



Consultation: CLC's Indicative Sanctions Guidance Policy

July 2017

Deadline for receipt of responses: 5pm, Friday 29 September 2017

Summary:

1. The CLC proposes to publish an Indicative Sanctions Guidance for the Adjudication Panel (“the Panel”) to take into account and determine the appropriate sanction to impose during misconduct hearings.
2. The Indicative Sanctions Guidance will:
 - a. Guide the Panel’s consideration of the sanction to impose following a determination that there has been a breach of the CLC’s Code of Conduct.
 - b. Provide an authoritative statement of the CLC’s approach to sanction issues for the regulated community, the public and other stakeholders.
 - c. Allow the respondent appearing before the Panel to know what powers and sanctions are available, and in the event that sanctions are to be imposed, the matters that the Panel may take into account when coming to a decision.
 - d. Promote fairness, consistency and transparency in the Panel’s decision making when considering an appropriate sanction.

Responding to this Consultation

3. You are invited to respond to this Consultation paper.
4. When you respond please give your name, address and your status-job/professional title or professional qualification.
5. The CLC intends to publish any response and to refer to it specifically in any further document it publishes following this Consultation. If you wish your response to be treated as confidential, please let us know when you respond.
6. The easiest way to respond is online:
<https://www.surveymonkey.co.uk/r/SanctionsGuidance>
7. Responses can also be sent:
By email to: Consultations@clc-uk.org
Post to: Council for Licensed Conveyancers
 CAN Mezzanine
 49-51 East Road
 London

Deadline for receipt of responses: 5pm, Friday 29 September 2017

Introduction

Purpose of consultation

8. The purpose of this Consultation is to seek views on our proposal to implement an Indicative Sanctions Guidance and the current form of the draft guidance at Annex A.
9. In this Consultation we explain:
 - a. the background to this consultation;
 - b. the draft Indicative Sanctions Guidance policy; and
 - c. next steps and implementation timetable
10. The Consultation will run for 12 weeks, ending on **29 September 2017**.

Statutory Framework

11. The CLC was established by the Administration of Justice Act 1985 (AJA) and is an Approved Regulator under the Legal Services Act 2007, subject to the oversight regulation of the Legal Services Board. It licenses and regulates CLC Lawyers and CLC Practices in the provision of reserved legal activities- currently conveyancing and probate services and other non-reserved legal activities (including will writing). It is also a Licensing Authority authorised to license and regulate Alternative Business Structures (ABS). It has no representative function.

CLC's Approach to Regulation

12. The CLC's role is to safeguard the public interest and consumers by regulating providers to deliver high quality and accessible legal services.

13. The CLC's regulatory activities include:

- issuing licences to practise to individuals and entities authorised to provide conveyancing and probate services
- setting educational and training standards for entry to the profession
- maintaining a register of all licensed conveyancers and CLC practices
- setting standards to regulate the professional practice, conduct and discipline of licensed conveyancers and CLC Practices
- monitoring the work and conduct of CLC Practices
- providing guidance and advice to CLC practices to maintain compliance with our regulatory requirements
- investigating allegations of misconduct and where appropriate taking disciplinary action, and
- collaborating with key stakeholders in the legal services market to monitor and shape future policy.

Statutory objectives

14. Section 28 of the Legal Services Act 2007 states that the CLC must, so far as is reasonably practicable, act in a way which is compatible with the following regulatory objectives:

- a. protecting and promoting the public interest
- b. supporting the constitutional principle of the rule of law
- c. improving access to justice
- d. protecting and promoting the interests of consumers
- e. promoting competition in the provision of services by 'authorised persons' as defined in the Act
- f. encouraging an independent, strong, diverse and effective legal profession
- g. increasing public understanding of the citizen's legal rights and duties
- h. promoting and maintaining adherence to the professional principles.

15. The CLC is of the view that the introduction of an Indicative Sanctions Guidance policy will support the statutory objectives in providing transparency to stakeholders regarding the matters the Panel will take into consideration when determining sanction. Furthermore, the CLC envisages that the implementation of such a policy will provide consistency when making decisions as the Panel will be applying the policy in every case it determines.

Background

Function of the Adjudication Panel

16. The Panel assumed the functions of the Discipline and Appeals Committee in 2011 as part of a review of the CLC's Governance Arrangements.
17. The CLC refers cases to the Panel when it suspects an individual or entity has breached the Code of Conduct or any of the CLC's disciplinary arrangements. The Panel determines the disciplinary sanction to be applied where it is satisfied on the civil standard, that there has been a breach of the rules.
18. The CLC's Council is confident that an Indicative Sanctions Guidance policy will:
 - a. assist the Panel in future decision-making to ensure that sanctions imposed properly reflect the standards expected of CLC Lawyers/entities and the need for consumer protection;
 - b. ensure that CLC Lawyers/entities are made aware of the factors which are taken into account in determining sanctions; and
 - c. ensure that stakeholders, including consumers, have confidence in the independence and robustness of the CLC's disciplinary processes.

1. Proposal: To Implement an Indicative Sanctions Guidance Policy

19. It is proposed that the Panel will take into full account the Indicative Sanctions Guidance Policy at all misconduct hearings when determining the question of sanction.

