

Proposed New Rules for the CLC's Adjudication Panel

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ANNEX 1

DRAFT ADJUDICATION PANEL DISCIPLINARY PROCEDURE RULES 2022

These Rules were made by the Council for Licensed Conveyancers under sections 20, 24(4A), 24(5), 25 and Schedule 4 to the Administration of Justice Act 1985 and as part of the regulatory arrangements of the CLC, with the approval of the Legal Services Board pursuant to Section 30 and paragraph 1 of the Legal Services Act 2007

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1. Commencement

The Rules may be cited as the CLC's Adjudication Panel Disciplinary Procedure Rules and shall come into effect on superseding all previous Adjudication Panel Procedure Rules save that:

- (a) no prior decision of the Investigating Committee, the Discipline and Appeals Committee or the Adjudication Panel shall be invalidated by the coming into force of these Rules;
- (b) any case referred for determination prior to the coming into force of these Rules, where notice of the time and place of the hearing has been given or the hearing has commenced, shall continue and shall be determined in accordance with the Adjudication Panel Procedure Rules 2013 (as amended August 2015).

2. Interpretation

Words and expressions shall have the meanings given to them by:

- (a) the 1985 Act, the 1990 Act and the 2007 Act
 - (b) the Adjudication Panel Constitution Rules 2022; or
 - (c) as set out below
 - (d) "Allegation" includes an allegation that a licensed conveyancer:
 - (i) has (whether while a licensed conveyancer or not) been convicted by any court in the United Kingdom of a criminal offence which renders him unfit to practise as a licensed conveyancer; or
 - (ii) has, while holding a licence in force under Part II of the 1985 Act, failed to comply with any condition to which that licence was subject; or
 - (iii) has failed to comply with any Rules, including the CLC Handbook, made by the Council under Part II of the 1985 Actand includes an allegation against a recognised body as set out in paragraph 3(1) of Schedule 6 to the 1985 Act
- "Appellant" means an individual or a body who is appealing any of the following:
- A direction to suspend a licence under s24(5) of the 1985 Act (interim suspension)
 - An order as to the payment of costs under s24(7), s24A(2), paragraph 3A(2) of Schedule 6 of the 1985 Act
 - A direction for payment of a penalty under s24A(1) or paragraph 3A(1) of Schedule 6 of the 1985 Act

	<ul style="list-style-type: none"> - a decision of the Council in relation to a licence under s29(1) of the 1985 Act or under the ABS Licensing Framework made pursuant to the 2007 Act - a decision of the Council in relation to recognition of a body under paragraph 8 of Schedule 6
"Applicant"	means an individual or a body who is applying for any of the following: <ul style="list-style-type: none"> - removal of disqualification from holding a licence under s27(1) of the 1985 Act
"CLC Role Holder"	includes Manager, Owner, Person with a material interest or a controlled interest, a Head of Legal Practice or a Head of Financial Administration
"Disciplinary Case"	means a case against a Licensee alleging a breach of CLC Rules
"Licensee"	includes Licensed Body, Licensed Conveyancer, Licensed CLC Practitioner or Recognised Body as applicable and shall include a person who was a licensed conveyancer at the time when the conduct to which an allegation relates took place
"Licensing Appeal"	means appeal against a decision of the Council in relation to a licence under s29(1) of the 1985 Act or under the ABS Licensing Framework made pursuant to the 2007 Act
"Party"	is as defined in the 1985 Act (Schedule 4) and may include the CLC, Licensees, CLC Role Holders, and Appellants
"registered address"	means the Licensee's address in the Register and/or their last known address
"Respondent"	in these Rules means the Licensed Conveyancer or Recognised Body against whom an allegation is made
"working day"	includes any day except a Saturday or Sunday, Christmas Day, Good Friday or a Bank Holiday under section 1 of the Banking and Financial Dealings Act 1971; Any direction to be complied with on or by a particular day must be complied with before 5pm on that day

3. **Sending and Delivery of Documents**

Any document to be provided to the Adjudication Panel or the parties under these Rules or a direction must be:

- (a) sent by pre-paid post to the registered address of the recipient;
- (b) delivered by hand to the registered address of the recipient; or
- (c) sent by email to the registered email address of the recipient, with a delivery receipt requested as proof of sending, provided that the parties have agreed to service by email.

4. **Function and Scope of these Rules**

4.1 Any complaint of misconduct shall be dealt with in accordance with these Rules and the Adjudication Panel Rules 2022 and guidance on such matters published from time to time.

4.2 The objective of these Rules is to enable the Adjudication Panel to deal with cases in accordance with its overriding objectives.

4.3 The Adjudication Panel's overriding objectives are:

- To protect the public and consumers of legal services
- To protect, promote and maintain public confidence in the profession of Licensed Conveyancing
- To promote and maintain proper standards and conduct amongst Licensed Conveyancers
- To deal with cases fairly and justly.

4.4 Dealing with a case fairly and justly includes: -

- Dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the public interest in the case, the anticipated costs and the resources of the parties;
- Avoiding unnecessary formality in the proceedings;
- Ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- Avoiding unnecessary delay.

4.5 The Adjudication panel must seek to give effect to the overriding objective when it exercises any power under these Rules.

4.6 The parties to a case must help the Adjudication Panel to further the overriding objective and co-operate with the Adjudication Panel to the best of their ability in the circumstances.

5. **Burden and Standard of Proof**

5.1 The burden of proving the facts in a disciplinary case before the Adjudication panel is on the CLC.

5.2 The burden of proving that an applicant is suitable to be licensed or recognised in a Licence Appeal to the Adjudication Panel is on the Applicant.

5.3 The standard of proof in relation to disputed facts is on the balance of probabilities.

6. **Representation**

6.1 A party may appoint a representative to represent that party in the proceedings and at any hearing. That representative must be either practising Counsel, a practising Solicitor, a representative from any professional organisation of which they are a member; or at the discretion of the Adjudication Panel, another person.

6.2 If a party appoints a representative, that party must provide the Adjudication Panel and the other party with the name, address and email address of the representative, within 7 days of their appointment.

6.3 A person appointed by a party as their representative may carry out any action or receive any document on behalf of that party except for:

- signing a witness statement
- giving evidence at any hearing

6.4 If a representative is appointed on behalf of a party, it is assumed that the representative remains authorised to act on behalf of that party, and to receive any documentation on behalf of that party, until the Adjudication panel and the other party receives written notification to the contrary from the representative or the represented party.

6.5 No other person shall appear at an Adjudication Panel hearing to represent a party without the written permission of the Adjudication Panel Chair.

7. **The Adjudication Panel**

Composition of the panels

7.1 The Adjudication panel appointed to hear a case must be composed of three members, of whom one must be a CLC Lawyer member. A member who has decided a Preliminary Investigation on a case must not sit as a member of the substantive hearing panel deciding that case.

7.2 It is the responsibility of the Adjudication Panel Chair to appoint the panel, in accordance with the Adjudication Panel Constitution Rules

Legal Advisor

7.3 Every Adjudication panel will either have:-

- (a) a legally qualified Chair, who is able to advise the panel on the relevant law should any matters arise or,
- (b) if the appointed Chair is not legally qualified, a Legal Advisor to provide appropriate legal advice to the panel if the Adjudication Panel Chair considers it necessary, having made an assessment of the issues in the case.

