

Professional Conduct Procedure

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.

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.

Hearings

- What is a hearing?** 1. All complaints that meet the criteria set out in the Disciplinary Regulations will be investigated. That investigation could lead to the complaint being dismissed, to a consensual disposal or to the complaint being referred for a hearing.
- Public events 2. Hearings are formal and public events at which a decision is made about whether the complaint is upheld and, therefore, the member concerned (the Defendant) is found guilty of improper conduct. Decisions at hearings are made on the basis of the balance of probabilities. If improper conduct is proved, a sanction may be applied.
- The Institution v the Defendant 3. When a complaint is considered at a hearing the case is between the Institution and the Defendant, and the Investigating Board will present the complaint. The person who made the complaint (the Complainant) is, however, invited to attend as a witness and may be asked to give details of the complaint or answer questions.
- Hearings are public events** 4. Hearings are normally held in public. The Complainant and the Defendant may apply to the Disciplinary Board for all or part of the hearing to be held in private. 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.
- Publication of hearings 5. The Disciplinary Board will publish the date of the hearing along with the name of the Defendant on the Institution website and in appropriate Institution publications. The nature and details of the complaint will not be published.
- Balance of probabilities** 6. The balance of probabilities requires that the Disciplinary Board be satisfied that the facts of the Investigating Board's case are more likely to be true than not, based on the available evidence. The difference between success and failure on the balance of probabilities can be small.
- Who conducts a hearing?** 7. Hearings are conducted by a Disciplinary Board. It will listen to the case, consider the evidence, ask questions and make a decision.
8. The Disciplinary Board is made up of a minimum of three people selected from the larger Disciplinary Panel. Two of these people will be Institution members and one will be a lay member (i.e. not a member of this Institution).

- The need to be fair 9. The Institution requires the membership of the Disciplinary Board to be such that it can fairly take into account any characteristic of the parties to the complaint that is relevant to the complaint, 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.
- Hearing procedure** 10. The following is a summary of the hearing procedure and is not exhaustive. More detail is set out in the Institution’s Disciplinary Regulations and the specific rules and procedures of the Disciplinary Panel, both available on the Institution’s website.
- Layout 11. The hearing is a formal event and will be conducted as such. The layout of the hearing room will conform to normal practice at an employment tribunal hearing. All hearings will be audio recorded and an independent person will be present at the hearing to take and produce the minutes.
- Absence of the defendant 12. If the Disciplinary Board is satisfied that the Defendant has been properly notified of the hearing, it may proceed in their absence.
- The charges 13. The Chair of the Disciplinary Board will read out the charges against the Defendant and ask, in respect of each, whether they are admitted or denied. Where the Defendant admits a charge, the Disciplinary Board will declare that the facts of the charge have been proved.
- The case 14. The Investigating Board will present the case for the Institution. It may conduct its own case, or it may be represented by a solicitor or by counsel. It will set out a summary of the evidence supporting the charges and may call witnesses as to facts. Where a Defendant has been convicted of a criminal offence, a certificate of conviction will 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. 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 will be taken as proof of those facts, unless the Defendant proves them to be inaccurate.
15. At the conclusion of the Investigating Board's case, where the Disciplinary Board is satisfied that it is right in all the circumstances to do so, it may determine that the charges are not well founded and determine that there is no case to answer.
- Advisers** 16. The Board will be advised on questions of law by a legal adviser and may also call expert witnesses as required.

17. Legal advisers sit with, but not as part of, the Board. Expert witnesses provide impartial and objective technical advice. With the Chair’s permission, the legal adviser may question a witness at a hearing. The legal adviser stays with the panel when it deliberates in private and the attendees at a hearing will be informed of any advice provided to the Board by the advisers.
18. The legal adviser will advise the Board on questions of law, including questions about the use of this guidance. The legal adviser will only provide advice on matters of legal opinion in relation to a case and should not act beyond their scope as a legal adviser.
19. Legal advice can include advice on matters that the Board should or should not take into account during its deliberations. This is the reason the legal adviser remains with the Board during its private deliberations. Any advice which the legal adviser gives to the Board in private is repeated in public before the parties at the next available opportunity.

The Clerk

20. The Clerk to the Disciplinary Board (“the Clerk”) sits with the Board throughout the proceedings, including private deliberations. The Clerk’s role is to guide the panel through the procedures and to remind them of guidance, resources and relevant reference or training materials. The Clerk assists the Board in drafting decisions and the determinations but does not take part in the decision-making process or seek to influence decisions.

Legal advice

21. The Disciplinary Board will normally be assisted by a legal adviser. All legal advice given to the Disciplinary Board during a hearing will be given in open session where it may be challenged by the parties involved in the hearing.

Evidence

22. The Disciplinary Board may admit any evidence, where it is fair to do so, which is relevant to the case. It may also allow expert witnesses to be called as required. The Disciplinary Board may adjourn a hearing at any stage.
23. Each party (the Investigating Board and the Defendant), or their representatives:
 - a. will be given a full and fair opportunity to be heard; and
 - b. may present their case and the Disciplinary Board will consider any written representations received; and
 - c. may call witnesses and may cross-examine witnesses called by the other party.

24. Each party, if present, has the right to make final submissions to the Disciplinary Board on the evidence concerning the charges.
- Questioning** 25. During the hearing the Disciplinary Board may ask questions or make enquiries of the parties, or witnesses.
- Finding** 26. The Disciplinary Board will then consider whether it finds the charges proved. Decisions of the Disciplinary Board are made by a simple majority.
- Mitigation and/or aggravation** 27. Where the Disciplinary Board has determined that some or all of the facts have been proved, or where the Defendant has admitted some or all of the facts, it will:
- a. ask the Institution to disclose any previous conduct recorded against the Defendant; and
 - b. ask whether the Defendant has provided, or wishes to provide, any additional mitigation including the calling of any witness evidence as to mitigation; and
 - c. invite both parties to make final submissions as to whether or not the facts found proved amount to serious improper conduct.
- Sanctions** 28. The sanctions available to the Disciplinary Board in respect of Institution members found guilty of improper conduct are admonition, reprimand, suspension and expulsion. More information about these sanctions is published in 'PC15 Sanctions' on the Institution's website.
- Right of appeal** 29. Where the Disciplinary Board finds the Defendant guilty of improper conduct the Defendant may appeal against the finding, or the outcome and sanction, or both. The Investigating Panel may appeal against the sanction imposed on the grounds that it is unduly lenient. The rules governing appeals are given in the Disciplinary Regulations available on the Institution's website.