

**Disciplinary Procedure Rules 2019**

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## **Part 1 – Introduction**

### **Commencement**

- 1.1 These *Rules* are made in accordance with the Charter and Byelaws of the *Institute* with which they should be read. In the event of any inconsistency or conflict between the provisions of the Charter and Byelaws and these *Rules*, the provisions of the Charter and Byelaws shall prevail.

### **Overriding objective**

- 1.2 These *Rules* are in place to assist all parties in achieving the objective of dealing with *Complaints* and *Allegations* justly and proportionately. This includes: (1) ensuring the parties are on an equal footing; (2) saving expense; (3) dealing with *Complaints* and *Allegations* proportionately within the context of securing and maintaining the confidence of the public, employers and members in the insurance profession and of the *Institute*; (4) ensuring *Complaints* and *Allegations* are dealt with fairly and expeditiously and (5) allowing a *Complaint* or *Allegation* an appropriate share of the resources of the *Case Investigator*, *Disciplinary Panel* and *Appeal Panel*. The objective should always be considered when interpreting these *Rules* and throughout the disciplinary process.

### **Appointment of *Case Investigator* and *Independent Review Pool***

- 1.3 The *Board* shall designate a person or persons to act as a *Case Investigator* who shall not be a member of the *Board* or *Independent Review Pool*.
- 1.4 The *Board* shall appoint individuals to sit within the *Independent Review Pool*. The *Independent Review Pool* shall include persons who are not *Members*.
- 1.5 Members of the *Independent Review Pool* shall be eligible for re-appointment, subject to a maximum of nine years of consecutive service. Casual vacancies may be filled for any period of less than one year ending at the next meeting at which appointments or re-appointments fall to be made.

## **Part 2 – *Case Investigator***

### **Investigation**

- 2.1 A *Complaint* shall be referred to a *Case Investigator*.
- 2.2 The *Case Investigator* may, on receipt of a *Complaint*, investigate the *Complaint* or defer all or part of the investigation until the outcome of any connected proceedings.

### **Disposal**

- 2.3 Following the conclusion of the *Case Investigator's* investigation, they shall close the *Complaint* if:
- (a) they consider that there is no realistic prospect of proving the *Complaint* to the civil standard;

- (b) they consider that it is not in the public interest for the *Complaint* to proceed further under the *Rules*;
  - (c) they consider that it would be contrary to the objective at Rule 1.2 for the *Complaint* to proceed further under the *Rules*; or
  - (d) the *Time Limit* has expired, and there are no exceptional circumstances to extend this. Such exceptional circumstances may include a delay due to a determination by a court, regulatory or other statutory body.
- 2.4 Following the Case Investigator's investigation, where a *Complaint* has not been closed pursuant to Rule 2.3, the *Case Investigator* shall:
  - (a) draft an *Allegation*;
  - (b) send to the *Respondent* an investigation letter setting out the *Allegation*;
  - (c) send to the *Respondent* a copy of any documents in the possession of the *Institute* at that time upon which the *Institute* intends to rely in support of the *Allegation*; and
  - (d) invite the *Respondent* to submit written representations on the *Allegation* within 21 days, or any specified longer period which the *Case Investigator* may agree with the *Respondent*.
- 2.5 After the expiry of the time limit for the *Respondent* to submit a response under Rule 2.4(d), the *Case Investigator* shall consider any response by the *Respondent* or further evidence received and either:
  - (a) close the case where they consider that one or more of the criteria for closure set out within Rule 2.3 applies;
  - (b) in appropriate cases, invite the *Respondent* to approve and sign a *Consensual Order* prepared by the *Case Investigator* which sets out a brief summary of the facts surrounding the *Complaint* and, following consideration of the *Indicative Sanctions Guidance*, the proposed sanction(s);
  - (c) find that the *Allegation* is proven where they are satisfied that it has been proved to the civil standard and, where appropriate, impose upon the *Respondent* one or more sanctions under Rule 4.1; or
  - (d) refer the *Allegation* to a *Disciplinary Panel* where, in the view of the *Case Investigator* there are exceptional circumstances which require the case to be heard by a *Disciplinary Panel*, such as where witnesses need to be cross-examined in relation to a material dispute of fact that cannot be otherwise resolved.
- 2.6 Where the *Respondent* returns a signed *Consensual Order*, the matter will be disposed of on the terms as agreed in the *Consensual Order* without the need for further process.
- 2.7 Where a *Consensual Order* is agreed by the parties the right to appeal is removed.

