



# **CILEX Malpractice and Maladministration Appeals Procedure**

*CILEX Regulated Qualifications*

# Introduction

1. This procedure describes the way in which CILEX implements its Appeals Policy - CILEX Regulated Qualifications for malpractice or maladministration appeals. This procedure should be read in conjunction with the CILEX Malpractice and Maladministration Policy – CILEX Regulated Qualifications, the CILEX Malpractice and Maladministration Procedure – CILEX Regulated Qualifications and the CILEX Sanctions Policy – CILEX Regulated Qualifications.

## Scope

2. This procedure applies to CILEX learners, Heads of Training Providers, other accredited training provider staff and associated contractors, for example invigilators and CILEX staff and 3<sup>rd</sup> party contractors involved in appeals.

## Who can appeal?

3. A learner, or a Head of Training Provider acting on behalf of a learner, may appeal a decision to impose a sanction/sanctions on a learner following an investigation into malpractice or maladministration.
4. A Head of Training Provider may appeal a decision to impose a sanction/sanctions on a CILEX accredited training provider or an accredited training provider member of staff, following an investigation into malpractice or maladministration.
5. An accredited training provider member of staff may appeal a decision to impose a sanction/sanctions on an accredited training provider member of staff following an investigation into malpractice or maladministration.

## How to appeal a decision

6. A written request for an appeal must be made within 10 working days of the date of the correspondence from CILEX setting out the decision in relation to the malpractice /maladministration allegation and the associated sanction/s. This appeal deadline will normally be set out in the correspondence from CILEX.
7. Appellants must complete the online CILEX Appeals Form on the CILEX website to apply for an appeal. Appellants should attach copies of any documents on which the appellant proposes to rely for the purposes of the appeal. It is important that all relevant documentation is included at this point as there will be limited opportunities to submit additional information later in the process.

## Grounds for appeal

8. The appellant must set out the grounds on which they rely. The grounds must be reasonable and relate to the case in question. The following are examples of reasonable grounds:
  - the case was not dealt with in accordance with the published CILEX policy and procedure;
  - the decision was unreasonable in light of the evidence;
  - the sanction was inconsistent with the CILEX Sanctions Policy.
9. The following are examples which by themselves do not constitute grounds for an appeal:
  - the appellant regrets his/her actions;
  - the appellant has a previously unblemished record with CILEX (or other awarding organisations).
10. Requests for appeals are reviewed by a CILEX Officer. The grounds for appeal are checked for their validity. Subject to the grounds for appeal being valid, the appeal will be submitted for formal consideration by the CILEX Qualifications Appeals Panel.

## Notice and arrangements for the CILEX Qualifications Appeals Panel hearing

11. CILEX will decide whether the hearing of the CILEX Qualifications Appeals Panel will be held remotely (using video conferencing technology) or face-to-face.
12. The Clerk to the CILEX Qualifications Appeals Panel will as soon as reasonably practical organise a CILEX Qualifications Appeals Panel hearing. Where possible, CILEX seeks to hold the hearing within 30 days of receipt of the request for an appeal, subject to the availability of the appellant to attend the hearing on the proposed date. Appeal requests which are incomplete, for example omit documents upon which the appellant is intending to rely, will delay arrangements for the hearing.
13. The Clerk will contact the appellant to confirm whether the appellant wishes to attend the CILEX Qualifications Appeals Panel hearing prior to finalising a date for the hearing.
14. The Clerk will also make arrangements for a CILEX representative who was involved in, or oversaw, the investigation of the case to attend the hearing.
15. The appellant may be accompanied by a relative or friend. In such cases, the appellant must provide the Clerk with the name and address of the person to accompany them no later than 10 days before the date of the hearing.
16. Legal representation is not normally permitted at CILEX Qualification Appeals Panel hearings, as a CILEX Qualifications Appeals Panel hearing is not a legal function.
17. If the appellant wishes to be legally represented, this must be discussed with the Clerk before a hearing date is finalised. In the event that legal representation for the appellant is agreed, CILEX reserves the right to also be legally represented. CILEX will not be liable for any professional fees incurred by the appellant.

# CILEX Qualification Appeals Panel documentation

18. The documentation presented to the CILEX Qualifications Appeals Panel will be:
  - the standard agenda for Panel hearings;
  - the documentation presented to the CILEX Qualifications Malpractice Panel, or the documentation considered by the Head of Awarding Organisation or CILEX Manager for cases where the appellant admitted malpractice/maladministration;
  - the record of the decision and rationale;
  - the appellant's statement of the grounds of appeal;
  - the documents provided by the appellant on which the appellant is relying for the purposes of the appeal.
19. Where any material is considered by CILEX to be of a confidential nature, CILEX may make any such material available to the CILEX Qualifications Appeals Panel under such circumstances as are necessary to protect the confidentiality of the material.
20. The Clerk will provide the CILEX Qualifications Appeals Panel, appellant and CILEX representative attending the hearing with the hearing documentation approximately 10 working days prior to the hearing.
21. It will not normally be possible for additional materials to be tabled by the appellant on the day of the hearing. The decision whether to allow any additional materials to be tabled will be made by the Chair at the hearing.

