

## Annex 2

# Proposed new 'Appendix B' to the SRA Enforcement Strategy

## Sanctions and Controls for CILEX members

### Introduction

The table below sets out the powers available to us when we take enforcement action against a CILEX member for a breach of the SRA's regulatory arrangements or any regulatory other requirement that might apply for which we are responsible for.

These include both sanctions and controls. The former are broadly intended to discipline the person to prevent similar behaviour by them or others, maintain standards and uphold public confidence in the legal profession. The latter are broadly intended to protect clients or the public by controlling or limiting the risk of harm.

Although not covered in the table, our powers include interim or immediate protective measures taken before a finding of breach, as well as those which follow a finding. For example, we will take immediate action to suspend an authorised CILEX member's rights to practise following certain events, such as a conviction for certain serious offences. We can also impose conditions on an interim basis where these are necessary and proportionate to address an identified risk pending a final outcome in the case.

The powers set out in the table below can in some cases effectively act as both a sanction and a control. For example, this may be a decision to restrict an authorised CILEX member from employment in a law firm without permission from the SRA, impose conditions on their practising arrangements or suspend their practising certificate).

They can be used in combination, where appropriate. For example, it may be appropriate to rebuke a CILEX member for misleading a client, and also to restrict their future employment (as above).

The factors set out in the table indicate some of the features which may lead us towards or away from imposing a particular sanction or control in any given circumstance. They do not comprise an exhaustive list and not all of the factors set out need to be present for us to consider that the relevant sanction or control is appropriate.

### Undertaking by CILEX member

Purpose	Factors in favour	Factors against
<p>In the case of an authorised CILEX member, to allow an individual to continue practising where the issues are only of mild seriousness, technical in nature, and do not require any other sanction or control in order to maintain standards/uphold public confidence.</p>	<ul style="list-style-type: none"> <li>• It is accepted that misconduct took place.</li> <li>• The individual agrees to provide and comply with any undertaking.</li> <li>• Remorse has been expressed and insight shown.</li> </ul>	<ul style="list-style-type: none"> <li>• It is not accepted that misconduct took place</li> <li>• The individual does not agree to provide and comply with any undertaking.</li> </ul>

<p>In the case of a non-authorized CILEX member to allow an individual to continue as a CILEX member and/or in employment in legal services where the issues are only of mild seriousness, technical in nature, and do not require any other sanction or control in order to maintain standards/uphold public confidence.</p> <p>Any undertaking will set out timescales within which any action should be taken.</p>	<ul style="list-style-type: none"> <li>• Corrective action has been taken.</li> <li>• Any undertaking is likely to prevent repeated misconduct and protect both consumers and the public interest</li> </ul>	<ul style="list-style-type: none"> <li>• Remorse is not expressed and no insight shown.</li> <li>• Corrective action not taken.</li> <li>• Any undertaking will not prevent repeated misconduct and/ or will not protect consumers or the public interest.</li> </ul>
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### Rebuke of a CILEX member

Purpose	Factors in favour	Factors against
<p>To sanction the individual for a breach of the SRA CILEX Code of Conduct but where the issues are only of moderate seriousness and do not require a higher level of response to maintain standards/uphold public confidence.</p>	<ul style="list-style-type: none"> <li>• No lasting significant harm to consumers or third parties.</li> <li>• Conduct or behaviour reckless as to risk of harm/regulatory obligations.</li> <li>• Breach rectified/remedial action taken but persisted longer than reasonable/ only when prompted.</li> <li>• Low risk of repetition.</li> <li>• Some public sanction required to uphold public confidence in the delivery of legal services.</li> </ul>	<ul style="list-style-type: none"> <li>• Any less serious sanction/outcome would be appropriate to protect the public/public interest</li> </ul> <p>Where a more serious outcome is warranted to protect the public/public interest, eg:</p> <ul style="list-style-type: none"> <li>• Dishonesty/lack of integrity/abuse of trust.</li> <li>• Sexual misconduct/ discrimination/ harassment.</li> <li>• Evidence of repetition of conduct/behaviour in question, particularly if previously warned/advised to stop.</li> <li>• Intentional failure to comply/cooperate with regulatory obligations.</li> </ul>

## Conditions on CILEX member

(The factors taken into consideration below relate to conditions imposed as a final sanction and not interim conditions)

