



## **CILEx Regulation – Consultation on proposals to revise the investigation, disciplinary and appeals rules**

**A response by  
The Chartered Institute of Legal Executives (CILEx)**

**July 2017**



## **1. Introduction**

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes approximately 7,500 fully qualified Chartered Legal Executive lawyers.
- 1.2. CILEx is the Approved Regulator under the Legal Service Act 2007. These regulatory powers are delegated to the independent regulator CILEx Regulation Ltd.
- 1.3. In preparation for applying to become a Licensing Authority, this consultation proposes changes to the CILEx Regulation Investigation, Disciplinary and Appeals Rules that cover declarations of prior conduct and the handling of allegations of misconduct.
- 1.4. We note that some of the proposed changes might extend beyond the changes one might expect are needed to encompass other forms of entity and owners, however for the large part these are uncontentious.
- 1.5. CILEx supports the approach to enforcement taken by CILEx Regulation to adopt a consistent approach for the various individuals and entities that fall within its regulatory community, as far as is appropriate. This will ensure that expectations are clear, and the misconduct allegations are handled in a uniform process.
- 1.6. That being so, we are supportive of the proposed changes, save for the following observations that we offer for consideration.

## **2. Investigation of complaints and the professional conduct panel**

- 2.1. We support the move to ensure consistency of approach when considering allegations made against the variety of persons subject to CILEx Regulation's oversight.
- 2.2. The standard of proof being on the balance of probabilities allows for greater, and in CILEx's view appropriate, flexibility than the stricter standard of reasonable doubt. That being so, the additional rules allowing evidence that may not otherwise be admissible, or to exclude evidence that may otherwise be admissible, in civil proceedings may be seen as requiring additional clarity within the rules.
  - 2.2.1. This could include a requirement for the Panel to record their decisions to include or exclude evidence, and for that decision, as well as the consideration of evidence as part of deliberations, to be undertaken with sufficient rigour, and be consistent with previously similar decisions.

## **3. Prior conduct**

- 3.1. We note the inclusion of additional duties to declare prior conduct, and the commitment in the consultation document to develop guidance. We hope the

guidance shall be sufficiently detailed as to ensure regulated persons are absolutely clear as to what information they should supply.

- 3.1.1. Considering that failure to declare prior conduct constitutes a misconduct in itself, we are concerned that the catch-all provision included in Rule 11(1)(h) and 11(3)(h) may be insufficiently vague, and could lead to confusion as to what information members should provide.
- 3.1.2. However we recognise that there will be circumstances where CILEx Regulation should be notified of prior conduct that may extend beyond the current defined list of required declarations.
- 3.1.3. To resolve this, we would recommend that as with other duties placed on our members, this should be considered through the prism of outcomes-focused regulation and the Code of Conduct.
- 3.1.4. We would therefore ask CILEx Regulation to consider the following possible revisions;

*11. (1) Every Applicant or Relevant Person who is an individual must declare in writing to CILEx Regulation if that individual has at any time been involved in any matter which may constitute a breach of the Code of Conduct. This includes, but is not limited to;  
Rules (a) to (g) as currently enforced.*

*11. (3) In respect of every Applicant or Relevant Person that is not an individual, a declaration must be made in writing to CILEx Regulation if a Relevant Person has at any time been involved in any matter which may constitute a breach of the Code of Conduct. This includes, but is not limited to;  
Rules (a) to (g) as currently enforced.*

#### **For further details**

Should you  
require any  
further  
information,  
please contact;

Richard Doughty  
Policy & Public Affairs Manager  
[richard.doughty@cilex.org.uk](mailto:richard.doughty@cilex.org.uk)  
01234 845710