

# Disciplinary regulations

**Approved by the IFA Board on 1 September 2019**

**Effective from 1 September 2019**

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## **1. Citation, commencement and application**

- 1.1 These regulations may be cited as the Institute of Financial Accountants Disciplinary Regulations 2019. They shall take effect on 1 September 2019 and replace previous regulations.
- 1.2 These regulations apply to all Members, Students, Affiliates and Member Firms as defined in the Institute's Bye-laws and these regulations.
- 1.3 Any reference to a numbered Bye-law is a reference to the Institute's Bye-laws.

## **2. Definitions and interpretation**

- 2.1 In these Regulations, unless the context otherwise requires, the following words and phrases shall have the following meanings:

"Affiliate" means an affiliate of the Institute in accordance with the Bye-laws.

"Appeal Committee" means the Appeal Committee established by these regulations to hear appeals from decisions of the Disciplinary Committee.

"Appellant" means a Member, Student, Affiliate or Member Firm who has been the subject of a finding or order made by the Disciplinary Committee and who has given effective Notice of Appeal to the Institute.

"Board" means the Board of Directors of the Institute as from time to time constituted.

"Bye-laws" means the Bye-laws of the Institute as amended from time to time.

"Case Manager" means the person appointed by the Institute to undertake the initial consideration of a Complaint.

"Caution" means an entry placed on the disciplinary record of the Member, Student, Affiliate or Member Firm. No further action will be taken under these regulations in respect of the matter, unless further Complaints or allegations regarding the Member, Student, Affiliate or Member Firm are received. If this occurs, the original matter may be reconsidered alongside any new matter and taken into account by the relevant Conduct Committee in deciding what if any sanction to impose on the Member, Student, Affiliate or Member Firm.

"Chair" means the person appointed by the Institute according to these regulations to chair a Conduct Committee or hearing as the case may be.

"Chief Executive Officer" means the Chief Executive Officer of the Institute.

"Complainant" means a person or body who has made a Complaint against a Member, Student, Affiliate or Member Firm of the Institute.

"Complaint" means an allegation regarding facts or matters indicating that a Member, Student, Affiliate or Member Firm may have become liable to disciplinary action in accordance with Bye-law 13 (liability to disciplinary action).

"Conduct Committees" means any one or more of the Regulatory Committee, Investigations Committee, Disciplinary Committee or Appeal Committee.

"Consent Order" means an order made by the Regulatory Committee or Investigations Committee in relation to a Complaint disclosed under these regulations by a Complainant, to which the Member, Student, Affiliate or Member Firm has agreed.

“Conviction” means any matter wholly or substantially arising from a conviction in any proceedings in the UK or elsewhere for an offence in relation to which a sentence of imprisonment has been or may be imposed.

“Costs Order” means an award of costs to be paid by the Member, Student, Affiliate or Member Firm so as wholly or partly to reimburse the Institute such reasonable costs and expenses as are incurred in connection with the investigation and determination of the disciplinary action including any appeal.

“Defendant” means a Member, Student, Affiliate or Member Firm against whom a formal Complaint has been referred to the Disciplinary Committee.

“Disciplinary Committee” means the Disciplinary Committee established by these regulations to adjudicate on matters referred to it by the Investigations Committee.

“Disciplinary Record” means all orders, findings, fines, penalties and sanctions whether made by the Regulatory Committee, Investigations Committee, the Disciplinary Committee or the Appeal Committee, to which the Member, Student, Member Firm or Affiliate has at any time been subject.

“Expelled” means expulsion as a Member, Student, Affiliate or Member Firm of the Institute indefinitely.

“Institute” means Institute of Financial Accountants.

“Interested Person” means an individual or body with a proper interest in the outcome of any proceedings under these regulations and may include the individual’s employer and any other professional regulatory bodies of which, to the Institute’s knowledge, the individual belongs.

“Interlocutory Directions” means an order, discretion or timetable given at an intermediate stage of an investigation or hearing by any of the Institute’s Conduct Committees.

“Interlocutory Orders” means orders that are made without conducting the full disciplinary proceedings that would apply in other circumstances.