Purpose	Factors in favour	Factors against
<p>To control the risk of harm arising from a repetition of a breach of the SRA CILEX Code.</p> <p>To restrict or prevent the involvement of an individual in certain activities or engaging in certain business agreements/associations or practising arrangements.</p> <p>To require an individual to take certain steps.</p> <p>To facilitate closer monitoring of an individual through regular reporting.</p>	<ul style="list-style-type: none"> <li>• Risk of serious harm or breach in the absence of conditions being imposed.</li> <li>• Sufficient insight to enable compliance with conditions.</li> <li>• Conduct/behaviour is likely to be repeated in the absence of control/support.</li> <li>• Conditions available which address the risk of repetition/harm, and which are reasonable and proportionate, realistic and measurable.</li> <li>• Evidence demonstrates person unsuitable for a particular role or activity which should be restricted.</li> </ul>	<ul style="list-style-type: none"> <li>• Risk can be managed/matters remediated or rectified without formal regulatory intervention.</li> </ul> <p>Where a more serious outcome is warranted to protect the public/public interest eg:</p> <ul style="list-style-type: none"> <li>• Dishonesty/lack of integrity/abuse of trust.</li> <li>• No conditions available which can manage the underlying conduct or behaviour.</li> <li>• Previous history of failure to comply with regulatory obligations/evidence unable or willing to comply with conditions.</li> <li>• Evidence unable/not competent to continue in legal practice at all.</li> <li>• Continued practice, albeit restricted, would tend to damage public confidence in the delivery of legal services.</li> <li>• Intentional failure to comply/cooperate with regulatory obligations.</li> </ul>

## Financial penalty for CILEX member

Purpose	Factors in favour	Factors against
<p>To sanction the individual for a serious breach of the SRA CILEX Code but where protection of the public/public interest does not require suspension or removal of their membership and authorisation.</p> <p>To deter the individual and others from similar behaviour in future.</p> <p>For the level of fine, see the indicative fining guidance published by the SRA from time to time.</p>	<ul style="list-style-type: none"> <li>• Conduct/behaviour caused/had potential to cause significant harm.</li> <li>• Direct control/responsibility for conduct/behaviour.</li> <li>• Conduct planned/pre-meditated.</li> <li>• Wilful or reckless disregard of risk of harm/regulatory obligations.</li> <li>• Breach rectified/remedial action taken but persisted longer than reasonable/ only when prompted.</li> <li>• Fine appropriate to remove financial gain or other benefit as a consequence of the breach.</li> </ul>	<ul style="list-style-type: none"> <li>• Any less serious sanction/outcome would be appropriate to protect the public/public interest</li> <li>• Evidence of insufficient means of the person directed to pay to pay</li> <li>• Where there is evidence of sexual misconduct/ discrimination/ harassment</li> </ul> <p>Where a more serious outcome is warranted to protect the public/public interest eg:</p> <ul style="list-style-type: none"> <li>• Continued practice would tend to damage public confidence in the delivery of legal services.</li> </ul>

## Imposition of Order under Section 43 of the Solicitors Act 1974

Purpose	Factors in favour	Factors against
<p>To impose such an order:</p> <p>Where a person who is or was involved in a solicitor's legal practice but is not a solicitor –</p> <p>(a) has been convicted of a criminal offence which is such that in the opinion of the SRA it would be undesirable for the person to be involved in a legal practice in one or more of</p>	<ul style="list-style-type: none"> <li>• Where there has been a serious breach of the SRA CILEX Code and the seriousness of the misconduct is at the highest level, such that a lesser sanction is inappropriate.</li> <li>• Conduct/behaviour caused/had potential to cause significant harm to</li> </ul>	<ul style="list-style-type: none"> <li>• Any less serious sanction/outcome would be appropriate to protect the public/public interest.</li> <li>• Where undertakings or conditions could address concerns surrounding the individual working within legal practice.</li> </ul>