- 2.8 Where a *Consensual Order* is agreed by the parties, the *Complainant* shall be notified of this as soon as practicable.
- 2.9 Where the *Case Investigator* closes the case, they may issue the *Respondent* with a *Warning*.
- 2.10 Where the *Case Investigator* finds that the *Allegation* is proven, the *Institute* shall give notice of the decision and the reasons for the decision to the *Respondent* as soon as practicable.
- 2.11 The *Respondent* shall have the right of appeal against a finding that an *Allegation* is proven and/or a sanction imposed by a *Case Investigator* only on one or more of the grounds set out in Rule 5.1 and shall be notified of that right and its consequences when they are notified of the decision.
- 2.12 Save where, in the reasonable view of the *Case Investigator*, it is inappropriate to do so, the *Complainant* shall be notified of the *Case Investigator's* decision to close the case or find the *Allegation* is proven as soon as practicable following the final, non-appealable decision.

### **Part 3 – Disciplinary Panel**

#### **General**

- 3.1 The *Disciplinary Panel* shall consider at a hearing any *Allegation* referred to it by a *Case Investigator* under Rule 2.5(d), as soon as practicable in accordance with the *Rules*.
- 3.2 The *Disciplinary Panel* shall have discretion in relation to the procedure to be followed, and the evidence admitted, at the hearing, considering the objective at Rule 1.2. This discretion includes, but is not limited to, the powers set out in Rule 6.1.

#### **Pre-hearing procedure**

- 3.3 Where a hearing is to be held before the *Disciplinary Panel*, the *Institute* shall send a *Notice of Hearing* to the *Respondent* no later than 28 days before the date fixed for the hearing.
- 3.4 Within 14 days of receipt of the *Notice of Hearing*, the *Respondent* shall:
- (a) inform the *Institute* whether they intend to attend and/or be represented at the hearing;
  - (b) provide the *Institute* with the names of any witnesses they propose to call together with copies of written statements signed by those witnesses and attested by statements of truth; and
  - (c) provide the *Institute* with any other documentary evidence upon which they propose to rely at the hearing.
- 3.5 If either party fails to comply with Rule 3.3 or 3.4 and the *Chair* or *Disciplinary Panel* has not extended the time limits within those rules, that party will not be able to rely on such evidence without the permission of the *Disciplinary Panel*.

#### **Constitution and decision making**

- 3.6 The quorum for a meeting of a *Disciplinary Panel* shall be three, which must include at least one person who is not a *Member*.
- 3.7 Each *Disciplinary Panel* shall have a *Chair* who must be *Legally Qualified*.
- 3.8 The standard of proof is the civil standard and where facts relating to an *Allegation* are in dispute, the burden of proving those facts shall rest on the party who seeks to rely on those facts.
- 3.9 The *Disciplinary Panel* shall reject an *Allegation* where it is not satisfied that it has been proved to the civil standard.
- 3.10 The *Disciplinary Panel* shall find that an *Allegation* is proven where it is satisfied that it has been proved to the civil standard.
- 3.11 A simple majority decision of the *Disciplinary Panel* is required to make a decision that an *Allegation* is rejected or is proven, subject to Rule 3.12.
- 3.12 If a *Disciplinary Panel* consists of an even number in the event of an equal vote the *Chair* shall be entitled to a casting vote.

#### **Public or private hearing**

- 3.13 Hearings of the *Disciplinary Panel* shall take place in public unless the *Disciplinary Panel* is satisfied that, in the interests of justice or for the protection of the private life of the *Respondent*, the *Complainant* or any person giving evidence, the public should be excluded from all or part of the hearing.

