

Professional Conduct Procedure

Appeals and reviews

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.
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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.
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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.
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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.

Appeals and reviews

This document was created, approved and published by the Appeals Panel pursuant to DR161. It sets out the procedures used by the Appeals Panel (the Panel) and Appeals Boards (Boards) for hearing appeals arising from complaints about the conduct of Institution members. It also includes additional material for the guidance of those hearing appeals.

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 appeals made in respect 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 appeal. It will change and be added to over time.

What is an appeal?

1. An appeal is a process by which a case is reviewed and in which parties request a change to the outcome of that case.
2. As part of the disciplinary procedure, individuals have rights of appeal against certain decisions, as follows:
 - a. Clerk to the Assessor's decision to dismiss a complaint on the grounds that it is not in scope
 - b. Assessor's decision to dismiss a complaint
 - c. Investigating Board decision to dismiss a complaint
 - d. Disciplinary Board finding, outcome or sanction

What is a review?

3. If an Assessor orders the interim suspension of a member, that member has the right to a review of the decision.

General matters

4. Decisions made during appeals and reviews are final and conclusive, except in cases in which an expelled Defendant has lost their Engineering Council registration as a result of the disciplinary process, in which case the Defendant has the right of appeal to the Engineering Council.
5. Unless otherwise stated in these regulations, appeal decisions and the reasons for them shall be communicated, in writing, by the Chief Executive, to the Appellant within 28 days of the decision being made.

A. Appeal against the Clerk to the Assessor's decision to dismiss a complaint on the grounds that it is not in scope

Receipt of appeal

- A1. The Clerk to the Assessors will acknowledge receipt of the appeal and will determine whether the appeal may go forward.
- A2. If the appeal may not go forward, the Clerk will inform the Appellant and explain why.
- A3. If the appeal may go forward, the Clerk will:
 - a. inform the Appellant
 - b. pass the appeal to a suitable Assessor.

Review

- A4. The Assessor will:
 - a. review the original decision considering only the original information provided and determine whether to uphold the appeal;
 - b. inform the Appellant of the outcome and the reasons for the decision.
- A5. If the appeal against dismissal is upheld, the complaint shall be passed to a nominated Assessor for consideration as if the original dismissal had not occurred; that Assessor will not be the same Assessor who heard the appeal.

B. Appeal against Assessor's decision to dismiss a complaint

Receipt of appeal

- B1. The Clerk to the Investigating Panel will acknowledge receipt of the appeal and will determine whether the appeal may go forward.
- B2. If the appeal may not go forward, the Clerk will inform the Appellant and explain why.
- B3. If the appeal may go forward, the Clerk will:
 - a. Inform the Appellant;
 - b. pass the appeal to the chair of the Investigating Panel.

Investigating Panel Chair

- B4. The chair of the Investigating Panel will appoint members of the Panel to hear the appeal, complying with the normal rules for the appointment of an Investigating Board.

**Appointed
Investigating
Panel members**

- B5. The Investigating Panel members appointed to hear the appeal will review the original decision, considering only the original information provided and determine whether to uphold the appeal.
- B6. The Appellant will then be informed of the appeal outcome and the reasons for the decision.
- B7. If the appeal against dismissal is upheld, the complaint shall be passed to the Investigating Panel for consideration as if the original dismissal had not occurred. The members of the Investigating Panel who heard the appeal may not take part in the subsequent investigation.

C. Appeal against Investigating Board decision to dismiss a complaint

**Receipt of
appeal**

- C1. The Clerk to the Investigating Panel will acknowledge receipt of the appeal and will determine whether the appeal may go forward.
- C2. If the appeal may not go forward, the Clerk will inform the appellant and explain why.
- C3. If the appeal may go forward, the Clerk will:
 - a. inform the Appellant
 - b. pass the appeal to the chair of the Investigating Panel.

**Investigating
Panel Chair**

- C4. The chair of the Investigating Panel will appoint members of the Panel to hear the appeal, complying with the normal rules for the appointment of an Investigating Board.

**Appointed
Investigating
Panel members**

- C5. The Investigating Panel members appointed to hear the appeal will review the original decision, considering only the original information provided and determine whether to uphold the appeal.
- C6. The Appellant will then be informed of the appeal outcome and the reasons for the decision.
- C7. If the appeal against dismissal is upheld, the complaint shall be passed to the Disciplinary Panel for a hearing as if the original dismissal had not occurred.

