

ILEX PROFESSIONAL STANDARDS LTD

DECISION MAKING GUIDANCE FOR DISCIPLINARY BODIES

PREAMBLE

1. This guidance has been developed by ILEX Professional Standards Ltd (IPS) for use by its Professional Conduct Panel (PCP), Disciplinary Tribunal (DT) and Appeals Panel (AP). These bodies are collectively referred to in this document as the 'disciplinary bodies'. The guidance will also be used by an Officer of IPS when exercising delegated functions (see paragraph 10 below).
2. The guidance provides decision makers with a basis for considering how to exercise their judgment and powers in any given case. It is intended to promote proportionality, consistency and transparency in decision making.
3. Also fairness requires that a member appearing before a disciplinary body knows, prior to any decision being made, what powers and sanctions are available and, in the event that sanctions are to be imposed, the matters that the disciplinary body may take into account when coming to a decision.
4. However, this is guidance only and a disciplinary body may depart from it when determining a power in accordance with the discretion conferred upon it under the Rules. The facts or details of a case may require a departure from the guidance. A disciplinary body must give reasons for its decision where it departs from the guidance.

DISCIPLINARY BODIES

5. This section sets out the duties and responsibility of each disciplinary body.

Professional Conduct Panel (PCP)

6. The PCP considers 'prior conduct declarations', complaints and allegations of misconduct.
7. *Prior conduct declarations* are made by an ILEX member or someone applying for membership. Such people are expected to declare cautions and convictions, bankruptcy and individual voluntary arrangements, exclusions or expulsions by a disciplinary body, orders under s43 Solicitors Act 1974, County Court Judgments and any order made by the Office for

Legal Complaints. In those instances the PCP has to decide what, if any, action to take as a result of the declaration or, in the case of a person applying to register as an ILEX member or upgrade their membership, including applications to become a Fellow of ILEX, whether or not to accept that application.

8. *Complaints* against ILEX members can be made by anyone, but are typically made by clients, third parties in legal proceedings or employers. IPS can also initiate an investigation into the conduct of a member in the absence of a complaint (referred to as *allegations of misconduct*).
9. IPS investigates complaints and allegations of misconduct. At the conclusion of the investigation a report is produced. The report and relevant documents are referred to the PCP, unless there is no evidence of misconduct in which case the investigation will be terminated. The PCP has to decide whether or not there is a prima facie case to substantiate the complaint or allegation of misconduct. Where a prima facie case is shown the PCP must decide whether to deal with the matter itself or, in the case of serious misconduct, to refer it to the DT.
10. In some instances a decision may be made under a delegated procedure, by an Officer of IPS in conjunction with two members of the PCP. An Officer will be the Professional Standards Manager or in their absence the Chief Executive of IPS.

Disciplinary Tribunal (DT)

11. The DT is responsible for considering cases referred to it by the PCP. Once a matter is referred to the DT charges are drafted against the member. IPS collates evidence which will be presented in the form of witness statements and exhibit bundles. The respondent practitioner may file statements and exhibits in response. Proceedings before the DT normally take the form of an oral hearing. The respondent has a right to attend and be represented at the hearing.
12. The DT must decide on the balance of probabilities, whether the charges have been proved. Where charges have been proved the DT considers sanction and costs and hears submissions from IPS and the respondent on costs and mitigation. The DT then determines what, if any, disciplinary sanctions to impose.

Appeals Panel (AP)

13. The AP considers appeals made against decisions of the PCP or DT. The AP decides whether the appellant has shown grounds for appeal and, if so, it will proceed to determine the matter. An appellant and IPS,

together with a representative, may attend to make oral submissions to the AP.

14. If the AP finds that grounds for appeal have been shown it will consider the original matter before the PCP or DT, as appropriate. The AP has the power to affirm or vary a decision of the PCP or DT. It has available to it all the powers available to the original disciplinary body.

POWERS

15. The options available to the PCP on a **prior conduct** case are:
 - to request a member or applicant to provide references as to their conduct and suitability to be a member of the Institute;
 - to accept an applicant for enrolment;
 - to accept an application for upgrading of membership;
 - to refuse an applicant for enrolment;
 - to refuse an application for upgrading of membership;
 - to seek advice from, or refer the matter to, any officer or other committee of the Institute as IPS may prescribe in guidance from time to time;
 - to impose conditions on a member or an applicant in respect of their conduct or in regard to their employment;
 - to request a member or applicant to give an undertaking as to their future conduct;
 - to warn or reprimand a member;
 - to refer a case to the Disciplinary Tribunal; and
 - to decide to take no further action.

