

# Investigation, Disciplinary and Appeals Rules Report 2016

## Introduction

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I am pleased to present the 2016 Annual Report on the work of the Professional Conduct Panel, Disciplinary Tribunal and Appeals Panel.

CILEx Regulation investigates complaints and allegations of misconduct made against CILEx members. These may be made by clients, third parties or other bodies, or be referrals by CILEx of members who fail to comply with rules and regulations set by CILEx or CILEx Regulation, such as examination regulations, Accounts Rules and Continuing Professional Development (CPD). Since 2015, we have also been able to accept complaints about firms that we regulate.

We are also responsible for receiving prior conduct declarations made by:

- CILEx members (any grade);
- CILEx Practitioners;
- CILEx regulated firms; and
- applicants wishing to become members of CILEx at any grade.

Collectively, these make up our regulated community and, together with all applicants to CILEx, are required to make declarations in respect of:

- convictions;
- cautions;
- bankruptcy;
- County Court Judgments;
- arrangements with creditors; and
- disciplinary orders by other professional bodies.

CILEx Regulation requires regulated firms and managers of those firms to declare additional prior conduct in respect of provisions under the Insolvency Act 1986.

Complaints, allegations of misconduct and prior conduct declarations are investigated and dealt with in accordance with the Investigation, Disciplinary and Appeals Rules 2015.

Members of our regulated community are required to meet the standards and obligations set out in the Code of Conduct and are measured against this Code. In addition, we require those regulated by CILEx Regulation to observe other codes applicable to their employment or working environment. Chartered Legal Executive Advocates must also comply with the Rights of Audience Conduct Rules.



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CILEx Regulation has three panels which consider the conduct of members, namely the:

- Professional Conduct Panel;
- Disciplinary Tribunal; and
- Appeals Panel.

This report reviews the activity of these panels during 2016, as well as reflecting on what we've learned during the year and how we aim to continue to improve during 2017.

I would like to take this opportunity to thank all the panel members and enforcement staff for their hard work and dedication during the year.

**Ian Chivers**  
Enforcement Portfolio  
CILEx Regulation Board



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## Prior conduct declarations

### Number of declarations

Figure 1 shows the number of prior conduct declarations received from 2013 to 2016. The number received in 2016 was the lowest figure for the four-year period and shows the highest percentage dealt with by delegated decision.

	2013	2014	2015	2016
Declarations received	187	180	215	164
Delegated	135	145	184	143
% Delegated	72%	81%	86%	87%

Figure 1

### Delegated decisions

Figure 2 shows the breakdown of delegated decisions by type. Anyone who declares a spent conviction\*, and who is not applying for authorisation, is dealt with under delegated powers in accordance with the Rehabilitation of Offenders Act 1974. Prior to 2010, only discharged bankruptcy orders or completed arrangements with creditors could be dealt with under the delegated decision process. This is reflected in the increase in bankruptcy orders dealt with by delegated decision since 2010, peaking in 2011 with a total of 115 prior conduct declarations relating to bankruptcy or creditor arrangements. In 2016, 49% of declarations in this category were from new applicants.

