

Regulations for professional conduct

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REGULATION: PROFESSIONAL CONDUCT

Procedure for making an allegation regarding professional conduct

1. An allegation against an individual member of the Institute ('the Respondent') may be made by any person or organisation ('the Complainant') at any time about matters arising during membership or in the course of an application for membership. The allegation shall be handled under the terms of these regulations, whether that person is or is not a current member.
2. As an alternative to receiving an allegation from a third party, during Stages 1 and 2 (below) the CIfA may nominate someone to bring an allegation on its behalf.
3. The allegation must identify the person or organisation making the allegation, identify the member against whom the allegation is made, specify the conduct that has led to the allegation, and should identify the paragraphs which are alleged to have been breached in the *Code of conduct* or any other by-laws and/or regulations that may apply from time to time.
4. An allegation brought by a nominated person or organisation shall be handled in accordance with the same procedures that apply to any other allegation.
5. All allegations of professional misconduct are taken seriously. However, in many cases allegations arise from disputes which can be resolved by discussion rather than confrontation. The Institute believes that in most cases the first stage in resolving any dispute is for the person or organisation making the allegation to write to the individual concerned, if the matter has not already been resolved by discussion.
6. The Institute expects every member who is the subject of an allegation or dispute to respond in writing to an allegation promptly.

Procedure on receipt of an allegation

7. All allegations shall be reported to the Board of Directors

Stage 1: Assessment of an allegation

8. On receipt of an allegation, the Chief Executive or his/her nominated deputy shall have the absolute discretion to nominate an employee, or other appropriate person, to carry out an assessment. The person appointing the assessor shall make enquiries to ensure that they do not have a potentially prejudicial interest in the matter they are about to assess.
9. The assessor shall determine the following:
 - a. that the allegation received should more appropriately be resolved by discussion
 - b. that the allegation received appears to be frivolous or vexatious and reject the allegation
 - c. that the Professional conduct regulations do not comprise the appropriate process under which to consider the allegation, and reject the allegation

- d. that the allegation is appropriate for consideration under the Professional conduct regulations, and shall be investigated as a formal allegation
10. In the event of a determination that the allegation is investigated as a formal allegation (clause 9d), the assessment of the formal allegation is reported to Chief Executive or nominee.

Stage 2: Investigation of a formal allegation

11. The Chief Executive or their nominee shall appoint a Professional conduct panel (which shall not include the person or organisation which conducted the assessment) to investigate the allegation.
12. The Professional conduct panel shall consist of three people, two of whom shall be voting members of CIfA.
13. The person appointing the Professional conduct panel shall make enquiries to ensure that they do not have a potentially prejudicial interest in the matter they are about to assess.
14. The Institute will normally commence the investigation of all allegations made within twelve months of the last incident or last conduct that forms the basis of the allegation. The Professional conduct panel shall have absolute discretion as to whether the Institute should process any allegation about something that happened more than twelve months before the allegation was received by the Institute.
15. The Professional conduct panel may conduct their work as they see fit providing this is consistent with the principles of natural justice, and that may include written proceedings and/or a formal hearing.
16. Within 28 days of acceptance of the formal allegation by the Institute, the Institute shall send a copy of all of the information to the member against whom the allegation is made unless exceptional circumstances apply. Those exceptional circumstances are where the identity of the complainant needs to be withheld to enable the allegation to be made as identified in sections 30 and 31 of the Freedom of Information Act 2000. If those circumstances apply then the Professional conduct panel shall have the discretion as to the information disclosed.
www.opsi.gov.uk/acts/acts2000/20000036.htm
17. The member against whom the allegation is made shall be invited by the Professional conduct panel to give a written response to the allegation and supply evidence. The person or organisation making the allegation shall be invited to submit any further evidence. Both parties will be informed that the Professional conduct panel will make a decision on the evidence provided by both parties. The Professional conduct panel shall have the discretion to carry out any other investigations or formal hearings to assist in determining the allegation.
18. The Professional conduct panel shall recommend any one of the following for each alleged breach
 - a. that the allegation is inappropriate for consideration under the Professional conduct regulations and should be rejected

- b. that there is no case to answer
 - c. that there has been no breach of the Code of conduct and the allegation should be rejected
 - d. there has been no significant breach of the Code of conduct but conduct warrants an advisory recommendation
 - e. that there has been a significant breach of the Code of conduct
19. The Professional conduct panel will report its findings and recommendation to the Board of Directors.
20. The Professional conduct panel may recommend to the Board of Directors to cease or suspend the investigation, if it considers that it is inappropriate to continue due to anticipated or actual civil or criminal proceedings, serious illness or any other compassionate grounds.
21. The Board of Directors shall consider the recommendation of the Professional conduct panel at the next most suitable meeting at which at least three members of the Board of Directors are present. The Board of Directors shall consider a summary report from the Professional conduct panel and vote on the following to agree on one of them:
- a. whether they agree with the findings of the Professional conduct panel
 - b. whether they disagree with the findings of the Professional conduct panel as they have identified matters for further consideration
22. If the Board of Directors agrees with the findings of the Professional conduct panel either of the following actions will be taken:
- a. if the finding is to reject as inappropriate, no case to answer or that there has been no breach, no further action will be taken other than that set out in clause 23
 - b. if the finding is no significant breach or that there has been a breach of the Code of conduct, the Board of Directors will ask for a Sanctions panel to be convened to consider sanctions

If the Board of Directors disagrees with the findings of the Professional conduct panel as they have identified matters for further consideration (see 21 b) they shall provide the Professional conduct panel with the details they wish to be considered further.