16. The options available to the PCP in a case involving a **complaint or allegation of misconduct** against an ILEX member are:
 - reject a complaint, allegation or issue of potential misconduct;
 - accept the member's response and decide to take no further action;
 - decide that the complaint, allegation or issue of professional misconduct concerns matters beyond the jurisdiction of IPS;
 - call for further information or evidence;
 - request the member to provide references from employers or others as to character and professional conduct;
 - defer a decision so that legal advice may be taken;
 - request a member to give undertakings as to their future conduct;
 - impose conditions on a member in respect of their conduct or in regard to their employment;
 - reprimand a member or warn him or her about their future conduct;
 - refer the matter to the Disciplinary Tribunal.

17. The options available to the **DT** where it finds one or more of the allegations against the respondent has been proved are:
- take no further action; or
 - impose conditions in respect of the member's conduct or in regard to their employment; or
 - reprimand the member or warn them about their future conduct, or
 - order that the respondent be excluded from membership of the Institute for such period (fixed or indefinite) as it shall decide and may make recommendations or observations with regard to their future reinstatement as a member, or
18. The DT may, in addition, order the respondent to pay costs to IPS in respect of the proceedings. If the DT has not ordered exclusion from membership, it may order the member to pay a fine up to a maximum specified by IPS.

PURPOSE OF SANCTIONS

19. The purpose of sanctions is to:
- Promote
 - good practice by ILEX members
 - public awareness of the standards they can expect of ILEX members
 - confidence in the profession on the part of all involved in the administration of justice.
 - Protect
 - clients
 - the public interest
 - the interests and reputation of ILEX, its members and the legal profession.

APPLICATION OF GUIDANCE

20. The disciplinary bodies will have regard to this guidance when deciding what action to take in each case. However, it is guidance only and a disciplinary body may depart from it where - in its absolute discretion - it judges this reasonable. Each case will be decided on its own merits.
21. The guidance considers to each disciplinary power in turn.

GENERAL CONSIDERATIONS

22. In considering what order to make a disciplinary body may take into account:

- the nature and seriousness of the breach,
- the duration of the breach,
- whether there were any aggravating or mitigating factors,
- the impact of the conduct on the client or complainant,
- whether the member was reckless or dishonest,
- whether the member admitted the breach,
- insight or remorse shown by the member,
- steps taken by the member to rectify the breach,
- the personal circumstances of the member,
- mitigation advanced by the member,
- references as to the conduct of the member,
- the member's prior conduct.

PRIOR CONDUCT DECLARATIONS

POWERS AVAILABLE

23. These powers are available to the PCP, or in the case of appeals, to the AP.

REFERENCES

24. The PCP may request references to assist in deciding whether a person is suitable to register as a member of ILEX, to upgrade their membership, or to remain as a member. References are therefore likely to focus on conduct, character and suitability. The PCP must specify what matters a reference should address.
25. References may be requested from any appropriate body or individual, including employers, course tutors, former employers, work colleagues or business associates. Where the declaration involves criminal convictions references may be sought from Probation Officers or other officials in the criminal justice system.

SEEK ADVICE AND REFERRALS

26. The PCP may seek advice from any Officer, ILEX, or professional advisor. Advice is likely to be required where the PCP is unclear about what is usual or good practice or procedure in a case. The advice may assist the PCP in determining what action to take and to understand the nature and impact of the conduct.
27. The PCP may seek advice from the Officer who will be present at meetings of the PCP. In the event that the information or advice sought is not available and is necessary in the determination of the proceedings, the PCP may adjourn the hearing of the case until such information or advice is produced.
28. The PCP may also refer a declaration to another Committee. This may take place where the other Committee is responsible for determining a matter. Referrals may be made to:
 - The Advocacy Rights Committee which decides whether a person may continue to practise as a Legal Executive Advocate.
 - The Health Committee which decides whether a member should be suspended from practice on health grounds.
 - The ILEX Awards Malpractice Committee which considers examination misconduct.

ACCEPT AN APPLICATION OR NO FURTHER ACTION

29. The power to accept an application is available when considering applications to enrol as a member of ILEX or to upgrade membership of ILEX. The PCP may accept an application. In accepting an application the PCP will have decided that it is appropriate to allow the applicant to become an ILEX member or upgrade their membership taking into account the nature of the declaration made.
30. The power to take no further action is available when considering declarations made by existing members of ILEX. The PCP can decide that no further action is required. The PCP thereby accepts that the person may continue as a member of ILEX.
31. The PCP may make either of these decisions alone or in conjunction with other powers. The relevant powers are to impose conditions, seek undertakings and, in the case of declarations made by existing members, to warn or reprimand.
32. In deciding whether to accept an application or take no further action the PCP may consider the following factors:

Financial orders

<i>Mitigating factors</i>	<i>Aggravating factors</i>
arrangements have been made to pay creditors	no arrangements have been made to pay creditors
payments are being made	payments were arranged but are not being made
arrangements are satisfactory	arrangements are not satisfactory
the applicant has shown insight into their conduct	applicant has not shown insight into their conduct
the applicant has expressed remorse	applicant has not expressed remorse
there is no dishonesty or serious financial mismanagement	there is dishonesty or serious financial mismanagement

Convictions and cautions

<i>Mitigating factors</i>	<i>Aggravating factors</i>
the nature of the offence – summary or either way (triable in magistrates or crown court)	serious offence
the continuity/duration of offence was	number of offences or committed over

short or one off	period of time
evidence of rehabilitation	no evidence of rehabilitation
the applicant has shown insight into their conduct	applicant has not shown insight into their conduct
the applicant has expressed remorse	applicant has not expressed remorse
there was no dishonesty or violence	there was dishonesty or violence

Declarations of convictions made on applications to become Fellows

<i>Mitigating factors</i>	<i>Aggravating factors</i>
the conviction would otherwise have been spent	the conviction would not be spent
the continuity/duration of offence was short or one off	number of offences or committed over period of time
evidence of rehabilitation	no evidence of rehabilitation
the applicant has shown insight into their conduct	applicant has not shown insight into their conduct
the applicant has expressed remorse	applicant has not expressed remorse
there was no dishonesty or violence	there was dishonesty or violence

Order by professional body or s43 order

<i>Mitigating factors</i>	<i>Aggravating factors</i>
been allowed entry back into profession or obtained Law Society consent	not been allowed entry back into profession or not obtained Law Society consent
misconduct took place long time ago	short passage of time since misconduct
substantial evidence of rehabilitation	no or little evidence of rehabilitation
the applicant has shown insight into their conduct	applicant has not shown insight into their conduct
the applicant has expressed remorse	applicant has not expressed remorse
no risk to public or consumer interest	risk to public or consumer interest

UNDERTAKING

33. The PCP may request a member or applicant to give an undertaking as to their future conduct. An undertaking is a signed statement given by the person agreeing to do or not do something. Wherever possible, the undertaking should set out a timescale within which action is to be taken; and must be capable of being monitored.

34. The PCP may request an undertaking in cases where it takes the view that a person may register or continue as a member of ILEX subject to an agreement. The undertaking may be issued in conjunction with a decision to register or continue as a member. An undertaking may be an agreement by a member to refrain from taking certain action, refrain from breaching a code or take a particular course of action.
35. In deciding whether to require an undertaking the PCP may consider the following factors:

Financial orders

<i>Mitigating factors</i>	<i>Aggravating factors</i>
arrangements have been made to pay creditors and are satisfactory	no arrangements have been made to pay creditors and/or are not satisfactory
payments are not being made on a regular basis but will be if an undertaking is given	payments were arranged but are not being made and will not be paid if an undertaking is given
the member is willing to provide an undertaking and to comply with it	the member is not willing to provide an undertaking and to comply with it
there is more than one financial order	there are many financial orders
controls are in place to prevent future orders	there is a risk of future orders
the applicant has shown some insight into their conduct	applicant has not shown insight into their conduct
the applicant has expressed remorse	applicant has not expressed remorse
there is no dishonesty or serious financial mismanagement	there is dishonesty or serious financial mismanagement

Convictions and cautions

<i>Mitigating factors</i>	<i>Aggravating factors</i>
the nature of the offence – summary or either way (triable in magistrates or crown court)	serious offence
there was more than one offence but no risk of future offending	there were a number of offences and/or a risk of re-offending
there was limited dishonesty or violence	there was serious dishonesty or violence
the member is willing to provide an undertaking and to comply with it	the member is not willing to provide an undertaking and to comply with it
evidence of rehabilitation or under	no evidence of rehabilitation or receipt

relevant treatment	of treatment
the applicant has shown some insight into their conduct	applicant has not shown insight into their conduct
the applicant has expressed remorse	applicant has not expressed remorse
there is no risk to public or consumer interest	there is a risk to public or consumer interest

Order by professional body or s43 order

<i>Mitigating factors</i>	<i>Aggravating factors</i>
been allowed entry back into profession or obtained Law Society consent	not been allowed entry back into profession or not obtained Law Society consent
misconduct took place long time ago	short passage of time since misconduct
demonstrated that addressed misconduct	no or limited action to address misconduct
evidence of rehabilitation	no evidence of rehabilitation
entry to profession and work in profession can be controlled by undertaking	admission into profession or work within profession cannot be controlled by undertaking
undertaking is sufficient to protect public or consumer interest	undertaking is insufficient to protect public or consumer interest
the member is willing to provide an undertaking and to comply with it	the member is not willing to provide an undertaking and to comply with it
the applicant has shown insight into their conduct	applicant has not shown insight into their conduct
the applicant has expressed remorse	applicant has not expressed remorse