“Investigations Committee” means the Investigations Committee established by these regulations which undertakes such functions relating to disciplinary proceedings allocated to it by these regulations.

“Lay member” means a person who is not and has never been a Member, Student Affiliate or employee of the Institute, but may include an accountant qualified by another professional body.

“Legal Assessor” means a person appointed by the Institute to provide legal advice to the Disciplinary and/or Appeal Committees and who shall be independent from those committees.

“Legally qualified” means a solicitor, barrister, member of the Faculty of Advocates, member of the Chartered Institute of Legal Executives (CILEx) or any person approved by a Conduct Committee Chair and Institute Chief Executive Officer as having a suitable qualification, skills and experience in law.

“Member” means a member of the Institute in accordance with the Bye-laws.

“Member Firm” means a Member Firm in accordance with the Bye-laws.

“Notice of Appeal” means the notice, letter or document served on the Institute setting out the Appellant’s grounds for appeal in accordance with 9.3.

“Practice” or “Public Practice” means practice as a public accountant in the United Kingdom in accordance with the Bye-laws.

“Practising Certificate” means a certificate issued to a member under the Institute’s Public Practice regulations in force from time to time authorising the Member to engage in Public Practice in accordance with the Bye-laws.

“Practice Committee” means the Institute’s Committee responsible for ensuring compliance with the Institute’s Public Practice regulations.

“Presenting Officer” means a person appointed by the Institute to present a Complaint to the Disciplinary Committee or Appeal Committee.

“Prima Facie Case” means an allegation or series of allegations which, if proved, would result in the Member, Student, Affiliate or Member Firm being guilty of a disciplinary offence.

“Registered Address” means:

- (a) in the case of a Member in practice or a Member Firm, the place of business registered by the Member or Member Firm with the Institute or, if more than one place of business is so registered, the one registered as the principal place of business; and
- (b) in the case of a Member not in practice, a Student or Affiliate, the address registered by the individual with the Institute.

“Regulations” mean these regulations as amended from time to time.

“Regulatory Committee” means the Disciplinary Committee established by these regulations which undertakes such functions relating to disciplinary proceedings allocated to it by these regulations.

“Representative” means a solicitor or barrister or other person appointed by any party for the purposes of a hearing before a Conduct Committee Hearing.

“Respondent” means a Member, Student, Affiliate or Member Firm of the Institute in accordance with the Bye-laws.

“Student” means a student of the Institute in accordance with the Bye-laws.

“Suspension” means suspension of a Member, Student, Affiliate or Member Firm from the Institute for a definite period of time or suspension of a Member or Member Firm from engaging from public practice for a definite period of time.

“Working days” means any day other than a Saturday, Sunday, UK bank holiday or public holiday.

2.2 The rules of interpretation set out below apply to these Bye-laws.

2.3 A reference to:

- (a) a "person" includes a reference to:

- (i) any individual, firm, partnership, unincorporated association or company wherever incorporated or situate; and
  - (ii) that person's legal personal representatives, trustees in bankruptcy and successors;
- (b) a "document" includes, unless otherwise specified, any document sent or supplied in electronic form; and
  - (c) a "company" shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.4 Unless the context otherwise requires:
- (a) words denoting the singular shall include the plural and vice versa;
  - (b) words denoting a gender shall include all genders; and
  - (c) references to (or to any specified provision of) these Bye-laws or any other document shall be construed as references to these Bye-laws, that provision or that document as in force and as amended from time to time.
- 2.5 Unless stated to the contrary, a reference to a statute, statutory provision or subordinate legislation includes a reference to it as modified, replaced, amended and/or re-enacted from time to time (before or after the date of these Bye-laws and any prior or subsequent legislation made under it) but this Bye-law shall not impose on any person any greater obligation than would otherwise apply.
- 2.6 Headings and sub-headings are for convenience only and shall not affect the interpretation of these Bye-laws.

### **3. Notices**

- 3.1 For the purposes of these regulations, a notice or other document may be given to a Member, Student, Affiliate or Member Firm in accordance with Bye-law 15 (Notices).