Purpose

20. The purpose of the Indicative Sanctions Guidance is to provide a link between two of the CLC's key regulatory roles, namely setting standards to regulate the professional practice, conduct and discipline of licensed conveyancers and regulated bodies, and taking disciplinary action where appropriate.

Rationale

21. The rationale and intended outcomes of the implementation of an Indicative Sanctions Guidance Policy is:
- a. to provide an authoritative statement of the CLC's approach to sanction issues for the regulated community, the public and other stakeholders.
 - b. to allow the respondent appearing before the Panel to know what powers and sanctions are available, and in the event that sanctions are to be imposed, the matters that the Panel will take in determining the appropriate sanction.
 - c. to promote fairness, consistency and transparency when the Panel considers the appropriate sanction.

Current regulatory practice

22. The introduction of such a policy will bring the CLC in line with the current practice across the professional regulatory sector.

The public interest

23. The principal purpose for imposing sanctions at a misconduct hearing is to protect the public. The Indicative Sanctions Guidance will provide additional assistance to ensure that misconduct hearings will achieve this purpose.

2. Proposal: The Indicative Sanctions Guidance will direct the Panel to determine the question of sanction starting from the least restrictive sanction

24. There are two main approaches that the Panel can take when determining the question of sanction: the 'sanctions ladder' or the tariff system.

'Sanctions ladder'

25. This method of considering sanction states that the Panel, starts at the least severe sanction and only moves to the next more severe sanction if the lesser sanction is not appropriate in the circumstances.

26. The current draft of the Indicative Sanctions Guidance policy (at page 9) requires the Panel to consider all sanctions from the least restrictive, explaining why it has chosen a particular sanction, and rejected others. The Council of the CLC and the Panel both preferred this approach as it was viewed as the system most likely to ensure proportionality in determining the appropriate sanction.

27. Advantages of the sanctions ladder system:

- Arguably more consistent as all cases start at the same point;
- Approach endorsed by case law- *Giele v GMC*¹;
- Approach taken by a number of other regulators (Solicitors' Disciplinary Tribunal), healthcare regulators such as General Medical Council, General Dental Council and, Nursing and Midwifery Council);
- Fairer – each sanction is considered in turn and an explanation provided as to why it is or is not appropriate;
- Arguably more transparent – reasoned decisions are produced explaining the rationale and justification for the chosen sanction and reason(s) why other sanctions are not appropriate;
- Arguably fairer as each case is considered on the facts rather than a blanket, uniform approach.

28. Disadvantages of the sanction ladder system:

- Likely to produce lengthier decisions as each sanction needs to be considered and an explanation given to why it is or is not appropriate;
- May produce decisions which are apparently inconsistent (because they are determined in their particular facts).

Tariff system

29. The alternative way of the Panel determining sanction is by using a tariff system akin to the sentencing guidelines used in the criminal courts where respondents in cases with similar characteristics receive similar sanctions, subject to the Panel having the ultimate discretion.

¹ [2005] EWHC 2143 (Admin)

The Panel would have the ability to treat apparently similar cases differently, if the circumstances required.

30. Advantages of the tariff system:

- More directional – a relatively inexperienced panel in making determinations, and would have detailed guidance;
- Apparently a more consistent approach as cases with similar facts start at the same point.

31. Disadvantages of the tariff system:

- May be viewed as rigid and inflexible, fettering the Panel's discretion;
- May not allow all the relevant facts and circumstances of the case to be taken into account;
- Not widely used in the professional regulatory community.

Diversity and inclusion impact

32. Whilst there is no indication that determinations made by the Panel have disproportionately affected any group it is anticipated that the Indicative Sanctions Guidance policy will have a positive impact on diversity and inclusion. It will set out a structured way in which sanctions are determined, and allow all those appearing before the Panel to know what powers and sanctions are available, and in the event that sanctions are to be imposed, the matters that the Panel may take into account when coming to a decision.

Questions:

- a. Do you agree with the proposal to implement an Indicative Sanctions Guidance Policy which is to be applied at all misconduct hearings?
- b. Do you agree that the Indicative Sanctions Guidance Policy should require the Panel to consider all sanctions starting from the least restrictive when considering sanction?
- c. Do you believe that the Indicative Sanctions Guidance Policy as drafted and appended to this consultation paper is fit for purpose?
- d. Do you have any detailed comments on the drafting of the proposed Indicative Sanctions Guidance Policy?

Next steps and implementation timetable

33. The timetable for implementation is as follows:

| | |
|----------------|---|
| July 2017 | Consultation Published |
| September 2017 | End of Consultation Period |
| December 2017 | Application to LSB to approve Indicative Sanctions Guidance |
| January 2018 | Implementation of the Indicative Sanctions Guidance |

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INDICATIVE SANCTIONS GUIDANCE

1. Introduction

- 1.1 This document sets out the Council for Licensed Conveyancers' policy on how sanctions should be applied by the Adjudication Panel ("the Panel") during misconduct hearings.
- 1.2 Hearing decisions will be published on the CLC's website in accordance with the CLC's publication policy.
- 1.3 This Guidance is not an alternative source of legal advice. When appropriate, the Legal Advisor will advise the Panel on questions of law, including questions about the use of this Guidance and the approach it should take.