IMPOSE CONDITIONS

36. The PCP may impose conditions on a member or an applicant in respect of their conduct or in regard to their employment.
37. Conditions are likely to be imposed in cases where the PCP takes the view that the range of activity a person should be allowed to undertake should be restricted or supervised but that they may otherwise enrol or continue as a member of ILEX. Conditions may, for example, prevent a member undertaking certain activities, restrict the areas of law in which a member may work or place supervision requirements upon a member.
38. In deciding whether to impose conditions upon a member or applicant the PCP may consider the following factors:

Financial orders

<i>Mitigating factors</i>	<i>Aggravating factors</i>
arrangements have been made to pay creditors and are satisfactory	no arrangements have been made to pay creditors and or are not satisfactory
payments are not being made on a regular basis but will be if a condition is imposed	payments were arranged but are not being made and a condition is insufficient to enforce payment
there is more than one financial order	there are many financial orders
controls are in place to prevent future orders	there is a risk of future orders
the applicant has shown some insight into their conduct	applicant has not shown insight into their conduct
the applicant has expressed remorse	applicant has not expressed remorse
there is no dishonesty or serious financial mismanagement	there is dishonesty or serious financial mismanagement
the applicant is likely to comply with the conditions	the applicant is unlikely to comply with the conditions

Convictions and cautions

<i>Mitigating factors</i>	<i>Aggravating factors</i>
the nature of the offence – summary or either way (triable in magistrates or crown court)	serious offence
there was more than one offence but no risk of future offending	there were a number of offences and/or a risk of re-offending
there was limited dishonesty or violence	there was serious dishonesty or violence
evidence of rehabilitation or under relevant treatment	no evidence of rehabilitation or receipt of treatment
the applicant has shown some insight into their conduct	applicant has not shown insight into their conduct
the applicant has expressed remorse	applicant has not expressed remorse
there is no risk to public or consumer interest	there is a risk to public or consumer interest
the applicant is likely to comply with the conditions	the applicant is unlikely to comply with the conditions

Order by professional body or s43 order

<i>Mitigating factors</i>	<i>Aggravating factors</i>
been allowed entry back into profession or obtained Law Society consent	not been allowed entry back into profession or not obtained Law Society consent
misconduct took place long time ago	short passage of time since misconduct
demonstrated that addressed misconduct	no or limited action to address misconduct
evidence of rehabilitation	no evidence of rehabilitation
entry to profession and work in profession can be controlled by conditions	admission into profession or work within profession cannot be controlled by conditions
conditions can protect public or consumer interest	conditions insufficient to protect public or consumer interest
the applicant has shown insight into their conduct	applicant has not shown insight into their conduct
the applicant has expressed remorse	applicant has not expressed remorse
the applicant is likely to comply with the conditions	the applicant is unlikely to comply with the conditions

REPRIMAND OR WARN

39. The PCP may reprimand a member. A reprimand may be given in respect of *past conduct*. The PCP may warn a member. A warning will be given in respect of *future conduct*.
40. Reprimands and warnings are appropriate in cases where the matter was of a serious nature but the PCP judges that the member may continue as a member of ILEX. By their nature reprimands and warnings can be issued only against existing members of ILEX.
41. In deciding whether to reprimand or warn a member the PCP may consider the following factors:

Financial orders

<i>Mitigating factors</i>	<i>Aggravating factors</i>
arrangements have been made to pay creditors and are satisfactory	no arrangements have been made to pay creditors and/or are not

	satisfactory
payments were not being made on a regular basis but are now	payments were arranged, were not being made and will be made in future
there is more than one financial order	there are many financial orders
controls are in place to prevent future orders	there is a risk of future orders
the applicant has shown some insight into their conduct	applicant has not shown insight into their conduct
the applicant has expressed remorse	applicant has not expressed remorse
there is no dishonesty or serious financial mismanagement	there is dishonesty or serious financial mismanagement

Convictions and cautions

<i>Mitigating factors</i>	<i>Aggravating factors</i>
the nature of the offence –either way(triable in magistrates or crown court) or indictable (triable in crown court only)	serious offence
there was more than one offence, over prolonged period but no risk of future offending	there were a number of offences and/or a risk of reoffending
there was dishonesty or violence	there was serious dishonesty or violence
evidence of rehabilitation	no evidence of rehabilitation or receipt of treatment
the applicant has shown some insight into their conduct	applicant has not shown insight into their conduct
the applicant has expressed remorse	applicant has not expressed remorse
there is no risk to public or consumer interest	there is a risk to public or consumer interest

