

Professional Conduct Procedure

Investigations

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.

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.

Investigations

This document is created, approved and published by the Investigating Panel pursuant to DR65. It sets out the procedures used by the Investigating Panel (the Panel) and Investigating Boards (Boards) for investigating complaints about the conduct of Institution members. It also includes additional material for the guidance of those undertaking investigations.

These procedures cater for most investigations but may, from time to time and depending on the nature of the complaint, need to be altered in the interests of fairness. The Panel may make such alterations but must record and explain to all parties what changes are being made and why the changes are needed.

INTRODUCTION

This document provides information about investigations into complaints about the conduct of Institution members. It is not exhaustive and is not intended to restrict the exercise of judgement on the part of those investigating the complaint. It will change and be added to over time.

What is an investigation?

1. An investigation is a process that aims to establish the facts, as far as is needed to reach a reasonable view about whether there is a realistic prospect of:
 - a. the facts of a complaint being proved;
 - b. establishing improper conduct on the part of the Institution member who is the subject of the complaint.

The principle of public interest

2. 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 is deemed to include:
 - a. The protection of members of the public;
 - b. The maintenance of public confidence in the profession and in the Institution.

Origin of complaints

3. Before a complaint is investigated it is reviewed by an Assessor who judges whether the complaint is suitable for investigation, based on criteria set out in the Disciplinary Regulations. If it is suitable, the complaint is referred to the Investigating Panel (the Panel) for investigation.

The Investigating Panel

4. The Panel is a standing committee of Institution members and lay people; a lay person is one who is not a member of the Institution. The Panel's role is to investigate complaints

referred to it by an Assessor; it is obliged to consider all complaints passed to it.

5. When a complaint is referred to the Panel, the Panel chair appoints at least three Panel members to form an Investigating Board (a Board) to act on its behalf. One Board member shall be a lay member.
 6. Panel members are required to declare any conflicts of interest when asked to take part in an investigation. When there is doubt about a conflict of interests, the Panel's chair will decide. The principle is, however, that where there is doubt about a possible conflict of interest, the member and the Panel should err on the side of caution and the conflicted member not participate in that investigation.
 7. Further information about conflicts of interest is provided separately on the Institution's website.
 8. All individuals charged with undertaking investigations and making decisions about the disposal of complaints, including members of the Panel, will be provided with regular training relevant to their role. Legal advice is available during investigations.
 9. The Chief Executive will appoint, subject to the approval of the Trustee Board, a member of the Institution staff as Clerk to the Investigating Panel to provide administrative support to the Panel and to Boards.
 10. The Board will investigate the complaint(s) in respect of which it was established and will make all judgments and determinations as if it was the full Panel.
 11. Before an investigation begins, the Complainant shall be asked whether they object to any member of the Investigating Panel taking part in the hearing and, if so, why. Objections shall normally lead to the exclusion of the Panel member, unless the Investigating Panel Chair determines that the objection is vexatious.
 12. The composition of the Board shall be such that it can fairly take into account any particular characteristic of the parties that is relevant to the case, or that might otherwise affect the fairness, or perception of fairness, of the decisions made. To achieve this, they may co-opt members, who may be Institution members or lay members. Examples of such characteristics, include:
- Conflicts of interest
- Training
- Support
- Investigating Boards**
- Objections
- Fairness

- a. any legally protected characteristic of the Complainant or Defendant, when this is relevant to the complaint;
- b. the subject matter of the complaint, such as a particular sector, discipline or area of expertise, where this is relevant to the complaint;
- c. the Defendant's membership grade and/or registration category.

THE INVESTIGATION PROCEDURE

Appointing the Board

13. When a complaint is received from an Assessor, the Investigating Panel Chair will appoint an Investigating Board to investigate it, following the requirements set out in the Disciplinary Regulations that apply on the date when the complaint was received.

14. The Complainant shall be asked whether they object to any member of the Investigating Panel taking part in the investigation and, if so, why. Objections shall normally lead to the exclusion of the Panel member unless the Panel chair determines that the objection is vexatious.

15. When appointing the Board, the chair will take account any particular characteristic of the parties that is relevant to the complaint or that might otherwise affect the fairness, or perception of fairness, of the decisions made.

16. When properly constituted, the Board will proceed in its investigation following the procedures set out below.

The investigation

17. On receipt of a complaint the Board will review the Complaint Form and supporting evidence, including any additional documentation provided by the Complainant at an earlier stage of the process.

