

Professional Conduct Procedure

**Information for members who are subject
to a complaint**

About this document

The Institution's member conduct and disciplinary procedures are governed by its Royal Charter, By-laws and Regulations. As a supplement to these the Institution publishes a series of information documents, of which this is one. The relationship between these different types of document is shown below.

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| 1 | Royal Charter | The Royal Charter is an instrument of incorporation granted by the UK monarch. It confers independent legal personality on the Institution and defines its objectives, constitution and powers to govern its own affairs including the power to make By-laws. |
| 2 | By-laws | The By-laws are approved by the Privy Council. They set out the rules that govern the actions of the Institution. They set out the general standards of conduct required of Institution members and require the Trustee Board to make Code of Conduct Regulations. They also define improper conduct, require the Trustee Board to make Disciplinary Regulations and set out members' liability to be penalised if found guilty of improper conduct. |
| 3 | Regulations | The Regulations set out the directives made by the Institution Trustees in defined subject areas, including the Code of Conduct Regulations and the Disciplinary Regulations. |
| 4 | Information | Information documents supplement the Regulations and are intended to help people who engage with the Disciplinary Procedures. |

All of the documents listed above are available on the Institution's website.

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Key messages

- 1** All Institution members are obliged to adopt a standard of conduct that is exemplified by the Institution Code of Conduct; 'exemplified means that the Code of Conduct is not exhaustive but provides examples of the standard of behaviour we expect from our members.
- 2** The Institution's disciplinary procedure is the mechanism through which we respond to complaints about the conduct of its members. We will investigate and may take action where there is evidence of improper conduct and where it is in the public interest to do so. We prioritise the public interest over the interests of our members.
- 3** Any person can complain about an Institution member if they believe that the member has failed to meet the standard of conduct that we expect of them. Complainants will need to provide evidence of the misconduct and explain how the member's action or inaction amount to improper conduct.
- 4** If we contact you during an investigation into a complaint, it does not mean that those investigating have concluded that you are at fault. It does mean, however, that the evidence available at that time indicates that the matter should be investigated. In these circumstances you will be provided with an opportunity to make your own observations about the complaint and the matters it refers to.

Further information

Please read this document and refer to the other information we publish on our website. If, when you have done this, you have any questions about the Institution's disciplinary procedure, please contact:

The Clerk to the Assessors and the Investigating Panel
Institution of Mechanical Engineers
One Birdcage Walk
Westminster
London
SW1H 9JJ

Institution staff can give more information about the procedure but may not discuss the merits of a possible, on-going or completed complaint.

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Introduction

1. The Institution obliges its members to agree to abide by its Code of Conduct (the Code). The Code sets the general standard of behaviour which members are expected to meet.
2. We recommend that when someone believes that a member has fallen short of that standard, they consider resolution in other ways before deciding to make a complaint to the Institution.
3. Occasionally, however, they may feel that the only appropriate action is to make a formal complaint to the Institution about a member.
4. This document explains how the Institution responds to these complaints, from the perspective of the member. It is part of a series of documents provided to all involved in the complaints process and which are available on the Institution's website.

Professional conduct

5. The Institution's By-laws set out the principles that underpin the high standards of professional conduct required of Institution members. In summary, members are required to act as ambassadors of the Institution who:
 - a. conduct themselves in a manner that upholds and enhances the reputation of the Institution, the profession of Mechanical Engineering and the Institution's members; and
 - b. conduct their professional work and relationships with integrity and objectivity and with due regard for the welfare of the people, the organisations and the environment with which they interact; and
 - c. take reasonable steps to maintain appropriate professional competencies.
6. The Code of Conduct for members, which sets out more specific conduct requirements, is founded on these By-Laws. It is important to note that the Code of Conduct deals with members' conduct whether they are acting in a professional or private capacity; it may also apply to conduct that took place before the date on which an applicant was elected as a member of the Institution, including in respect of unspent convictions by a criminal court in the United Kingdom or a finding by an overseas court of an offence which would constitute a criminal offence if committed in the United Kingdom. It does not, for example, refer to commercial

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matters such as fees, contract terms or copyright, for which legally enforceable remedies exist elsewhere.

What does it mean to be the subject of a complaint?