Order by professional body or s43 order

<i>Mitigating factors</i>	<i>Aggravating factors</i>
been allowed entry back into profession or obtained Law Society consent with restrictions	not been allowed entry back into profession or not obtained Law Society consent
misconduct took place long time ago	short passage of time since misconduct
demonstrated that addressed misconduct	no or limited action to address misconduct

evidence of rehabilitation	no evidence of rehabilitation
entry to profession and work in profession can be permitted	admission into profession or work within profession cannot be permitted
no future risk to public or consumer interest	potential for future risk to public or consumer interest
the applicant has shown insight into their conduct	applicant has not shown insight into their conduct
the applicant has expressed remorse	applicant has not expressed remorse

REFUSE AN APPLICATION OR REFERRAL TO DISCIPLINARY TRIBUNAL

42. The PCP may refuse an application or refer a matter to the DT. A decision to refuse can only be made in respect of applications to enrol as a member of ILEX or to upgrade membership of ILEX. Referrals can be made only in respect of a declaration made by a member of ILEX.
43. An applicant whose application is refused may make future applications to enrol or to upgrade. Where a decision is made to refuse an application to upgrade membership the PCP will have determined that a member is suitable to remain in the existing grade of membership but not to progress into the new grade.
44. A prior conduct declaration may be referred to the Disciplinary Tribunal by the PCP. Referrals to the Disciplinary Tribunal will be made in respect of what are in the opinion of the PCP deemed to be very serious cases where the sanctions available to the PCP may not suffice or where a formal hearing is required.
45. In deciding whether to refuse an application or refer a matter to the DT the PCP may consider the following factors:

Financial orders

no arrangements have been made to pay creditors
arrangements were made but not complied with
there are many financial orders
there is a risk of future orders
applicant has not shown insight into their conduct
applicant has not expressed remorse
there is dishonesty or serious financial mismanagement

Convictions and cautions

serious offence
there were a number of offences and/or a risk of re-offending
there was serious dishonesty or violence
no evidence of rehabilitation or receipt of treatment
applicant has not shown insight into their conduct
applicant has not expressed remorse
there is a risk to public or consumer interest

Order by professional body or s43 order

not been allowed entry back into profession or not obtained Law Society consent
short passage of time since misconduct
no or limited action to address misconduct
no evidence of rehabilitation
admission into profession or work within profession cannot be permitted
potential for future risk to public or consumer interest
applicant has not shown insight into their conduct
applicant has not expressed remorse

DECISIONS DELEGATED TO THE OFFICE IN RESPECT OF PRIOR CONDUCT MATTERS

46. An Officer of IPS may determine that no action will be taken in relation to a declaration of prior conduct where:
- (a) the applicant or member has declared an outstanding financial judgment, unless there is evidence of
 - (i) persistent or deliberate failure to meet financial obligations, or
 - (ii) a related criminal offence, or
 - (iii) no arrangements being made to pay off the debts;
 - (b) the applicant or member has declared a spent conviction (provided he/she is not a Fellow and is not applying for Fellowship);
 - (c) the applicant or member has declared a driving offence unless
 - (i) there is a persistent pattern of offending,
 - (ii) a custodial sentence is applied, or
 - (iii) a period of disqualification has been imposed of 18 months or more;

- (d) the applicant or member is or has been subject to a bankruptcy Order or had entered into an arrangement with creditors; or
 - (e) the applicant or member is applying for Fellowship and has declared prior conduct to ILEX or IPS that the PCP or Investigating Committee has previously determined should not result in further action provided there is no evidence of repetition of such prior conduct.
47. The Officer may refer a matter to the PCP for decision notwithstanding the general delegation to them of that type of case.

POWERS AVAILABLE IN CASES OF COMPLAINT OR MISCONDUCT

48. These decisions will be made by the PCP or DT. Some decisions can be exercised by an Officer in conjunction with two members of the PCP.

DELEGATED POWER TO REJECT CASES

49. The rules delegate to an Officer, with the agreement of one lay and one professional member of the PCP, the power to reject a complaint or information where:

- there is no evidence available to substantiate the complaint, allegation or issue of professional misconduct; or
- the information received does not disclose any misconduct on the part of the member; or
- IPS has no jurisdiction to consider the matter; or
- the events giving rise to the complaint or information (or, if later, the date the complainant became aware of the grounds for the complaint) occurred more than 1 year prior to the date the complaint was made to, or information was received, by IPS.

50. In exercising this power the Officer and PCP members may take into account the following factors:

<i>Mitigating factors</i>	<i>Aggravating factors</i>
evidence demonstrably disproves the case	evidence does not disprove a case
the matter does not amount to a breach of a code or rule	the matter amounts to a breach of a code or rule
the matter does not involve a member	the matter involves a member

DELEGATED POWER TO REFER TO DT

51. An Officer may, with the agreement of one lay and one professional member of the PCP, refer the complaint or information directly to the DT without further reference to the PCP where:

- the evidence available demonstrates a prima facie case that the member has committed professional misconduct; and either
- the conduct involved is of a serious nature; or
- the member has previously been subject to an adverse finding by the PCP or DT and the conduct involved in the current case is of a similar nature to that in the previous case.