Delegation

7.4 The Adjudication Panel Chair may direct a single member of the Adjudication Panel to act as an Adjudicator, which can be the Adjudication Panel Chair themselves. An Adjudicator can decide:

- (a) to refer an allegation or allegations against a Respondent to a fresh panel of the Adjudication Panel for determination in accordance with these Rules;
- (b) to issue a direction to suspend a licence under s24(5) of the 1985 Act ("interim suspension") subject to the provisions of Rule 9 below;
- (c) to order payment of costs under s24(7) ("interim suspension costs")

7.5 In the event of the Adjudication Panel Chair being absent or unable to act or continue to act, anything authorised or required to be done by the Adjudication Panel Chair may be done by any other Adjudication Panel member who is authorised for the purpose by the Adjudication Panel Chair.

8. Initial stages and Adjudicator procedure and powers

8.1 Where the CLC identify a case in which it is alleged that a licensed conveyancer

- (a) has (whether while a licensed conveyancer or not) been convicted by any court in the United Kingdom of a criminal offence which renders him unfit to practise as a licensed conveyancer; or
- (b) has, while holding a licence failed to comply with any condition to which that licence was subject; or
- (c) has failed to comply with any rules made by the Council

the CLC must send to the Respondent a written draft allegation(s), a summary of the facts relied on and any supporting evidence and seek the Respondent's representations and if CLC considers it appropriate an indication that it considers the case suitable for an agreed penalty outcome.

8.2 If the Respondent wishes to provide representations and/or to consent to an agreed penalty outcome they should do so within 28 days, setting out any matter on which they would rely if the matter proceeded to a hearing before the Adjudication Panel.

8.3 If the CLC, having received the Respondent's response document or after 28 days, intend to proceed with a referral to the Adjudication Panel, that referral, in the form of a draft allegation and supporting evidence, and any response and documents received from the Respondent, must be made to the Adjudication Panel Chair within 14 days of any Respondent's response being received or if not received, 14 days from expiry of the 28 day period.

8.4 The CLC should confirm to the Respondent if it has amended the draft allegation.

8.5 Within 28 days of being appointed to review the draft allegation and supporting evidence, the Adjudicator will provide to the Adjudication Panel Chair and the Adjudication Panel Assistant written notice of their reasoned decision.

- 8.6 Within 7 days of receiving the written reasoned decision from the Adjudicator, the Adjudication Panel Assistant will distribute the written decision to the parties.
- 8.7 The Adjudicator shall refer a case under Rule 7.4(a) above if they decide there is a case for the Respondent to answer.
- 8.8 In the event that the Respondent fails to pay the agreed penalty within 28 days, the CLC shall provide an update to the Adjudicator who shall decide whether to refer the case to the Adjudication Panel for determination.
- 8.9 The Adjudicator shall not issue directions or provide guidance to the CLC in relation to the draft allegation(s) and supporting evidence.
- 8.10 Appeal of referral decision
- (a) There is no general right to appeal the Adjudicator's decision to refer a case to the Adjudication Panel for hearing.
 - (b) However, in certain circumstances only, the Respondent or the CLC may request a review of the decision by the Adjudication Panel Chair. Those circumstances are limited to the following:
 - (i) If the decision in question may be materially flawed, for any reason, wholly or partly; or
 - (ii) There is new information which may have, wholly or partly, led to a different decision.
 - (c) Save for in cases where subsection (e) below applies, the Adjudication Panel Chair will only conduct a review of the Adjudicator's decision if they are satisfied that one of those circumstances is made out **and** they consider that the review is necessary for the protection of the public, the prevention of injustice to the Respondent, or is otherwise necessary in the public interest.
 - (d) Any such review shall be a review on the papers only, the Adjudication Panel Chair having invited written representations from both parties.
 - (e) No review will be undertaken if the decision was made by the Adjudicator more than 12 months ago or if Notice of Hearing has been sent, unless there are exceptional circumstances.
9. **Interim Orders**
- 9.1 Where the Adjudicator has referred a case under Rule 7.4(a) and they consider that it may be necessary for the protection of consumers to make a direction for interim suspension of the Respondent's licence the Adjudicator shall:
- (a) direct that notice be given to the Respondent inviting the Respondent to make any representations against the making of the proposed directions within 14 days of receipt of the notice;
 - (b) consider any representations received from the Respondent;
 - (c) decide whether to direct that the Respondent's licence be suspended until the allegation is determined by the Adjudication Panel or until otherwise directed by an Adjudication Panel;
 - (d) make such order as they think fit as to the payment of costs by the Council, or the Respondent.
- 9.2 In accordance with s24(5)(b) of the 1985 Act the Adjudicator may only direct that the Respondent's licence be suspended where they consider it is necessary for the protection of consumers to make such a direction.
- 9.3 In accordance with s24(8) of the 1985 Act where a direction for interim suspension of a licence has been made, a Respondent may appeal to the Adjudication Panel, within 21 days of the initial direction or in the event of a material change of circumstances.

9.4 Where an interim suspension is appealed by reason of a material change of circumstances the Adjudication Panel Chair will only schedule an appeal if they are satisfied that this is made out.

9.5 If an appeal is scheduled the Adjudication Panel Chair shall:

- (a) appoint a panel, in accordance with Rule 7 above;
- (b) determine whether the matter can be considered on the papers or whether a hearing is required;
- (c) make an assessment as to whether a Legal Advisor is required to advise the panel on the relevant law at any hearing;
- (d) if required arrange for service of a notice of the hearing on the panel and parties, which must include the date, time and location of the hearing and the names of the hearing panel members.

9.6 At any Adjudication Panel hearing to consider an interim suspension:

- (a) Rule 6 Representation shall apply;
- (b) Rule 12.4 Proceeding in absence shall apply;
- (c) Relevant parts of Rule 10 shall apply;
- (d) There will be a presumption that the matter will be heard in private:
- (e) No person shall give oral evidence at a hearing unless the Adjudication Panel considers such evidence is necessary to enable it to discharge its functions;
- (f) The Adjudication Panel shall hear from the CLC and the Respondent representations as to whether an Interim Order is necessary;
- (g) The Adjudication Panel shall decide whether to direct that the Respondent's licence be suspended until the allegation is determined by the Adjudication Panel or until otherwise directed by an Adjudication Panel;
- (h) The Adjudication Panel shall make such order as they think fit as to the payment of costs by CLC, or the Respondent.

10. **Adjudication Panel powers**

10.1 The Adjudication panel, when considering a case referred to it, may

- (a) Give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending, or setting aside an earlier direction
- (b) Extend or shorten the time for complying with any rule or direction, unless such extension or shortening would conflict with the over-riding objective;
- (c) Consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues;
- (d) Deal with an issue in the proceedings as a preliminary issue;
- (e) Hold a hearing to consider any case management issue;
- (f) Make or permit an amendment to the allegation(s), where it is satisfied that there would be no injustice caused to either party in so doing;
- (g) Permit or require a party to amend a document, where it is in the interests of justice to do so;
- (h) Exclude evidence that would otherwise be admissible where
 - (i) The evidence was not relevant to the matter being considered
 - (ii) The evidence was not provided within the time specified by a direction
 - (iii) The evidence was not provided in a manner or format specified by a direction