#### **Absence of the *Respondent***

- 3.14 Where the *Respondent* does not attend and is not represented at the hearing, the *Disciplinary Panel* may nevertheless proceed with the hearing if it is satisfied that all reasonable steps have been taken to serve the *Notice of Hearing* on the *Respondent* in accordance with the *Rules* and it is appropriate and fair to proceed in their absence.

#### **Admissibility of evidence**

- 3.15 Subject to Rule 3.2 and 3.16, the rules on the admissibility of evidence that apply in civil proceedings in England and Wales shall apply.
- 3.16 At the discretion of the *Disciplinary Panel* where appropriate the strict rules of evidence shall not apply at a hearing before the Panel.

#### **Proof of certain matters**

- 3.17 Where the *Respondent* has been convicted of a criminal offence, a copy of the certificate of conviction or equivalent provided by an officer of the Court shall be conclusive evidence of that conviction and of the findings of fact upon which it was based.

- 3.18 Where the *Respondent* has been the subject of a judgment of any civil court in any jurisdiction, a copy of the judgment provided by an officer of the Court shall be conclusive evidence of that judgment and of the findings of fact upon which it was based.
- 3.19 Where the *Allegation* relates to an order of a regulatory body, a certificate as to that order signed by an officer of that regulatory body, or publication of that order on the website of the regulatory body or in any other official publication shall be conclusive evidence of the order and the findings of fact upon which it was based.

### **Witnesses**

- 3.20 Where a witness is called to give oral evidence their witness statement shall stand as evidence in chief, unless the *Disciplinary Panel* orders otherwise.
- 3.21 Each party will have the right to cross-examine the other party's witnesses. Each party may re-examine a witness called by that party.
- 3.22 Where a witness does not attend, the *Disciplinary Panel* may proceed in their absence and consider any written statement or representation from the witness and give such weight to that evidence as it sees fit.

### **Decision of *Disciplinary Panel***

- 3.23 When a decision has been reached by the *Disciplinary Panel* (or *Appeal Panel*, if applicable), it shall provide sufficient reasons for its decision and any sanctions imposed, considering the *Indicative Sanctions Guidance*. The *Institute* shall give to the *Respondent* and *Complainant* notice of the *Disciplinary Panel's* decision and the reasons for its decision as soon as practicable after the conclusion of the hearing.
- 3.24 The *Respondent* shall have the right of appeal against a finding by a *Disciplinary Panel* that an *Allegation* is proven and/or a sanction imposed by the *Disciplinary Panel* only on one or more of the grounds set out in Rule 5.1 and shall be notified of that right and its consequences at the same time as they are notified of the decision.

### **Part 4 - Sanctions**

- 4.1 Following a finding that an *Allegation* is proven and considering any mitigating and aggravating factors, the *Case Investigator* or *Disciplinary Panel* may (subject to any restrictions in the Sanctions Matrix that may apply) direct that any one or more of the following sanctions be imposed upon the *Respondent* and the date from which any sanction(s) will take effect:
- (a) A reprimand;
  - (b) A withdrawal of some or all of the *Respondent's* privileges of membership for a specified period;

- (c) An order imposing conditions which the *Respondent* must comply with for a specified period;
- (d) A fine of a specified amount not exceeding the maximum in the *Sanctions Matrix*;
- (e) An order that the *Respondent's* examination candidature be rescinded, or script, paper or submission be disallowed;
- (f) An order that the *Respondent* be excluded, for a specified period of up to 3 years, from examinations held by the *Institute*;
- (g) An order that the *Respondent* pay any subscription arrears or other monies due to the *Institute*;
- (h) an order that the *Respondent's* Statement of Professional Standing be suspended or withdrawn for a specified period; that the *Respondent* be declared ineligible to apply for a Statement of Professional Standing for a specified period; and/or that the *Respondent's* Statement of Professional Standing be issued/re-issued subject to the imposition of conditions;
- (i) an order that the *Respondent* be declared ineligible to apply for membership of the *Institute* for a specified period of up to 5 years;
- (j) an order that the *Respondent* be suspended from membership of the *Institute* for a specified period of up to 5 years;
- (k) an order that the *Respondent* be expelled from membership of the *Institute* (the *Respondent* may seek to have his status reviewed by a Panel appointed by the Professional Standards Committee after the expiry of 5 years commencing with the date the decision to expel is made); and/or
- (l) such other sanctions or orders as the *Case Investigator* or *Disciplinary Panel* considers reasonable and appropriate having regard to the overriding objective at Rule 1.2, save that no such sanction shall be imposed without giving the *Respondent* an opportunity to provide submissions on the proposed sanction under this Rule 4(l).