18. If the Board considers that the complaint meets the criteria for investigation, as used by the Assessor, it will 'accept' the complaint and proceed to the next stage of the investigation. If the Board considers that the complaint does not meet the criteria it will dismiss the complaint explaining why it does not meet the criteria. If in doubt about whether to investigate, the Board should take account of the need to prioritise the public interest and decide to investigate.

- Identifying possible improper conduct
19. The Board will:
- a. discuss and agree the general nature of the complaint as presented;
 - b. discuss and record which allegations made within the complaint:
 - i. do not indicate possible improper conduct;
 - ii. do indicate possible improper conduct.
- Interim suspension
20. The Investigating Board may, at any stage of its investigation, consider whether the complaint is such that it is necessary to order the interim suspension of the member who is the subject of the complaint. More information about interim suspension is available on the Institution's website.
- Other proceedings
21. Where the subject matter of the complaint is subject to a criminal, civil or other investigation in any court or tribunal in any jurisdiction, the Board will take advice on whether to postpone its consideration of the complaint until the conclusion of any such investigation or proceedings. Board members should familiarise themselves with the information on criminal, civil and other relevant proceedings available on the Institution's website.
22. In cases where the Board postpones its investigation pending the outcome of other proceedings it will:
- a. record its decision and the reasons for it; and
 - b. inform the parties to the investigation of the postponement and the reasons for it.
- New allegations arising from an investigation
23. During the course of investigating an allegation, information may be revealed that shows evidence of a potential breach of the Code that was not included in the original complaint. In these circumstances, the Board has the authority to raise new, separate allegations. (See Procedural notes, below, for further information.)
- Recording decisions
24. The Board will prepare an Investigation Summary Sheet (ISS) to set out the allegation(s) that will be investigated. The sheet will identify which facts form the basis of each allegation, along with the corresponding potential breaches of the Code of Conduct Regulations (the Code) that have been identified.
25. When the Board decides not to investigate allegations within the complaint, or to investigate possible improper conduct not alleged in the complaint, it will record the reasons for its decisions on the ISS.

Gathering additional information

26. The Board will decide, based on the individual facts of the allegation(s), what further enquiries it needs to carry out as part of the investigation. This may include seeking legal advice about general or specific matters within the complaint or about the Board's investigation. It is important that all reasonable lines of enquiry are pursued during the investigation to ensure that a robust decision can be made at its conclusion. (See Procedural notes, below, for further information.)
27. It is a matter for the Board to decide as to whether it needs to gather additional information before writing to the Defendant for their observations.

Limits of investigation

28. The Board will:
- a. investigate only to the point at which it can fairly assess whether the complaint should be referred for a hearing or should be dismissed;
 - b. where possible, make its enquiries and seek advice in parallel in the interests of making progress as quickly as is possible, consistent with fairness and accuracy; the Board will need to determine, on a case-by-case basis, to what extent this is possible.

Letter to the Defendant

29. Once the Board has prepared the ISS it will write to the Defendant to provide them with the particulars of the complaint, as recorded on the ISS, and copies of any relevant evidence in its possession.
30. The Defendant should be informed that if they provide a response to the allegations, it may be sent to potential witnesses for comment as part of the investigation.
31. The Defendant should also be informed that if they wish to include within their response confidential or privileged information that they do not wish to be disclosed, as above, the information should be provided on a separate sheet, clearly marked as privileged, with an explanation of the reasons why the information should be privileged. This could be appropriate where the Defendant wishes to provide information such as copies of instructions, or confidential, personal or medical information, for example. The Defendant should be informed that the decision about whether to disclose the information they wish to be kept confidential will be for the Board to take after considering their reasons for wanting to keep it confidential.

Comments from the Complainant

32. Once the Defendant's observations are received and, subject to any points of clarification or additional information

needed, the observations will be provided to the Complainant for comment if they wish.

Concluding the investigation

33. The investigation will conclude when all relevant evidence has been gathered, or the deadlines for responses have expired without a reply.

Outcomes of other proceedings

34. The Board must review the outcome and any available and verifiable information about the proceeding that led to a postponement, to ensure that any relevant information disclosed during that proceeding is taken into account during the Board's investigation.

Could the facts, as far as are known, constitute improper conduct?

35. Once the facts of the allegation(s) have been gathered, as far as is possible and as far as is needed, the Board will determine whether those facts disclose possible improper conduct on the part of the Defendant(s). The Board will need to exercise judgement in determining whether the established facts amount to improper conduct within the meaning of Institution By-law 33.