52. The matters that may be considered in making a referral to the DT are set out later in this document.

DETERMINATION BY CONSENT

53. Where an Officer is of the opinion that the evidence available demonstrates a prima facie case that the member has committed professional misconduct and the member agrees that they have committed professional misconduct, they may agree a determination by consent.
54. The Officer and the member may agree any sanction or combination of sanctions available to the PCP or the DT, save that the Officer may not seek costs as part of any determination by consent.

INTERIM SUSPENSION FROM MEMBERSHIP

55. This power is available to the PCP. The PCP may decide, on an application by the Office, to suspend a member from ILEX membership and allow a detailed investigation to be undertaken.
56. This is a significant power. Suspension is normally a precursor to formal DT proceedings being brought. It should be ordered only in cases where the PCP is satisfied that it is necessary to protect the public in the period before the DT can hear the case.
57. IPS must notify a member that an application for suspension will be made. Generally 5 days notice must be provided, but it might be reduced in very urgent cases adjudged to warrant such action. The notice will include a copy of all the information that will be put to the PCP. The member has the right to make a written response and to attend before the PCP to make oral submissions.
58. A suspension order will be placed for a maximum of 12 months, with a review every 3 months. The order will terminate upon the conclusion of the case by a decision of the DT or PCP. IPS must ensure a member who is suspended from practice puts in place arrangements for the management of files during their suspension, if they practised independently. In such a case the PCP must consider the impact of suspension upon the member and their practice
59. In deciding whether to make an order the PCP may take into account the following factors:

<i>Mitigating factors</i>	<i>Aggravating factors</i>
the matter is not serious	the seriousness of the case or allegations
the evidence is not weighted towards proving the matter	the weight of the evidence
there are adequate procedures in place to prevent further misconduct during the investigation	the likelihood of further misconduct occurring during the investigation of the case
there have been no findings of misconduct against the member	misconduct has been found proved against the member in the past
there is no risk to client interests	the member poses a risk to clients' interests if they continued to practise
there is no urgent need to take action to protect the public and clients	there is an urgent need to take action to protect the public and clients
there is minimal risk to the reputation of the profession by continued practice	the continued practice of the member will cause damage to the reputation of the profession

DECISION THAT A MATTER IS BEYOND THE JURISDICTION OF IPS

60. This power is available to the PCP. The PCP may decide that a complaint, allegation or issue of professional misconduct concerns matters beyond the jurisdiction of IPS.
61. In deciding whether to exercise this power the PCP may consider the following factors:
- whether the misconduct was undertaken by a person who is not a member of ILEX
 - whether the matters are for the police to investigate
 - whether the matters should be for the courts
 - whether the matters should be the subject of negligence proceedings
 - whether there are service matters only for the legal ombudsman

FURTHER INFORMATION OR EVIDENCE

62. This power is available to the PCP.
63. A decision requesting further information or evidence may be made, but is not limited to, where the PCP takes the view that:
- further information or evidence will assist it in deciding whether or not there is a prima facie case.

- further investigation needs to be undertaken.
- the papers before it reveal that a matter of misconduct had not been identified or investigated by the investigating Officer.

SEEK LEGAL ADVICE

64. This power is available to the PCP. The PCP may defer a decision so that legal advice may be taken. Where a decision is made to defer it is likely that the case would be held over to the next meeting of the PCP or until such legal advice is received.
65. Legal advice may be sought on any matter relating to the case. It could include but is not limited to:
- An outline of proper practice in the matter that is the subject of the complaint or misconduct.
 - An outline of the relevant law.
 - Advice as to legal procedure.
 - Advice on issues of natural justice or human rights.

REFERENCES

66. This power is available to the PCP. The PCP may request the member to provide references to assist in deciding what action to take. References are therefore likely to focus on conduct and character. The PCP must specify what matters a reference should address. References may be requested from any appropriate body or individual, including employers, course tutors, former employers, work colleagues or business associates. The PCP may defer the proceedings pending receipt of the reference.
67. References may assist the PCP to decide what disciplinary order to make against a member, gain information about their general conduct, their character or their health.