- (iv) It would be otherwise unfair to admit the evidence
 - (i) Compel a party to attend and/or to produce documents in accordance with paragraph 2 of Schedule 4 to the 1985 Act
 - (j) Adjourn or postpone a hearing;
- 10.2 All decisions made by a three-member panel will be made on the basis of a majority decision, with all members of the panel having an equal vote.
11. **Referral to hearing**
- 11.1 Where the Adjudicator has decided to refer the case to a freshly constituted Adjudication Panel the Adjudication Panel Assistant will notify the CLC, the Respondent and the Adjudication Panel Chair a request for an oral hearing.
- 11.2 The Adjudication Panel Chair shall thereafter
- (a) appoint a hearing panel and Chair, in accordance with the requirements set out at Rule 7.1 and 7.2 above
 - (b) Make an assessment as to whether a Legal Advisor is required to advise the panel on the relevant law at the hearing, in accordance with rule 7.3 above.
 - (c) Arrange for service of a notice of the hearing on the panel and parties, which must include the date, time and location of the hearing and the names of the hearing panel members
 - (d) issue the Standard Directions (Schedule A).
- 11.3 The Chair will issue any other directions in the case that they deem appropriate, bearing in mind the overarching objectives and any application in writing by the parties. Directions may include the calling of a case management hearing if necessary.
12. **Hearing**
- 12.1 The Chair shall be responsible for the management of the hearing.
- 12.2 The Adjudication Panel may hear:
- (a) two or more cases against a Respondent at the same time; or
 - (b) cases against two or more Respondents at the same time where it would be just to do so.
- 12.3 There is a presumption that all hearings will be held in public, unless a direction has been made by the Chair that it will be held in private. Such a direction will only be made where the panel are satisfied that the particular circumstances of the case outweigh the public interest in holding the hearing, or any part of the hearing, in public. It will only be made in exceptional circumstances, and reasons must be given for the making of that decision.
- 12.4 If, at the hearing, the Respondent is not present or represented, the hearing panel may proceed to hear the matter in the Respondent's absence if it is satisfied it is in the interests of justice to do so. Before deciding to proceed in the absence of the Respondent,:
- (a) the hearing panel must be satisfied that the Respondent has been sent notice of the hearing
 - (b) The CLC should confirm whether the Respondent made any contact with as a result of receiving notice of the hearing
 - (c) The CLC should confirm if any information been received which would suggest that it is not in the interests of justice to proceed without the Respondent being present
- 12.5 The hearing panel, or the Chair may give a direction excluding any person (who is not a party to the proceedings) from a hearing or part of a hearing if:
- (a) The panel considers their conduct is disrupting or is likely to disrupt the hearing
 - (b) The panel considers their presence is likely to prevent another person from giving evidence or making submissions freely

- 12.6 The hearing panel, or the Chair, may make a direction excluding a witness from a hearing until that person gives evidence.
- 12.7 At the request of either party, or of its own volition, the hearing panel (or the Chair alone) may adjourn the hearing if it is satisfied it is in the interests of justice to do so. An application for an adjournment may be made by a party in writing in advance of the hearing, or orally at the hearing itself.
- 12.8 The order of proceedings for the hearing before the Adjudication hearing panel, unless the Chair otherwise directs, are set out in the Hearing Guidance.
- 12.9 The hearing will consist of four stages;
- (a) The Facts stage; where the panel will decide whether any unadmitted facts are found proved;
 - (b) The Misconduct stage; where the panel will consider whether the Respondent has, on the basis of the admitted and/or proven facts, a) been convicted by any court in the United Kingdom of a criminal offence which renders him unfit to practise as a licensed conveyancer; or b) while holding a licence failed to comply with any condition to which that licence was subject; or c) failed to comply with any rules made by the Council
 - (c) The Sanctions stage; where the panel will decide whether to impose a sanction on the Respondent in accordance with the CLC Sanctions Guidance;
 - (d) The Costs stage; where the panel may make such order for costs as it thinks fit.
- 12.10 The panel must make its decision at each stage before moving on to the next, and must not conflate the stages in any way. Submissions however can be made on Facts and Misconduct together, and Sanctions and Costs together, if the panel considers it appropriate in the facts of the case.
- 12.11 All oral evidence will be given on oath or by affirmation.
- 12.12 Production of a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas that a person has been convicted of a criminal offence or, in Scotland, an extract conviction, shall be conclusive evidence of the offence committed.
- 12.13 Production of a Court order, finding or certified note of a civil court penalty or findings of fact shall be conclusive proof of the facts found or penalty imposed.
- 12.14 Production of a certificate signed by an officer of a regulatory body in the UK or overseas, that has made a determination about the fitness to practise of a person shall be conclusive evidence of the facts found proved in relation to that determination.
- 12.15 The panel has the power to award costs against either party. Any application for costs must be accompanied by a Schedule of Costs prepared by the party applying, which should usually have been served on the other party at least 2 working days earlier.
- 12.16 Where the Respondent wishes to make representations about their ability to pay this must be accompanied by a signed and dated Statement of Means served at least 2 working days earlier.
- 12.17 A complete record of the hearing must be made and retained for a period of [x] That record should be in the form of a digital audio recording, but in the event that is not practically possible, the Chair must make a full note and their note will stand as the official record of the hearing.
- 12.18 The record of the panel's findings, with detailed reasons, will be distributed to the parties and filed with the CLC within five working days of the conclusion of the hearing, and will be published on the CLC website within 28 days of the conclusion of the hearing, if there has been no appeal, otherwise within 28 days of the conclusion of any appeal proceedings.

6 Correcting mistakes and omissions

- 6.1 The Adjudication Panel may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by:

- (a) Sending notification of the amended decision or direction, or a copy of the amended document, to each party, and
- (b) Making any amendment to information published in relation to the decision, direction or document.

ANNEX 2

DRAFT ADJUDICATION PANEL LICENSING AND RECOGNITION APPEAL PROCEDURE RULES 2022

These Rules were made by the Council for Licensed Conveyancers under sections 20, and paragraph 8(3) Schedule 6 to the Administration of Justice Act 1985 and as part of the regulatory arrangements of the CLC, with the approval of the Legal Services Board pursuant to section 30 and paragraph 1 of the Legal Services Act 2007.

CONTENTS

1. Commencement

These Rules may be cited as the CLC's Adjudication Panel Licensing and Recognition Appeal Procedure Rules (or Appeal Procedure Rules) and shall come into effect on

2. Interpretation

Words and expressions shall have the meanings given to them by:

- (a) the 1985 Act, the 1990 Act and the 2007 Act;
- (b) the Adjudication Panel Constitution Rules 2022;
- (c) the Adjudication Panel Disciplinary Procedure Rules 2022.
- (d) the Adjudication Panel Fraud and Error Procedure Rules 2022; or
- (e) the Adjudication Panel Restoration Procedure Rules 2022.

3. Sending and Delivery of Documents

Any document to be provided to the Adjudication Panel or the parties under these Rules or a direction must be:

- (a) sent by pre-paid post to the registered address of the recipient;
- (b) delivered by hand to the registered address of the recipient; or
- (c) sent by email to the registered email address of the recipient, with a delivery receipt requested as proof of sending, provided that the parties have agreed to service by email.

4. Function and Scope of these Rules

4.1 Any appeal against:

- (a) An order as to the payment of costs under s24(7), s24A(2), paragraph 3A(2) of Schedule 6 of the 1985 Act;
- (b) A direction for payment of a penalty under s24A(1) or paragraph 3A(1) of Schedule 6 of the 1985 Act;
- (c) a decision of the Council in relation to a licence under s29(1) of the 1985 Act or under the ABS Licensing Framework made pursuant to the 2007 Act; or
- (d) a decision of the Council in relation to recognition of a body under paragraph 8 of Schedule 6 of the 1985 Act;

shall be dealt with in accordance with these Rules and such other Adjudication Panel Rules and guidance on such matters published from time to time.