2 Purpose of the CLC's Indicative Sanctions Guidance

- 2.1 To guide the Panel's consideration of the sanction to impose following a determination that there has been a breach of the CLC's Code of Conduct.
- 2.2 To provide an authoritative statement of the CLC's approach to sanction issues for the regulated community, the public and other stakeholders.
- 2.3 To allow the respondent appearing before the Panel to know what powers and sanctions are available, and in the event that sanctions are to be imposed, the matters that the Panel may take into account when coming to a decision.
- 2.4 To promote fairness, consistency and transparency by the Panel when considering an appropriate sanction.
- 2.5 In preparing this Guidance, the CLC recognises that each case will be determined on its own set of facts and that the members of the Panel exercise their own judgement when considering what sanction(s) to impose. In all cases written reasons must be given by the Panel on the sanction(s) imposed (rule r.31(2)(b) Adjudication Panel Procedure Rules 2013 (as amended)).
- 2.6 The Guidance sets out the principles which should be applied when determining what sanction to impose.

2.7 This document is for guidance only and is not intended to fetter the Panel's discretion. The Panel may depart from it when determining sanction in accordance with its discretion. The Panel should, in the interests of transparency, provide written reasons for its decision to depart from this guidance.

3 Purpose of sanctions

3.1 To uphold the CLC's regulatory objective of protecting the public and consumers of legal services;

3.2 To maintain and uphold public confidence in the reputation of the profession;

3.3 To declare and uphold proper standards of conduct; and

3.4 To promote public and professional confidence in the CLC's complaints and disciplinary processes.

3.5 To mark the seriousness (actual or potential) of the proven misconduct. It is well established that the purpose of imposing sanctions is not to punish the respondent, but to protect the public. This is consistent with and does not prevent the imposition of a sanction which may have a punitive effect on the respondent when it is necessary to meet its objectives at 3.1 to 3.4 above.

4 Principles of the CLC's sanctions regime

4.1 **Proportionality** - ensuring that the sanction imposed is proportionate, taking account of the need to protect the public and the need to uphold proper standards of conduct amongst the regulated community in order to maintain the reputation of the regulated community. The interference with the CLC Lawyer's or entity's right to practise must be no more than necessary to achieve the Panel's purpose in imposing sanctions.

4.2 **Consistency** - ensuring a consistent approach to determining an appropriate sanction.

4.3 **Accountability** - to consumers and the regulated community.

4.4 To promote **transparency** in the CLC's decision-making processes.

4.5 **Targeting** the sanction should apply directly to the misconduct that the Panel has found proven in order to remedy the breaches identified and avoid the risk of repetition.

5 Sanctions available to the Panel

5.1 The sanctions for a CLC Lawyer are as follows (in ascending order):

No Further Action

Reprimand

Fine

Conditions on licence
Suspension
Disqualification (whether for a fixed period or permanent)
Revocation of Licence

5.2 In deciding what sanction to impose the Panel should consider the following factors:

- Proportionality
- Harm (impact on client, clients in general, on the profession)
- Insight
- The public interest (impact on the reputation of the profession, confidence in the CLC's regulatory process and the deterrent effect)
- Aggravating factors (which may cause sanction to be increased)
- Mitigating factors (which may cause sanction to be reduced)

6 Sanctions Ladder

6.1 The Panel should consider the full range of sanctions open to them. The recommended approach is to start with the least restrictive sanction.² In *Giele v General Medical Council*³ Mr Justice Collins said that the panel should decide "*whether [the sanction] was right for the misconduct in question after considering any lesser sanction*".

6.2 Accordingly, the Panel must always give reasons as to why they have chosen a particular sanction, and also why they have rejected other sanctions.

6.3 The Panel should always start at the least restrictive sanction (No Further Action) and only impose the next serious sanction after it has assessed whether the lesser sanction adequately addresses the principle of proportionality, weighing the interests of the public against those of the respondent.

6.4 Although the Panel should always impose the least restrictive sanction which adequately addresses public protection, the Panel should also consider the next more serious sanction on the scale to determine which sanction is the appropriate one in the circumstances. Guidance on these points are set out below.

² "It is necessary for a Panel, when considering the appropriate sanction, to work from the bottom up, if I may put it that way, that is to say to consider the least penalty and to ask itself whether that is sufficient, and, if not, then to go to the next one, and so on. Thus they go from taking no action and merely recording a serious professional misconduct finding through a reprimand, the imposition of conditions, suspension, and the final sanction of erasure." *Raschid v General Medical Council* [2006] EWHC 886 (Admin) Collins, J.

³ - [2005] All ER (D) 156 (Oct)

7 Public interest

- 7.1 Sanctions exist to protect members of the public from the potential risk which the Respondent may present to those who use or may use his or her services.
- 7.2 However, there are important wider public interest matters that the Panel will have to consider such as:
- the reputation of the profession;
 - the deterrent effect on the regulated community as a whole; and
 - public confidence in the profession and in the CLC's regulatory proceedings.
- 7.3 The Panel is able to impose a sanction on wider public interest reasons alone, but should give written reasons if it chooses to do so.

8 Proportionality

- 8.1 In deciding what sanction, if any, to impose, the Panel must apply the principle of proportionality, considering the following questions in order to balance the interests of the public alongside those of the respondent:
- Is the sanction in question a suitable means of attaining the degree of public protection identified by the Panel?
 - Is the sanction in question the least restrictive means of attaining that degree of public protection?