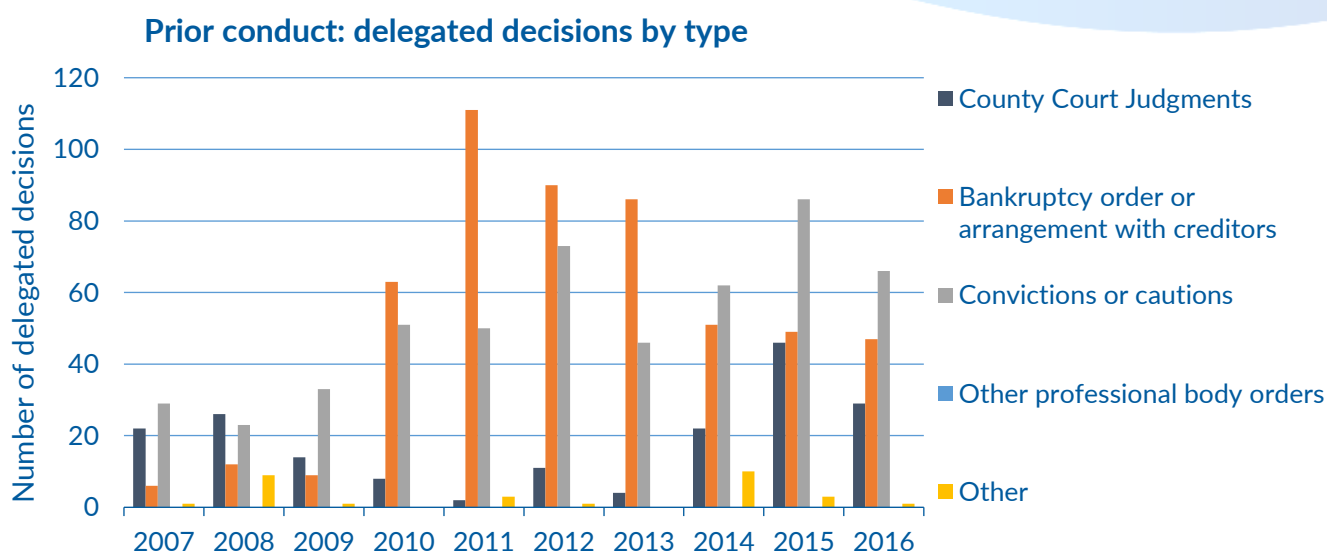


Figure 2

\*A spent conviction is a conviction which, under the Rehabilitation of Offenders Act 1974, can be effectively ignored after a specified amount of time, which is determined by the sentence imposed.



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There was also an increase both in the overall number of declarations relating to convictions or cautions and in the number of these declarations dealt with by delegated decision.

- In 2007, 49 such declarations were received with 59% delegated.
- In 2016, 83 such declarations were received, with 79% delegated.
- In 2015, the figure peaked with 103 declarations for convictions or cautions, of which 83% were delegated.

In 2015, the law changed regarding spent convictions, including convictions and cautions committed by a person under the age of 18. These are now only considered as prior conduct when the individual applies to become a qualified Chartered Legal Executive or to deliver services in certain areas of law such as conveyancing and probate that require authorisation. Subject to verification, CILEx Regulation can no longer consider a spent conviction as prior conduct. Where a spent conviction is declared, it is dealt with under the delegated decision making process rather than by the Professional Conduct Panel.

### Professional Conduct Panel decisions

The corresponding breakdown of decisions for prior conduct declarations referred to the Professional Conduct Panel is shown below (Figure 3).

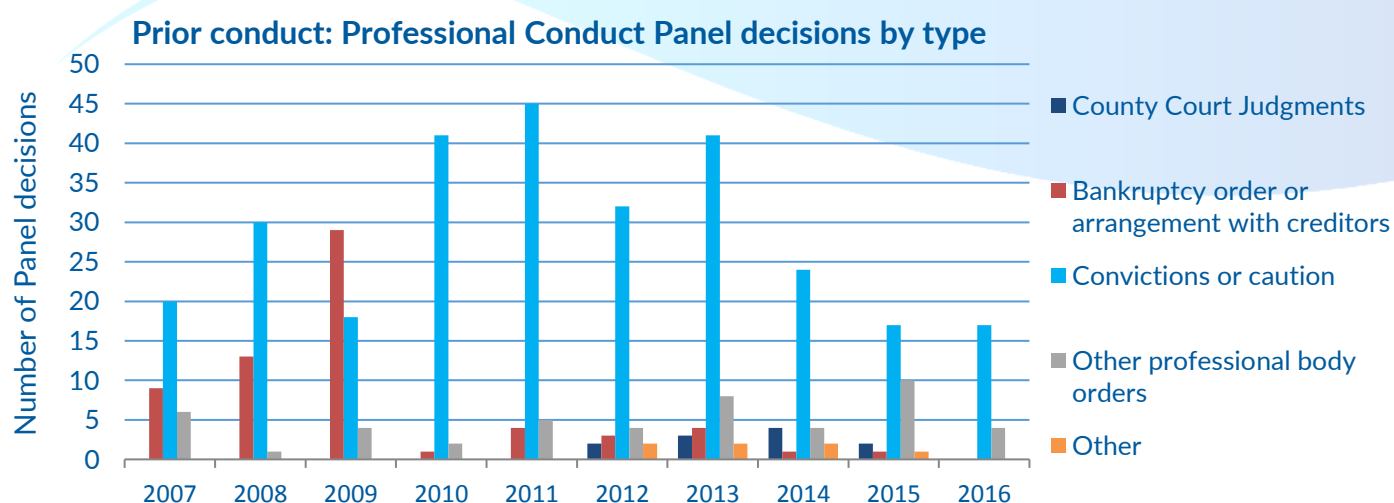


Figure 3

Of the 21 decisions referred to the Professional Conduct Panel in 2016:

- 18 were approved (10 CILEx members, seven new applicants, and one resigned/excluded);
- one new application was rejected; and
- two cases remained outstanding as at 31 December 2016.