Balanced evidence

36. In some cases, it may be that the information gathered indicates that the accounts provided by the Complainant and Defendant are equally credible. In this case the Board will decide whether:

- a. there is sufficient evidence to refer the complaint to the Disciplinary Panel; or
- b. more evidence is needed before a decision can be made to pass the complaint to the Disciplinary Panel; or
- c. the matter will only be resolved by a hearing, the procedures for hearings allowing for witnesses to be called to provide oral evidence; or
- d. to dismiss the complaint.

Would the improper conduct, if proved, be serious?

37. Whether improper conduct is serious is a matter of judgment for the Board. Improper conduct may be considered serious if it:

- a. is serious enough to warrant a sanction being made by the Disciplinary Board;
- b. could have serious consequences;
- c. is deliberate;
- d. is likely to undermine the professional standing of the individual, the public confidence in the Institution or the profession; or
- e. otherwise warrants being referred for a disciplinary hearing.

- Recording decisions 38. The Board will record its decisions and the reason for the decisions fully and clearly.
- Consensual disposal 39. In certain circumstances it may be possible and appropriate for the Board to approve a consensual disposal. Consensual disposal is the resolution of a complaint in which, in specific circumstances, the parties agree to a finding of improper conduct. For further information about consensual disposal please refer to the protocol on consensual disposal available on the Institution's website.
- Disposing of the complaint** 40. If, taking account of the complaint and the information gathered, the Board is satisfied that there is a realistic prospect of the facts of the complaint being proved and a realistic prospect of establishing improper conduct on the part of the Defendant, and that consensual disposal is not appropriate, it must refer the complaint for a hearing.
41. No more than 21 days after the Board determines to refer a case for a hearing it must inform, in writing, the Disciplinary Panel and the Defendant of the referral.

PROCEDURAL NOTES

- New allegations arising from an investigation** 42. When there is evidence of a potential breach of the Code that was not identified in the original complaint, initial consideration should be given to whether the new potential allegation(s) should be:
- a. treated as an aspect of the original complaint to be dealt with by the Board; or
 - b. whether a new complaint should be raised and considered by an Assessor.
43. This question will turn on the particular facts and circumstances of the allegation, but the general test is whether the new allegation(s) shares a sufficiently similar factual core with the original allegation(s).
44. During an investigation, the Board may identify other potentially culpable Institution members whose conduct occurred within the circumstances of the original allegation(s).
45. In these cases, the Board should determine whether it is appropriate for it to:

- a. investigate the new allegation(s), given that circumstances of the allegation(s) are shared with the allegations it is already investigating (these investigations would then be considered linked investigations); or
- b. refer the new allegation(s) using a Complaint Form, submitted by the chair on behalf of the Board.

46. When investigations are linked it may be necessary to place the original investigation on hold while the new allegation(s) are investigated to the point at which all the allegations can proceed together. Decisions about this should be taken on a case-by-case basis.

Gathering additional information

47. As a starting point, consideration should be given to making enquiries, where relevant, of:

- a. the Complainant;
- b. any potential witnesses, whether or not identified in the information received (this may include people who have been affected by an allegation);
- c. a relevant Court in relation to judgments, evidence of convictions and/or transcripts of hearings;
- d. legal advisors on matters of procedure and / or law.

Limited to matters of fact

48. Information gathered should be limited to matters of fact. The Board must not seek the views of others with regard to whether the facts of the case do or could indicate improper conduct.

Recording the rationale for contacting witnesses

49. Whenever the Board decides to make an enquiry of either party, or any third party, other than the Defendant's observations and the Complainant's comments, as described above, it should record the rationale behind its action. This should include a record of how the Board expects that the information requested will help it establish whether or not the complaint evidences a breach of the Code and reach a conclusion about the disposal of the complaint.

Fair dealing with Institution members

50. Individuals contacted by the Board for information or advice during the Investigation may be Institution members. Where the individual is known to be an Institution member they will be advised, on first contact, that:

- a. they are subject to the Code of Conduct;
- b. they are obliged by the Code of Conduct to cooperate with the investigation;

- c. the Board may investigate instances of improper conduct revealed during the investigation on the part of any member.

