

## **RULES FOR INVESTIGATING, DISCIPLINARY PROCEEDINGS AND APPEALS**

*Effective from 13 June 2009*

- 1) Complaints must be in writing to **IHE, 58 Russell Square LONDON WC1B 4HS** or to [membership@theihe.org](mailto:membership@theihe.org) and contain sufficient detail to enable them to be investigated. The Institute will not accept a resignation from the member concerned until an investigation is complete and s/he has been notified of the outcome.
- 2) When a complaint is received, it will be acknowledged within 2 days. The Membership & Qualifications Committee, excluding any member who might be involved, will set up a Disciplinary Panel and all information will be sent to the Panel by the Secretary within 28 days.
- 3) The Panel Chairman shall be a Past President and at least two other members shall be appointed - normally, a Past President not currently serving on Membership & Qualifications Committee or a lay person not a member of IHE, a Council Member not on M&Q and a Fellow, not on Council, who has some knowledge of the field of the complaint.
- 4) The Panel will make a preliminary decision on the nature of the case within 28 days. If the Panel considers that there may be a remedy under civil law, or that the case might be more properly resolved through the courts, or that the case is not within its remit, then the Panel will inform all interested parties accordingly and will disband.
- 5) In general, questions of public interest, integrity, professional competence and professional conduct are within the remit of the Panel. Questions of contractual liability and simple mistakes are not.
- 6) If the Panel decides to proceed it, or one or more of its number, may carry out a preliminary investigation on whether there is a case to answer and prepare an initial report.  
The Chairman of the Disciplinary Panel shall keep notes and make such investigation as the Panel thinks proper to obtain sufficient evidence to enable a just and fair decision. Telephone conferencing facilities and email may be used.
- 7) When the preliminary investigation is complete, an initial report is agreed by the Panel.
- 8) A copy of the complaint, the initial report and the Disciplinary Procedures is sent in writing to the member concerned inviting comments within 28 days.

- 9) After expiration of 28 days the Panel will meet to make a decision and decide whether to:
- i) Call for more written evidence from either side
  - ii) Ask the member and/or complainant to a meeting
- 10) All correspondence is through the Secretary.
- 11) Under the Data Protection Act (1999) papers relating to disciplinary enquiry must be made available to the subject on request. Hence, only factual information that can be substantiated should be recorded.
- 12) The member has the right to make a written submission and/or to attend the Panel.

### **CONDUCT OF PROCEEDINGS**

- 13) The Panel shall conduct any hearing in accordance with the principles listed below. The Panel shall at all times seek to act in accordance with these rules and to act fairly. Where these rules do not make specific provision for a procedure, the Panel may adopt such procedure as appears to them to be fair and just in all the circumstances.
- 14) The Panel shall at all times apply the following broad principles:
- i) Balance – the Panel shall have regard to the public interest, the interests of the Institute or of any of its members, the interest of any complainant, the interest of any person with a vested interest or legitimate expectation in relation to a relevant matter, or any other interest which should be properly taken into account.
  - ii) Where two or more of these interests are in conflict, the Panel shall seek to balance such interests as fairly as possible, having regard to all the relevant circumstances.
  - iii) Equality – the Panel shall not only directly or indirectly discriminate against anyone person on the grounds of their race, colour, ethnic or national origin, nationality, citizenship, sex, sexual orientation, marital status, disability, religion or political persuasion
  - iv) Proportionality – the Panel shall recommend measures which are, in the Panel's opinion, proportional to any allegation made and which are justified by their findings.
  - v) Non-retroactivity and Notice – no amendment or addition to the code of conduct shall have retrospective effect and any alleged breach of the code shall be judged through reference to the

provisions of the code existing at the time of the alleged breach. All members shall be informed of any amendment to the code of conduct as soon as practicable.

vi) Right to a fair hearing – any person who is or may be in jeopardy of being adversely affected by any decision of the Panel shall be entitled to full particulars of the allegations made. Exceptionally, where the Panel consider that there are substantial grounds for withholding full particulars, (a) brief particulars must still be provided on request and (b) brief reasons must be given as to why full particulars are not disclosed. Any such person may make written representations to the Panel. No one who is a member of the Institute or has a legitimate expectation of membership shall be excluded from membership without first being given an opportunity to attend an oral hearing. Any such person has a right to legal representation and a right not to incriminate himself save in relation to the allegation at issue.

vii) Finality – the Panel shall not carry out an investigation or make any findings regarding any matter which has already been the subject of a previous decision by a Panel of the Institute, save where fresh information comes to hand and such information could not have been known at the time.