4.2 The objective of these Rules is to enable the Adjudication Panel to deal with cases in accordance with its overriding objectives.

4.3 The Adjudication Panel's overriding objectives are:

- (a) To protect the public and consumers of legal services;
- (b) To protect, promote and maintain public confidence in the profession of Licensed Conveyancing
- (c) To promote and maintain proper standards and conduct amongst Licensed Conveyancers
- (d) To deal with cases fairly and justly.

4.4 Dealing with a case fairly and justly includes: -

- (a) Dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the public interest in the case, the anticipated costs and the resources of the parties;
- (b) Avoiding unnecessary formality in the proceedings;
- (c) Ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) Avoiding unnecessary delay.

4.5 The Adjudication Panel must seek to give effect to the overriding objective when it exercises any power under these Rules.

4.6 The parties to a case must help the Adjudication Panel to further the overriding objective and co-operate with the Adjudication Panel to the best of their ability in the circumstances.

5. Burden and Standard of Proof

5.1 The burden of proving the facts in an appeal case before the Adjudication Panel is on the Appellant.

5.2 The burden of proving that an applicant is suitable to be licensed or recognised in a Licence Appeal to the Adjudication Panel is on the Applicant.

5.3 The standard of proof in relation to disputed facts is on the balance of probabilities.

6. Representation

6.1 A party may appoint a representative to represent that party in the proceedings and at any hearing. That representative must be either practising Counsel, a practising Solicitor, a representative from any professional organisation of which they are a member; or at the discretion of the Adjudication Panel, another person.

6.2 If a party appoints a representative, that party must provide the Adjudication Panel and the other party with the name, address and email address of the representative, within 7 days of their appointment.

6.3 A person appointed by a party as their representative may carry out any action or receive any document on behalf of that party except for:

- (a) signing a witness statement
- (b) giving evidence at any hearing

6.4 If a representative is appointed on behalf of a party, it is assumed that the representative remains authorised to act on behalf of that party, and to receive any documentation on behalf of that party, until the Adjudication Panel and the other party receives written notification to the contrary from the representative or the represented party.

6.5 No other person shall appear at an Adjudication Panel hearing to represent a party without the written permission of the Adjudication Panel Chair.

7. The Adjudication Panel

Composition of the panels for appeals

7.1 The Adjudication Panel appointed to hear an appeal must be composed of three members, of whom one must be a CLC Lawyer member. If the appeal is against an Adjudication Panel decision no member who sat as a member of the substantive hearing panel can sit on the appeal.

7.2 It is the responsibility of the Adjudication Panel Chair to appoint the panel, in accordance with the Adjudication Panel Constitution Rules

Legal Advisor

7.3 Every appeal panel will either have:-

- (a) a legally qualified Chair, who is able to advise the panel on the relevant law should any matters arise or,
- (b) if the appointed Chair is not legally qualified, a Legal Advisor to provide appropriate legal advice to the appeal panel

if the Adjudication Panel Chair considers it necessary, having made an assessment of the issues in the case.

Delegation

7.4 The Adjudication Panel Chair will consider any Appeal Notice and confirm if it complies with the Appeal Notice Requirements before appointing a hearing panel.

7.5 In the event of the Adjudication Panel Chair being absent or unable to act or continue to act, anything authorised or required to be done by the Adjudication Panel Chair may be done by any other Adjudication Panel member who is authorised for the purpose by the Adjudication Panel Chair.

8. Consequences of making Appeal

8.1 Where an appeal is against:

- (a) a Disciplinary decision of the Adjudication Panel;
- (b) an order as to the payment of costs;
- (c) a direction for payment of a penalty;
- (d) a decision of the Council in relation to a licence under the 1985 Act; or
- (e) a decision of the Council under the ABS Licensing Framework

the decision shall not take effect (and no penalty or costs will be payable) pending consideration of the appeal by the Adjudication Panel.

8.2 Where an appeal is requested, the Adjudication Panel shall review the existing order, direction, or decision that forms the subject of the appeal. The appeal will not be a re-hearing. The Adjudication Panel shall assess whether the order, direction, or decision was within the range of reasonable options open to the Panel and proportionate in all the circumstances.

8.3 Rule 8.1(d) and 8.1(e) do not apply to automatic consequences for licences as a result of intervention.

8.4 Where an appeal is against a decision not to grant a licence or give recognition the individual or business will remain unlicensed or without recognition pending consideration of the appeal by the Adjudication Panel.

9. Adjudication Panel powers

9.1 The Adjudication Panel, when considering an appeal, may

- (a) Give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending, or setting aside an earlier direction;
- (b) Extend or shorten the time for complying with any rule or direction, unless such extension or shortening would conflict with the over-riding objective;

- (c) Consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues;
- (d) Deal with an issue in the proceedings as a preliminary issue;
- (e) Hold a hearing to consider any case management issue;
- (f) Permit or require a party to amend a document, where it is in the interests of justice to do so;
- (g) Exclude evidence that was not before the original decision maker(s) unless
 - (i) The evidence was not relevant to the matter being considered
 - (ii) The evidence was not provided within the time specified by a direction
 - (iii) The evidence was not provided in a manner or format specified by a direction
 - (iv) It would be otherwise unfair to admit the evidence;
- (h) Compel a party to attend and/or to produce documents in accordance with paragraph 2 of Schedule 4 to the 1985 Act;
- (i) Adjourn or postpone a hearing.

9.2 All decisions made by a three-member panel will be made on the basis of a majority decision, with all members of the panel having an equal vote.

10. Arrangements for an appeal hearing

10.1 Where the Adjudication Panel Chair confirms an appeal complies with the Appeal Notice Requirements the Adjudication Panel Assistant will notify the CLC and the Appellant.

10.2 The Adjudication Panel Chair shall thereafter

- (a) appoint an appeal panel and Chair, in accordance with the requirements set out at Rule 7.1 and 7.2 above.
- (b) Make an assessment as to whether a Legal Advisor is required to advise the appeal panel on the relevant law at the hearing, in accordance with rule 7.3 above.
- (c) Arrange for service of a notice of the hearing on the appeal panel and parties, which must include the date, time and location of the hearing and the names of the appeal panel members. The date notified must be not earlier than 14 days from the date of the notice of the meeting or hearing.
- (d) issue such directions in the case that they deem appropriate, bearing in mind the overriding objectives and any application in writing by the parties. Directions may include the calling of a case management hearing if necessary.

11. Hearing

11.1 The Chair shall be responsible for the management of the hearing.

11.2 The appeal panel considering an appeal may hear two or more appeals at the same time where it would be just to do so.

11.3 There is a presumption that all hearings (except for decisions relating to the grant or refusal of a licence or recognition) will be held in public, unless a direction has been made by the Chair that it will be held in private. Such a direction will only be made where the appeal panel are satisfied that the particular circumstances of the case outweigh the public interest in holding the hearing, or any part of the hearing, in public. It will only be made in exceptional circumstances, and reasons must be given for the making of that decision.