### **4. Complaint**

- 4.1 Any Complaint against a Member, Student, Affiliate or Member Firm of the Institute shall be submitted in writing to the Institute, together with supporting evidence, using the Institute's prescribed form. The Institute as a result of its own enquiry or information may submit a Complaint against a Member, Student, Affiliate or Member Firm in accordance with these regulations.
- 4.2 The Institute's jurisdiction over its Members, Students, Affiliates or Member Firms is regulatory and disciplinary in nature. Complaints relating to fee disputes, legal disputes or business decisions will not be dealt with through the disciplinary process unless it involves liability to disciplinary action as defined in Bye-law 13 (liability to disciplinary action). If a complainant feels they have a claim in law against a Member, Student, Affiliate or Member Firm of the Institute, they may wish to seek independent legal advice. There is no provision in the Bye-laws or disciplinary regulations to order compensation or costs of any kind to the Complainant or any interested person.
- 4.3 Any Complaint against a Member, Student, Affiliate or Member Firm of the Institute shall be referred to the Case Manager who will carry out the initial consideration of the Complaint. In certain circumstances referred to below, the Case Manager may reject the Complaint without processing it further:
- (a) Time limits: when the Complaint is lodged in excess of 12 months after the last incident relied on or in excess of 12 months when that last incident became known to the Complainant. However, if in the opinion of the Disciplinary Case Manager there are public

interest reasons for pursuing the Complaint because it is of sufficient importance or gravity, the Disciplinary Case Manager will proceed with the Complaint.

- (b) Lack of jurisdiction: if the individual subject to the Complaint is no longer a Member, Student, Affiliate or Member Firm then the Disciplinary Case Manager has no jurisdiction to deal with the Complaint.
- (c) Trivial or vexatious Complaints: if the Complaint is minor in nature and the Disciplinary Case Manager is of the view that it discloses no potential liability to disciplinary action.

4.4 If the Case Manager decides that no further action is merited, then the Case Manager shall communicate in writing to the Complainant this decision. The Complainant may write to the Case Manager within 14 working days to request that the Complaint be referred to the Chair of the Investigations Committee. The Chair of the Investigations Committee may uphold the Case Manager's decision or request that the matter be referred to the relevant Conduct Committee.

## **5. The Disciplinary Process**

5.1 The Conduct Committees shall operate independently from the Board and the Institute. No current member of the Board or Institute staff shall be appointed to the Conduct Committees.

5.2 Bye-law 12 (disciplinary process) sets out the principles of the disciplinary process and Bye-law 13 (liability to disciplinary action) when a Member may be liable to disciplinary action.

5.3 The Chair of the relevant Conduct Committee has discretion to issue:

- (a) interlocutory directions at any stage prior to the conclusion of a hearing as guidance to the parties to the proceedings and any other interested person, for the efficient and equitable progress of the Complaint; or
- (b) interlocutory orders prior to a full disciplinary hearing in circumstances where it appears urgent for the protection of the public or Members or both.

5.4 The Institute reserves the right to proceed with a disciplinary referral, notwithstanding the withdrawal of a formal Complaint, if there are prima facie matters which in the opinion of the Chair of the Investigations Committee should be considered.

5.5 If, at any time after an allegation has been received, or after a Complaint has been put to a Member, Student, Affiliate or Member Firm circumstances arise which in the opinion of the Chair of the relevant Conduct Committee make it clearly inappropriate to proceed, the matter may be closed after consideration of a report on those circumstances from the Case Manager. Such circumstances would include, but are not limited to, the death or extreme ill-health of the Member, Student or Affiliate concerned.

5.6 There is no provision for the Complainant or any interested person to make an appeal against the decision or order of a Conduct Committee.

## **6. Appointment of Conduct Committee Members**

6.1 No person may be a member at the same time of more than one of the Conduct Committees. No Regulatory Committee, Investigations Committee or Disciplinary Committee member may sit on an Appeal Committee if they were previously involved with the disciplinary process of the same Complaint.

6.2 The Chairs, Members and Lay members of all Conduct Committees will be required to disclose interests to the Institute on appointment and annually thereafter.