9 Harm

- 9.1 In determining harm, the Panel will assess:
- Whether there was actual harm caused by the respondent's misconduct
 - If not, whether there was the potential of harm being caused by the respondent's misconduct
 - If the respondent's actions are reckless or deliberate
 - Risk of repetition is of particular importance when considering whether there is the likelihood of future harm.

10 Insight

- 10.1 The degree of insight displayed by a respondent is vital to a proper determination of what sanction (if any) is required. The issues which the Panel need to consider include whether the respondent:

10.2 has admitted or recognised their failings, including the impact (actual or potential) of their misconduct - for example, on the consumer concerned, and/or the reputation of the profession;

10.1 has taken or is taking any appropriate remedial action; and

10.2 is likely to repeat or compound their misconduct.

10.3 However, the Panel should be mindful that cultural differences could affect how the respondent may express insight.

11 Particular Considerations

11.1 Dishonesty

11.2 Misconduct which involves dishonesty will be viewed as the most serious form of misconduct and result in a severe sanction (such as disqualification) save in exceptional circumstances. Dishonesty is serious even when it does not involve direct harm to clients because dishonesty has the potential to undermine public trust in the profession. Evidence of technical competence cannot mitigate dishonesty.

12 Mishandling of client money falling short of dishonesty

12.1 Findings of serious breaches of the Accounts Code (such as shortage to client account) which fall short of dishonesty are also likely to receive more severe sanctions because of the potential of direct harm to clients, damage to the reputation and confidence of the profession.

13 Criminal convictions

13.1 The purpose of a professional disciplinary hearing in relation to a regulated member's criminal conviction is not to punish the respondent a second time for the same offence, but to protect members of the public and safeguard the public interest.

13.2 Criminal convictions not directly related to a respondent's professional conduct may still require a sanction.

14 Drafting decisions

14.1 The Panel must state the sanction it is imposing and give clear reasons for imposing it. The written decision should include the following:

- A summary of the case and the facts found proved;

- Any mitigating or aggravating factors taken into account with reference, where appropriate, to the parties' submissions on mitigation;
- Legal jurisdiction applied-Sections of Acts, Rules, Codes;
- If the Adjudication Panel Chair has selected a Legal Advisor to attend the hearing, a summary of any legal advice provided by the legal advisor.

14.6 Length of sanctions

14.7 In determining the period of a suspension or disqualification order, the Panel should consider all the circumstances of the case, including the aggravating and mitigating factors and then consider the period of the sanction to reflect the seriousness of the misconduct.

15 Costs

15.1 The Panel has the power to make a costs order on an application by either party, or on its own initiative. The Panel may not make an order against a respondent without first:

- (a) giving that person an opportunity to make representations; and
- (b) if the paying person is an individual, considering that person's financial means.

15.2 The amount of costs or expenses to be paid under a costs order may be ascertained by

- (a) summary assessment by the Adjudication Panel;
- (b) agreement of a specified sum by the paying person and the person entitled to receive the costs or expenses ("the receiving person"); or
- (c) assessment of the whole or a specified part of the costs or expenses incurred by the receiving person, if not agreed.

This policy will be reviewed biannually to ensure that it complies with the requirements of the Human Rights Act 1998 (principally the right to a fair trial), the Equality Act 2010 and relevant case law.

This policy is due next to be reviewed in 2020.

Annex A

Aggravating and mitigating factors

The following are examples of potential aggravating and mitigating factors. This is not an exhaustive list and the weight attached to these factors will be left to the Panel's professional judgement.

| | Aggravating Factors | Mitigating Factors |
|------------------|---|--|
| Behaviour | Failure to self- report to the CLC | Prompt self-report to the CLC |
| | Attempt to conceal wrongdoing | Open and honest about wrongdoing |
| | Failure to co-operate with CLC investigation and any interim measures | Full co-operation with CLC investigation |
| | Likelihood of repetition | Repetition unlikely |
| | Abuse of position (particularly in relation to vulnerable clients) | |
| | Motivated by desire for personal advantage | |
| | Respondent gained advantage as a result of wrongdoing | |
| | Abusive behaviour | |
| | Lack of insight or learning | Evidence of significant insight, remediation or learning |
| | Lack of remorse | Clear demonstration of remorse |
| | Lack of explanation for actions | |
| | Drug or alcohol misuse linked to misconduct | |
| | No apology to the client | Apology to the client |
| | | Relevant positive references |
| | Previous finding(s) of misconduct | No previous finding(s) of misconduct |
| | Dishonesty | |

| | | |
|------------------------------|---|--|
| Nature of misconduct | Serious breach of the CLC's regulatory arrangements | Breach of a technical nature |
| | Serious financial mismanagement | There is no serious financial mismanagement |
| | Repeated failure or pattern of behaviour | Single isolated incident |
| Effect on others | Significant risk of harm to others | |
| | Abuse of position/breach of trust | |
| | Increased likelihood of damage to reputation of the profession | No risk of damage to reputation of the profession |
| Convictions/ cautions | Criminal offences for example, the nature of the offence involves violence/ dishonesty/breach of trust and/or has the potential to cause significant loss of confidence in the profession | |
| | Risk of repetition/reoffending | Evidence of rehabilitation |
| | Number of offences/ offence committed over a prolonged period of time | The offence occurred over a short period of time/ was an isolated incident |
| | No evidence of rehabilitation | Evidence of rehabilitation |

Annex B

Sanctions for a CLC lawyer:

No Further Action

Having regard to all the circumstances of the case before it, the Panel may decide not to impose a sanction, where the Panel concludes that that whilst the facts of the allegation were proved, there is no public interest in imposing a sanction.