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## Complaints and allegations of misconduct

### Complaints handling in 2016

At the start of 2016, 55 complaints were being investigated and a further 17 complaints were received during the year.

In the course of 2016, four complaints were dealt with by delegated decision. The Professional Conduct Panel (PCP) heard 54 complaint cases and the Disciplinary Tribunal (DT) heard 52 cases. Of these 52 cases, six had been referred to the DT in 2015 and the remainder were referred within 2016.

### Area of practice

Figure 4 shows the areas of practice giving rise to complaints since 2007, including an average for each area over a 10 year period. In 2016, 64% of complaints/misconduct allegations related to breaches of CILEx regulations, such as CPD or exam regulations. This compared with an average of 36% over the 10 years. Breaches of CILEx regulations was the highest area of complaint/misconduct allegations for seven out of the 10 years as shown below.

	(%) 2007	(%) 2008	(%) 2009	(%) 2010	(%) 2011	(%) 2012	(%) 2013	(%) 2014	(%) 2015	(%) 2016	10-year average
Civil litigation	21	19	17	10	18	23	40	25	16	12	20
Conveyancing	10	8	11	2	0	6	10	5	8	6	7
Crime	3	0	0	0	0	0	0	5	8	0	2
Trust/probate	7	8	28	10	7	6	0	15	4	12	10
Employment disputes	0	0	0	7	13	12	0	0	0	0	3
Employment law	3	0	5	2	0	6	0	0	0	0	2
Family	21	8	11	15	11	15	5	5	12	6	11
Immigration	32	8	17	10	2	0	0	0	4	0	7
Local government	0	0	0	0	0	0	10	0	0	0	1
Private/non-legal matters	0	0	0	0	2	3	0	5	12	0	2
CILEx regulations	3	49	11	44	47	29	35	40	36	64	36
<b>TOTAL</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Figure 4

Other areas of law which have attracted a higher percentage of complaints are civil litigation, conveyancing, trust/probate and family law. There has been a notable reduction in immigration-related complaints since 2011. This is likely to be due to higher requirements for practitioners, together with the development of closer working relationships with other regulators in this sector. The average for complaints in each area of law is shown below in Figure 5.



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### Complaints by areas of law - average 2007-2016

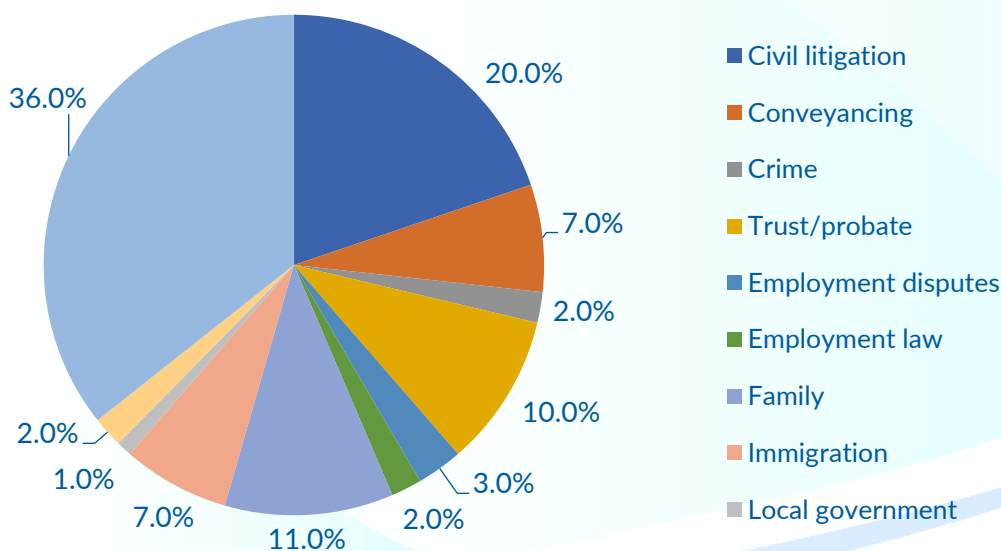


Figure 5

### Types of complaints

Complaints received in 2016, other than in relation to CILEx professional regulations, are shown in Figure 6 below. These complaints have been referred to CILEx Regulation by another regulator or by a third party, such as a client.

