

Annex 3 - CLC's Adjudication Panel (No 2) Rules 2011

The CLC's Adjudication Panel (No 2) Rules 2011

Made on **[date]** by the Council for Licensed Conveyancers with the approval of the Legal Services Board pursuant to sections 24, 24A and 38 and paragraph 5 of Schedule 3 and paragraph 3 of Schedule 6 to the Administration of Justice Act 1985, Part II of Schedule 8 to the Courts and Legal Services Act 1990 and section 20 and Part 3 of Schedule 4 to the Legal Services Act 2007.

1. ***Citation, Commencement, Interpretation and Saving***

1.1 These Rules may be cited as the CLC's Adjudication Panel (No 2) Rules 2011 and shall come into effect on **[date]** on which date the CLC's Adjudication Panel Rules 2011 shall cease to have effect save that:

- (a) no prior decision of the Investigating Committee nor the Adjudication Panel shall be invalidated by this repeal,
- (b) any case referred for determination in accordance with the Investigating Committee Rules 2004 or the CLC's Adjudication Panel Rules 2011, which has not been finally determined on the coming into force of these Rules, shall continue and shall be determined in accordance with these Rules, and
- (c) the terms of office of the Adjudication Chair and members of the Adjudication Panel appointed in accordance with the CLC's Adjudication Panel Rules 2011 shall continue in effect until expiry of their terms of office unaffected by the coming into force of these Rules. These persons shall be deemed to be appointed in accordance with these Rules.

1.2 In these Rules: -

unless the contrary intention appears, words importing the masculine gender include the feminine, words in the singular include the plural and words in the plural include the singular;

"the 1985 Act" the Administration of Justice Act 1985;

"the 1990 Act" the Courts and Legal Services Act 1990;

"the Adjudication Chair" the chair of the Adjudication Panel;

"the Adjudication the rules made by the CLC currently in force for the
Procedure Rules" conduct of disciplinary proceedings referred to the
Adjudication Panel for determination;

"the Adjudication Panel" the committee established by the CLC by which the
functions conferred on the Investigating Committee under
Part II of the 1985 are to be discharged;

"Authorised Officer" An employee of the CLC appointed to exercise the
functions delegated to him by these Rules;

“the CLC”		the Council for Licensed Conveyancers established under section 12 of the 1985 Act;
“CLC’s Rules”		the Licenced Conveyancers’ Conduct Rules and any other rules made by the CLC
“Company”		has the meaning given by section 1(1) of the Companies Act 2006;
“Disciplinary Order”		in the case of a Licensed Conveyancer an order made against him pursuant to section 24A or 26 of the 1985 Act (other than an order which provides only for the payment of costs by him) or a direction made pursuant to paragraph 17(2) of schedule 8 to the 1990 Act;
“the Discipline and Appeals Committee”		the Committee established under section 25 of the 1985 Act;
“Lay Member”		a person appointed as a member of the Adjudication Panel, who is not eligible to sit as a Licensed Conveyancer Member;
“Licensed Body”		A body which provides legal services to the public and in which a non-lawyer is a Manager and/or owner as provided at s.72 of the 2007 Act;
“Licensed Conveyancer”		a person who holds a licence in force under Part II of the 1985 Act;
“Licensed Conveyancer Member”		an individual appointed as a member to the Committee who is a Licensed Conveyancer, who has at any time held a Licence to practise as a Licensed Conveyancer or any individual who is or has at any time been a Manager of a Recognised Body regulated by the CLC;
“Limited Liability Partnership”		a body corporate formed by being incorporated under the Limited Liability Partnerships Act 2000;
“LLP Member”		a member of a Limited Liability Partnership;
“Manager”		in relation to a Recognised Body, means a person who is: <ul style="list-style-type: none"> (a) a member of the Recognised Body, if the Recognised Body is a Company and its affairs are managed by its members; (b) a director of the Recognised Body, if the Recognised Body is a Company and paragraph (a) does not apply; (c) a partner, if the Recognised Body is a partnership; (d) a LLP member, if the Recognised Body is a Limited Liability Partnership; (e) a member of its governing body, if the Recognised

Body is an unincorporated body (other than a partnership); and

- (f) a Licensed Conveyancer, if sub-paragraphs (a)-(e) do not apply and the affairs of the Recognised Body are not managed by another Licensed Conveyancer;