A No Further Action order is only likely to be imposed in exceptional circumstances.

The Panel must give clear and reasoned decisions explaining why it has determined to take no further action.

Reprimand

A reprimand does not restrict a CLC Lawyer's ability to practise.

A reprimand might be most appropriate in cases:

- Where an act or omission needs particular attention drawn to it, with the intention that the behaviour of the individual/body is changed.
- Where the misconduct has now been remediated
- Where the respondent has demonstrated insight

Fine

*A direction for a CLC lawyer to pay a fine which is **fair and proportionate**, and does not exceed £50 million.*

As fines are punitive in nature, it will be rare for the Panel to impose such a sanction on its own. It is recommended that fines are used in conjunction with another sanction, or for unlicensed individuals, or where the misconduct cannot be sufficiently dealt with by issuing a Reprimand and it would be disproportionate to issue conditions on licence.

The level of the penalty will take into account the size/resources of the body so it is fair and proportionate, whilst also at a level likely to give consumers and the public confidence that issues which cause them detriment are dealt with appropriately.

The Panel may impose a separate penalty in respect of each allegation which has been proved.

In determining the appropriate level of the fine the Panel must take into consideration:

- the gravity of the respondent's misconduct; and
- the respondent's financial means

The Panel should ensure that the level of the fine reflects the gravity of the respondent's misconduct, having regard to all relevant aggravating and mitigating factors.

The existence of significant mitigation should normally preclude the imposition of the maximum fine.

Although consistency in decision making is desirable, the amount of the fine is within the discretion of the Panel.

Conditions on licence

Conditions will restrict a CLC Lawyer's practice, require the CLC Lawyer to take remedial action, or a combination of both.

A condition may require a respondent to be supervised, undertake education or training, to comply with particular requirements when practising (including restrictions on the nature of any work undertaken or clients represented).

Conditions might be most appropriate in cases where there is evidence of shortcomings in a specific area or areas of the CLC Lawyer's practice (for example – record keeping)

Conditions are likely to be suitable in cases where the:

- Respondent has insight
- Panel is satisfied that the CLC Lawyer will fully comply with the conditions imposed

Conditions should be proportionate, appropriate, workable and measurable.

Proportionate means that the conditions must be no more than necessary to protect the public and uphold confidence in the profession and regulatory process.

Appropriate means that the conditions should directly relate to and address the matters giving rise to the misconduct.

Practicable means that it must be possible for the respondent to comply with the conditions. Any condition imposed should not be impracticable, or so restrictive that it amounts to a suspension.

Measurable means that it must be possible to assess objectively whether or not the respondent has complied with the condition.

Time specific means that the date by which the condition must be complied with and/or the date when the condition will no longer have effect must be specified in the order.

Prohibits a CLC Lawyer from holding a licence for a time specified by the Panel.

Suspensions are temporary in nature and have a deterrent effect. Suspensions can be used to show the public and the regulated community what is viewed as unacceptable behaviour.

Suspension might be most appropriate in cases where there is serious misconduct which requires the public to be protected and public confidence in the profession to be maintained.

Disqualification

Disqualification prohibits a CLC Lawyer from holding a licence for a specified period of time

Disqualification might be most appropriate in cases:

- Involving serious misconduct
- Involving dishonesty
- Involving convictions
- Where there is a lack of insight
- Where the evidence suggests that the CLC Lawyer will be unwilling to remedy the failings identified

Disqualification for a fixed period commensurate with the criminal sanction

In the event that the Respondent has received a criminal disqualification order, the Panel may consider applying a disqualification order for the same period.

Permanent disqualification

Permanent disqualification prohibits a CLC Lawyer from holding a licence at any given time in the future

As this is a last resort option, it is reserved for the most serious cases of misconduct.

Permanent disqualification might be most appropriate in cases:

- Involving deliberate and reckless acts, for example, misconduct involving an abuse of trust, dishonesty, or persistent failures
- Where there is no other way to protect the public due to a lack of insight, continuing problems and/or denial. (An unwillingness and inability to remedy the misconduct will suggest that a lower sanction is not appropriate)
- Where the nature and severity of the misconduct are such that any lesser sanction would lack a deterrent effect or undermine public confidence in the profession or the regulatory process.

Please note that this is not an exhaustive list.

Permanent disqualification is a long term sanction intended to be permanent. Although section 27 Administration of Justice Act 1985 provides that allows a respondent to apply for a CLC licence after 10 months, Panels should impose permanent disqualification orders in cases where they are of the view that the should never be permitted to hold a CLC licence.

Revocation of Licence

The effect of revoking a licence is to withdraw the licence and treat it as if it had never been issued.