Additional types of complaints	Number
Breaching legislation or other professional codes	3
Behaving unprofessionally	1
Holding out as a solicitor/reserved legal activity	1
Giving improper/incorrect/inadequate advice or taking improper/incorrect/inadequate action	1
Giving inaccurate information	1
Providing an inadequate service (non-authorised person only)	1

Figure 6

The Legal Ombudsman deals with service complaints where the individual is a Chartered Legal Executive. However, CILEx Regulation may receive complaints about service provided by a regulated individual who is not a Chartered Legal Executive and who does not work in a regulated firm providing reserved legal services. CILEx Regulation will consider these complaints where the overall conduct of the individual is under investigation.



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## Delegated decisions

During 2016, four decisions were dealt with by delegated decision and were referred directly to the Disciplinary Tribunal. These cases related to two CILEx Graduate members, one Associate member and one Affiliate.

## Complaints dealt with by the Professional Conduct Panel

During 2016, the Professional Conduct Panel heard 54 complaints. Figure 7 provides a breakdown of decisions by grade of membership.

PCP Decision		Grade of Member	
Determination by Consent (DBC)	4	Fellow	4
Complaint rejected - no jurisdiction	1	Associate	1
No further action	1	Fellow	1
Complaint referred to Disciplinary Tribunal (DT)	48	Fellow	17
		Graduate	16
		Associate	10
		Associate Prosecutor	0
		Affiliate	5
		Student	0
<b>Total</b>	<b>54</b>	<b>Total</b>	<b>54</b>

Figure 7

## Timescales

Performance targets were for 80% of cases to be dealt with by delegated decision or referred to the Professional Conduct Panel within six months and 100% within nine months. Figure 8 shows the percentage of cases within timescale bands for both the 6-month and 9-month targets. 2016 was unusual in that CILEx Regulation saw a significant increase in misconduct cases largely due to the enforcement of CPD non-compliance. This was absorbed within existing staff capacity which resulted in a temporary backlog.

Timescale	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Within 6 months (%)	52%	54%	61%	58%	67%	48%	86%	42%	44%	9%
Within 9 months (%)	34%	11%	17%	22%	29%	46%	7%	34%	41%	48%
Over 9 months (%)	14%	35%	22%	20%	4%	6%	7%	24%	15%	43%

Figure 8



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## Complaints dealt with by the Disciplinary Tribunal

The Disciplinary Tribunal made decisions in 52 cases during 2016. Figure 9 below shows decisions by type. Of these, 29 (56%) resulted in exclusion from membership of CILEx.

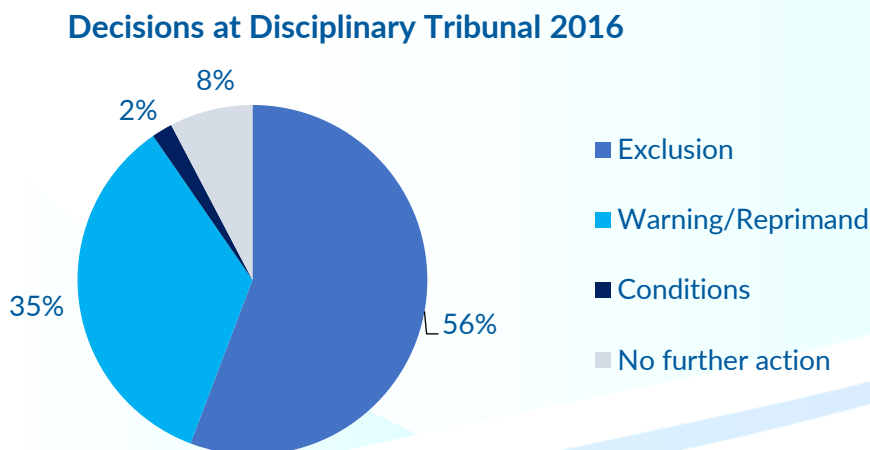


Figure 9

Figure 10 shows the grades of CILEx members whose cases were heard at Disciplinary Tribunal during 2016 and the grades of members subsequently excluded. In addition, one Graduate member had their case referred to the Tribunal, but then agreed to enter into a determination by consent (DBC) prior to the hearing.