REJECT A COMPLAINT, ALLEGATION OR ISSUE OF MISCONDUCT OR CHARGES

68. This power is available to the PCP or DT. A complaint, allegation or issue of potential misconduct may be rejected where the PCP finds that there is no evidence to substantiate a prima facie case. Charges brought against a member may be rejected where the DT finds that they are not proved.
69. In deciding whether to reject a complaint, allegation, issue of misconduct or charges the PCP and DT may consider the following factors:
- whether the evidence disproves a case

- whether the matter does not amount to a breach of a code or rule
- whether the evidence does not meet the standard of proof

TAKE NO FURTHER ACTION

70. This power is available to the PCP and DT. The PCP may accept a member’s response to a complaint, allegation or issue of professional misconduct and decide to take no further action in relation to it. The DT may find that the charges against a member are proved but no disciplinary order is necessary.
71. In deciding whether to take no further action the PCP or DT may consider the following factors:
- whether the member has accepted that the misconduct took place
 - whether the member has apologised
 - whether the member has taken corrective action
 - whether the misconduct has been repeated
 - what impact the misconduct had on consumer interests
 - whether the conduct of the member presents any risk to the public
 - whether the conduct of the member has brought the Institute into little disrepute

UNDERTAKINGS

72. This power is available to the PCP. The PCP may request a member to give an undertaking as to their future conduct. Wherever possible, the undertaking will set out a timescale within which action should be taken. An undertaking is a signed agreement given by a member to refrain from taking certain action, refrain from breaching a code or take a particular course of action. Undertakings can be sought where the PCP takes the view that the member may practise as a member of the profession subject to an agreement.
73. In deciding whether to require undertakings the PCP may consider the following factors:

<i>Mitigating factors</i>	<i>Aggravating factors</i>
the member has accepted that the misconduct took place	the member has not accepted that the misconduct took place
the member has apologised	the member has not apologised
the member has taken some corrective action	the member has not taken corrective action
the member may continue in practice	the member should not be able to continue in practice

the undertaking is likely to prevent misconduct being repeated	there is a risk that misconduct might be repeated which cannot be prevented by an undertaking
the undertaking will provide adequate protection to the consumer and public interest	the undertaking will not provide adequate protection to the consumer and public interest
the member agrees to provide the undertaking and to comply with it	the member does not agree to provide the undertaking and/or to comply with it
the member has shown insight	the member has not shown insight
the member has shown remorse	the member has not shown remorse

CONDITIONS

74. This power is available to the PCP and DT. The PCP and DT may impose conditions on a member in respect of their conduct or in regard to their employment.
75. Conditions are likely to be imposed in instances where the range of activity that a member should be able to carry needs to be restricted or supervised. They must be sufficient to manage the conduct of the member and be able to act as a mechanism to overcome the deficiencies which have been identified.
76. In deciding whether to impose conditions the PCP or DT may consider the following factors:

<i>Mitigating factors</i>	<i>Aggravating factors</i>
the member has accepted that the misconduct took place	the member has not accepted that the misconduct took place
conditions are likely to provide adequate protection to the public and consumer interests	conditions are unlikely to provide adequate protection to the public and consumer interests
conditions are likely to prevent misconduct being repeated	there is a risk that misconduct might be repeated which cannot be prevented by conditions
the member accepts the need to comply with the conditions	the member does not accept the need to comply with the conditions
the range of activity a member can undertake should be restricted or supervised	supervision or restrictions on the range of activity that a member can undertake do not provide sufficient protection
there are identifiable areas of a member's practice in need of	there are no identifiable areas of a member's practice which could

assessment or retraining	remedied by assessment or retraining
the member has shown some insight	the member has not shown insight
the member has shown remorse	the member has not shown remorse

REPRIMAND

77. These powers are available to the PCP and DT. A reprimand will be given in respect of *past conduct*. A warning will be given in respect of *future conduct*.
78. Reprimands may be given where the PCP judges that a person may continue as a member of the profession subject to a rebuke about their past conduct.
79. Warnings are appropriate in cases where there is a risk that the misconduct might be repeated in the future in the absence of a warning but that a warning itself is likely to be sufficient to prevent it. In such cases the PCP or DT must be satisfied that it is safe to allow the person to continue as a member of ILEX.
80. In deciding whether to reprimand or warn a member the PCP or DT may consider the following factors:

<i>Mitigating factors</i>	<i>Aggravating factors</i>
the member has accepted that the misconduct took place	the member has not accepted that the misconduct took place
continued practise poses no risks to the public and consumer interests	continued practise poses a risk to the public and consumer interests
there was no loss to clients	there was a loss to clients
there is minimal risk that the misconduct will be repeated	there is a risk that misconduct might be repeated
the member was previously of good character	the member was not previously of good character
there was no personal gain to the member	there was a personal gain to the member
it was a isolated incident	the evidence revealed a pattern of behaviour
the member has shown insight	the member has not shown insight
the member has shown remorse	the member has not shown remorse

REFER TO DISCIPLINARY TRIBUNAL

81. This power is available to the PCP. The PCP will refer to the DT cases they judge to be serious. Referrals are likely to take place in cases where

the PCP takes the view that its powers are insufficient to test the evidence adequately or to impose an appropriate sanction.