11.4 If, at the hearing, the Appellant is not present or represented, the appeal panel may proceed to determine the appeal in the Appellant's absence if it is satisfied it is in the interests of justice to do so. Before deciding to proceed in the absence of the Appellant:

- (a) the appeal panel must be satisfied that the Appellant has been sent notice of the hearing;

- (b) The CLC should confirm whether the Appellant made any contact with CLC as a result of receiving notice of the hearing;
 - (c) The CLC should confirm if any information has been received which would suggest that it is not in the interests of justice to proceed without the Appellant being present.
- 11.5 The appeal panel, or the Chair, may give a direction excluding any person (who is not a party to the proceedings) from a hearing or part of a hearing if:
- (a) The appeal panel considers their conduct is disrupting or is likely to disrupt the hearing
 - (b) The appeal panel considers their presence is likely to prevent another person from giving evidence or making submissions freely.
- 11.6 At the request of either party, or of its own volition, the appeal panel (or the Chair alone) may adjourn the hearing if it is satisfied it is in the interests of justice to do so. An application for an adjournment may be made by a party in writing in advance of the hearing, or orally at the hearing itself.
- 11.7 The order of proceedings for the appeal hearing before the appeal panel, unless the Chair otherwise directs will consist of the following:
- (a) The Appellant will refer the appeal panel to the existing decision in their case and outline their grounds of appeal;
 - (b) The CLC will respond to the appeal;
 - (c) The parties may only adduce fresh evidence with the permission of the appeal panel (or the Chair);
 - (d) The Appellant will be permitted to make any closing submissions;
 - (e) The appeal panel shall determine the appeal and announce its decision.
- 11.8 The appeal panel considering any appeal may:
- (a) Dismiss the appeal and uphold the original decision;
 - (b) Allow the appeal (in full or in part) and vary the original decision or make any decision which would have been available to the original decision makers;
 - (c) Make such order for costs as it thinks fit, having sought and considered submissions from the parties.
- 11.9 Any oral evidence will be given on oath or by affirmation.
- 11.10 Any application for costs must be accompanied by a Schedule of Costs prepared by the party applying, which should be made in writing and usually have been served on the other party at least 2 working days earlier.
- 11.11 Where the Appellant wishes to make representations about their ability to pay this must be accompanied by a signed and dated Statement of Means served at least 2 working days earlier.
- 11.12 A complete record of the hearing must be made and retained for a period of []. That record should be in the form of a digital audio recording, but in the event that is not practically possible, the Chair must make a full note and their note will stand as the official record of the hearing.
- 11.13 The record of the appeal panel's decision with detailed reasons, will be distributed to the parties and filed with the CLC within five working days of the conclusion of the hearing.
- 11.14 Within 28 days of the conclusion of the hearing:
- (a) Where an appeal against a disciplinary case is dismissed the original decision will then be published on the CLC website.

- (b) Where an appeal is allowed (in full or in part) and the Adjudication Panel varies the original decision or makes a new decision, that appeal decision will then be published on the CLC website.

12. Correcting mistakes and omissions

12.1 The Adjudication Panel may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by:

- (a) Sending notification of the amended decision or direction, or a copy of the amended document, to each party, and
- (b) Making any amendment to information published in relation to the decision, direction or document.

ANNEX 3

DRAFT ADJUDICATION PANEL RESTORATION PROCEDURE RULES 2022

These Rules were made by the Council for Licensed Conveyancers under sections 20, 24(4A), 25 and Schedules 4 and 6 to the Administration of Justice Act 1985 and as part of the regulatory arrangements of the CLC, with the approval of the Legal Services Board pursuant to section 30 and paragraph 1 of the Legal Services Act 2007.

CONTENTS

1. Commencement

The Rules may be cited as the CLC's Adjudication Panel Restoration Rules and shall come into effect on

2. Interpretation

Words and expressions shall have the meanings given to them by:

- (a) the 1985 Act, the 1990 Act and the 2007 Act;
- (b) the Adjudication Panel Constitution Rules 2022;
- (c) the Adjudication Panel Disciplinary Procedure Rules 2022;
- (d) The Adjudication Panel Fraud and Error Procedure Rules 2022;
- (e) The Adjudication Panel Licensing and Recognition Appeal Procedure Rules 2022; or
- (f) as set out below

"Applicant" means an individual or a body who is applying for any of the following:

- removal of disqualification from holding a licence under s27(1) of the 1985 Act
- a licence under s29(1) of the 1985 Act
- recognition of a body under paragraph 8 of Schedule 6 of the 1985 Act
- a licence under the ABS Licensing Framework made pursuant to the 2007 Act
- removal or waiver of a disqualification from holding a role within a Recognised Body or CLC Licenced Body

"party" is as defined in the 1985 Act (Schedule 4) and may include Applicants, the CLC, Licensees, CLC Role Holders, and Appellants

"working day" includes any day except a Saturday or Sunday, Christmas Day, Good Friday or a Bank Holiday under section 1 of the Banking and Financial Dealings Act 1971

Any direction to be complied with on or by a particular day must be complied with before 5pm on that day.

3. **Sending and Delivery of Documents**

Any document to be provided to the Adjudication Panel or the parties under these Rules or a direction must be:

- (a) sent by pre-paid post to the address of the recipient;
- (b) delivered by hand to the address of the recipient; or
- (c) sent by email to the email address of the recipient, with a delivery receipt requested as proof of sending, provided that the parties have agreed to service by email.

4. **Function and Scope of these Rules**

4.1 Where an Applicant has previously:

- (a) Had their CLC licence or recognition revoked by an Adjudication Panel (or the Discipline and Appeals Panel) or as a result of a licence being issued or recognition being granted as a result of fraud or error;
- (b) Been disqualified by an Adjudication Panel (or the Discipline and Appeals Panel) from holding a licence and that period of disqualification is ongoing;
- (c) Been disqualified by an Adjudication Panel (or the Discipline and Appeals Panel) from holding a role within a Recognised Body or CLC Licenced Body and that period of disqualification is ongoing;

their application for a new licence or recognition must be decided in accordance with these rules.

4.2 The objective of these Rules is to enable the Adjudication Panel to deal with cases in accordance with its overriding objectives.

4.3 The Adjudication Panel's overriding objectives are:

- (a) To protect the public and consumers of legal services;
- (b) To protect, promote and maintain public confidence in the profession of Licensed Conveyancing
- (c) To promote and maintain proper standards and conduct amongst Licensed Conveyancers
- (d) To deal with cases fairly and justly.

4.4 Dealing with a case fairly and justly includes:

- (a) Dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the public interest in the case, the anticipated costs and the resources of the parties;
- (b) Avoiding unnecessary formality in the proceedings;
- (c) Ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
- (d) Avoiding unnecessary delay.

4.5 The Adjudication Panel must seek to give effect to the overriding objective when it exercises any power under these Rules.

4.6 The parties to a case must help the Adjudication Panel to further the overriding objective and co-operate with the Adjudication Panel to the best of their ability in the circumstances.