Grade	All Decisions	Exclusions	% Exclusions
Fellow	18	10	56%
Graduate	18	13	72%
Associate	11	2	18%
Associate Prosecutor	1	0	0%
Affiliate	4	4	100%
Student	0	0	0%
<b>Total</b>	<b>52</b>	<b>29</b>	<b>56%</b>

Figure 10

## Timescales

Performance targets were for 65% of cases to be dealt with by the Disciplinary Tribunal within six months of referral by the Professional Conduct Panel and 100% within nine months. Figure 11 shows the percentage of cases within timescale bands. The increase in misconduct cases referred to above also affected the 6-month and 9-month targets for the Disciplinary Tribunal.



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Timescale	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Within 6 months (%)	100%	38%	40%	89%	46%	45%	45%	33%	79%	56%
Within 9 months (%)	-	12%	60%	11%	10%	13%	55%	22%	21%	40%
Over 9 months (%)	-	50%	-	-	44%	42%	-	45%	-	4%

Figure 11

## Appeals Panel

The Appeals Panel is responsible for considering appeals against decisions of the Professional Conduct Panel and the Disciplinary Tribunal. Its remit also includes appeals against decisions under delegated powers.

The panel heard four cases during 2016 as shown in Figure 12. In one case, the appeal was by the regulated member. The Appeals Panel found in CILEx Regulation's favour upholding the original decision. In three cases, the appeals were by CILEx Regulation and resulted in sanctions against members being increased. We take this as a strong endorsement of our commitment and success in upholding standards within the regulated community.

Disciplinary Tribunal sanction	Appeal Panel decision	New sanction
Exclude 10-12 months	Affirm	-
Formal warning	Vary	Reprimand and warning
Formal warning	Vary	Exclusion 12 months
Reprimand and warning	Vary	Exclusion 12 months

Figure 12

## Diversity – prior conduct

Diversity information for prior conduct applications was collected from regulated members and new applicants by questionnaire. In 2016, 111 questionnaires were completed by 164 people who submitted prior conduct declarations – a return rate of 68%. Figure 13 shows the gender and disability breakdown compared with 2015.

Gender	2015	2016	Disability	2015	2016
Male	33%	41%	No	85%	84%
Female	64%	55%	Yes	6%	7%
Prefer not to say/blank	3%	4%	Prefer not to say/blank	9%	9%

Figure 13



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Figures 14-17 (below) show the diversity breakdown of respondents to the 2016 prior conduct questionnaire. PNS stands for 'Prefer Not to Say'.

- Age: 75% of respondents were aged between 25 and 44 (66% in 2015).
- Religion/belief: 52% of respondents were Christian (51% in 2015), 16% were atheist (18% in 2015) and 15% preferred not to say (16% in 2015).
- Ethnicity: 59% were White British (65% in 2015) with Black or Black African second highest at 8% (9% in 2015).
- Sexual orientation: 86% identified as heterosexual (92% in 2015).