7. The By-laws and Code of Conduct Regulations are available on the Institution's website.
8. The Institution understands that it can be disconcerting when someone complains about your conduct. In the light of this we ask you to note the following:
 - a. We do not tell you immediately if a complaint is made about you. This is primarily to protect you from undue concern and/or stress. This is particularly relevant when the complaint is dismissed; reasons for dismissal at an early stage include that the complaint is not supported by sufficient evidence, is judged to be frivolous or vexatious or is not in scope of the disciplinary process.
 - b. If the complaint is passed to the Investigating Board for investigation, and the Board believes that the complaint meets certain conditions, as set out in the Disciplinary Regulations, they will write to you for your observations about the complaint. It is important to remember that the fact that the Board writes to you does not mean that it has already concluded that you are at fault. It does mean, however, that the evidence available at that time indicates that the matter should be investigated.
 - c. The Panel has a duty to consider any allegation(s) of improper conduct on the part of a member if the information provided in support of the allegation(s) indicates that the member's conduct might have failed to meet the required standard of conduct. It is, however, fair that the member who is complained about has the opportunity to provide observations about the allegation(s). Your observations will help the Board decide whether to refer the complaint to the Institution's Disciplinary Panel or to dismiss the complaint. In some instances, there is an option for parties to agree a consensual disposal. For more about this please read our information about consensual disposal, which is available on our website.

Public interest

9. Consistent with its responsibilities as a charity, the Institution prioritises the public interest over the rights of its individual members. Public interest is an abstract notion that is difficult to define. When used in relation to the declaring and upholding of proper standards of conduct the public interest could be deemed to include:

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- a. the protection of members of the public; and
- b. the maintenance of public confidence in the profession and in the Institution.

How will the complaint be managed?

10. Below is a brief summary of the disciplinary process (you can find more information in the other documents on our website. At the end of this document there is a flowchart overview summary of the disciplinary process and a summary of its key characteristics.
11. The Institution's disciplinary process is broadly divided into three stages, triage, investigation and hearing.
12. **Triage** is the process during which we:
 - a. check that the Complaint Form is complete and that there is supporting evidence;
 - b. check that the complaint is in scope, that is whether it can be considered under Institution By-laws and Regulations;
 - c. pass complaints that are in scope to an Assessor to determine whether the complaint should be investigated.
13. **Investigations** establish the facts as far as is needed to reach a reasonable view about whether there is a realistic prospect of the facts of the complaint being proved and of establishing serious improper conduct by the Defendant. To achieve this, we:
 - a. will make any further enquiries and/or obtain any material needed to investigate the complaint; and
 - b. may provide the member being complained about (the Defendant) with the particulars of the complaint and copies of relevant evidence and invite them to provide observations about the complaint (see below); and
 - c. will, if appropriate invite the Complainant to submit further information in response to the Defendant's observations.
14. At relevant points within triage and investigation, we will:
 - a. Advise the Complainant whether we can or cannot respond to the complaint; and
 - b. advise the Complainant about alternative methods of dealing with their concerns, where appropriate.
15. If the investigation establishes that there is a realistic prospect of the facts of the complaint being proved and of establishing serious improper conduct by the Defendant, the Investigating Board will refer the complaint to a Disciplinary Board for a hearing.

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Your observations

16. If the information presented to the Board leads them to believe that there is a case to investigate, they will invite you to submit representations in writing. In this way the Board can take account of your views alongside those of the Complainant. Through this mechanism you can:

- a. refute the complaint and the information on which it is based, and provide information that supports that refutation; or
- b. accept the facts as stated, but explain why they do not constitute improper conduct; or
- c. accept the complaint and offer mitigation; or
- d. accept the complaint without further comment; or
- e. provide any other response that helps the Panel to reach a fair and reasonable conclusion about the complaint.

17. **Hearings** are formal and public events at which a Disciplinary Board determines, on the basis of the evidence available and of representations and witness statements, whether improper conduct is proved on the basis of the balance of probabilities.

18. The case is presented by the Institution, represented by the Investigating Board, although you, as the Defendant, and the Complainant may be called to give evidence.

19. The Disciplinary Board will weigh up the available evidence and decide which position is most probably true, that of the Investigating Board or that of the Defendant. Where accounts provided by the parties are both equally credible, the Disciplinary Board will take particular account of the need for the Institution to protect the public and the reputation of the profession. The Board will find the Defendant either guilty or not guilty of improper conduct. A sanction may be applied if improper conduct is found.

Sanctions

20. A sanction may be applied when a Defendant is found guilty of improper conduct. Sanctions are strictly limited to discipline of the member. The disciplinary process cannot provide any form of compensation or restitution to a Complainant.

21. The Disciplinary Board may:

- a. admonish or reprimand the member; or
- b. suspend the member from Institution membership temporarily; or
- c. expel the member from Institution membership.