## **Part 5 – Appeals**

### **Grounds**

- 5.1 Where an *Allegation* has been found proven and/or a sanction has been imposed on a *Respondent* by the *Case Investigator* or *Disciplinary Panel*, the *Respondent* or the *Institute* may appeal to the *Appeal Panel* only on one or more of the following grounds:
- (a) the decision was based on an error of law or fact;
  - (b) the decision was unjust because of a serious procedural error or irregularity;
  - (c) the decision was irrational; and/or

(d) new material evidence has come to light which was not reasonably available at the time of the decision.

### **Lodging and responding to an appeal**

- 5.2 The appealing party must serve a written notice of appeal on the other party within 21 days of the decision to be appealed. Appeals served after 21 days shall not be valid and shall be dismissed.
- 5.3 The notice of appeal must state the grounds of the appeal and be signed by or on behalf of the party appealing. A notice of appeal which is not in writing; does not contain the grounds of appeal; and/or is not signed by or on behalf of the party appealing shall not be valid and shall be dismissed.
- 5.4 The party responding to the appeal must file and serve any notice of response responding to the notice of appeal no later than 21 days after receiving the notice of appeal.

### **Impact on sanction**

- 5.5 The fact that an appeal has been made has no effect on the enforcement of the sanction or publication of the decision of the *Case Investigator* or *Disciplinary Panel* save that a decision to publish may be deferred until after any *Appeal Panel* decision, at the discretion of the *Case Investigator* or *Disciplinary Panel*.
- 5.6 If either party wishes there to be a stay in the enforcement of the sanction and publication then that party must apply to the *Chair of the Appeal Panel* in writing for such a stay setting out the circumstances which justify a stay being granted.
- 5.7 The *Chair of the Appeal Panel* may order a stay in the enforcement of the sanction or publication where exceptional circumstances exist which mean that it would be unjust to enforce the sanction or publish pending determination of the appeal. No appeal lies from such a decision of the *Chair of the Appeal Panel*, which will take immediate effect.

### **Consideration by Appeal Panel**

- 5.8 The *Appeal Panel* shall consider the appeal in private on the basis of the papers submitted by the *Respondent* and/or the *Institute* unless exceptional circumstances exist that justify a public hearing.
- 5.9 The *Appeal Panel* shall not consider evidence that was not before the *Case Investigator* or *Disciplinary Panel* unless new evidence of a material nature has become available which could not reasonably have been available previously. The *Chair of the Appeal Panel* shall have discretion as to whether or not to allow new evidence to be considered by the *Appeal Panel*.
- 5.10 The quorum of each *Appeal Panel* shall be three, which must include at least one person who is not a *Member*.



- 5.11 Each *Appeal Panel* shall have a *Chair* who must be *Legally Qualified*.
- 5.12 If an *Appeal Panel* consists of an even number and in the event of an equal vote the *Chair* shall be entitled to a casting vote.

