

The Institute of Materials, Minerals & Mining

DISCIPLINARY AND APPEALS PROCEDURE (Bye-Laws 16(c), 19)

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THE DISCIPLINARY AND APPEALS PROCEDURE AND ITS APPLICATION TO THE MEMBER

It is essential that the Institute of Materials, Minerals and Mining regulates its membership through appropriate standards. This it does through a Code of Professional Conduct. It must also have the wherewithal to deal in a fair and prescribed manner with members who contravene and transcend the Code of Professional Conduct in addition to making provision for any member who becomes the subject of such proceedings to appeal any decision subsequently made. The Institute has therefore put in place this Disciplinary and Appeals Procedure to support the Code of Professional Conduct.

When an individual becomes a member, at any grade, of the Institute, they enter into a contract which binds them to uphold the Code of Professional Conduct. As a consequence this makes any member liable to the Disciplinary and Appeals Procedure.

The purpose of the Institute's disciplinary and appeals procedure is not to punish but to protect and safeguard the public interest. In addition it maintains the high standing and integrity of the Institute, its membership and the wider profession.

PRINCIPLES OF THE DISCIPLINARY & APPEALS PROCEDURE

The Disciplinary and Appeals procedure is underpinned by the following principles:

- The proceedings will be conducted in private and be clear, open, fair, unbiased and proportionate.
- All people involved should respect the confidentiality of the proceedings; members will be bound by the Code of Professional Conduct and staff by the confidentiality clause in their contracts of employment with the Institute.
- No person should participate in decision-making in more than one stage of the process of any particular case.
- Whilst the Institute is the owner of the process, it may delegate authority for any part of the process to an appropriate third party.
- Judgement and decision-making may only be undertaken by appropriately qualified persons specifically appointed for the task.
- There is a presumption of innocence until a breach of the Code of Professional Conduct has been admitted or proved. Decisions will be based on the appropriate standard of proof.

- Proved breaches of the Code of Professional Practice may only attract sanctions as allowed by the Bye-Laws.
- Clear timescales will be established and agreed for each stage of the process; progress will be monitored by the Director of Professional Development and Membership.
- Records will be maintained for a minimum period of 10 years from the conclusion of the process.

Stages of the Disciplinary and Appeals Procedure

Initial Review

Once a complaint is received an initial review will be undertaken by a suitably qualified and senior person within the Institute staff appointed by the Chair of the Professional Standards and Development Board. This will usually be the Director of Membership and Professional Standards. The Chair of the Professional Standards and Development Board is a member of the Institute's Executive Board and will report directly to this group at appropriate stages. This review will have the purpose of framing the complaint as an alleged breach of the Code of Professional Conduct, collecting initial information and presenting an advisory summary to the Chair. It is anticipated that this Initial Review take no longer than 60 working days from the first working day after the complaint is received, to it being presented to the Chair. When a complaint is received against a member of the Institute, they will not be allowed to resign their membership or be lapsed from the membership, through for example non-payment of membership fees.

Should the Chair decide there is a case to answer, a Preliminary Investigation will be initiated with a suitably qualified Case Officer being assigned from the senior team of the Institute staff who will coordinate and administer the process. If the Chair does not believe there is a case to answer, the complaint will be dismissed.

Preliminary Investigation

The purpose of the Preliminary Investigation is to investigate the complaint in detail in order to determine whether the alleged misconduct would, if admitted or proved, lie within the ambit or jurisdiction of the Disciplinary Panel. To enable such a decision to be reached, robust and significant evidence needs to be assembled to assess the validity of the complaint. During this process, the subject of the complaint should be informed of the complaint and kept informed of developments; evidence submitted by the complainant and the subject shall be disclosed to each other. The Preliminary Investigation is undertaken by a panel of three trained Fellows of the Institute supported by the Case Officer; one of the Fellows will act as Chair of the Preliminary Investigation. None of the Panel members should have a conflict of interest which creates a real danger of bias in respect of either the subject or complainant, or employers of either party.

The Panel are expected to reach one of two decisions at the conclusion of their investigation: a decision of 'no case to answer' should result in dismissal of the complaint. The subject and the complainant should be informed of the decision and the reason behind it. Records of the complaint including evidence need not be

maintained beyond the time limit for any appeal by the complainant. A finding that there was a 'case to answer' should result in referral to a Disciplinary Panel.

The Preliminary Investigation should also determine whether any criminal or civil court proceedings related to the alleged misconduct are likely or underway. If so, then the disciplinary hearing should not proceed until the court proceedings, including any appeal, are concluded. Where the subject has been convicted of a criminal offence or found liable in a civil court, the disciplinary hearing must separately determine whether the subject's conduct (including, but not limited to, that proven in court) amounts to a breach of the Code of Professional Conduct. An adverse court verdict should not in itself form the basis of a complaint. It is anticipated that the Preliminary Investigation take no longer than 90 working days from the working day following the confirmation of the Preliminary Investigation Panel members.

Disciplinary Hearing

The Disciplinary Hearing will be conducted by a Disciplinary Panel consisting of three trained Fellows of the Institute. None of the Disciplinary Panel should have been involved in any of the earlier stages or have a conflict of interest which might create bias in respect of either the subject or complainant, or employers of either party. In more serious cases where a 'license to practise' or potential loss of livelihood is involved, a lay member (a trained individual holding the Fellowship grade of a different professional body operating) will be included on the Panel. One of the Panel will be appointed by the Chair of the Professional Standards and Development Board to act as Chair of the Disciplinary Panel. It will be their responsibility to report the findings of the Disciplinary Hearing to the Professional Standards and Development Board. The Disciplinary Hearing is held 'In-camera' and will take place at one of the Institute's offices.