“Panel Member”	a person appointed as a member of the Adjudication Panel in accordance with rule 3.1;
“Party”	(a) the CLC (and includes the CLC’s Representative); (b) the Respondent; or (c) the complainant;
“Recognised Body”	a body recognised by the CLC under section 32 of the 1985 Act to provide Regulated Services to the public (“Recognised Body” is an entity regulated by the CLC and includes, without limitation, a partnership, a sole principal, a limited company and a Limited Liability Partnership);
“Regulated Services”	conveyancing services and such other services, including probate services, regulated by the CLC;
“Respondent”	the Licensed Conveyancer, Manager, employee, Recognised Body about whom the reference is made or treated as made;
“Review Panel”	the panel selected by the Adjudication Chair comprising not less than two and not more than three members of the Adjudication Panel, provided none of those members attended the meeting when the determination was made which is the subject of the application for review;
“Standing Orders”	the Standing Orders made for the Adjudication Panel and the Adjudicating Committee by the CLC pursuant to paragraph 9(2) of schedule 3 to the 1985 Act.

Other expressions shall have the meanings given by the 1985 Act and the 1990 Act.

2. Delegation of Powers

- 2.1 In accordance with paragraph 12(2) schedule 8 to the 1990 Act the functions conferred on the Investigating Committee under Part II of the 1985 are to be discharged by the Adjudication Panel which for these purposes is a committee established by the CLC under paragraph 12 schedule 8 to the 1990 Act and by the Authorised Officer.
- 2.2 The Adjudication Panel and the Authorised Officer shall consider or deal with such other matters specifically delegated to or referred to them by the CLC, the Council of the CLC or by any other committee of the CLC.

3. Membership of the Adjudication Panel

- 3.1 The CLC shall in accordance with rule 4 appoint the Adjudication Chair, up to two Deputy Chairs and up to six Panel Members none of whom shall be a member of the Council of the CLC.
- 3.2 The Lay Members shall exceed by one the number of Licensed Conveyancer Members.
- 3.3 If he resigns his office as Adjudication Chair, subject to these Rules, the Adjudication Chair may remain a member of the Adjudication Panel.
- 3.4 If the Adjudication Chair resigns his office or is suspended under rule 8.1, the CLC may in its absolute discretion appoint a new Adjudication Chair:
 - (a) from among the Deputy Chairs or the Panel Members; or
 - (b) in accordance with rule 4.

4. *Appointment of Adjudication Chair and Panel Members*

- 4.1 The posts of the Adjudication Chair, Deputy Chairs and Panel Members shall be advertised in such manner as the CLC shall determine.
- 4.2 The appointment of the Adjudication Chair, Deputy Chairs and Panel Members shall be made by an appointment panel, comprising no less than three persons, chosen by the CLC after considering the advice of the Chief Executive Officer of the CLC.
- 4.3 A person shall not be eligible for appointment to the Adjudication Panel if:
 - (a) he is the Chair or an employee or member of the CLC;
 - (b) he has been convicted of a criminal offence involving fraud, dishonesty, deception or violence or an indictable offence unless the conviction is spent within the meaning of the Rehabilitation of Offenders Act 1974;
 - (c) he is or has been an undischarged bankrupt, is or has been the subject of a bankruptcy restrictions order or has made a composition or arrangement with his creditors unless:
 - (i) the bankruptcy order is annulled either on the ground that he ought not to have been adjudged bankrupt, or that his debts have been paid in full, on the date of the annulment;
 - (ii) in the case of a composition or arrangement with his creditors, he pays his debts in full on the date on which payment is completed or on the expiration of five years from the date on which the terms of the deeds of composition or arrangement are fulfilled.
 - (d) if he lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers in relation to sections 15-20 or section 48 of that Act have been exercised in relation to him;
 - (e) the CLC is satisfied that, in respect of the following, the circumstances of the particular case make that person ineligible for appointment to the

Adjudication Panel:

- (i) a Disciplinary Order has been made against him, unless more than six years have passed since the Order was made;
- (ii) the CLC's power of intervention have been exercised against him or his practice in accordance with part 1 of schedule 5 to the 1985 Act or against a Recognised Body of which he is a Manager in accordance with schedule 6 to the 1985 Act unless in either case more than six years have passed since such powers were exercised; or
- (iii) the CLC is satisfied that as a member of another profession an adverse determination has been made against him by a disciplinary tribunal or committee established to regulate the activities and the conduct of members of his profession (other than an order which provides only for the payment of costs by him), unless more than six years have passed since the Order was made and if he has been disqualified from holding a licence or practising certificate (as the case may be) for a period longer than six years, his licence or practising certificate has been restored.