5. **Burden and Standard of Proof**

- 5.1 The burden of proving to the Adjudication Panel that a licence should be granted or disqualification revoked is on the Applicant.
- 5.2 The standard of proof in relation to disputed facts is on the balance of probabilities.
6. **Representation**
- 6.1 A party may appoint a representative to represent that party in the proceedings and at any hearing. That representative must be either practising Counsel, a practising Solicitor, a representative from any professional organisation of which they are a member; or at the discretion of the Adjudication Panel, another person.
- 6.2 If a party appoints a representative, that party must provide the Adjudication Panel and the other party with the name, address and email address of the representative, within 7 days of their appointment.
- 6.3 A person appointed by a party as their representative may carry out any action or receive any document on behalf of that party except for:
- (a) signing a witness statement
 - (b) giving evidence at any hearing
- 6.4 If a representative is appointed on behalf of a party, it is assumed that the representative remains authorised to act on behalf of that party, and to receive any documentation on behalf of that party, until the Adjudication Panel and the other party receives written notification to the contrary from the representative or the represented party.
- 6.5 No other person shall appear at an Adjudication Panel hearing to represent a party without the written permission of the Adjudication Panel Chair.
7. **The Adjudication Panel**
- Composition of the panels
- 7.1 The Adjudication Panel appointed to hear a case must be composed of three members, of whom one must be a CLC Lawyer member.
- 7.2 It is the responsibility of the Adjudication Panel Chair to appoint the hearing panel, in accordance with the Adjudication Panel Constitution Rules.
- Legal Advisor
- 7.3 Every hearing panel will either have:-
- (a) a legally qualified Chair, who is able to advise the hearing panel on the relevant law should any matters arise or,
 - (b) if the appointed Chair is not legally qualified, a Legal Advisor to provide appropriate legal advice to the hearing panel
- if the Adjudication Panel Chair considers it necessary, having made an assessment of the issues in the case.
- Delegation
- 7.4 In the event of the Adjudication Panel Chair being absent or unable to act or continue to act, anything authorised or required to be done by the Adjudication Panel Chair may be done by any other Adjudication Panel member who is authorised for the purpose by the Adjudication Panel Chair.
8. **Applications**
- 8.1 An Applicant subject to one of the outcomes set out at 4.1 may apply to have their disqualification revoked and/or a licence issued or recognition granted by applying in writing to the CLC.
- 8.2 Such applications can only be made after at least 10 months have elapsed from:

- (a) the date of the relevant order;
- (b) the date of the last such application.

8.3 Such applications will be accompanied by any evidence the Applicant wishes the Adjudication Panel to consider.

8.4 If the CLC wishes to oppose the application it must send to the Applicant a written summary of the facts relied on and any supporting evidence usually within 42 days.

8.5 The CLC, having received the Applicant's application and having provided its response to the Applicant should refer the case to the Adjudication Panel Chair within 14 days.

9. **Adjudication Panel powers**

9.1 The Adjudication Panel, when considering a case referred to it, may

- (a) Give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending, or setting aside an earlier direction;
- (b) Extend or shorten the time for complying with any rule or direction, unless such extension or shortening would conflict with the over-riding objective;
- (c) Consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues;
- (d) Deal with an issue in the proceedings as a preliminary issue;
- (e) Hold a hearing to consider any case management issue;
- (f) Permit or require a party to amend a document, where it is in the interests of justice to do so;
- (g) Exclude evidence that would otherwise be admissible where
 - (i) The evidence was not relevant to the matter being considered
 - (ii) The evidence was not provided within the time specified by a direction
 - (iii) The evidence was not provided in a manner or format specified by a direction
 - (iv) It would be otherwise unfair to admit the evidence;
- (h) Compel a party to attend and/or to produce documents in accordance with paragraph 2 of Schedule 4 to the 1985 Act;
- (i) Adjourn or postpone a hearing;

9.2 All decisions made by a three-member panel will be made on the basis of a majority decision, with all members of the panel having an equal vote.

10. **Referral to hearing**

10.1 Where the CLC has referred a restoration case to an Adjudication Panel the Adjudication Panel Assistant will notify the CLC, the Applicant and the Adjudication Panel Chair and request either a meeting or a hearing.

10.2 The Adjudication Panel Chair shall thereafter

- (a) appoint a hearing panel and Chair, in accordance with the requirements set out at Rule 7.1 and 7.2 above.
- (b) make an assessment as to whether a Legal Advisor is required to advise the hearing panel on the relevant law at the hearing, in accordance with rule 7.3 above.

- (c) arrange for service of a notice of the hearing on the panel and parties, which must include the date and the names of the hearing panel members for the meeting or hearing, and for a hearing, the time and location of the hearing. The date notified must be not earlier than 14 days from the date of the notice of the meeting or hearing.
- 10.3 The Chair will issue any directions in the case that they deem appropriate, bearing in mind the overriding objectives and any application in writing by the parties. Directions may include the calling of a case management hearing if necessary.
11. **Meeting**
- 11.1 The Adjudication Panel Assistant shall before the meeting of the meeting panel provide to each meeting panel member:
- (a) a copy of the application and any documents sent under 8.1; and
 - (b) copies of any written representations and documents provided by the CLC
- 11.2 The provisions as to evidence and costs set out at 12.12 to 12.16 will apply.
- 11.3 There will not be a formal record of the meeting.
- 11.4 The meeting panel will decide whether to advise the CLC to, as appropriate,:
- (a) Issue a licence;
 - (b) Grant recognition;
 - (c) Permit a person to hold a role within a Recognised Body or Licensed Body.
- 11.5 The meeting panel may make such order as it thinks fit in relation to the payment of costs.
- 11.6 The meeting panel's advice, with detailed reasons, will be distributed to the parties and filed with the CLC within five working days of the conclusion of the hearing.
12. **Hearing**
- 12.1 The Chair shall be responsible for the management of the hearing.
- 12.2 There is a presumption that all restoration hearings will be held in private, unless an Applicant requests that it be held in public.
- 12.3 If, at the hearing, the Applicant is not present or represented, the hearing panel may proceed to hear the matter in the Applicant's absence if it is satisfied it is in the interests of justice to do so. Before deciding to proceed in the absence of the Applicant:
- (a) the hearing panel must be satisfied that the Applicant has been sent notice of the hearing.
 - (b) The CLC should confirm whether the Applicant made any contact with the CLC as a result of receiving notice of the hearing.
 - (c) The CLC should confirm if any information has been received which would suggest that it is not in the interests of justice to proceed without the Applicant being present, bearing in mind the nature of restoration cases.
- 12.4 At any public hearing the hearing panel, or the Chair may give a direction excluding any person (who is not a party to the proceedings) from a hearing or part of a hearing if:
- (a) The hearing panel considers their conduct is disrupting or is likely to disrupt the hearing; or
 - (b) The hearing panel considers their presence is likely to prevent another person from giving evidence or making submissions freely.

- 12.5 The hearing panel, or the Chair, may make a direction excluding a witness from a hearing until that person gives evidence.
- 12.6 At the request of either party, or of its own volition, the hearing panel (or the Chair alone) may adjourn the hearing if it is satisfied it is in the interests of justice to do so. An application for an adjournment may be made by a party in writing in advance of the hearing, or orally at the hearing itself.
- 12.7 The order of proceedings for the hearing before the Adjudication hearing panel, unless the Chair otherwise directs, are set out in the Hearing Guidance.
- 12.8 The hearing will consist of two stages;
- (a) The Restoration stage: where the hearing panel will decide whether to advise the CLC whether or not to:
 - (i) Issue a licence;
 - (ii) Grant recognition;
 - (iii) Permit a person to hold a role within a Recognised Body or Licensed Body
 - (b) The Costs stage; where the hearing panel may make such order for costs as it thinks fit.
- 12.9 The hearing panel must make its decision at each stage before moving on to the next, and must not conflate the stages in any way. Submissions however can be made on the various stages together, if the hearing panel considers it appropriate in the facts of the case.
- 12.10 All oral evidence will be given on oath or by affirmation.
- 12.11 Production of a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas, that states a person has been convicted of a criminal offence or, in Scotland, an extract conviction, shall be conclusive evidence of the offence committed.
- 12.12 Production of a Court order, finding or certified note of a civil court penalty or findings of fact shall be conclusive proof of the facts found or penalty imposed.
- 12.13 Production of a certificate signed by an officer of a regulatory body in the UK or overseas, that has made a determination about the fitness to practise of a person shall be conclusive evidence of the facts found proved in relation to that determination.
- 12.14 The hearing panel has the power to award costs against either party. Any application for costs must be accompanied by a Schedule of Costs prepared by the party applying, which should be made in writing and usually have been served on the other party at least 24 hours earlier.
- 12.15 Where the Applicant wishes to make representations about their ability to pay this must be accompanied by a signed and dated Statement of Means.
- 12.16 A complete record of the hearing must be made and retained in accordance with the CLC's data retention policy. That record should be in the form of a digital audio recording, but in the event that is not practically possible, the Chair must make a full note and their note will stand as the official record of the hearing.
- 12.17 The record of the hearing panel's findings, with detailed reasons, will be distributed to the parties and filed with the CLC within five working days of the conclusion of the hearing. The CLC will take steps to promptly implement the advice given by the hearing panel.
13. **Appeal**
- 13.1 There is no appeal from decisions made under these Rules.
14. **Correcting mistakes and omissions**

- 14.1 The Adjudication Panel may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by:
- (a) Sending notification of the amended decision or direction, or a copy of the amended document, to each party, and
 - (b) Making any amendment to information published in relation to the decision, direction or document.