<p>the ways mentioned in subsection (1A) of the Solicitors Act 1974,</p> <p>or</p> <p>(b has, in the opinion of the SRA, occasioned or been a party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on their part of such a nature that in the opinion of the SRA it would be undesirable for them to be involved in a legal practice in one or more of the ways mentioned in subsection (1A) of the Solicitors Act 1974. In these circumstances, the SRA may either make, or make an application to the Solicitors Disciplinary Tribunal for it to make, an order with respect to that person which will require that person to obtain the prior written permission of the SRA before they can be employed or remunerated in a firm regulated by the SRA.</p>	<p>consumers or third parties.</p> <ul style="list-style-type: none"> <li>• Dishonesty/lack of integrity.</li> <li>• Abuse of trust or exploitation of vulnerability.</li> <li>• Misconduct involving the commission of a criminal offence.</li> <li>• Direct control/ responsibility for conduct/behaviour.</li> <li>• Conduct planned/pre-meditated.</li> <li>• Wilful or reckless disregard of risk of harm/regulatory obligations.</li> <li>• Breach not rectified/no remedial action taken</li> <li>• Evidence of sexual misconduct/discrimination/ harassment.</li> <li>• Misconduct which continued over a period of time or was repeated.</li> <li>• Where undertakings or conditions cannot address concerns of work by the individual within legal practice.</li> <li>• Where undertakings or conditions are insufficient to protect the public or consumers and the individual is unlikely or will not comply.</li> <li>• No insight has been demonstrated and there is little to no evidence of remorse.</li> <li>• No evidence of rehabilitation.</li> </ul>	<ul style="list-style-type: none"> <li>• Where undertakings or conditions are sufficient to protect the public or consumer interest and the individual is likely to or will comply.</li> </ul>
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**Exclusion from membership and, in the case of authorised CILEX members, authorisation**

<b>Purpose</b>	<b>Factors in favour</b>	<b>Factors against</b>
<p>To protect the public/public interest by preventing an individual from practising as an authorised CILEX member.</p> <p>To sanction the individual for a serious breach of the CILEX Code.</p> <p>To deter the individual and others from similar behaviour in future.</p> <p>To signpost conduct or behaviour which is fundamentally incompatible with continued practice as an authorised CILEX member and to show the public the consequences for an authorised CILEX member who commits the most serious misconduct.</p> <p>In the case of a non-authorised CILEX member the above purposes apply to their status as a CILEX member.</p>	<ul style="list-style-type: none"> <li>• Where there has been the imposition of an order under section 43 of the Solicitors Act 1974.</li> <li>• The seriousness of the misconduct is at the highest level, such that a lesser sanction is inappropriate.</li> <li>• Conduct/behaviour caused/had potential to cause significant harm to consumers or third parties.</li> <li>• Dishonesty/lack of integrity.</li> <li>• Abuse of trust or exploitation of vulnerability.</li> <li>• Misconduct involving the commission of a criminal offence.</li> <li>• Direct control/responsibility for conduct/behaviour.</li> <li>• Conduct planned/pre-meditated.</li> <li>• Wilful or reckless disregard of risk of harm/regulatory obligations.</li> <li>• Breach not rectified/no remedial action taken.</li> <li>• Evidence of sexual misconduct/discrimination/harassment.</li> </ul>	<ul style="list-style-type: none"> <li>• Any less serious sanction/outcome would be appropriate to protect the public/public interest.</li> </ul>

	<ul style="list-style-type: none"> <li>• Misconduct which continued over a period of time or was repeated.</li> </ul>	
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**Interim Order to suspend or restrict a CILEX members' membership or, in the case of authorised CILEX members, authorisation – where allegations have been made and are being investigated but pending any hearing or final determination of the matter.**

<b>Purpose</b>	<b>Factors in favour</b>	<b>Factors against</b>
<p>An order should only be made in cases where it is necessary to protect the public, or it is in the interests of the individual or it is otherwise in the public interest.</p>	<ul style="list-style-type: none"> <li>• The seriousness of the alleged misconduct is at the highest level.</li> <li>• Where there is a risk to the public.</li> <li>• Where the public confidence in the profession would be seriously damaged if the individual were left to continue to practise unrestricted.</li> <li>• Where the individual concerned requires protection from themselves and should not be left to practise unrestricted.</li> <li>• Where there has been a history of conduct issues or where there have been previous orders/decisions made in relation to the matter under investigation.</li> </ul>	<ul style="list-style-type: none"> <li>• The alleged misconduct is mild/ moderate in nature.</li> <li>• There is no/little risk posed to the public or to the individual concerned.</li> </ul>