5. Tenure of Office

- 5.1 Subject in each case to rules 5.2, 6.1 and 9.1 the term of office of each Adjudication Chair, Deputy Chair and Panel Member appointed takes effect on the date specified in the letter of appointment for a term of office not exceeding four years.
- 5.2 An Adjudication Chair, Deputy Chair or Panel Member shall be eligible subject to review for re-appointment, once only, for a further term of office not exceeding four years.

6. Vacancies

- 6.1 A vacancy in the office of Adjudication Chair, Deputy Chair and Panel Member shall automatically occur and his right to hold office shall cease immediately:
 - (a) on his death;
 - (b) on receipt by the CLC of his written resignation;
 - (c) on the expiry of his term of office as a Panel Member;
 - (d) on his appointment as Chair or member of the CLC;
 - (e) If appointed as a Lay Member, he becomes a Licensed Conveyancer or a Manager of a Recognised Body or a Licensed Body regulated by the CLC;
 - (f) if, without the consent of the Adjudication Chair or (in the absence of the Adjudication Chair) a Deputy Chair, he fails to attend more than three consecutive meetings of the Adjudication Panel;
 - (g) if he is convicted of a criminal offence involving fraud, dishonesty, deception or

violence or an indictable offence;

- (h) if he is adjudged bankrupt, is the subject of a Bankruptcy Restrictions Order or makes a composition or arrangement with his creditors unless:
 - (1) the bankruptcy order is annulled either on the ground that he ought not to have been adjudged bankrupt, or that his debts have been paid in full, on the date of the annulment;
 - (2) in the case of a composition or arrangement with his creditors, he pays his debts in full on the date on which payment is completed or on the expiration of five years from the date on which the terms of the deeds of composition or arrangement are fulfilled.
- (i) if he lacks capacity (within the meaning of the Mental Capacity Act 2005) and powers in relation to sections 15-20 or section 48 of that Act have been exercised in relation to him;
- (j) if, being a Licensed Conveyancer Member,
 - (1) a Disciplinary Order is made against him;
 - (2) his Licence is suspended pursuant to section 24 of the 1985 Act; or
 - (3) the CLC's powers of intervention are exercised against him in accordance with Part I of Schedule 5 to the 1985 Act or against a Recognised Body of which he is a Manager in accordance with schedule 6 to the 1985 Act;
- (k) if as a member of another profession, an adverse determination is made against him by a disciplinary tribunal or committee (other than an Order which provides only for the payment of costs by him);
- (l) if he has failed to disclose to the CLC any matter referred to in rule 4.3 subparagraphs (b), (c), (d) or (e).
- (m) if he is removed from office under rule 9.1.

6.2 In the event that a vacancy occurs by reason of the operation of rule 6.1, the CLC shall inform the Adjudication Chair, or one of the Deputy Chairs (if the office of the Adjudication Chair has been vacated).

6.3 Where a vacancy occurs, the CLC will as soon as possible make an appointment in accordance with rule 4.

7. Remuneration

7.1 The CLC will pay to the Adjudication Chair, Deputy Chairs and Panel Members attendance fees and expenses reasonably incurred, such fees to be determined by the CLC and to be reviewed periodically.

8. Suspension of the Adjudication Chair, a Deputy Chair or a Panel Member

- 8.1 The Adjudication Chair, Deputy Chair or Panel Member is suspended with immediate effect in the event that: -
- (a) he is charged with any offence referred to in rule 6.1(g); or
 - (b) he is served with a bankruptcy petition or issues a bankruptcy petition on his own behalf; or
 - (c) he receives notice of any application against him for an order under rule 6.1(k).
- 8.2 Any suspension imposed under rule 8.1 shall automatically be revoked in the following circumstances: -
- (a) under sub-paragraph 8.1(a) in the event that the charge is dismissed, discharged, discontinued or otherwise withdrawn;
 - (b) under sub-paragraph 8.1(b) if the bankruptcy petition is disposed of without a declaration of bankruptcy being made against him;
 - (c) under sub-paragraph 8.1(c) in the event that the application is withdrawn or dismissed or the only order made is for the payment of costs.

9. *Removal of the Adjudication Chair, a Deputy Chair or a Panel Member*

- 9.1 The Council may by a majority remove the Adjudication Chair, a Deputy Chair or a Panel Member who has breached the Standing Orders or the Code of Conduct applicable to the Adjudication Chair, Deputy Chairs and Panel Members.