- 6.3 Committees dealing with disciplinary matters shall be formed from individuals who meet pre-agreed objective criteria and who are selected jointly by any Conduct Committee Chair and the Chief Executive Officer.
- 6.4 All of those appointed to serve on the Conduct Committees shall be entitled to reimbursement of reasonable out of pocket expenses and remuneration at a daily rate to be agreed from time to time for attending the hearings.

## **7. The Regulatory Committee**

- 7.1 The Regulatory Committee shall consist of a Lay Chair, an additional Lay person and a Member of the Institute (in the grade of Associate or Fellow). The quorum shall be three. There shall be a majority decision.
- 7.2 The purpose of the Regulatory Committee is to investigate the alleged liability to disciplinary action by the Member, Student, Affiliate or Member Firm as defined by Bye-law 13 (Liability to Disciplinary Action) and determine if there is a prima facie case arising from complaints by the Institute relating to Bye-laws 13.1 (c) and 13.1 (d). If the complaint involves a third party other than the Institute and/or relates to an alleged liability to disciplinary action other than as defined in Bye-laws 13.1 (c) and 13.1 (d), the complaint shall be considered by the Investigations Committee.
- 7.3 The Regulatory Committee will receive evidence and submissions in each Complaint referred from the Case Manager and the Respondent having been given no less than 10 working days in which to respond.
- 7.4 If the Regulatory Committee is of the opinion that there is prima facie case that facts or matters have occurred or arisen which render a Respondent liable to disciplinary action under Bye-law 13 and which may warrant a more severe penalty than the Regulatory Committee is empowered to impose, then it shall send to the last Registered Address of the Respondent within 10 working days of the decision a summary of the facts or matters to be considered by the Disciplinary Committee.
- 7.5 Where the Regulatory Committee is of the opinion that there is sufficient evidence that facts or matters have occurred or arisen which render a Respondent liable to disciplinary action under Bye-law 13 but do not warrant a more severe penalty than the Regulatory Committee is empowered to impose, and, in addition, the Regulatory Committee considers that a referral to the Disciplinary Committee is not otherwise appropriate (for example, as a matter of general application or interest), the Regulatory Committee may impose by way of a Consent Order one or more of the following sanctions if the Member, Student, Affiliate or Member Firm so agrees:
- (a) Caution
  - (b) Reprimand
  - (c) Fine and/or costs.
- 7.6 In considering what sanction to offer by way of a Consent Order upon the Respondent, the Regulatory Committee shall have regard to any previous Disciplinary Record, and any facts, admissions and decisions relating to any Disciplinary Record against the Respondent. The Committee may offer a Consent Order in respect of the matter under consideration and/or may combine it with other disciplinary matters relating to the Respondent.
- 7.7 A fine and/or costs may be levied on the Respondent by the Regulatory Committee, in addition to any sanction imposed, if the Committee believes it to be appropriate to do so. There shall be no maximum fine and additionally or instead (as the Committee decides) unlimited costs shall be recoverable. Due regard, in setting the level of fines, will be given to formal guidelines on sanctions, the severity of the Complaint and statutory limits (including EU Directives). All fines and costs imposed shall be payable within 30 calendar days from the date of the invoice and

late payments shall be subject to interest at a reasonable rate (normally 8% over the Bank of England's base rate). An unpaid fine or costs shall be a debt enforceable before the English courts by any remedy available for contract debt. In accordance with Bye-law 5.4(g), a Respondent may be expelled at the discretion of the Chief Executive Officer for non-payment of fines and/or costs imposed by the Regulatory Committee.

- 7.8 If the Respondent concerned does not accept in writing within 21 working days a Consent Order when offered by the Regulatory Committee, the Complaint shall automatically be referred to the Disciplinary Committee.
- 7.9 Where the Regulatory Committee is of the opinion that there is insufficient evidence that facts or matters have occurred or arisen which render a respondent liable to disciplinary action under Bye-law 13, the Regulatory Committee shall dismiss the Complaint against the Respondent. In this event, it shall send to the last Registered Address of the Respondent, within 10 working days, the decision of the Regulatory Committee. No further action will be taken and there will be no record made against the Respondent.