A licence should only be revoked where it was issued as a result of an error or as a result of fraud by the licensee. A licence which is revoked is treated as if it had never been granted.

The Panel may direct the payment of costs by any party to proceedings including the CLC. Such costs may include the costs incurred in a preliminary investigation.

The party will be ordered to pay any costs as determined by the Panel.

Annex C

Sanctions for a Recognised Body or sole practitioner practice regulated by the CLC:

No Further Action

Having regard to all the circumstances of the case before it, the Panel may decide not to impose a sanction, where the Panel concludes that that whilst the facts of the allegation were proved, there is no public interest in imposing a sanction.

A No Further Action order is only likely to be imposed in exceptional circumstances.

The Panel must give clear and reasoned decisions explaining why it has determined to take no further action.

Reprimand the entity

A reprimand does not restrict an entity's or a sole practitioner's ability to practise.

A reprimand might be most appropriate in cases:

- Where an act or omission needs particular attention drawn to it, with the intention that the behaviour of the individual/body is changed.
- Where the misconduct has now been remediated
- Where the respondent has demonstrated insight

Direct the payment of a fine which is fair and proportionate, and does not exceed £250 million

The entity/sole practitioner will be ordered to pay a fine not exceeding £250 million.

Financial penalties will only be directed in serious circumstances. This will be used to penalise inappropriate behaviour demonstrated by a specific act or omission and to deter future non-compliance (by both the individual/body and others).

Should a number of breaches be separately investigated, the Panel may determine it appropriate for a separate penalty to be imposed in each case.

Direct the issue of a certificate of recognition subject to conditions it may specify

A certificate of recognition may be issued subject to conditions

Conditions will restrict a Recognised Body's/sole practitioner's practice, require remedial action to be taken, or a combination of both.

Any conditions should be proportionate, appropriate, practicable, measurable and time related.

Revoke the recognition of the entity

A certificate of recognition issued by the CLC to an entity /sole practitioner will be withdrawn.

The Panel may direct the payment of costs by any party to proceedings including the CLC. Such costs may include the costs incurred in a preliminary investigation.

The party will be ordered to pay any costs as determined by the Panel.

Annex D

Sanctions for a Manager or employee who is not a CLC Lawyer but works in a CLC regulated practice:

No Further Action

Having regard to all the circumstances of the case before it, the Panel may decide not to impose a sanction, where the Panel concludes that that whilst the facts of the allegation were proved, there is no public interest in imposing a sanction.

A No Further Action order is only likely to be imposed in exceptional circumstances.

The Panel must give clear and reasoned decisions as to why it has determined to take no further action.

Direct the payment of a fine which is fair and proportionate, not exceeding £50 million

The Manager or employee will be ordered to pay a fine not exceeding £50 million.

Financial penalties will only be directed in serious circumstances. This will be used to penalise inappropriate behaviour demonstrated by a specific act or omission and to deter future non-compliance (by both the individual/body and others).

Should a number of breaches be separately investigated we may determine it appropriate for a separate penalty to be imposed in each case.

Require the CLC to take such steps as it may specify in relation to the Manager or employee

The CLC will be required to take steps in relation to the Manager and employee as determined by the Panel. For example, enhanced monitoring and/or supervision.

Require the CLC to refer to an appropriate regulator any matter relating to the conduct of the Manager or employee

The CLC will be required to refer the conduct of a manager or employee to the appropriate regulator where we have reason to believe that the individual's behaviour is in breach of their regulatory responsibilities.

The Panel may direct the payment of costs by any party to proceedings including the CLC. Such costs may include the costs incurred in a preliminary investigation.

The party will be ordered to pay any costs as determined by the Panel.

Annex E

Sanctions for a Licensed ABS Body, or an employee or manager within, or owner, of the Licensed ABS Body:

A Licensed Body:

No Further Action

Having regard to all the circumstances of the case before it, the Panel may decide not to impose a sanction, where the Panel concludes that that whilst the facts of the allegation were proved, there is no public interest in imposing a sanction.

A No Further Action order is only likely to be imposed in exceptional circumstances.

The Panel must give clear and reasoned decisions as to why it has determined to take no further action.

Reprimand the body

A reprimand does not restrict a Licensed Body's ability to practise.

A reprimand might be most appropriate in cases:

- Where an act or omission needs particular attention drawn to it, with the intention that the behaviour of the body is changed.
- Where the misconduct has now been remediated
- Where the respondent has demonstrated insight

Direct the payment of a fine which is fair and proportionate, not exceeding £250 million

The Licensed Body/sole practitioner will be ordered to pay a fine not exceeding £250 million.

Financial penalties will only be directed in serious circumstances. This will be used to penalise inappropriate behaviour demonstrated by a specific act or omission and to deter future non-compliance (by both the individual/body and others).

Should a number of breaches be separately investigated the Panel may determine it appropriate for a separate penalty to be imposed in each case.

Direct the issue of a licence subject to conditions it may specify

A licence issued by the CLC to a body corporate recognising it as a Recognised Body suitable to undertake the provision of Regulated Services authorised by the CLC may be subject to certain conditions.

Conditions will restrict a Licensed Body's practice, require remedial action to be taken, or a combination of both.

Any conditions should be proportionate, appropriate, practicable, measurable and time-specific.

