

# Chartered Institution of CIVIL ENGINEERING SURVEYORS

## DISCIPLINARY REGULATIONS

Amended and approved by Council of Management on 6th December 2018 in accordance with Bye-law 39 (c).

*Expressions used in these Disciplinary Regulations shall have the meanings assigned to them by the Bye-laws and Regulations of the Institution. The term 'improper conduct' shall have the meaning to be inferred from these Disciplinary Regulations.*

Subject to the Rules of Professional Conduct ("the Rules") and these Disciplinary Regulations, the Investigating Panel and the Disciplinary Committee shall have the power to regulate their own practice and procedures to suit the particular case under investigation and will not be bound by the strict application of the laws of evidence. They may adjourn the proceedings for any reason.

### **1 Allegation of a Breach of the Rules or Improper Conduct.**

- 1.1 Any allegation of a breach of the Rules or improper conduct on the part of a member, received from any source, shall be referred to the President who shall appoint an Investigating Panel to consider the matter further.
- 1.2 The Secretary shall acknowledge receipt of the allegation and where the complainant is not a member of the Institution, shall provide them with copies of the Rules and these Disciplinary Regulations.
- 1.3 To ensure receipt of all notices, the despatch of correspondence to either the complainant or the member shall be by recorded delivery, directed through the office of the Secretary, or such other person as nominated by the President.

### **2 Investigating Panel.**

- 2.1 The Investigating Panel ('the Panel') shall comprise three Fellow members of the Institution, at least two of whom shall be current or past members of the Council of Management. The names of those appointed shall remain confidential to prevent any improper contact by either the member concerned or the complainant.
- 2.2 The Panel shall, within one calendar month of their appointment, determine whether it consider the allegation is founded or otherwise. It may:

- 2.2.1 if it considers the allegation does not disclose a *prima facie* case, or that it is of such a trivial nature that it calls for no further action, dismiss the case without informing the member concerned that such an allegation had been made and without hearing the complainant, in which case the complainant shall be informed accordingly; or
  - 2.2.2 decide that they need to conduct an initial enquiry to determine whether or not the allegation is sufficiently founded to refer it to a Disciplinary Committee.
- 2.3 In cases where the Panel decides to conduct an enquiry it shall send written notice to the member concerned giving the nature and particulars of the allegation and invite him to submit his observations in writing to the Panel no later than one calendar month of the date of the notice. (In exceptional circumstances the Panel may grant an extension of time). At the same time the member shall be informed that he is under no obligation to make any observations but that if he does not do so, or if the Panel do not regard any explanations offered by him as satisfactory, the matter may be referred to a Disciplinary Committee which will give him a reasonable opportunity to present his case.
- 2.4 A member may resign from membership of the Institution at any time but the Panel, the Disciplinary Committee and the Council shall remain entitled to exercise the powers accorded to them by the Rules and these Disciplinary Regulations.
- 2.5 The Panel may call for additional particulars, clarification or evidence from the complainant, or the member concerned, at any time during the course of the investigation.
- 2.6 Where the complainant does not comply within one calendar month to a request by the Panel for further information, the Panel may dismiss the complaint and inform the complainant and member concerned.
- 2.7 On receiving the member's observations and any further information requested from the complainant, the Panel may:
  - 2.7.1 dismiss the case where they find the allegations of improper conduct:
    - 2.7.1.1 is unfounded;
    - 2.7.1.1 does not disclose a *prima facie* case; or
    - 2.7.1.2 is of such a trivial nature that it does not call for further action.