## CILEX Qualifications Appeals Panel

22. The CILEX Qualifications Appeals Panel comprises three members appointed on a case-by-case basis in accordance with the CILEX Qualifications Appeals Panel Terms of Reference. Panel members are appointed based on their expertise and taking into consideration any potential conflicts of interest. A minimum of one of the members must be independent (i.e. not a member of CILEX staff, a CILEX assessor or an individual working for CILEX or otherwise connected to CILEX (including being a member of other CILEX boards, committees, and panels) for a minimum of 5 years).
23. A Chair is appointed in accordance with the CILEX Qualifications Appeals Panel Terms of Reference.
24. The Panel members attending a hearing must have no personal interest in the appeal(s) being considered. The Panel members cannot have been involved in the decision being appealed at an earlier stage.

## Conduct of hearings

25. Panel hearings are held remotely (using video conferencing technology) or face-to-face at a venue arranged by CILEX. Face-to-face hearings will not be held outside the United Kingdom.

26. The Chair of the Panel is responsible for ensuring the hearing complies with CILEX procedures and follows the agenda, although some flexibility is permitted to allow for the circumstances of the case and any issues which arise on the day.
27. The Panel, with the consent of the appellant, may record the open sessions of the hearing; closed sessions cannot be recorded.
28. The Panel will give the appellant the opportunity of being heard. The appellant can choose not to present their evidence to the Panel. In the event that the appellant wishes to be heard, the CILEX representative will also be invited to present their case.
29. In the event that the appellant has chosen not to attend the hearing or has failed to confirm their attendance at the hearing, the Panel will continue to consider all the documentary evidence supplied by the appellant.
30. In the event that the appellant has stated s/he wishes to attend the hearing and be heard by the Panel, and they do not present themselves at the hearing on the given date and time (either in person or via video conference, as applicable), the hearing will proceed in the appellant's absence.
31. The hearing will take the form of a re-examination of the evidence and reports and other relevant documentation presented to the CILEX Qualifications Malpractice Panel or considered by the Head of Awarding Organisation or CILEX Manager and the appellant's appeal statement and supporting documentation.
32. The Panel will have the opportunity to question the appellant and the CILEX representative if the appellant has chosen to attend the hearing.
33. Neither the appellant nor the CILEX representative are permitted to be present for the Panel's deliberations and decision-making process.

## The decision

34. The Panel decides, on the balance of probabilities:
  - (i) whether CILEX has followed its policies and procedures correctly and consistently and applied them properly and fairly in arriving at judgements;
  - (ii) whether there is sufficient evidence to support a decision that malpractice/maladministration is proven;
  - (iii) the appropriateness of the sanction in accordance with the CILEX Sanctions Policy – CILEX Regulated Qualifications;
  - (iv) whether the decision was reasonable in light of the evidence.

The Panel may substitute its own decision in relation to (i) to (iv) above.

35. Decisions are made by a majority vote of the Panel members present at the hearing. The Panel sets out the reasons for its decision.
36. The Clerk is responsible for providing administrative support to the Panel including producing a report of the hearing.

37. The Panel may make recommendations to CILEX in relation to any issues/concerns which emerged during the appeals hearing. The Clerk will keep a separate record of any recommendations.
38. The decision of the Panel is final, no further appeal is permitted.

## After the hearing

39. The appellant will be notified of the Panel's decision by the Clerk within 5 working days of the hearing.
40. The report of the hearing, approved by the Chair, may be provided to the appellant and CILEX Representative within 10 working days. This report is confidential to the appellant and CILEX.
41. The appellant and the CILEX Representative will be offered the opportunity to correct errors of fact made in the report. The decision whether to accept these amendments will be at the discretion of the Chair of the Panel.
42. The Clerk will provide the CILEX Quality and Standards team with the Panel's recommendations, and this team is responsible for disseminating the Panel's recommendations to the appropriate members of CILEX staff.

## Fees and payments

43. Learners must pay the appeal fee through the myCILEX portal when they request for an appeal.
44. Where a training provider requests an appeal on behalf of a learner or where a training provider or member of training provider staff requests an appeal, the training provider will be invoiced for the appropriate fee within 5 working days of a request for an appeal. Payment terms will be strictly 30 days from the date of the invoice. Non-payment of invoices may result in CILEX services being suspended.
45. CILEX reserves the right not to progress an appeal application until the correct fee has been paid.
46. The fee is refunded if the CILEX Qualifications Appeals Panel upholds the appeal.

## Record keeping

47. All documentation associated with the appeal is maintained in the relevant case file.

## Retention of materials

48. CILEX retains all documentation and records in relation to malpractice or maladministration appeals for three years.

# Review arrangements

49. Following each appeal, the CILEX Quality and Standards team will conduct a review to identify any lessons learnt to inform reviews of relevant policies and procedures.
50. The Education Compliance Manager has overall responsibility for this procedure and will ensure it is reviewed at least annually as part of the annual self-evaluation arrangements to take account of stakeholder feedback, actions from the regulatory authorities, changes in legislation, or issues emerging from previous appeals.
51. The procedure may be reviewed more frequently in light of operational feedback to ensure the arrangements for dealing with appeals remain effective.