The Disciplinary Panel's role is to act as impartial assessors of the complaint. They may request the attendance of any witness they feel is able to clarify or confirm the evidence collected to help them reach a decision.

They are expected to reach one of two decisions at the conclusion of the hearing: if they find the 'complaint upheld', they will also decide the sanction against the subject from a list prescribed in the Bye-Laws; if they find the 'complaint unproven', it will be dismissed.

Disciplinary Process

This involves the collection, examination and clarification of evidence. Prejudicial material that is irrelevant to the 'case to answer' will not be presented as evidence. The subject and complainant should have timely access to all evidence and responses. Where the complaint relates to matters of a specialised technical nature, the Disciplinary Panel may engage an expert technical witness. The Disciplinary Panel may make a decision after examining the evidence, or in more serious complex cases, organise an extended hearing to which all parties are invited. For extended hearings, consideration may be given to inviting a legal adviser to attend and advise on the legal process but not vote on the decision.

The subject of the alleged misconduct will be invited to the Disciplinary Hearing. A complainant may be invited to attend to observe the proceedings, at the discretion of the Disciplinary Panel, but not be allowed to speak. They can however be called as a witness. The parties involved will be entitled to bring to the hearing a friend. If the friend is a lawyer they may speak on the respective parties' behalf. If the friend is a non-lawyer, a 'McKenzie Friend'⁽¹⁾, they may support the respective party, take notes and quietly provide advice, but may not speak on behalf of the respective party. The cost involved in engaging a friend, be they lawyer or non-lawyer, will be borne by the individual parties.

Consideration will be given to adjourning the hearing if the subject is unable to be present or represented. If the subject fails to appear on the day of the hearing, a brief adjournment may be considered to allow enquiries to be made.

The Disciplinary Hearing will be conducted with transparent fairness. It will involve a statement of the complaint by the Case Officer (or their representative) and the evidence to support it (with any cross-examination of the witnesses) followed by a rebuttal by the subject (or their representative) with evidence which is also open to cross-examination. Additionally evidence may include written statements at the Disciplinary Panel's discretion. Neither party should be ambushed with new evidence which has not been disclosed in advance. It is anticipated that the Disciplinary Hearing will have been held within 90 working days of the Disciplinary Panel being confirmed.

Burden of Proof

This will be the civil standard, the 'balance of probabilities'. However, in cases where a 'licence to practise' or potential loss of livelihood is involved, the burden of proof will be 'beyond reasonable doubt'.

Sanction

It will be the responsibility of the Professional Standards and Development Board to recommend a sanction to the Executive Board if the 'complaint is upheld' by the Disciplinary Panel. The Professional Standards and Development Board will be briefed by the Director of Membership and Professional Standards on the sanctions that can be recommended.

Right of Appeal

The right of appeal will be available to the complainant following the Preliminary Investigation and to the subject following the Disciplinary Hearing. Both have 30 working days to lodge their appeals from the date of communication of the respective decisions. The appeal process consists of two parts: leave to appeal and if leave is granted, an independent review of the Preliminary Investigation or the Disciplinary Hearing by an Appeal Panel.

Leave to Appeal

This is not granted automatically and specific grounds should be identified usually involving the following:

- Jurisdiction – the complaint fell outside the scope of the Code of Professional Conduct.
- Procedure – correct procedure was not followed.
- Perversity – the decision was perverse in light of the evidence.
- New evidence – which could not reasonably have been produced at the original hearing.
- Proportionality – the sanction was disproportionate to the gravity of the breach.

Leave to appeal may be granted on two or more grounds, but not on an accumulation of individually insufficient arguments under two or more grounds.

Leave to appeal against 'no case to answer' will be considered by a suitable trained person who is independent of the Institute. They will review the material presented to the Preliminary Investigation, the record of its decision, and any additional evidence admitted. If the independent reviewer decides there is a 'case to answer', the Institute will refer the case to a Disciplinary Panel.

Leave to appeal against a Disciplinary Panel decision will be considered by the Chair of the Professional Standards and Development Board. If leave to appeal is granted, the Institute will convene an Appeal Panel with minimum delay.

Appeal Panel & Hearing

The Appeal Panel will be made up of three trained Fellows of the Institute, who are not members of Council or the Professional Standards and Development Board, and who have had no contact with the case before or any conflict of interest which might create bias in respect of either the subject or complainant, or employers of either party. The Chair of the Professional Standards and Policy Board will appoint one of the Panel Chair of the Appeal Panel; it will be their responsibility to report the findings of the Appeal Panel to the Professional Standards and Development Board. The Institute might decide to have a legal advisor in attendance. The Appeal Panel will be supported by the Director of Membership and Professional Standards.

The Appeal Hearing will follow the same principles as the Disciplinary Hearing, modified to suit the accepted grounds for appeal; a full hearing might not be required in all circumstances. It is anticipated that the Appeal Hearing will have been held within 90 working days of the Appeal Panel being confirmed.

Appeal to Licensing Bodies

This is only available if a member, in losing their membership as a result of disciplinary action by the Institute also loses their registration, and the appeals procedure has been exhausted. In the case of the Engineering Council this is carried out under Engineering Council Regulation 1C.

Notes

(1) <http://courtwithoutalawyer.co.uk/mckenzie-friends.html>