ANNEX 4

DRAFT ADJUDICATION PANEL FRAUD AND ERROR PROCEDURE RULES 2022

These Rules were made by the Council for Licensed Conveyancers under sections 20, 24(4A), 25, and Schedules 4 and 6 to the Administration of Justice Act 1985 and as part of the regulatory arrangements of the CLC, with the approval of the Legal Services Board pursuant to section 30 and paragraph 1 of the Legal Services Act 2007.

CONTENTS

1. Commencement

These Rules may be cited as the CLC's Adjudication Panel Fraud and Error Procedure Rules and shall come into effect on save that:

- (a) no prior decision of the Investigating Committee, the Discipline and Appeals Committee or the Adjudication Panel shall be invalidated by the coming into force of these Rules.

2. Interpretation

Words and expressions shall have the meanings given to them by:

- (a) the 1985 Act, the 1990 Act and the 2007 Act;
- (b) the Adjudication Panel Constitution Rules 2022;
- (c) the Adjudication Panel Disciplinary Procedure Rules 2022
- (d) the Adjudication Panel Licensing and Recognition Appeal Procedure Rules 2022;
- (e) the Adjudication Panel Restoration Procedure Rules 2022; or
- (f) as set out below

"party" is as defined in the 1985 Act (Schedule 4) and may include the CLC, Licensees, CLC Role Holders, and Appellants

"registered address" means the Licensee's address in the Register and/or their last known address

"Respondent" in these Rules means the Licensed Conveyancer or Recognised Body whose licence it is suggested was issued or recognition granted as a result of fraud or error

"working day" includes any day except a Saturday or Sunday, Christmas Day, Good Friday or a Bank Holiday under section 1 of the Banking and Financial Dealings Act 1971

Any direction to be complied with on or by a particular day must be complied with before 5pm on that day.

3. Sending and Delivery of Documents

Any document to be provided to the Adjudication Panel or the parties under these Rules or a direction must be:

- (a) sent by pre-paid post to the registered address of the recipient;
- (b) delivered by hand to the registered address of the recipient; or
- (c) sent by email to the registered email address of the recipient, with a delivery receipt requested as proof of sending, provided that the parties have agreed to service by email.

4. Function and Scope of these Rules

- 4.1 Any concern that a licence has been issued or recognition granted as a result of fraud or error shall be dealt with in accordance with these Rules. These Rules outline the procedure to be followed for decisions made pursuant to s28 or paragraph 7 of Schedule 6 of the Administration of Justice Act 1985.
- 4.2 The objective of these Rules is to enable the Adjudication Panel to deal with cases in accordance with its overriding objectives.
- 4.3 The Adjudication Panel's overriding objectives are:
- (a) To protect the public and consumers of legal services;
 - (b) To protect, promote and maintain public confidence in the profession of Licensed Conveyancing;
 - (c) To promote and maintain proper standards and conduct amongst Licensed Conveyancers;
 - (d) To deal with cases fairly and justly.
- 4.4 Dealing with a case fairly and justly includes: -
- (a) Dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the public interest in the case, the anticipated costs and the resources of the parties;
 - (b) Avoiding unnecessary formality in the proceedings;
 - (c) Ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
 - (d) Avoiding unnecessary delay.
- 4.5 The Adjudication Panel must seek to give effect to the overriding objective when it exercises any power under these Rules.
- 4.6 The parties to a case must help the Adjudication Panel to further the overriding objective and co-operate with the Adjudication Panel to the best of their ability in the circumstances.
5. **Burden and Standard of Proof**
- 5.1 The burden of proving to the Adjudication Panel the fraud or error that resulted in the issue of a licence or recognition is on the CLC.
- 5.2 The standard of proof in relation to disputed facts is on the balance of probabilities.
6. **Representation**
- 6.1 A party may appoint a representative to represent that party in the proceedings and at any hearing. That representative must be either practising Counsel, a practising Solicitor, a representative from any professional organisation of which they are a member; or at the discretion of the Adjudication Panel, another person.
- 6.2 If a party appoints a representative, that party must provide the Adjudication Panel and the other party with the name, address and email address of the representative, within 7 days of their appointment.
- 6.3 A person appointed by a party as their representative may carry out any action or receive any document on behalf of that party except for:
- (a) signing a witness statement
 - (b) giving evidence at any hearing
- 6.4 If a representative is appointed on behalf of a party, it is assumed that the representative remains authorised to act on behalf of that party, and to receive any documentation on behalf of that party, until the Adjudication Panel and the other party receives written notification to the contrary from the representative or the represented party.
- 6.5 No other person shall appear at an Adjudication Panel hearing to represent a party without the written permission of the Adjudication Panel Chair.

7. **The Adjudication Panel**

Composition of the panels

- 7.1 The Adjudication Panel appointed to hear a case must be composed of three members, of whom one must be a CLC Lawyer member.
- 7.2 It is the responsibility of the Adjudication Panel Chair to appoint the hearing panel, in accordance with the Adjudication Panel Constitution Rules.

Legal Advisor

- 7.3 Every hearing panel will either have:-
- (a) a legally qualified Chair, who is able to advise the hearing panel on the relevant law should any matters arise or,
 - (b) if the appointed Chair is not legally qualified, a Legal Advisor to provide appropriate legal advice to the hearing panel,
- if the Adjudication Panel Chair considers it necessary, having made an assessment of the issues in the case.

Delegation

- 7.4 In the event of the Adjudication Panel Chair being absent or unable to act or continue to act, anything authorised or required to be done by the Adjudication Panel Chair may be done by any other Adjudication Panel member who is authorised for the purpose by the Adjudication Panel Chair.

8. **Initial stages and Adjudication Panel procedure and powers**

- 8.1 Where the CLC identify a case in which it is alleged that a licensed conveyancer or recognised body has been issued with a licence or granted recognition as a result of fraud or error it must send to the Respondent a written summary of the facts relied on and any supporting evidence and seek the Respondent's representations.
- 8.2 If the Respondent wishes to provide representations they should do so within 14 days, setting out any matter on which they would rely if the matter proceeded to a hearing before the Adjudication Panel.
- 8.3 If the CLC, having received the Respondent's response document or after 14 days, intend to proceed with a referral to the Adjudication Panel, that referral, in the form of the summary of facts and supporting evidence, and any response and documents received from the Respondent, must be made to the Adjudication Panel Chair within 14 days of any Respondent's response being received or if not received, 14 days from expiry of the 7-day period.