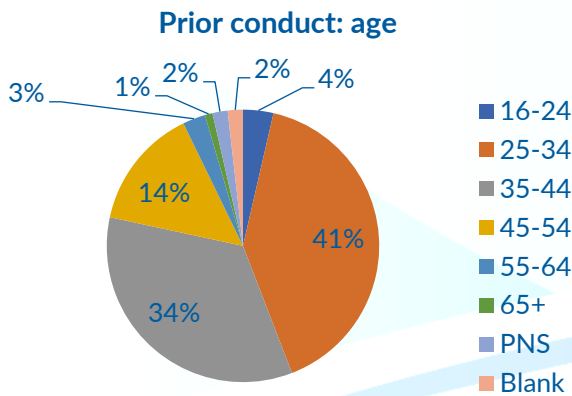


Figure 14

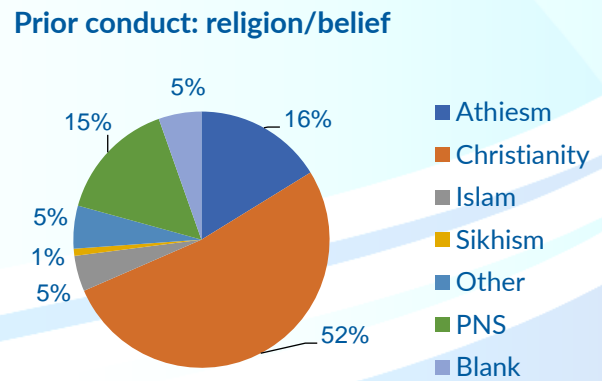


Figure 15

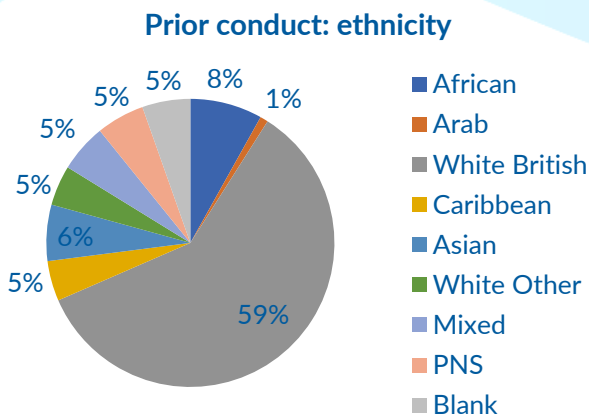


Figure 16

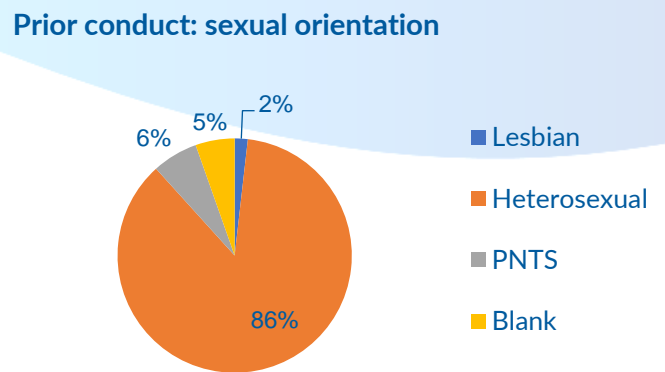


Figure 17



## Diversity – misconduct

### Gender

Figure 18 shows the percentage of male and female regulated individuals whose cases went to the Professional Conduct Panel and Disciplinary Tribunal in 2016. This compares to the makeup of the CILEx membership of 75% female and 25% male.

Professional Conduct Panel		Disciplinary Tribunal		CILEx Membership	
Gender		Gender		Gender	
Male	37%	Male	38%	Male	25%
Female	63%	Female	62%	Female	75%

Figure 18

### Ethnicity

Figure 19 shows the breakdown of the ethnicity of individuals whose cases went to the Professional Conduct Panel. Figure 20 shows the ethnicity of individuals whose cases went to the Disciplinary Tribunal in 2016.

Professional Conduct Panel 2016		
Ethnicity	Number	%
Asian or Asian British – Indian	1	1.9
Asian or Asian British – Pakistani	1	1.9
Black or Black British – African	1	1.9
Black or Black British – Caribbean	1	1.9
White British	25	46.3
White Irish	1	1.9
White Other	2	3.6
Unknown/prefer not to say	22	40.6

Figure 19

Disciplinary Tribunal 2016		
Ethnicity	Number	%
Asian or Asian British – Indian	2	3.8
Asian or Asian British – Pakistani	2	3.8
Black or Black British – African	3	5.8
Black or Black British – Caribbean	1	2.0
White British	22	42.3
White Irish	1	2.0
White Other	2	3.8
Unknown/prefer not to say	19	36.5

Figure 20



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Further analysis of ethnicity is shown in Figure 21-23 below.

Figure 21 shows ethnicity of individuals whose cases went to the Professional Conduct Panel between 2010 and 2016.

Annual case numbers range from 20 to 75.

