



Standard of Proof April 2011 Consultation – Summary of responses

Purpose of Consultation

Our initial Licensing Authority and Schedule 4 Rules Amendment applications to the Legal Services Board proposed a sliding scale in our enforcement proceedings: from the civil standard of proof of the 'balance of probabilities', to the criminal standard of 'beyond a reasonable doubt' in cases where dishonesty is alleged.

After due consideration of the Legal Services Consumer Panel's consequent proposal that application of the civil standard in all formal disciplinary cases would be more in keeping with the approach of other Approved Regulators; and given this is also the standard which will be employed by the First-Tier Tribunal – when determining appeals against the CLC's Licensing Authority licensing determinations – we provisionally concluded that the civil standard should be applied in all of our enforcement proceedings and consulted on this in April 2011.

Questions asked:

- a) Do you agree that the appropriate standard of proof for enforcement proceedings taken by the CLC as a Licensing Authority should be the balance of probabilities?
- b) Do you agree that the same standard of proof (the balance of probabilities) should also be applied when the CLC is taking enforcement action as an Approved Regulator?

Status	For or against proposals
Licensed conveyancer	Considers the balance of probabilities to be inappropriate, judging the 'beyond reasonable doubt' test employed in criminal proceedings to be appropriate as a 'professional sanction can...have severe consequences for the professional person and for those in his or her employment. It is no justification to say that a few innocent parties must suffer, in order to get rid of the real bad eggs'.
Licensed conveyancer	Agreement with proposed Clause 5 (a) and (b).

Licensed conveyancer	Reservations about the 'balance of probabilities' test 'as we seem to be moving further and further away from a presumed innocent until proven otherwise position - and changing the very emphasis on which the English Legal system has been based'. However, doesn't consider the CLC to have any real option but to apply it as it is in its best interests to be designated as a Licensing Authority.
Recognised Body	Supports the proposed changes.
Approved Regulator	Important that the same standard of proof is applied by all Licensing Authorities and the First-Tier Tribunal as well as that applied as an Approved Regulator. IPS has moved to the civil standard of proof in disciplinary matters and this has worked well.

CLC Conclusion

Four of the five respondents agreed with our proposal to apply the civil standard in all cases. In reply to the two respondents who expressed concerns on the grounds that allegations may wrongly be found against an innocent person we cited a recent case in which the Supreme Court had distinguished between the standard of proof and the quality of the evidence. If an event were inherently improbable it may take better evidence to persuade the judge that it has happened than would be required if the event were commonplace.

As a consequence of the Consumer Panel's feedback to our Licensing Authority application and that gathered through this dedicated consultation, we have amended our applications to the Legal Services Board so that the civil standard is applied in all such matters.