### **Decision of Appeal Panel**

- 5.13 The *Appeal Panel* may:
- (a) dismiss the appeal;
  - (b) allow the appeal and quash the original decision appealed against;
  - (c) vary the order to publish or the sanction imposed by the *Case Investigator* or *Disciplinary Panel* to one or more sanctions of greater or lesser severity within the *Sanctions Matrix*;
  - (d) Where an appeal is from a *Case Investigator* decision, remit the *Allegation* back to the *Case Investigator* where there are exceptional circumstances which require further investigation, such as where new material has come to light which was not reasonably available at the time of the original decision and needs to be investigated further, or the original investigation was fundamentally inadequate;
  - (e) Where an appeal is from the *Disciplinary Panel*, remit the *Allegation* back to the *Disciplinary Panel* for a re-hearing where there are exceptional circumstances which require the case to be re-heard by a *Disciplinary Panel*, such as where new material evidence has come to light which was not reasonably available at the time of the original decision and witnesses need to be cross-examined in relation to a material dispute of fact concerning this evidence that cannot be otherwise resolved;
  - (f) where a sanction was imposed by a *Case Investigator* and the *Appeal Panel* considers that there are exceptional circumstances which mean the case should have been heard by the *Disciplinary Panel* or, on the basis of new evidence which was not reasonably available at the time of the original decision, should now be heard by the *Disciplinary Panel*, the *Appeal Panel* can require the *Disciplinary Panel* to convene a hearing and refer the matter to it for consideration.
- 5.14 The *Institute* shall give to the *Respondent* and *Complainant* notice of the *Appeal Panel's* decision and the reasons for its decision as soon as practicable.
- 5.15 All decisions of the *Appeal Panel* are final, shall take immediate effect and are binding on all parties.
- 5.16 There is no further right of appeal from a decision of the *Appeal Panel*.

## **Part 6 – General**

### **General Powers of Management of the Disciplinary or Appeal Panel or Chair**

- 6.1 The *Disciplinary Panel*, Appeal Panel (or, in a preliminary hearing, the *Chair of a Disciplinary Panel* or *Appeal Panel* sitting alone) may: -
- (a) extend or shorten the time for compliance with any *Rule*;
  - (b) adjourn or bring forward a hearing;
  - (c) require a party or a party's representative to attend a preliminary or other hearing (either in person or by such other means as may be appropriate such as by video conferencing or telephone);
  - (d) direct that part of any proceedings be dealt with as separate proceedings;
  - (e) stay the whole or part of any proceedings;
  - (f) order that two or more *Allegations* against the same *Respondent* be considered at the same hearing where they are of a similar kind or are founded on the same facts;
  - (g) order that *Allegations* against two or more *Respondents* be considered at the same hearing where it would be just to do so, and the *Allegations* arise out of the same circumstances;
  - (h) exclude an issue from consideration;
  - (i) dismiss or determine an *Allegation* after a decision on a preliminary issue;
  - (j) at any stage before announcing whether the *Allegation* is found proved, allow an amendment to the *Allegation* after considering representations from the parties, unless it would be unfair to allow such amendment; and/or
  - (k) take any other step or make any other order for the purpose of managing or dealing with the case and furthering the objective in Rule 1.2.

### **Service of documents**

- 6.2 Notices or other documents may be sent by post or electronically.
- 6.3 Notices and other documents sent by prepaid post will be deemed to be received by the addressee on the third working day after the date of posting to an address within the UK and on the fifth working day after the date of posting to an address outside the UK.
- 6.4 In the absence of any undeliverable report, notices and documents sent electronically will be deemed to have been received immediately.
- 6.5 In proving the service of a notice or document it shall be sufficient to show that the notice or document was properly addressed and sent to the last address (including any email address) notified to the other party, and, in the case of a Member, to the address recorded on the *Institute's* member database.

### **Costs**

- 6.6 The *Disciplinary or Appeal Panel* may, subject to Rule 6.8, make such order as to costs as it considers appropriate including an order:
- (a) disallowing costs incurred unnecessarily; or
  - (b) that costs be paid by any party judged to be responsible for wasted or unnecessary costs, whether arising through non-compliance with time limits or otherwise.
- 6.7 The *Disciplinary or Appeal Panel* may, subject to Rule 6.8, order that any party bear the whole or a part or a proportion of the costs of the other party.
- 6.8 The *Disciplinary or Appeal Panel* may only make an order as to costs against the *Institute*, in exceptional circumstances, if the case was improperly brought or the *Institute* has acted unreasonably or vexatiously.
- 6.9 In determining the award for costs, the *Disciplinary or Appeal Panel* will have due regard to the *Respondent's* means.
- 6.10 The *Respondent* and the *Institute* shall be given the opportunity to make representations in respect of any sanctions and/or costs application.

#### **Publication**

- 6.11 Where a sanction is imposed on a *Respondent* by a *Case Investigator, Disciplinary Panel or Appeal Panel* this shall be published in accordance with the *Institute's* policy on publication as issued from time to time.
- 6.12 In exceptional circumstances the *Case Investigator, Disciplinary Panel or Appeal Panel* may decide that publication is inappropriate or should be anonymised.