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Appeals

22. As the person who is the subject of a complaint you have rights of appeal after the hearing. Appeals against the outcome of a hearing may also be made by the Investigating Board as it is the body that presents the case.

23. There are three grounds on which appeals are permitted:

- a. the decision was unreasonable or could not be supported by the evidence; or
- b. there was a serious procedural irregularity in the proceedings; or
- c. the sanction applied was not commensurate with the offence.

How long will the process take?

24. We aim to investigate complaints as quickly as possible while also being fair and thorough to all parties. However, it can take up to six months for a relatively straightforward complaint to over a year, depending on, for example, how complex the complaint is and how many people are involved.

25. Sometimes there are factors outside of our control; for example, when we need to wait for a court to provide documents, or when we need to seek an expert opinion or additional witness statements. In some cases, these factors can add several months to the time it takes to handle the complaint.

26. It is, therefore, rarely possible to provide an accurate estimate of how long it will take to investigate any particular complaint. However, in the interests of fairness and transparency and for the information of all involved, we provide guidelines on timings in PC08 Complaint categories and timescales. These guidelines apply to the Triage and Investigation stages of complaint handling. If a complaint is referred for a hearing, the Disciplinary Board will work to timescales that are appropriate to the particular complaint.

How we will keep you informed

27. Once we have contacted you about the complaint, we will write to you throughout the process to tell you about any significant developments. If you want to find out how the case is progressing or want to discuss the complaint, please contact the Clerk to the Assessors and Investigating Panel. The Complainant who made the complaint can do the same.

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Confidentiality

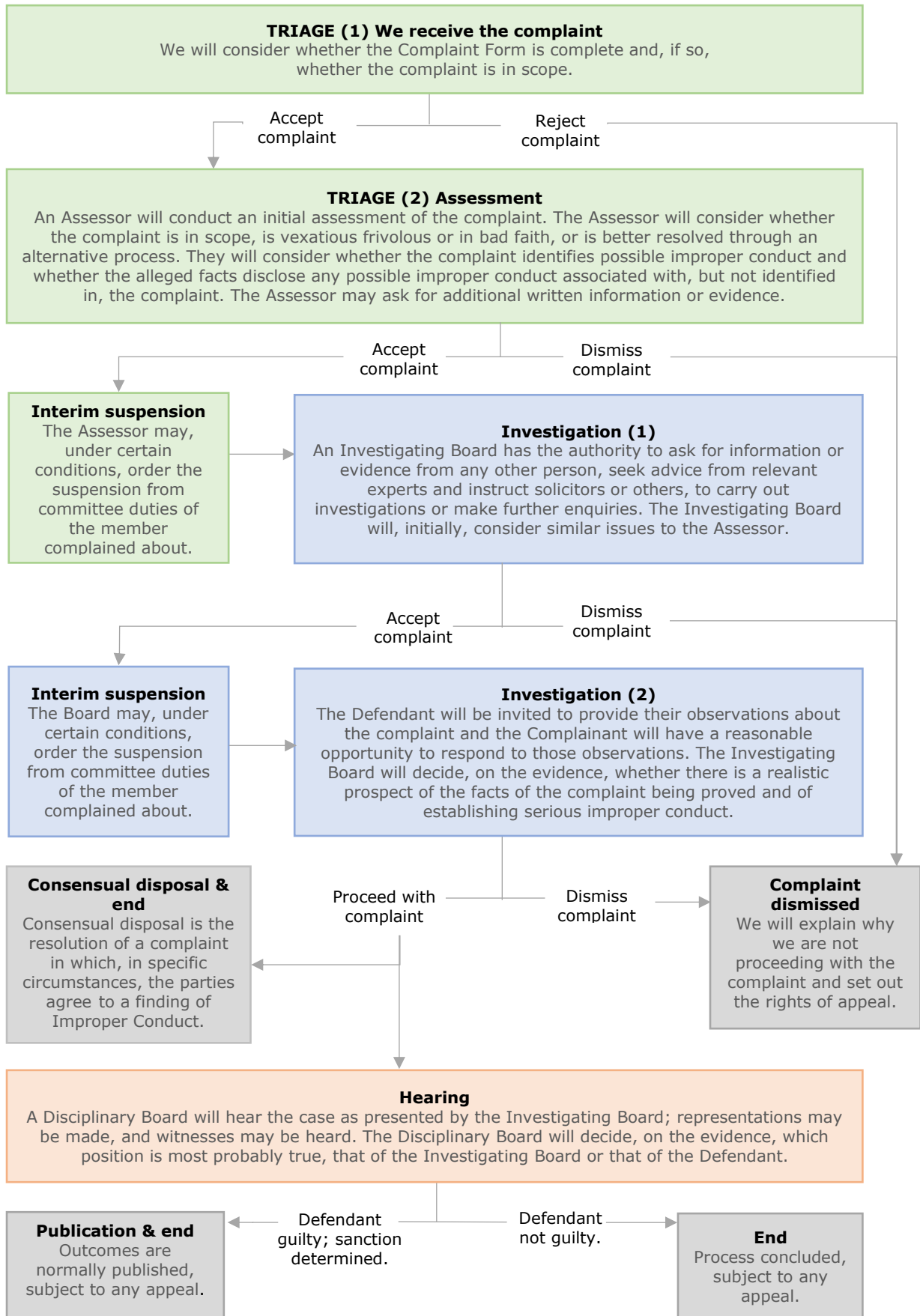
28. Correspondence between the Complainant, the Institution member, and the Institution is private and confidential. We will not communicate a complaint or the accompanying papers to anyone who is not directly involved in the case unless required to handle the complaint and unless we need to seek legal advice about the procedure or are required to by law or any other regulatory requirement. You can read more about confidentiality on our website.