FINE

- 82. This power is available to the DT. The DT may order a member to pay a fine. A fine can be ordered in conjunction with another penalty, except that it cannot be ordered where the DT has excluded the respondent from membership of ILEX. A fine can act as a deterrent and therefore is payable as a penalty for a breach of the Code.
- 83. The current maximum fine is £3000. IPS may revise that sum from time to time. In deciding what level of fine to order the DT may take into account the seriousness of the misconduct and the ability of the member to pay a fine. Failure to pay a fine itself will be a matter of misconduct.
- 84. In deciding whether to impose a fine the DT may consider the following factors:

<i>Mitigating factors</i>	<i>Aggravating factors</i>
the member may continue as a member of the profession	the member should not be able to continue as a member of the profession
there was no personal gain to the member	the member made a personal gain by the misconduct
there was no financial impropriety	there was financial impropriety
there was no dishonesty or recklessness	there was dishonesty or recklessness
there was no abuse of trust	there was abuse of trust
the member has shown some insight	the member has not shown insight
the member has shown remorse	the member has not shown remorse

EXCLUSION FROM MEMBERSHIP

- 85. This power is available to the DT. The DT may order that the respondent be excluded from being a member of ILEX for a specified period. The period may be fixed or indefinite. Exclusion is a sanction of last resort and is intended to be used in cases where no other sanction is appropriate to protect the public and the reputation of the profession.
- 86. In making its determination the DT may make recommendations or observations about the future reinstatement of the respondent as a member. The PCP must take those recommendations or observations into account when considering whether or not to accept a future application

for reinstatement. An application may not be made until any period of exclusion set by the DT has expired. In cases of indefinite exclusion the DT will normally provide an indication of what is the earliest date at which an application for reinstatement of membership should be considered.

87. In deciding whether to exclude a person from membership of ILEX the DT may consider the following factors:

<i>Mitigating factors</i>	<i>Aggravating factors</i>
the member has accepted that the misconduct took place	the member has not accepted that the misconduct took place
the member may continue as a member of the profession	the member should not be able to continue as a member of the profession
continued practice poses no significant risk to the public and consumer interests	continued practice poses a significant risk to the public and consumer interests
there was no loss to clients	there was a loss to clients
there is no risk that the misconduct will be repeated	there is a risk that misconduct might be repeated
the member was previously of good character	the member was not previously of good character
action was taken to prevent or mitigate the loss	there was a lack of action to prevent or mitigate the loss
the misconduct was not deliberate	the misconduct was deliberate
there was no dishonesty	there was dishonesty
there was no abuse of trust	there was an abuse of trust
there was no recklessness	there was recklessness
there was no personal gain to the member	there was a personal gain to the member
there were no persistent and wilful breaches	there were persistent and wilful breaches
it was an isolated incident	there was a pattern of behaviour
the member has shown insight	the member has not shown insight
the member has shown remorse	the member has not shown remorse

INTERIM MEASURES

88. Where the DT makes an order to exclude a person from membership of ILEX or to impose conditions, it may make a further order. If it considers it necessary for the protection of the public, or in the public interest, or those of the member, it may order that their membership be suspended immediately, or made subject to immediate conditions, pending the taking effect of the main order for exclusion or conditions.

89. The power to impose an interim order is a discretionary power, intended to be exercised in exceptional cases where there would be a serious risk to the public or public confidence in the profession if the member were allowed to continue to practise, or practise without conditions, prior to the order taking effect.

COSTS

90. This power is available to the DT. The DT may order a member to pay costs to IPS in respect of the proceedings.
91. Costs may be ordered, at the total discretion of the DT, only in cases where it has found the charges proved against the member. The costs should represent the costs of bringing the proceedings, including the costs incurred in holding PCP and DT hearings. In determining what level of costs to order the DT may take into account the likelihood of recovery, the ability of a member to pay, except where a member has not responded to an invitation to provide information of his means and outgoings to the DT. The DT may also take into account any conduct of the member which may have increased or decreased costs. A payment for costs can be enforced through the contractual nature of the relationship between ILEX and its members.
92. Costs may be ordered where the charges were not found proved, provided IPS has taken the correct course of action in the public interest in bringing the proceedings.

APPEALS

93. The AP has the power to affirm or vary a decision of the original decision making body where it finds grounds of appeal made out.
94. The AP may decide that a decision reached by the DT or PCP does not require any amendment, even after finding grounds of appeal made out. In those instances the AP may affirm the decision.
95. Where the AP finds that the decision should be varied it will have available to it all the powers available to the original decision making body. It may exercise these having regard to the guidance in this document.