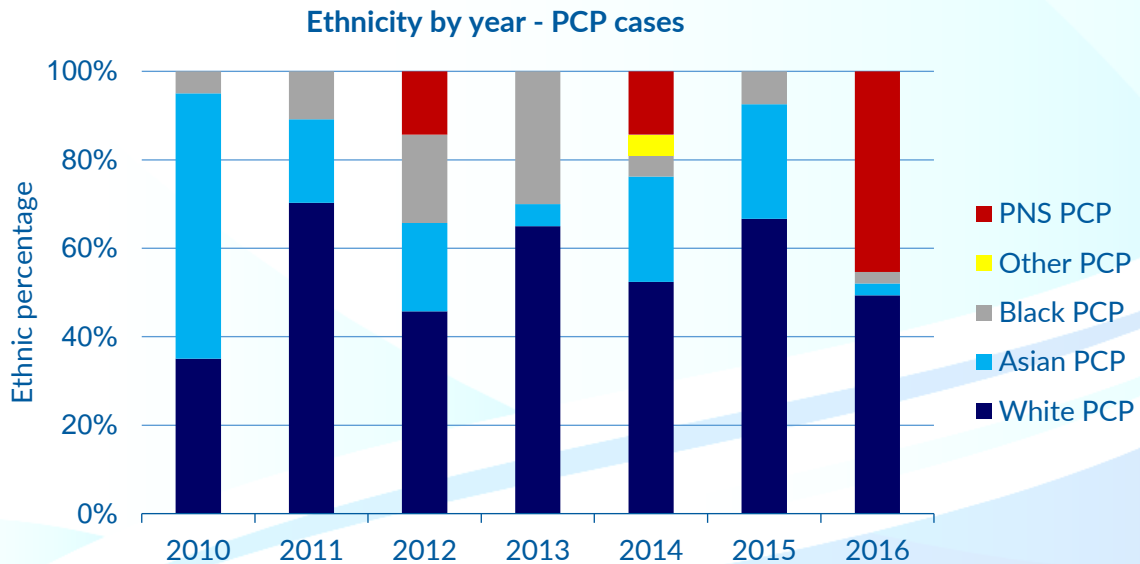


Figure 21

Figure 22 shows ethnicity of individuals who cases went to the Disciplinary Tribunal between 2010 and 2016.

Annual case numbers range from 9 to 52.

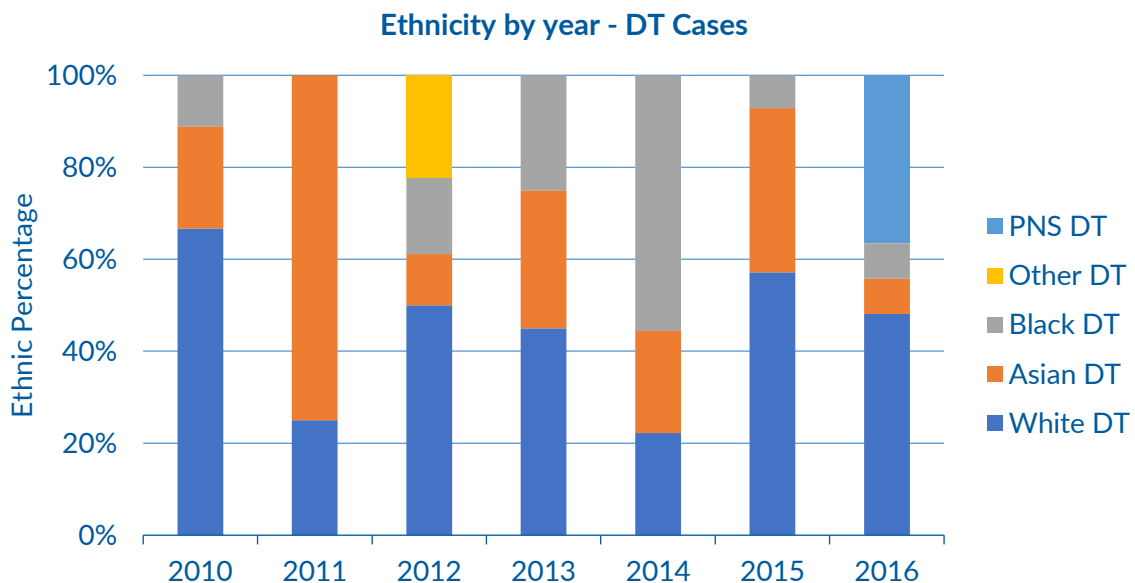


Figure 22



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Figure 23 shows the ethnicity of all regulated individuals between 2010 and 2016.