## **8. The Investigations Committee**

- 8.1 The Investigations Committee shall consist of a Lay Chair who is legally qualified, an additional Lay person and a Member of the Institute (in the grade of Associate or Fellow). The quorum shall be three. There shall be a majority decision.
- 8.2 The purpose of the Investigations Committee is to investigate the alleged liability to disciplinary action by the Member, Student, Affiliate or Member Firm as defined by Bye-law 13 (Liability to Disciplinary Action) and determine if there is prima facie case of liability to disciplinary action.
- 8.3 The Investigations Committee will receive evidence and submissions in each Complaint referred from the Case Manager and the Respondent having been given no less than 21 working days in which to respond.
- 8.4 If the Investigations Committee is of the opinion that there is prima facie case that facts or matters have occurred or arisen which render a Respondent liable to disciplinary action under Bye-law 13 and which may warrant a more severe penalty than the Investigations Committee is empowered to impose, then it shall send to the last Registered Address of the Respondent within 10 working days of the decision a summary of the facts or matters to be considered by the Disciplinary Committee.
- 8.5 Where the Investigations Committee is of the opinion that there is sufficient evidence that facts or matters have occurred or arisen which render a Respondent liable to disciplinary action under Bye-law 13 but do not warrant a more severe penalty than the Investigations Committee is empowered to impose, and, in addition, the Investigations Committee considers that a referral to the Disciplinary Committee is not otherwise appropriate (for example, as a matter of general application or interest), the Investigations Committee may impose by way of a Consent Order one or more of the following sanctions if the Member, Student, Affiliate or Member Firm so agrees:
- (a) Caution
  - (b) Reprimand
  - (c) Fine and/or costs.
- 8.6 In considering what sanction to offer by way of a Consent Order upon the Respondent, the Investigations Committee shall have regard to any previous Disciplinary Record, and any facts, admissions and decisions relating to any Disciplinary Record against the Respondent. The Committee may offer a Consent Order in respect of the matter under consideration and/or may combine it with other disciplinary matters relating to the Respondent.

- 8.7 A fine and/or costs may be levied on the Respondent by the Investigations Committee, in addition to any sanction imposed, if the Committee believes it to be appropriate to do so. There shall be no maximum fine and additionally or instead (as the Committee decides) unlimited costs shall be recoverable. Due regard, in setting the level of fines, will be given to formal guidelines on sanctions, the severity of the Complaint and statutory limits (including EU Directives). All fines and costs imposed shall be payable within 30 calendar days from the date of the invoice and late payments shall be subject to interest at a reasonable rate (normally 8% over the Bank of England's base rate). An unpaid fine or costs shall be a debt enforceable before the English courts by any remedy available for contract debt. In accordance with Bye-law 5.4(g), a Respondent may be expelled at the discretion of the Chief Executive Officer for non-payment of fines and/or costs imposed by the Investigations Committee.
- 8.8 If the Respondent concerned does not accept in writing within 21 working days a Consent Order when offered by the Investigations Committee, the Complaint shall automatically be referred to the Disciplinary Committee.
- 8.9 Where the Investigations Committee is of the opinion that there is insufficient evidence that facts or matters have occurred or arisen which render a respondent liable to disciplinary action under Bye-law 13, the Investigations Committee shall dismiss the Complaint against the Respondent. In this event, it shall send to the last Registered Address of the Respondent, within 10 working days, the decision of the Investigations Committee. No further action will be taken and there will be no record made against the Respondent.
- 8.10 In accordance with Bye-laws 13.2 Complaints which arise from a Conviction shall be referred in the first instance to the Chair of the Investigations Committee who may direct the Complaint to the Disciplinary Committee without preliminary consideration by the Investigations Committee.