- 2.7.2 where they find the member's conduct has technically contravened the provisions of any of the Rules but the contravention is of such a minor nature that it does not warrant referral to a Disciplinary Committee, advise the member accordingly and warn him as to his future conduct; or
- 2.7.3 in all other cases the Panel shall refer the allegation of improper conduct to a Disciplinary Committee.
- 2.8 Should the Panel find as in 2.7.1 or 2.7.2 they shall report to the President accordingly and, subject to the complainant and the member concerned being informed in writing, this shall conclude the matter. The Panel's findings shall not be made public unless not doing so would be detrimental to the member concerned.
- 2.9 The Panel will not normally investigate allegations which fall within the competence of a criminal court, industrial tribunal, local ombudsman or other duly appointed body. However, in such cases the Panel shall consider whether any findings of fact constitute a breach of the Rules and/or bring the Institution into disrepute. If they do and if the Panel accepts those findings, they shall refer the matter to a Disciplinary Committee.
- 2.10 During any enquiry, communications between the Panel, the complainant and the member concerned, shall be by correspondence only. Neither the complainant nor the member shall communicate directly with any member of the Panel.

### **3 Disciplinary Committee.**

- 3.1 The President shall appoint a Disciplinary Committee to hear any complaint referred by the Panel pursuant to Regulation 2.7 3. No member of the Disciplinary Committee shall have been a member of the Panel considering the case.
- 3.2 The Disciplinary Committee shall consist of five Fellows, two of who shall be past Presidents of the Council and three past or present members of Council. The Disciplinary Committee may consult a practising barrister or solicitor of at least seven years' standing to advise them as to the manner in which they should best exercise their functions.
- 3.3 Once the complaint has been referred to a Disciplinary Committee, the Secretary shall arrange that the member concerned be given notice that the matter has been referred to a Disciplinary Committee.

- 3.4 The Panel shall place before the Disciplinary Committee such information available to them during its investigation. The Disciplinary Committee shall, in the first instance, invite the member concerned to respond to the allegations against him in writing and may, if it considers it has sufficient evidence to do so, make a 'documents only decision'. However, should it consider it more appropriate, or should the member concerned so request, it shall call a meeting of all interested parties to hear evidence in person.
- 3.5 As soon as practicable after the decision to hold a hearing, and subject to any observations by the member concerned, the Secretary shall give notice in writing to all interested parties of the date of the hearing, the practice of the Disciplinary Committee in relation to the hearing of the complaint, and the manner in which they may be represented. The date of the hearing shall be set no earlier than one calendar month and no later than two calendar months from the date the parties are notified, unless otherwise agreed by the parties concerned. The Disciplinary Committee shall have power to adjourn any hearing as it sees fit.
- 3.6 At the hearing a member of the Panel shall present the evidence received as a result of its initial investigation. The member concerned shall be given a reasonable opportunity of being heard, of calling witnesses and cross-examining any other witness testifying before the Disciplinary Committee. He shall be allowed to conduct his own case, or to be represented by a solicitor, counsel or another Institution member of his choice, but not by any other person. On conclusion of the hearing the Disciplinary Committee will reserve its judgement and issue its decision in writing at a later date.
- 3.7 The Disciplinary Committee may take into consideration, act upon and give such weight as it thinks fit, to any information that may be available to it, whether or not such information would or would not be admissible as evidence in a court of law.
- 3.8 In the event that the Disciplinary Committee finds the allegation that a breach of the Rules or other improper conduct has been proved beyond all reasonable doubt, it shall inform the member concerned of its decision and its reasons, together with its proposed recommendations to Council. The member concerned will then be offered the opportunity to make representation to the Disciplinary Committee in mitigation of the proposed recommendations, either in writing, by appearing before the Disciplinary Committee in person, or by being represented as in 3.6 above. The Disciplinary Committee shall take such representations into account in finalising their recommendations and report to Council.
- 3.9 In cases where the Disciplinary Committee finds that the member's conduct did not technically contravene the provisions of any of the Rules but fell short of the recognised standards of professional practice and behaviour, or the contravention was only of a minor nature, they shall inform the President and advise the member concerned as to the propriety of his actions and future conduct.