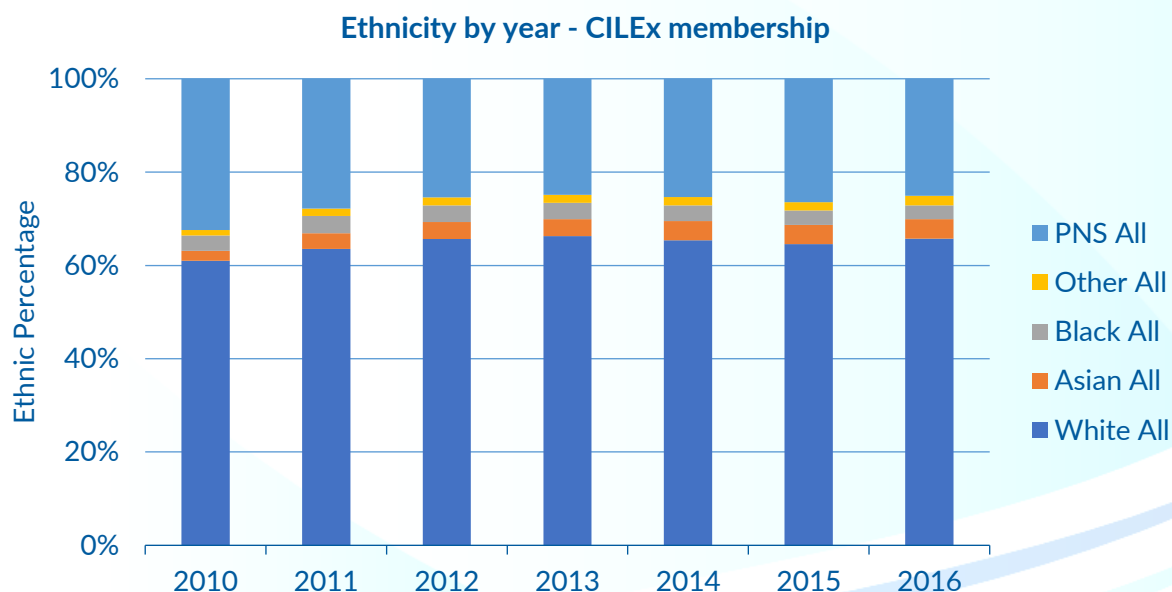


Figure 23

## Conclusion

We have taken the opportunity to reflect on the outcomes of our work during 2016 and the areas where we believe we can improve. For example, to enable us to analyse allegations more effectively and draw out any trends in the types of allegations being made, we will be recording allegations directly against the Code of Conduct principles.

We are working closely with the the membership body CILEx, to support its members to ensure they are CPD compliant. This approach is reflected in the reduced number of cases progressing to the Disciplinary Tribunal for CPD non-compliance in 2017.

We again successfully ran our panel member training to ensure that our panellists are confident in carrying out their roles.

During the course of the year, we updated our sanctions guidelines to add further protections for the public so that individuals excluded from membership of other regulatory bodies are not allowed to enter CILEx membership creating a risk to the public that another regulator has addressed.

CILEx Regulation understands that working as a lawyer has many pressures. We regularly publish articles about best practice and reminders about the Code of Conduct to support regulated individuals. Learning points are identified and published after disciplinary cases to reinforce the importance of maintaining standards of professional conduct. We also conduct customer satisfaction surveys for



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complainants and include key learning points in our communications with members of the regulated community.

Looking ahead to 2017, we have incorporated changes into our Investigation, Disciplinary and Appeals Rules to reflect our application to become a licensing body for Alternative Business Structures (ABS). We have also taken this opportunity to refine our rules to provide clarity and transparency about disciplinary outcomes for consumers making allegations about regulated members.

We look forward to a positive 2017 in which we continue to develop our practice to enhance the status of CILEx members and practitioners in the legal services market and to support our regulated members in providing high quality legal services to consumers.



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