10. *Composition of hearings of the Adjudication Panel*

- 10.1 In consultation with the CLC the Adjudication Chair shall direct the date, time and place for the hearing under the CLC's Approved Regulator (Disciplinary Procedure) Rules in consultation with the CLC when the Adjudication Panel shall meet to determine proceedings.
- 10.2 The CLC shall as soon as reasonably possible send notice of the hearing to each member of the Adjudication Panel nominated by the Adjudication Chair to attend the hearing and to the appropriate Parties in the manner prescribed by the Adjudication Procedure Rules.
- 10.3 When the Adjudication Panel direct that a new hearing date be fixed to hear or continue to hear and determine the matter before them, the Adjudication Chair shall determine the date, time and place for the hearing in consultation with the CLC.
- 10.4 The CLC shall as soon as reasonably possible send notice of the hearing to every member of the Adjudication Panel who is to attend the hearing and to the appropriate Parties in the manner prescribed by the Adjudication Procedure Rules.
- 10.5 If a case has been part heard on the expiry of the term of office of one or more members of the Adjudication Panel under rule 6.1(c) (but for no other reason), that Panel Member may with the agreement of the Adjudication Chair be treated as remaining a member of the Adjudication Panel and hear the case until its conclusion even though for all other purposes that individual has ceased to be a Panel Member.
- 10.6 If an individual sitting as a member of the Adjudication Panel ceases to be a Panel

Member under rule 6.1 (other than as a result of the operation of rule 6.1(c)) where a case has been part heard and as a result the hearing is not quorate, the Adjudication Chair may nominate another Panel Member to attend the hearing to enable the hearing of that case to continue until its conclusion provided he is satisfied that it is in the interests of natural justice.

11. Standing Orders

11.1 Save as modified by these Rules and by the CLC's Approved Regulator (Disciplinary Procedure) Rules as provided for under rule 10.1, proceedings of the Adjudication Panel shall be governed by the Standing Orders.

12. Disciplinary Powers of the CLC as an Approved Regulator

12.1 Rule 12 applies when the Respondent is regulated by the CLC acting as an Approved Regulator.

12.2 The Authorised Officer must carry out a preliminary investigation of any case in which it is alleged that:

(a) a Licensed Conveyancer:

(i) has (whether as 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 made by the Council under Part II of the 1985 Act;

(b) a Recognised Body:

(i) has (while a Recognised Body) been convicted of a criminal offence which renders it unsuitable to be recognised under section 32 of the 1985 Act; or

(ii) has failed to comply with any rules applicable to it by virtue of section 32 of the 1985 Act; or

(iii) has (while a Recognised Body) failed to comply with a condition subject to which its recognition has effect;

(c) a manager or employee of a Recognised Body who is not a Licensed Conveyancer has failed to comply with any rules applicable to him by virtue of section 32 of the 1985 Act;

with a view to determining whether such case ought to be determined by him, or ought to be referred to the Discipline and Appeals Committee, alternatively the Adjudication Panel, for hearing and determination.