D. Appeal against a Disciplinary Board finding, outcome or sanction

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| Receipt of appeal | <p>D1. The Clerk to the Appeals Panel will acknowledge receipt of the appeal and determine whether the appeal may go forward.</p> <p>D2. If the appeal may not go forward, the Clerk will inform the Appellant and explain why.</p> <p>D3. If the appeal may go forward, the Clerk will:</p> <ul style="list-style-type: none"> a. inform the Appellant and ask them to identify any Appeals Panel members they object to being involved in the Appeal; b. inform the Defendant and ask them to identify any Appeals Panel members they object to being involved in the Appeal c. pass the appeal to the chair of the Appeals Panel. |
| The Appeals Panel | <p>D4. The Appeals Panel is a pool of Institution members and non-members. Its role is to hear appeals against decisions made by a Disciplinary Board. When an appeal is lodged, the Panel chair appoints at least three Panel members, as set out in the Disciplinary Regulations, to form an Appeals Board (a Board) to act on its behalf.</p> |
| Appeal Boards | <p>D5. The Board will hear the appeal that it was established to hear and will conduct the hearing, making all judgments and determinations as if it was the full Panel.</p> |
| Support | <p>D6. The Chief Executive will appoint, subject to the approval of the Trustee Board, a member of the Institution staff as Clerk to provide administrative support to the Appeals Panel and its Boards.</p> |
| Training | <p>D7. All individuals charged with undertaking investigations and making decisions about the disposal of complaints will be provided with regular training. Legal advice is available during hearings.</p> |
| Fairness | <p>D8. The Board composition 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:</p> <ul style="list-style-type: none"> 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.
- Conflicts of interest
- D9. Appeals Panel members must declare any known conflicts of interest when they are asked to take part in an appeal. Where they have a conflict of interests they will not take part in the appeal. When there is doubt about a conflict of interests, the chair of the Appeals Panel will decide.
- D10. Further information about conflicts of interest is provided separately on the Institution's website.
- The hearing procedure**
- D11. When properly constituted, the Board will proceed with the hearing following the procedures set out below.
- Pre-hearing actions**
- D12. The Appellant will provide the Board with an appeal bundle, which they shall seek to agree the contents of, and any skeleton arguments or other written submissions at least 14 days in advance of the appeal hearing. Where it is not possible to agree the contents of the appeal bundle, both parties may provide appeal bundles.
- D13. The Board will inform the parties of;
- a. the date of the appeal hearing;
 - b. the procedures to be adopted by the Board.
- Recordings
- D14. Hearings will be audio recorded and an independent person will be present at the hearing to take and produce the minutes.
- The appeal hearing**
- D15. Appeals shall normally be held in public. The Appellant may apply to the Appeals Board for all or part of the appeal to be held in private; such applications must be addressed to the Clerk and be received at the Institution at least 21 days before the scheduled hearing date. The Appeals Board will take legal advice on any such application before deciding whether to allow all or part of the appeal to be held in private.
- D16. If the Defendant is absent, the Board will confirm that the Defendant has been properly notified of the hearing before proceeding with the hearing. The Board may also enquire as to any notification by the Defendant of the reasons for 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.

D17. The Board will:

- a. via the Board chair, outline the decision which is the subject of the appeal and direct the Board to any relevant evidence including transcripts of any hearing;
- b. consider all the evidence available to the Disciplinary Board;
- c. determine whether there are exceptional circumstances that lead the Board to permit the presentation of oral evidence or documentation not seen by the Disciplinary Board and to hear such evidence;
- d. via the Board chair, outline the decision which is the subject of the appeal and direct the Board to any relevant evidence including transcripts of any hearing;
- e. permit the Appellant to address the Board on the grounds of the appeal;
- f. permit the Appellant to make a closing address;
- g. retire to make a decision in relation to the appeal.

D18. The Board will inform the Appellant whether it will make and announce its decision and reasons on the day of the hearing or in writing at a later date. If the Appeals Board makes and announces its decision and reasons on the day of the hearing, it will write within 28 days of the date of the hearing to confirm its decision and reasons. If the Appeals Board announces its decision and reasons in writing at a later date, it will do so within 28 days of the date of the hearing.

D19. The Board will:

- a. determine the outcome, by simple majority;
- b. announce its decision and the reasons for it;
- c. notify the parties of its decision and reasons in writing within 28 days of the date on which its decision was made.

E. Review of Interim Suspension Order

Receipt of appeal

E1. The Clerk to the Appeals Panel will:

- a. acknowledge receipt of the appeal;
- b. inform the Assessor or the Investigating Board (the Defendant) of the appeal;
- c. ask both parties to the appeal to identify any Appeals Panel members who they object to being involved in the appeal;

d. pass the appeal to the chair of the Appeals Panel.

**Appeals Panel
Chair**

E2. The chair of the Appeals Panel will appoint three members of the Panel to conduct the review, complying with the normal rules for the appointment of an Appeals Board (the Board).

**Before the
review**

E3. The Board will:

- a. Set a date for the review and inform the Appellant and the Defendant of that date;
- b. invite written representations from the Appellant;
- c. invite written representations from the Defendant.

The review

E4. The Board will:

- a. review the decision considering the original complaint, and any representations from the Appellant and the Defendant.
- b. inform the parties of the outcome and the reasons for the decision.

E5. If the appeal against the interim suspension is upheld, the Board shall inform the Appellant that there is no record of the ordered suspension on their Institution record.