23. The Institute shall notify the Complainant and the Respondent of the Board of Directors' findings.
24. If the Board of Directors finds that there are matters to be considered further, they shall notify the Professional conduct panel in writing of those matters that it believes should be reviewed further and the reasons why. The Professional conduct panel will consider those matters, act on the advice if it sees fit, and report back to the Board of Directors.

Stage 3: Sanctions

25. The Chief Executive or their nominee will appoint a Sanctions panel of six people who will normally be ClfA members. The quorum for this panel will be four.
26. The person appointing the Sanctions panel shall make enquiries of each potential member of the panel to ensure that they do not have a potentially prejudicial interest in the matter they are about to consider.
27. The Sanctions panel may make any one of the following four findings on each element of an allegation:
 - a. in the event that there does not appear to have been any significant breach of the Code of conduct, that investigations have revealed opportunities for improvement in specified areas, whether the subject of the allegation or not: the finding shall make advisory recommendations regarding any potential for improvements or redress, such as undertaking relevant CPD, using the Institute's arbitration scheme, redoing a piece of work, apologising, or making a compensatory payment not exceeding £2000
 - b. that the Board of Directors should issue a formal reprimand (normally drafted by the Sanctions panel)
 - c. that the Board of Directors should suspend the member against whom the allegation is made from membership of the Institute for at least one year and no more than three years
 - d. that the Board of Directors should expel the member against whom the allegation is made from membership of the Institute
28. The Sanctions panel shall report its findings/recommendations to the Board of Directors. The Board of Directors shall impose those sanctions unless it believes that due process has not been followed, in which case it shall either redirect the Sanctions panel to consider the case or it shall instruct the Chief Executive or nominee to appoint a new Sanctions panel.
29. In the event of expulsion, in accordance with by-law 8.7, a former member shall be entitled to reapply for membership of the Institute up to a maximum of three times. In the event of suspension, membership shall not be renewed unless and until the membership application is supported by sufficient evidence to enable the Institute in its discretion to conclude the applicant has taken sufficient steps to ensure that the circumstances of the allegation, or similar instances, would be unlikely to arise again.

Stage 4: Appeals

30. The member against whom the allegation was made may appeal the finding of the Board of Directors and/or the sanction recommended by the Sanctions panel, provided that they remain a member throughout the Professional conduct panel's investigations and the Sanctions panel's deliberations.
31. The grounds on which an appeal may be made are that
 - a. the determination is flawed because the defined process for considering a complaint was not followed
 - b. that the determination was wrong in that insufficient weight was given, or

- incorrect conclusions were made from the evidence provided
- c. that the respondent has acquired new information, which could not have been submitted to the Professional conduct panel during the initial investigation which would have been likely to have influenced the decision of the Professional conduct panel
 - d. that the sanction imposed was excessive in the light of the determination
32. Any such notice of appeal must be made in writing to the Institute within 28 days of the date of the relevant decision, and must state the grounds for the appeal and state the facts or matters relied on in support of the appeal.
33. The Chair of the Advisory Council and his/her nominees shall assess the merits of the appeal on the evidence provided under clause 32.
34. The Chair of the Advisory Council and his/her nominees shall determine
- a. that the appeal is frivolous or vexatious and reject the appeal
 - b. that there is insufficient cause given in the appeal to take the matter further and reject the appeal
 - c. that there is sufficient cause to set up an Appeal panel
35. The Chair of the Advisory Council or his/her nominee shall appoint an Appeal panel consisting of a total of six people, including five members of the Advisory Council, and a further Appeal panel member who may or may not be an archaeologist and/or a member of the Institute. The person appointing the Appeal panel shall make enquiries of each potential member of the Appeal panel to ensure that they do not have a potentially prejudicial interest in the matter they are about to consider.
36. The Appeal panel shall make determinations based on the grounds of the appeal which may include
- a. confirm the finding of the Board of Directors (and therefore the subsequent sanction)
 - b. rescind the finding of the Board of Directors (and therefore the subsequent sanction)
 - c. to substitute the finding of the Board of Directors with another from clause 18 c, d, or e,
 - d. that the new evidence was unlikely to affect the decision by the Board of Directors and confirm the finding of the Board of Directors
 - e. that the new evidence could not have been provided during the earlier investigation and was likely to affect the decision of the Board of Directors and that the Professional conduct process (under a new Professional conduct panel) should start again from clause 10

f. confirm the sanction of the Sanctions panel

g. to substitute the sanction of the Sanctions panel with another from clause 27

38. Decisions made by the Advisory Council Appeal panel are final.

Stage 5: Reporting and review

39. An account of any and all investigations and subsequent appeals shall be published in any publications the Institute shall decide.

40. An account of the case shall not be published until the 28 days for receipt of appeal have passed. A summary of the findings only may be published if the 28 days to appeal have not yet passed.

41. In the event of a reprimand, suspension or expulsion the Institute shall include in the report the name of the member(s) involved and the details of the sanction decided, unless there are exceptional compassionate grounds for not doing so. The Institute may also make this information known to third parties by other means.

42. Whatever the outcomes of any cases, the Institute will normally arrange for a review of allegations annually and publish an account of the number and nature of cases but will not name the parties to cases that have not reached a conclusion, where the allegation was not upheld, or where lesser sanctions than reprimand, suspension or expulsion were applied.

43. The review will be undertaken by a lay person (who is not a member of the Institute) who will review the papers from all of the proceedings in the period of the review. The review report will be presented to the next meeting of the Board of Directors which shall have absolute discretion as to how to respond to matters identified in the review report.