What do we tell prospective Complainants?

29. We provide information for people who are considering making a complaint about an Institution member. That information is available to read on our website.
30. However, here are some key matters we ask prospective Complainants to consider before making a complaint:
- a. we can only investigate complaints about people who are members of the Institution on the date on which we receive the complaint;
 - b. if the concern relates to a criminal matter, the police (or other relevant authority) should be asked to investigate before a complaint is made;
 - c. anonymous complaints will not be considered;
 - d. commercial or personal disputes are not covered by the Code of Conduct or the Disciplinary Regulations; neither do we provide legal advice;
 - e. the disciplinary process does not cater for cases of whistleblowing; we provide separate advice on this matter on our website.

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Overview of the Institution’s complaints handling process



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Key characteristics of the Disciplinary Process

Core disciplinary process

| | 1 Triage | 2 Investigation | 3 Hearing |
|--|--|---|---|
| Process purpose(es) | <ul style="list-style-type: none"> - Confirm Complaint is in scope - Identify suitable alternative resolution process - Identify nature of Complaint - Consider interim suspension | <ul style="list-style-type: none"> - Investigate facts - Determine whether to refer for hearing | <ul style="list-style-type: none"> - Hear the Complaint - Judge whether guilty or not guilty - Apply sanction, when guilty verdict |
| Person or body making decision(s) | <ul style="list-style-type: none"> - Clerk to the Assessors - Assessor | <ul style="list-style-type: none"> - Investigating Board | <ul style="list-style-type: none"> - Disciplinary Board |
| Defendant made aware of the Complaint? | <ul style="list-style-type: none"> - Not by Clerk to the Assessors - By Assessor if an Interim Suspension Order is made | <ul style="list-style-type: none"> - If complaint is in scope and could amount to serious improper conduct | <ul style="list-style-type: none"> - Defendant already aware |
| Submissions and representations permitted | <ul style="list-style-type: none"> - Written | <ul style="list-style-type: none"> - Written | <ul style="list-style-type: none"> - Written or in person or via representative |
| Interim Suspension Order available (ISO)? | <ul style="list-style-type: none"> - Yes | <ul style="list-style-type: none"> - Yes | <ul style="list-style-type: none"> - No |
| Outcomes possible | <ul style="list-style-type: none"> - Dismiss - Refer for investigation | <ul style="list-style-type: none"> - Dismiss - Consensual Disposal - Refer for hearing | <ul style="list-style-type: none"> - Finding for the Defendant or finding for the Investigating Board |
| Sanctions available | <ul style="list-style-type: none"> - None | <ul style="list-style-type: none"> - Consensual Disposal (letter of advice or warning) | <ul style="list-style-type: none"> - Admonish or reprimand - Suspend membership or expel |

Appeals

| | | | |
|--|---|--|--|
| Rights of appeal | <ul style="list-style-type: none"> - By Complainant, against dismissal - Review of an ISO | <ul style="list-style-type: none"> - By Complainant, against dismissal | <ul style="list-style-type: none"> - By Defendant - By Investigating Board |
| Person or body hearing the appeal | <ul style="list-style-type: none"> - Assessor (Clerk's dismissal) - Investigating Panel (Assessor's dismissal) - Appeals Panel (review of ISO) | <ul style="list-style-type: none"> - Investigating Panel (Assessor's dismissal) | <ul style="list-style-type: none"> - Appeals Board |