

Professional Conduct Procedure

Disciplinary Hearings

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.

Disciplinary Hearings

This document was created, approved and published by the Disciplinary Panel pursuant to DR113. It sets out the procedures used by the Disciplinary Panel (the Panel) and by Disciplinary Boards (Boards) for hearing complaints about the conduct of Institution members. It also includes additional material for the guidance of those undertaking investigations.

These procedures cater for most circumstance 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 hearings of 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 hearing the complaint. It will change and be added to over time.

What is a hearing?

1. A hearing is a formal and public event 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. If improper conduct is proved, a sanction may be applied.

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 heard it will have been investigated by an Investigating Board. Complaints are referred for a hearing only when the Investigating 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, that the improper conduct is sufficiently serious to warrant a sanction available to the Disciplinary Board and that consensual disposal is not appropriate.

**The
Disciplinary
Panel**

4. The Disciplinary 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 hear complaints referred to it by an Investigating Board; it is obliged to hear all complaints passed to it.
5. When a complaint is referred to the Panel, the Panel chair appoints at least three Panel members, as set out in the Disciplinary Regulations, to form a Disciplinary Board (a Board) to act on its behalf.

Conflicts of
interest

6. Panel members are required to declare any conflicts of interest when asked to take part in a hearing. When there is doubt about a conflict of interests, the Panel 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.

Training

8. All individuals charged with participating in hearings and making decisions about the disposal of complaints, including members of the Panel, will be provided with regular training. Legal advice is available during hearings.

Support

9. The Chief Executive will appoint, subject to the approval of the Trustee Board, a member of the Institution staff as Clerk to the Disciplinary Panel to provide administrative support to the Panel and Boards.

**Disciplinary
Boards**

10. A Board will hear the complaint(s) that it was established to hear and will conduct the hearing, making all judgments and determinations as if it was the full Panel.

Objections

11. Before a hearing takes place, the Complainant and the Defendant shall be asked whether they object to any member of the Disciplinary Panel taking part in the hearing and, if so, why. Objections shall normally lead to the exclusion of the Disciplinary Panel member, unless the Disciplinary Panel Chair determines that the objection is vexatious.

Fairness

12. The composition of the Board will 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. Examples of such characteristics, include:

- 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 HEARING PROCEDURE

Appointing the Board

13. When a complaint is referred for a hearing, the Panel chair will appoint a Board to hear 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 Panel taking part in the hearing 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 of 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 with the hearing following the procedures set out below.

Preparing for a hearing

17. In preparation for the hearing, the Board will:
 - a. set a date for the hearing;
 - b. inform the parties to the hearing of the hearing date no fewer than 45 days prior to the date of the hearing;
 - c. inform the Defendant of the procedures to be adopted at the hearing, including the appeals procedure;
 - d. supply the Defendant with a copy of the complaint and of all documents provided to it by the Investigating Board;
18. The Disciplinary Board Chair may direct that the parties participate in a case-management meeting.
19. The Disciplinary Board will:
 - a. Provide the Defendant with the evidence documentation to be relied on at least 45 days before the date of the hearing; and
 - b. Seek to agree the contents of a hearing bundle with the Defendant.

20. Where there is no agreement on the hearing bundle, both parties may provide hearing bundles. The hearing bundle, along with any skeleton arguments or other written submissions, must be provided to the Disciplinary Board at least 14 days before the hearing.
21. Hearings are normally conducted in public; as such the hearing notice is published in advance and any individual may attend; this includes the media. The Complainant and the Defendant may apply to the Disciplinary Board for all or part of the hearing to be held in private; such applications must be addressed to the Clerk to the Disciplinary Board and be received at the Institution at least 21 days before the scheduled hearing date. The Disciplinary Board will take legal advice on any such application before deciding whether to allow all or part of the hearing to be held in private. The Board will inform all parties of the decision before the hearing.
22. The Board will publish a notification of the scheduled hearing if the hearing is to be held in public.

The hearing

23. The case is between the Institution, represented by the Investigating Board, and the Defendant. The Complainant will be invited to attend as a witness and may be asked to give details about the complaint or to answer questions.

Room layout

24. The layout of the hearing room shall conform to normal practice at an employment tribunal hearing. Sufficient rooms shall be available to allow each party to meet separately and in private before the hearing starts and during any breaks, including lunch. It is not appropriate for the parties to meet informally before, during or immediately after the hearing, although case-related discussions may take place as needed between the parties, ideally with the legal advisor(s) present, to assist in the good conduct of the hearing.

Absent Defendant

25. If the Defendant is not present at the hearing, the Board will confirm that the Defendant has been properly notified of the hearing. They may also enquire as to any notification by the Defendant of the reasons for their absence. The Board may proceed with the hearing if the Defendant has been properly notified of the hearing and if it is reasonable to do so.

The charges

26. The Board chair will read out the charges against the Defendant and ask, in respect of each, whether they are admitted or denied. If the Defendant admits the charges, the chair will declare that the facts of the charge have been

proved. Admission of the facts of the charges does not necessarily imply that those facts constitute improper conduct.

