

Professional Conduct Procedure

Criminal, civil and other relevant proceedings

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.

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The Institution must balance the interests of the Complainant, its member, the public and the profession, including any other interested parties. It must act with fairness and in accordance with the law and principles of natural justice.

It is incumbent on the Institution to conduct its investigations expeditiously, and it is in the interest of both the public and our members that allegations are considered and resolved as quickly as possible.

Response to known criminal, civil or other proceedings

1. In cases when the Institution is asked to investigate allegation(s) of improper conduct made against members who are being, or are about to be, tried for related criminal or civil charges, we will postpone our investigation until the proceedings are complete where the circumstances of the case reasonably require us to do so. The same approach will be taken in cases where action is known to be under way against the member through a tribunal, other regulatory body or similar circumstances.
2. Postponement of an investigation in such cases will not be automatic. We will take account of the particular facts and circumstances of individual cases. In all cases we will take advice on whether the investigation should be postponed.

General

3. Information revealed in the course of other proceedings could assist a subsequent investigation by the Institution in favour of either party. The finding may also have a bearing on any investigation made by the Institution.
4. Acquittal in other proceedings will not automatically lead the Institution to dismiss the postponed complaint. The grounds for acquittal may be irrelevant for the purpose of our investigation. For example, the conduct of an Institution member may be found to be lawful, but nonetheless fall below the standard of behaviour expected of a professional.
5. The purpose of the Disciplinary Regulations is not to punish the Defendant a second time for an offence or offences of which they have been found guilty. However, it should be borne in mind that:
 - a. the Institution requires its members to maintain appropriate standards of personal as well as professional behaviour;

- b. considerations taken into account by others, for example, a criminal court, may be different from those relevant to a regulatory body.

Convictions

- 6. "Convictions" refers to a decision 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.
- 7. Where a certificate of conviction is available and accepted by the decision-making body, that certificate will be taken as conclusive proof of the offence having been committed. The only exception is if there is evidence to the effect that the Defendant is not the person referred to in the certificate.
- 8. A conviction, as evidenced by a certificate of conviction, shows that the Defendant may have conducted themselves improperly. Therefore, when the complaint is supported by a certificate of conviction, the allegation of improper conduct is made in respect of the conviction itself. The conviction itself, or the truth or falsehood of the events which led to the conviction shall not be challenged or reinvestigated. The consideration will be whether the conviction is sufficient to warrant a finding of improper conduct.

Cautions

- 9. In England and Wales, a caution may be given by the police when there is sufficient evidence for a conviction, but it is not considered to be in the public interest to pursue criminal proceedings. To be given a caution, the individual must have admitted guilt and consented to the caution.
- 10. A caution, as duly evidenced, shows that an Institution member may have conducted themselves improperly. Therefore, when the complaint is supported by a duly evidenced caution, the allegation of improper conduct is made in respect of the caution itself. The caution itself, or the truth or falsehood of the events which led to the caution shall not be challenged or reinvestigated. The consideration will be whether the caution is sufficient to warrant a finding of improper conduct.

Conditional discharges

- 11. A conditional discharge may only be imposed on a person following a finding of guilt. However, Section 14 of the Powers of Criminal Courts (Sentencing) Act 2000 states that a conditional discharge is not a conviction for any purpose other than the proceedings in which the order was

made. A conditional discharge cannot be treated as though it were a caution or conviction. Rather, the consideration shall be whether the events that led to the conditional discharge being applied amount to improper conduct.

Alternatives to prosecution – Scotland

12. In Scotland, the Procurator Fiscal may decide that prosecuting an alleged offence is not in the public interest and may apply an alternative measure. Alternatives to prosecution include: a warning; a Fiscal fine; a compensation order; a work order; a road traffic fixed penalty; or rehabilitative support. The acceptance of the offer of an alternative to prosecution does not, unlike a caution, amount to an admission of guilt by the accused.

13. Because of this a Scottish alternative to prosecution cannot be treated as though it were a caution or conviction, and thus as showing improper conduct. Rather, where an offer of an alternative to prosecution has been accepted, the consideration must be whether the events that led to the offer and acceptance of an alternative to prosecution amount to improper conduct.

Determinations

14. "Determinations" refers to decisions made by another institution or body in the United Kingdom (or elsewhere) which has determined that the Defendant is guilty of improper conduct, or an equivalent finding.

Rehabilitation of Offenders Act

15. The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 came into force on 29 May 2013. The Order states that certain spent convictions and cautions are "protected" which means there is no requirement on individuals to disclose these and they cannot be taken into account when making a decision on an individual's suitability to carry out a particular occupation.

16. A person applying for membership of the Institution is not obliged to declare cautions or convictions considered spent under The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013. When considering a case which involves cautions/convictions which have not been declared to the Institution, legal advice will be sought.

17. If a member fails to declare a conviction and that conviction later becomes spent, it is unlikely that the Institution will be able to bring proceedings in respect of either the offence itself or the underlying conduct because the Rehabilitation of Offenders Act prohibits this. However,

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proceedings may still be brought for the failure to promptly notify the Institution of the fact of the conviction as this is a requirement within the Institution's Code of Conduct Regulations.