## 4 Powers of Council.

- 4.1 Disciplinary action may be taken against any member who is found:
  - 4.1.1 to have contravened the provisions of any of the Rules;
  - 4.1.2 guilty of unprofessional conduct rendering him unfit to serve the public in his professional capacity or to be a member of the Institution; or
  - 4.1.3 to have brought the Institution into disrepute.
- 4.2 In considering a report from the Disciplinary Committee that a breach of the Rules or other unprofessional conduct has been established, the Council, in its absolute discretion, may:
  - 4.2.1 warn the member as to his future conduct;
  - 4.2.2 reprimand, or seriously reprimand, the member;
  - 4.2.3 publish the member's name and brief details of the complaint;
  - 4.2.4 determine that the member should not hold office within the Institution, or any organisation associated with the Institution, for such a period as considered appropriate;
  - 4.2.5 suspend the member from membership of the Institution for such a period as considered appropriate;
  - 4.2.6 terminate the member's membership of the Institution;
  - 4.2.7 require the member to pay the Disciplinary Committee's cost for any hearing, including the cost of any legal advice or representation; or
  - 4.2.8 combine any of the above penalties as they consider appropriate.
- 4.3 Council shall not impose a more severe penalty than that recommended by the Disciplinary Committee.
- 4.4 The examination of a complaint against a member shall be concluded by the Secretary who shall send a letter to both the member concerned and the complainant giving notice of:
  - 4.4.1 the Panel's decision under either regulation 2.6, or 2.8; or
  - 4.4.2 the Council's decision under either regulation 3.9 or 4.2.

- 4.5 In implementing any decision under these Disciplinary Regulations, the Council reserves the right to give such publicity thereto as it may, in its absolute discretion, deem appropriate having regard for the interests of the public and the Institution.

## **5 Appeals.**

- 5.1 The Construction Industry Council (CIC) has established an Independent Appeals Tribunal (IAT) for its member bodies, which may be used for appeals against the decisions by the Disciplinary Committee of the Institution. A member shall be entitled, within one calendar month after receipt of the Disciplinary Committee's decisions, to give notice of intention to lodge an appeal with the CIC IAT against any decision of the Disciplinary Committee.
- 5.2 Notice of intention to appeal shall be made by recorded delivery to the CIC IAT and the Institution. The appellant will receive information as to the appeals procedures including an application form that must be completed and returned to the CIC IAT within the timescale stated on the form. A copy of the completed form shall be sent to the Institution at the same time.
- 5.3 The appeal shall be conducted in accordance with the CIC IAT procedures in force at the time the appeal was lodged.
- 5.4 The appellant and the Institution shall be bound by the decision of the tribunal hearing the appeal.
- 5.5 The appellant may be represented at the tribunal hearing at his own cost
- 5.6 Unless the Institution specifically determines to the contrary, the Institution will require the CIC IAT to exercise its discretion to award as to the costs of an appeal. Unless, by the exercise of that said discretion, the CIC IAT specifically determines otherwise, the costs of a failed appeal shall be awarded against the appellant.
- 5.7 Appeal to the Engineering Council is only available if a member, in losing his membership as a result of disciplinary action by the Institution, also loses his registration and the Institution's appeals process has been exhausted. This appeal is carried out under the relevant Engineering Council Regulation. Complaints not amounting to an appeal to the Engineering Council in respect of other matters may result in the Engineering Council discussing the case with the Institution concerned only to confirm that the procedure approved as part of the licensing process had been followed.

## **6 Expulsions and Suspensions**

- 6.1 A member who is permanently expelled from membership of the Institution shall immediately return to the Institution their membership certificate and shall not be entitled to use any title, post nominal letters, logo or description implying current or past membership.
  
- 6.2 A member who is suspended for any period shall immediately return to the Institution his membership certificate. During the period of suspension he shall not be entitled to exercise any of the rights or privileges of membership, or use any title, post nominal letters, logo or description implying current membership. In all other respects he shall remain subject to the laws of the Institution.