9. **Adjudication Panel powers**

- 9.1 The Adjudication Panel, when considering a case referred to it, may
- (a) Give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending, or setting aside an earlier direction;
 - (b) Extend or shorten the time for complying with any rule or direction, unless such extension or shortening would conflict with the overriding objective;
 - (c) Consolidate or hear together two or more sets of proceedings or parts of proceedings raising common issues;
 - (d) Deal with an issue in the proceedings as a preliminary issue;
 - (e) Hold a hearing to consider any case management issue;

- (f) Permit or require a party to amend a document, where it is in the interests of justice to do so;
 - (g) Exclude evidence that would otherwise be admissible where
 - (i) The evidence was not relevant to the matter being considered
 - (ii) The evidence was not provided within the time specified by a direction
 - (iii) The evidence was not provided in a manner or format specified by a direction
 - (iv) It would be otherwise unfair to admit the evidence;
 - (h) Compel a party to attend and/or to produce documents in accordance with paragraph 2 of Schedule 4 to the 1985 Act;
 - (i) Adjourn or postpone a hearing.
- 9.2 All decisions made by a three-member panel will be made on the basis of a majority decision, with all members of the panel having an equal vote.
- 10. Referral to hearing**
- 10.1 Where the CLC has referred a fraud or error case to an Adjudication Panel, the Adjudication Panel Assistant will notify the CLC, the Respondent and the Adjudication Panel Chair and request a meeting for an error case or an oral hearing for a fraud case.
- 10.2 The Adjudication Panel Chair shall thereafter
- (a) appoint a meeting or hearing panel and Chair, in accordance with the requirements set out at Rule 7.1 and 7.2 above.
 - (b) make an assessment as to whether a Legal Advisor is required to advise the hearing panel on the relevant law at the meeting or hearing, in accordance with rule 7.3 above.
 - (c) arrange for service of a notice of the meeting or hearing on the panel and parties, which must include the date, time and location of the hearing and the names of the hearing panel members. The date notified must be not earlier than 14 days from the date of the notice of the meeting or hearing.
- 10.3 The Chair will issue any directions in the case that they deem appropriate, bearing in mind the overriding objectives and any application in writing by the parties. Directions may include the calling of a case management hearing if necessary and the listing of an error case as a hearing if the Chair deems this appropriate.
- 11. Meeting**
- 11.1 The Adjudication Panel Assistant shall before the meeting of the meeting panel provide to each panel member:
- (a) a copy of the notice and any documents sent under 8.1; and
 - (b) copies of any written representations and documents received from the Respondent.
- 11.2 The provisions as to evidence and costs set out at 12.12 to 12.16 will apply.
- 11.3 Before reaching a decision on the matter, the meeting panel may if they think fit, cause further investigations to be made or request further information from the CLC or from the Respondent.
- 11.4 There will not be a formal record of the meeting.
- 11.5 The meeting panel will decide whether it is satisfied that a licence was issued or recognition granted as a result of any error or fraud and may if they think fit, revoke the licence or recognition.

- 11.6 The meeting panel may make such order as it thinks fit in relation to the payment of costs.
- 11.7 The meeting panel's findings, with detailed reasons, will be distributed to the parties and filed with the CLC within five working days of the conclusion of the hearing. Where the meeting panel have ordered revocation of the licence or recognition it shall take immediate effect.
12. **Hearing**
- 12.1 The Chair shall be responsible for the management of the hearing.
- 12.2 The hearing panel may hear cases against two or more Respondents at the same time where it would be just to do so.
- 12.3 There is a presumption that all fraud or error hearings will be held in private, unless a Respondent requests that it be held in public.
- 12.4 If, at the hearing, the Respondent is not present or represented, the hearing panel may proceed to hear the matter in the Respondent's absence if it is satisfied it is in the interests of justice to do so. Before deciding to proceed in the absence of the Respondent:
- (a) the hearing panel must be satisfied that the Respondent has been sent notice of the hearing.
 - (b) The CLC should confirm whether the Respondent made any contact with the CLC as a result of receiving notice of the hearing.
 - (c) The CLC should confirm if any information has been received which would suggest that it is not in the interests of justice to proceed without the Respondent being present, bearing in mind the seriousness nature of fraud or error cases.
- 12.5 At any public hearing, the hearing panel, or the Chair may give a direction excluding any person (who is not a party to the proceedings) from a hearing or part of a hearing if:
- (a) The hearing panel considers their conduct is disrupting or is likely to disrupt the hearing.
 - (b) The hearing panel considers their presence is likely to prevent another person from giving evidence or making submissions freely.
- 12.6 The hearing panel, or the Chair, may make a direction excluding a witness from a hearing until that person gives evidence.
- 12.7 At the request of either party, or of its own volition, the hearing panel (or the Chair alone) may adjourn the hearing if it is satisfied it is in the interests of justice to do so. An application for an adjournment may be made by a party in writing in advance of the hearing, or orally at the hearing itself.
- 12.8 The order of proceedings for the hearing before the Adjudication hearing panel, unless the Chair otherwise directs, are set out in the Hearing Guidance.
- 12.9 The hearing will consist of three stages;
- (a) The Fraud/Error stage; where the hearing panel will decide whether it is satisfied that the licence was issued or recognition granted as a result of fraud or error;
 - (b) The Revocation stage; where, if it is satisfied that the licence was issued or recognition granted as a result of fraud or error the hearing panel will decide whether to revoke the licence or recognition;
 - (c) The Costs stage; where the hearing panel may make such order for costs as it thinks fit.
- 12.10 The hearing panel must make its decision at each stage before moving on to the next, and must not conflate the stages in any way. Submissions however can be made on the various stages together, if the hearing panel considers it appropriate in the facts of the case.
- 12.11 All oral evidence will be given on oath or by affirmation.

- 12.12 Production of a certificate, purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas, that states a person has been convicted of a criminal offence or, in Scotland, an extract conviction, shall be conclusive evidence of the offence committed.
- 12.13 Production of a Court order, finding or certified note of a civil court penalty or findings of fact shall be conclusive proof of the facts found or penalty imposed.
- 12.14 Production of a certificate signed by an officer of a regulatory body in the UK or overseas, that has made a determination about the fitness to practise of a person shall be conclusive evidence of the facts found proved in relation to that determination.
- 12.15 The hearing panel has the power to award costs against either party. Any application for costs must be accompanied by a Schedule of Costs prepared by the party applying, which should be made in writing and usually have been served on the other party at least 24 hours earlier.
- 12.16 Where the Respondent wishes to make representations about their ability to pay this must be accompanied by a signed and dated Statement of Means.
- 12.17 A complete record of the hearing must be made and retained in accordance with the CLC's data retention policy. That record should be in the form of a digital audio recording, but in the event that is not practically possible, the Chair must make a full note and their note will stand as the official record of the hearing.
- 12.18 The record of the hearing panel's findings, with detailed reasons, will be distributed to the parties and filed with the CLC within five working days of the conclusion of the hearing. Where the hearing panel has directed revocation of the licence or recognition it shall take immediate effect.

13. **Appeal**

- 13.1 There is no appeal from decisions under these Rules.

14. **Correcting mistakes and omissions**

- 14.1** The Adjudication Panel may at any time correct any clerical mistake or other accidental slip or omission in a decision, direction or any document produced by it, by:
- (a) Sending notification of the amended decision or direction, or a copy of the amended document, to each party, and
 - (b) Making any amendment to information published in relation to the decision, direction or document.