## Glossary

“Allegation” means a charge (or charges) against a *Respondent* that by reason of certain alleged facts, they have failed to comply with the *Laws of the Institute*.

“Appeal Panel” means a panel drawn from the *Independent Review Pool* to determine any appeal against a decision made or sanction imposed by a *Case Investigator* or *Disciplinary Panel* in accordance with these *Rules*.

“Board” means the Board of the *Institute* as defined in the Charter and Byelaws and in the Board Regulations and for the purposes of these Rules includes CII’s Professional Standards Committee when exercising powers delegated to it by the Board.

“Case Investigator” means a person or persons appointed by the *Board* to investigate and process and/or dispose of *Complaints* in accordance with these *Rules*.

“Chair” means the Chair for the time being of a *Disciplinary Panel* or *Appeal Panel*.

“Complainant” means a person, whether or not a *Member*, or a department of the *Institute*, who has submitted to the *Institute* a *Disciplinary Complaint* against a *Member*.

“Complaint” means a *Disciplinary Complaint* under the Byelaws provided in written form and submitted to the *Institute* concerning a *Member*.

“Consensual Order” means an agreement prepared by the *Case Investigator* for acceptance by the *Respondent* for the disposal of an *Allegation* on agreed terms.

“Disciplinary Complaint” means an allegation that a *Member* has failed to comply with the Laws of the *Institute* and may comprise several allegations.

“Disciplinary Panel” means a panel drawn from the *Independent Review Pool* to consider an *Allegation* in accordance with these *Rules*.

“Independent Review Pool” means the pool of *Disciplinary Panel* or *Appeal Panel* members appointed by the *Board* with responsibility for the application of these Rules insofar as they relate to disciplinary matters and appeals and the adjudication of *Allegations*.

“Indicative Sanctions Guidance” means the guidance to which the *Case Investigator*, *Disciplinary Panel* and *Appeal Panel* shall refer when imposing a sanction.

“Institute” means the Chartered Insurance Institute.

“Laws of the Institute” means the *Institute’s* Charter, Byelaws and all regulations and codes (including the *Institute’s* Code of Ethics) or other requirements of the *Institute* as amended and published from time to time.

“Legally Qualified” means a person who is a barrister, solicitor, advocate, CILEx or equivalent in another common law jurisdiction and who practises or who has practised as such.

“Member” means member or former member, or student or former student of the *Institute* or any other person who has agreed to be bound by any of the *Laws of the Institute*.

“Notice of Hearing” means a notice sent to the *Respondent* by the *Institute*, informing the *Respondent* of: (a) the date, time and venue of the hearing; (b) the *Allegation and any additional documents or evidence the Institute proposes to rely up at the hearing that has not already been disclosed to the Respondent*; (c) their right to attend and/or to be represented at the hearing; (d) the *Disciplinary Panel’s* power to proceed with the hearing in the *Respondent’s* absence; (e) their right to adduce evidence; (f) their right to call witnesses, and to cross-examine any witnesses called by the *Institute*; (g) their right to make written submissions for consideration by the *Disciplinary Panel*; and (h) the requirement for the *Respondent* to provide the *Institute* with the information set out in Rule 3.4 within 14 days of receipt of the *Notice of Hearing*.

“Respondent” means a *Member* in relation to whom a *Complaint* has been made and referred to a *Case Investigator*.

“Rules” means these Disciplinary Procedure Rules.

“Sanctions Matrix” means the guidance setting out relevant considerations in respect to sanctions, as issued from time to time.

“Time limit” means 12 months from the date on which the events complained of took place or since the *Complainant* became (or should reasonably have become) aware that the events complained of took place (whichever is the later).

“Warning” is a written notice warning the *Respondent* against future similar actions to those alleged within the *Complaint*. A *Warning* may be given to a *Respondent* by a *Case Investigator* when they decide to close a case. This will remain on the *Respondent’s* record with the *Institute* and may be referred to if a further *Complaint* is made against the *Respondent*.