Communication with potential witnesses

51. Communications with potential witnesses should include a summary of the issues on which comments or information is sought. It may be appropriate to send a copy of the ISS.
52. If the potential witness is only involved in a small part of the allegation, the letter and any documents sent with it should be restricted to the specific issue(s) about which comments or information is required.
53. Potential witnesses should be sent a tailored list of questions, rather than a general request for comments, to ensure that the responses provide the information needed to assess whether there has been a breach of the Code. All initial letters to the Defendant, potential witnesses, interested persons and others must include information on the General Data Protection Regulations, unless this has already been sent.
54. In some circumstances, it may be appropriate to provide the witness with a redacted or summarised version of the complaint, the Defendant's observations and/or the Complainant's comments, for example, when the documentation includes:
 - a. reference to relevant but confidential or legally privileged information;
 - b. reference to matters irrelevant to the substance of the allegation; and/or,
 - c. a report relating to other allegations not involving the witness.
55. Initial deadlines for responses will normally be:
 - a. three weeks for a response from the Defendant and Complainant;
 - b. two weeks for all others.
56. Where circumstances dictate, the Board may extend the deadline, either on its own initiative or at the request of the party concerned. When extending a deadline, the Board should balance the need of the party with the need to conclude the investigation in a timely manner. Extensions should normally be granted where they are required as a reasonable adjustment for someone with a disability.
57. Examples of reasons for an extension include;

- a. a particularly complex case,
- b. a particular need for the party to gather information or seek advice before responding (e.g. when the Defendant submits a relevant Subject Access Request to the Institution or other organisation before submitting observations);
- c. a need to make reasonable adjustments for a person who is disabled;
- d. absence for reasons beyond the control of the party (e.g. pre-booked holiday, existing work commitments, jury service etc)
- e. illness (short or long-term);
- f. serious personal problems such as bereavement, family breakdown or unexpected caring responsibilities.

58. The Board will consider each case on its own merits; however, as a rough guide:

- a. a two-week extension should be granted for sickness or holiday;
- b. extensions in relation to serious personal problems should not normally exceed a month unless there is clear evidence as to why a longer extension is reasonable; and
- c. extensions of several months may be appropriate in cases of serious illness but only where medical evidence is provided.

59. The length of an extension arising from the need to make reasonable adjustments will depend on the circumstances of the individual and should be for as long as is reasonably required to accommodate the individual's needs.

60. Where an extension is requested for medical reasons it may be necessary to ask for medical evidence in support of the application for an extension. Clear medical evidence should not be rejected without very good reason, which must be recorded. If the medical evidence is out of date or insufficiently specific, it may be appropriate to request up to date evidence from the Defendant. Extensions of more than three weeks on health grounds should be supported by a doctor's note or medical report. Where such documentary evidence is provided, the length of the extension should be commensurate with the nature of the condition and the medical advice given. Normally an extension on medical grounds will not require the investigation to be formally put on hold unless the evidence indicates that it is not possible to determine when the applicable person will be likely to return to a state of health that allows the investigation to progress.

- Updates on progress to involved individuals
61. People involved in the investigation will be kept regularly updated on progress of the investigation, as appropriate to their involvement. In doing so, the Board should take reasonable steps to manage expectations. This will be particularly relevant where there is likely to be a delay.
- Contact with the Complainant during the investigation
62. The person who made the complaint should be sent a letter telling them that some or all of their concerns are being investigated and what contact the Board, through the Clerk, is likely to have with them during the investigation.
63. Where the Complainant is required to provide further evidence or act as a witness they should be treated as any other potential witness in the investigation and contacted where necessary to obtain evidence in the same way as any other witness. The only exception to this is where it has been agreed and authorised that the Complainant is to be kept updated about the ongoing investigation.
- Disclosure of documents during an investigation
64. Disclosure of the fact of any allegation(s) and investigation, and of any information about the allegation or investigation that is not in the public domain, can only be made if the Board needs to do so to fulfil its responsibilities.
65. The Board should keep a record of the documents disclosed, to whom and when, along with any redactions made. This will be particularly useful in cases which are document heavy and there is regular correspondence with others involved in the case. Such a record will also be of importance in the event of a challenge during disciplinary proceedings or a Subject Access Request being made.
- Redaction
66. Redaction of documents should be done using specialist software or a **black marker pen**. If the latter method of redaction is used, those doing the redacting should ensure that this is done carefully. Electronic means other than the specialist software should not be used to block out text, as some methods are not effective, and the information can be revealed if sent electronically. Therefore, all redactions should be made manually or using specialist software to mitigate this risk.
67. Since it is possible to read through marker pen, only photocopies of manually redacted papers should be sent. Photocopies should be made on a dark setting as it is sometime possible to 'see through' the marker pen on pages photocopied on a lighter setting. The original copies of the redacted information should be retained.