Suspend the licence of the body

Suspensions are temporary in nature and have a deterrent effect on the Body and can be used to show the public and the regulated community what is viewed as unacceptable behaviour.

The decision to suspend will not be taken lightly. We will only use this measure where, due to the seriousness and/or persistence of the act or omission – or the body has changed its structure/provision arrangements so it is no longer licensable - no other enforcement action is judged adequate to address the identified issue.

Revoke the licence of the body

The effect of revoking a licence is to withdraw the licence and treat it as if it had never been issued.

This measure will only be used where, due to the seriousness and/or persistence of the act or omission – or the body has changed its structure/provision arrangements so it is no longer licensable - no other enforcement action is judged adequate to address the identified issue.

As this is a last resort option, it is reserved for the most serious cases of misconduct.

A Licensed Body owner:

Place conditions on the owner's material interest

Where the Panel are concerned that a material interest holder in Licensed Body may be demonstrating improper influence – i.e. an owner is influencing, or attempting to influence the decisions of the Licensed Body or the conduct of Authorised Persons in a way which would constitute a breach of their regulatory duties, the Panel can object to the interest and this may ultimately result in divestiture.

Direct the payment of a fine which is fair and proportionate, not exceeding £50 million

The Licensed Body owner will be ordered to pay a fine not exceeding £50 million.

Financial penalties will only be directed in serious circumstances. This will be used to penalise inappropriate behaviour demonstrated by a specific act or omission and to deter future non-compliance (by both the individual/body and others).

Should a number of breaches be separately investigated we may determine it appropriate for a separate penalty to be imposed in each case.

A Head of Legal Practice (HoLP) or Head of Finance & Administration (HoFA):

No Further Action

Having regard to all the circumstances of the case before it, the Panel may decide not to impose a sanction, where the Panel concludes that that whilst the facts of the allegation were proved, there is no public interest in imposing a sanction.

A No Further Action order is only likely to be imposed in exceptional circumstances.

The Panel must give clear and reasoned decisions explaining why it has determined to take no further action.

Require the CLC to take such steps as it may specify in relation to the HoLP or HoFA

The CLC will be required to take steps in relation to the HoLP or HoFA as determined by the Panel.

Direct the payment of a fine which is fair and proportionate, not exceeding £50 million

The HoFA/HoLP will be ordered to pay a fine not exceeding £50 million.

Financial penalties will only be directed in serious circumstances. This will be used to penalise inappropriate behaviour demonstrated by a specific act or omission and to deter future non-compliance (by both the individual/body and others).

Should a number of breaches be separately investigated we may determine it appropriate for a separate penalty to be imposed in each case.

Withdraw approval of the individual for the role

Withdrawal of approval of a Licensed Body's Head of Legal Practice or Head of Finance and Administration where the individual has become demonstrably inappropriate for the role e.g. an event has occurred which impacts upon their fit and proper status or they have repeatedly fail to meet their regulatory responsibilities.

Disqualify the individual from a role within a Licensed Body

Disqualification prohibits the individual from a specific role for a specified period of time.

Disqualification of an individual from a role within a Licensed Body or a CLC Lawyer from holding a licence will be reserved for exceptional circumstances and where the seriousness of the act or omission means that no other enforcement action is judged adequate to address it.

A manager or employee:

No Further Action

Having regard to all the circumstances of the case before it, the Panel may decide not to impose a sanction, where the Panel concludes that that whilst the facts of the allegation were proved, there is no public interest in imposing a sanction.

A No Further Action order may be appropriate in circumstances where:

- the seriousness of the misconduct is of a low level;
- the Respondent has taken sufficient corrective action;
- there is no likelihood of repetition;

The Panel must give clear and reasoned decisions as to why it has determined to take no further action.

Direct the payment of a fine which is fair and proportionate fine, not exceeding £50 million

The Manager/employee will be ordered to pay a fine not exceeding £50 million.

Financial penalties will only be directed in serious circumstances. This will be used to penalise inappropriate behaviour demonstrated by a specific act or omission and to deter future non-compliance (by both the individual/body and others).

Should a number of breaches be separately investigated we may determine it appropriate for a separate penalty to be imposed in each case.

Require the CLC to take such steps as it may specify in relation to the manager or employee

The CLC will be required to take steps in relation to the Manager and employee as determined by the Panel.

Require the CLC to refer to an appropriate regulator any matter relating to the conduct of the manager or employee

The CLC will be required to refer the conduct of a manager or employee to the appropriate regulator where we have reason to believe that the individual's behaviour is in breach of their regulatory responsibilities.

Disqualify the individual from a role in a Licensed Body.

Disqualification of an individual from a role within a Licensed Body or a CLC Lawyer from holding a licence will be reserved for exceptional circumstances and where the seriousness of the act or omission means that no other enforcement action is judged adequate to address it.