- 12.3 The Authorised Officer must refer an allegation to the Discipline and Appeals Committee if, having made a preliminary investigation of such an allegation, he is satisfied that the nature of the allegation, if proved, is likely to justify:
- (i) the imposition of a penalty in excess of £50,000; or
 - (ii) the making of one or more of the orders referred to in section 26(2)(a)-(d) or (f) of, alternatively paragraph 4(2)(a), (ba) or (bb) of Schedule 6 to, the 1985 Act.
- 12.4 If, having made a preliminary investigation of the allegation in accordance with rule 12.3, he does not make a referral to the Discipline and Appeals Committee, the Authorised Officer the Authorised Officer may certify that the complaint is appropriate for hearing and determination by the Adjudication Panel under section 24(1A)(a) of, alternatively paragraph 3(1A)(a) of Schedule 6 to, the 1985 Act in accordance with the Adjudication Procedure Rules provided he is satisfied that the nature of the allegation, if proved, is likely to justify the imposition of a penalty which does not exceed £50,000, and no other order, other than an order that a Party pays costs.
- 12.5 If, having made a preliminary investigation of the allegation in accordance with rule 12.2, he does not make a referral to the Discipline and Appeals Committee or to the Adjudication Panel, the Authorised Officer may certify that the complaint is appropriate for hearing and determination by him under section 24(1A)(a) of, alternatively paragraph 3(1A)(a) of Schedule 6 to, the 1985 Act in accordance with the Adjudication Procedure Rules provided he is satisfied that the nature of the allegation, if proved, is likely to justify the imposition of a penalty which does not exceed £1,000, and no other order, other than an order that a Party pays costs.
- 12.6 Not less than 14 days after notice has been given to the Parties in accordance with rule 12.5, the Authorised Officer may:
- i) direct that the Respondent pay a penalty not exceeding £1,000 in respect of each allegation made; or
 - ii) dismiss the complaint; and
 - iii) in either case, order the payment of costs by a Party.
- 12.7 Where any Party gives notice to the Authorised Officer not more than 7 days after a notice has been served in accordance with rule 12.5 that he does not accept the certificate, the Authorised Officer must refer the case to the Discipline and Appeals Committee in accordance with rule 12.3, alternatively to the Adjudication Panel in accordance with rule 12. 4.
- 12.8 Any Party may apply for determination by the Adjudication Panel within 14 days after a determination made by the Authorised Officer in accordance with rule 12.6 has been served on the Parties, such determination shall be determined by the Adjudication Panel in accordance with the CLC's Approved Regulator (Disciplinary Procedure) Rules as if a referral had been made in accordance with rule 12.5. The Adjudication Panel will be notified as a fact of the determination made in accordance with rule 12.6.
- 13. *Disciplinary Powers of the CLC as a Licensing Authority***

13.1 Rule 13 applies when the Respondent is regulated by the CLC acting as a Licensing Authority.

13.2 The Authorised Officer may in respect of:

- (a) a Licensed Body owner
 - (i) place conditions on the owner's material interest;
 - (ii) direct the payment of a fine which is fair and proportionate, not exceeding £1,000;
- (b) a Licensed Body
 - (i) reprimand the body;
 - (ii) direct the issue of a licence subject to conditions it may specify;
 - (iii) direct the payment of a fine which is fair and proportionate, not exceeding £1,000;
- (c) a Head of Legal Practice (HoLP) or Head of Finance & Administration (HoFA):
 - (i) require the CLC to take such steps as it may specify in relation to the HoLP or HoFA;
 - (ii) withdraw approval of the individual for the role;
 - (iii) direct the payment of a fine which is fair and proportionate, not exceeding £1,000;
- (d) a manager or employee:
 - (i) require the CLC to take such steps as it may specify in relation to the manager or employee;
 - (ii) require the CLC to refer to an appropriate regulator any matter relating to the conduct of the manager or employee;
 - (iii) disqualify the individual from a role in a Licensed Body .
 - (iv) direct the payment of a fine which is fair and proportionate, not exceeding £1,000;

13.3 The Adjudication Panel may in respect of:

- (a) a Licensed Body owner:

- (i) place conditions on the owner's material interest;
- (ii) object to the owner's material interest, and initiate the application to the High Court to divest the owner of their material interest;
- (iii) direct the payment of a fine which is fair and proportionate, not exceeding £50 million;
- (b) a Licensed Body:
 - (i) reprimand the body;
 - (ii) direct the issue of a licence subject to conditions it may specify;
 - (iii) direct the payment of a fine which is fair and proportionate, not exceeding £150 million;
 - (iv) suspend the licence of the body;
 - (v) revoke the licence of the body;
 - (vi) intervene;
- (c) a Head of Legal Practice (HoLP) or Head of Finance & Administration (HoFA):
 - (i) require the CLC to take such steps as it may specify in relation to the HoLP or HoFA;
 - (ii) direct the payment of a fine which is fair and proportionate, not exceeding £50 million;
 - (iii) withdraw approval of the individual for the role;
 - (iv) disqualify the individual from a role within a Licensed Body;
- (d) a manager or employee:
 - (i) direct the payment of a fine which is fair and proportionate fine, not exceeding £50 million;
 - (ii) require the CLC to take such steps as it may specify in relation to the manager or employee;
 - (iii) require the CLC to refer to an appropriate regulator any matter relating to the conduct of the manager or employee;
 - (iv) disqualify the individual from a role in the Licensed Body.

13.4 A Respondent may:

- (a) within 14 days after the determination has been made:

- (i) apply to the Adjudication Panel to review a determination made by an Authorised Officer under rule 13.2; or
 - (ii) apply to the Review Panel to review a determination made by the Adjudication Panel under rule 13.3; and
- (b) within 28 days after the determination made under rule 13.4(a) appeal to the First Tier Tribunal.