27. If the Defendant denies the facts of the charges, the Board will ask the Investigating Board representative to set out a summary of the evidence supporting the charges.
- Is there a case to answer? 28. At the conclusion of the Investigating Board's case, the Board will consider whether the charges are well founded. The Board will announce its decision which will be that:
- a. there is a case to answer, in which case the hearing will proceed; or that
 - b. there is no case to answer, in which case the hearing will end.
29. If it determines that there is a case to answer, the Board will provide each party with a full and fair opportunity to be heard, including:
- a. presenting their case;
 - b. presenting written representations;
 - c. calling witness(es) (See Procedural notes, below, for further information);
 - d. cross-examining witnesses called by the other party.
- Questioning 30. The Board may itself question each party, and any or all witnesses, as needed.
- Final submissions 31. The Board will allow final submissions by each party on the evidence concerning the charges.
- Board decisions 32. The Board will retire to deliberate in private about whether it finds the charges proved. (See Procedural notes, below, for further information.)
33. Where some or all of the facts have been proved, or where the Defendant has admitted some or all of the facts, the Board will:
- a. ask the Institution to disclose any previous conduct record against the Defendant;
 - b. ask whether the Defendant has provided, or wishes to provide, any additional mitigation including the calling of any witness evidence as to mitigation;
 - c. invite both parties to make final submissions as to whether or not the facts found proved amount to improper conduct.

34. The Board will determine the outcome, by simple majority, and on the basis of the balance of probabilities.
- Finding of improper conduct** 35. If the Board find the Defendant guilty of improper conduct with respect to one or more allegation within the complaint, they shall invite submissions from the parties with regard to mitigation and aggravation.
- Sanctions** 36. The Board will determine the sanction taking account of previous conduct, mitigation and aggravation and any final submissions.
- Notification** 37. The Board will normally notify the parties of their finding and of the sanction orally when it has concluded its deliberations, followed by a written notification dated within fourteen days of the date of the end of the hearing. If an oral notification is not made, the Board will:
- a. inform the parties orally of the fact;
 - b. explain why;
 - c. tell them that they will be informed of the decision in writing;
 - d. tell them when they will be informed.

PROCEDURAL NOTES

- Criminal convictions** 38. Where a Defendant has been convicted of a criminal offence, a certificate of conviction certified by a competent officer of a court in the United Kingdom or, in other jurisdictions, an equivalent document, shall be conclusive proof of the conviction and the findings of fact upon which the conviction is based shall be admissible as proof of those facts.
39. Where the Defendant has been the subject of proceedings by a court or tribunal other than a criminal court, any facts found proved by that court or tribunal shall be proof of those facts, unless the Defendant proves them to be inaccurate.
40. Further information about criminal, civil and other proceedings is provided separately on the Institution's website.
- Witnesses** 41. Both parties may call witnesses. A party wishing to call a witness to attend a hearing must notify the Board at least 28 days before the hearing and provide a signed statement by the witness at the time of notification. The Board will inform the other party.

42. Witnesses may be questioned by the Panel and by both parties in relation to their evidence.
- Vulnerable witnesses**
43. For the purposes of hearings, the Board will treat the following as vulnerable witnesses:
- a. any witness under the age of 18;
 - b. any witness with a mental disorder;
 - c. any witness who is significantly impaired in relation to intelligence or social functioning (for example by reason of a learning disability or diagnosed mental health condition);
 - d. any witness with physical disabilities who requires assistance to give evidence;
 - e. any witness in respect of a complaint where one or more of the allegations are of a sexual nature and the witness is the alleged victim; or
 - f. any witness who complains of intimidation.
44. Where one or more of the allegations is sexual in nature, the Defendant may not directly cross-examine a witness who is the alleged victim in relation to those allegations. If the Defendant is represented by a legally qualified representative, their representative may cross-examine a witness who is the alleged victim. Otherwise the questioning of the witness shall be undertaken by the Board and/or such other person as the Board considers appropriate. The Board may direct the Defendant to submit questions in writing in advance, which the Board may, if appropriate (but need not), ask on the Defendant's behalf.
45. The Panel may direct that the identity of the witness, or any other person having a connection with the proceedings, should not be revealed in public.
- Findings**
46. The Board must use its judgement to determine whether the established facts of the case amount to a failure to meet the standard of conduct exemplified by the Institution's Code of Conduct and as further clarified in the Code of Conduct Instructions.
- Basis of findings**
47. Findings in all cases are on the basis of the balance of probabilities (the Civil burden of proof) with regard to the facts of the case. The balance of probabilities requires the Board to be satisfied that, on the evidence, the alleged facts are more likely to be true than not. The difference between success and failure on the balance of probabilities can be small. If, on the evidence, the Board concludes that the

Disciplinary Hearings

alleged facts are more probably true than not (i.e. 51% or more), the alleged fact is found to be proved; however, if the probabilities are no more than equal (i.e. 50% or less) the alleged fact is not found to be proved.

48. Decisions about whether the facts are evidence of improper conduct, whether any improper conduct is serious and what sanction, if any, is to be applied are judgements made by the Board.

Recordings

49. Hearings will be audio recorded in compliance with current legal requirements; an independent person will be present at the hearing to take and produce the minutes.