Annex F

Sanctions available

| Sanctions – CLC Lawyer | Statutory provision | CLC Rules |
|--|---|--|
| Revocation of Licence | s.26(2)(a) Administration of Justice Act 1985 (AJA 1985) | r.13.3 (a)(i) Adjudication Panel Rules 2015 (AP Rules 1985) |
| Disqualified from holding a licence/role (permanently or for a specified period) | s.26(2)(b) AJA 1985 | r.13.3 (a)(ii) AP Rules 2015 |
| Licence suspended | s.26(2)(c) AJA 1985 | r.13.3 (a)(iii) AP Rules 2015 |
| Licence subject to conditions (e.g. only carry out specified activity, only act for specific types of clients, only provide legal services if a particular structure or policy is in place and implemented, provide information to the CLC to enable it to monitor the practice or CLC Lawyer closely) | s.26(2)(d) AJA 1985 | r.13.3 (a)(iv) AP Rules 2015 |
| Payment of penalty to HM Treasury which is fair & proportionate (not to exceed £50 million) | s.26(2)(e) AJA 1985 | r.13.3 (a)(v) AP Rules 2015 |
| Reprimand | s.26(2)(f) AJA 1985 | r.13.3 (a) (vi) AP Rules 2015 |
| Payment of costs | s.26(2A) AJA 1985 | r.9 AP Procedure Rules 2013 (as amended) |

| Sanctions - Recognised Bodies | Statutory provision | CLC Rules |
|--------------------------------------|---|---------------------------------|
| Revoke recognition of entity | Paragraph 4(2)(a) Schedule 6 AJA 1985 | r.13.3 (b) (i) AP Rules 2015 |

| | | |
|--|--|---|
| Reprimand entity | Paragraph 4(2)(ba) Schedule 6 AJA 1985 | r.13.3 (b) (iii) AP Rules 2015 |
| Certificate issued subject to conditions | Paragraph 4(2)(bb) Schedule 6 AJA 1985 | r.13.3 (b) (iv) AP Rules 2015 |
| Payment of a penalty to HM Treasury which is fair & proportionate (not to exceed £250 million) | Paragraph 4(2)(b) Schedule 6 AJA 1985 | r.13.3 (b) (ii) AP Rules 2015 |
| Payment of costs | Paragraph 4(2D) Schedule 6 1985 Act | r.9 AP Procedure Rules 2013 (as amended) |

| Sanctions – manager or employee of Recognised Body | Statutory provision | CLC Rules |
|--|--|---|
| Payment of a fine to HM Treasury which is fair & proportionate (not to exceed £50 million) | Paragraph 4(2B)(a) Schedule 6 AJA 1985 | r.13.3(c)(i) AP Rules 2015 |
| Order requiring the CLC to take such steps as the AP may specify in relation to the Manager or employee | Paragraph 4(2B)(b) Schedule 6 AJA 1985 | r.13.3(c)(ii) AP Rules 2015 |
| Order requiring the CLC to refer to an appropriate regulator any matter relating to the conduct of the Manager or employee | Paragraph 4(2B)(c) Schedule 6 AJA 1985 | r.13.3(c)(iii) AP Rules 2015 |
| Payment of costs | Paragraph 4(2D) Schedule 6 1985 Act | r.9 AP Procedure Rules 2013 (as amended) |

| Sanctions - Licensed Bodies (ABS) | CLC Rules |
|---|------------------------------|
| Reprimand body | r.14.2(a)(i) AP Rules 2015 |
| Licence issued subject to conditions | r.14.2(a)(ii) AP Rules 2015 |
| Payment of a fine to HM Treasury which is fair & proportionate (not to exceed £250 million) | r.14.2(a)(iii) AP Rules 2015 |

| | |
|----------------------------|-----------------------------|
| Suspend licence of body | r.14.2(a)(iv) AP Rules 2015 |
| Revoke licence of the body | r.14.2(a)(v) AP Rules 2015 |
| Intervene | S14.2(a)(vi) AP Rules 2015 |

| Sanctions - Licensed Body owner | CLC Rules |
|---|-----------------------------|
| Place conditions on owner's material interest | s14.2(b)(i) AP Rules 2015 |
| Object to owner's material interest and initiate application to High Court to divest owner of material interest | s14.2(b)(ii) AP Rules 2015 |
| Payment of a fine to HM Treasury which is fair & proportionate (not to exceed £50 million) | s14.2(b)(iii) AP Rules 2015 |

| Sanctions – Head of Legal Practice (HoLP) or Head of Finance and Administration (HoFA) | CLC Rules |
|---|-----------------------------|
| Require the CLC to take such steps as it may specify in relation to the HoLP or HoFA | s14.2(c)(i) AP Rules 2015 |
| Payment of a fine to HM Treasury which is fair & proportionate (not to exceed £50 million) | s14.2(c)(ii) AP Rules 2015 |
| Withdraw approval of the individual for the role | s14.2(c)(iii) AP Rules 2015 |
| Disqualify individual from a role within a Licensed Body | s14.2(c)(iv) AP Rules 2015 |

| Sanctions – Manager or employee of a Licensed Body | CLC Rules |
|--|-----------------------------|
| Payment of a fine to HM Treasury which is fair & proportionate (not to exceed £50 million) | s14.2(d)(i) AP Rules 2015 |
| Require the CLC to take such steps as it may specify in relation to the Manager or employee | s14.2(d)(ii) AP Rules 2015 |
| Require the CLC to refer to an appropriate regulator any matter relating to the conduct of the Manager or employee | s14.2(d)(iii) AP Rules 2015 |
| Disqualify the individual from a role within a Licensed Body | s14.2(c)(iv) AP Rules 2015 |