## DECISIONS

15) After consideration, the Disciplinary Panel will meet to decide and notify the Secretary of one of the following:

- There is no case of a professional misconduct; or
- The complaint is not supported by the evidence or is vexatious or frivolous; or
- There is a case of professional misconduct and the member should be:
  - (a) Warned as to his future conduct
  - (b) Required to undergo further training and to furnish proof of competence,
  - (c) Reprimanded, or
  - (d) Expelled and if registered with the Engineering Council, lose their registration.

16) **In the case of (a), (b) and (c)** above the complainant and the member will be informed within 28 days, the case filed and a formal note prepared for Council. No further correspondence or action will be allowed.

17) **If (d)**, the Disciplinary Panel will prepare a summary of the facts and make a formal recommendation to the next quarterly meeting of the Council. At least 28 days notice will be given to the member concerned who has a right to attend and/or to be represented by a friend who maybe a lawyer.

18) The Council will hear a presentation by the Chairman of the Panel stating the complaint and supporting evidence followed by a written or verbal reply by the member and/or his representative. Both statements may be subject to cross-examination by both parties.

19) Panel members, the member concerned and any other interested parties present will withdraw whilst Council decides whether to:

- Warn the member as to his future conduct
- Require further training and evidence of competence
- Reprimand the member, or
- Expel the member and inform the Engineering Council accordingly

A two-thirds majority of those present is required.

20) The member and complainant will be notified in writing within 14 days of the Council's decision which will be published in "Highways" and on the IHE website.

## **APPEALS**

21) In the case of members registered with the Engineering Council, the Engineering Council shall be informed of cases of where professional misconduct is proven.

22) EC Registered members may only appeal to the Engineering Council against the Institute's decision if they have been found to have failed to practice engineering to the requisite standard, or committed misconduct or any behaviour likely to bring IHE into disrepute, if they believe that IHE has not followed its own procedures or if new evidence is available. All notes of the evidence, IHE's decision and reasons for the decision shall be available to the Council.

24) Members who are expelled may appeal to an independent tribunal of the Construction Industry Council.

## **APPEAL AGAINST IHE COUNCIL DISCIPLINARY DECISIONS**

***Members may appeal to an independent Tribunal of the Construction Industry Council (CIC) against a decision of the Council which has found a case of professional misconduct proven.***

### ***Grounds***

You may appeal if you believe IHE:

- Has interpreted its code / rules of conduct incorrectly, or
- Has not followed its disciplinary procedures properly.

## **Procedure**

You have 6 weeks from receiving a ruling to lodge an appeal.

Write to IHE setting out your grounds in a registered letter.

IHE will send an acknowledgement by return. If an acknowledgement is not received within 10 working days, contact the IHE Secretary.

IHE will ask CIC to hold a hearing at least 2 months hence.

At the same time, IHE will ask you to send 5 copies of any papers you wish to use at the hearing to CIC within one month.

You will receive a month's notice of the date of the hearing. You may engage legal representation.

IHE will send to CIC all notes of evidence and its decision and reasons within one month.

Tribunals will be heard by a group of 3 or 5.

Proceedings are conducted in public and are tape recorded. The normal procedure rules to ensure a fair hearing apply.

The Tribunal may award **costs** payable to IHE against you if you lose.

These costs include the fee IHE pays to CIC to undertake the hearing.

**Construction Industry Council, 26 Store Street, London WC1E 7BT**

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