## **9. The Disciplinary Committee**

- 9.1 The Disciplinary Committee shall consist of a Lay Chair who is legally qualified, an additional Lay Member and an appropriately qualified Member of the Institute (in the grade of Associate or Fellow). The quorum shall be three. There shall be a majority decision.
- 9.2 The Disciplinary Committee shall consider those matters in respect of the Defendant referred to the Disciplinary Committee by the Investigations Committee.
- 9.3 At least 21 working days before the hearing, the Institute will send to the last notified address of the Defendant the notice of the hearing which includes the terms of the Complaint which the Institute seeks to prove, the time and place fixed for the hearing and copies of all documents upon which the Presenting Officer intends to rely.
- 9.4 The Defendant will have a right to attend the hearing and should inform the Institute of their intention to attend, and any witnesses they intend to bring on their behalf. The Defendant shall, at least 10 working days before the hearing, provide the Disciplinary Committee with copies of all documents upon which they intend to rely in evidence, failing which such documents shall not be admitted for consideration without permission of the Disciplinary Committee
- 9.5 The Defendant may be accompanied at the hearing by a representative or arrange for witnesses to attend to give evidence. The Defendant may elect to send a representative of their choice to attend on their behalf if the Defendant is not attending in person.
- 9.6 If the Defendant does not attend the hearing and is not represented at the hearing then, provided the Disciplinary Committee is satisfied that the notice required was served on the Defendant, the Committee may proceed with the hearing in the Defendant's absence.

- 9.7 Before deciding to hear and determine any proceedings in the absence of the Defendant or their representative, the Disciplinary Committee shall consider any representations, in writing or otherwise, submitted by or on behalf of the Defendant in response to the notice of the hearing and shall give any party present at the hearing an opportunity to be heard in regard to those representations.
- 9.8 All fees and expenses of the representative and witnesses shall be met in full by the Defendant. Further, the Defendant shall instruct their Representative and witnesses of the date, time, and venue of the hearing.
- 9.9 The Presenting Officer may invite a Complainant and any individual who in the opinion of the Presenting Officer is an interested person to attend the hearing to give evidence.
- 9.10 Where facts or matters relating to the particulars are in dispute, the burden of proving such facts or matters shall rest on the Presenting Officer, and the standard of proof required is the balance of probabilities, such that the committee considers that the facts are more likely than not to have happened.
- 9.11 Where a Defendant has been convicted of a criminal offence, a copy of the certificate of Conviction, certified by a competent officer of that Court in the United Kingdom, shall be conclusive proof of the conviction. The findings of fact upon which the Conviction is based shall be admissible as proof of those facts. The findings of fact set out in a final judgment of a judge of a Court in the United Kingdom shall be admissible as conclusive proof of those facts.
- 9.12 The Chair of the Disciplinary Committee has discretion to grant an application for an adjournment for any hearing which has not begun. After the hearing has begun any application for adjournment shall be decided by the members of the Disciplinary Committee hearing the case.
- 9.13 If at any time during the hearing the Chair is of the opinion that it is impracticable or would be contrary to the interests of justice for the hearing to be continued or completed, the Chair shall direct that the Complaint against the Defendant be heard by a newly appointed Disciplinary Committee, which does not include any member of the previous Disciplinary Committee.
- 9.14 If the Disciplinary Committee concludes that a Complaint against a Defendant has been upheld wholly, or in part, it shall state a finding to that effect. In the event of such a finding, it may make any one, or more, of the following orders against the Defendant, having regard to the Complaint stated by the Defendant, and the Committee's view as to the nature and seriousness of the Complaint or any other circumstances, which the committee considers relevant. The committee shall have regard to the Institute's formal guidance on sanctions and the orders that may be made by the Disciplinary Committee against a Defendant are that:
- (a) They be cautioned.
  - (b) They be reprimanded.
  - (c) They be severely reprimanded.
  - (d) Condition be imposed on the Member, Student, Affiliate or Member Firm.
  - (e) If not being a holder of a Practising Certificate, they be deemed ineligible for the award of a Practising certificate in future (or for a stated number of years).
  - (f) If in practice, their Practising Certificate be suspended or withdrawn.
  - (g) They be suspended as a Member, Student, Affiliate or Member Firm with their re-instatement being subject to conditions as decided by the Disciplinary Committee.
  - (h) They be expelled from the Institute.

- 9.15 More than one sanction may be imposed, at the discretion of the Committee. In deciding the appropriate sanction(s) the Disciplinary Committee may take into account previous disciplinary records imposed by the Institute against the Defendant.
- 9.16 A fine and/or costs may be levied on the Defendant by the Disciplinary Committee, in addition to any sanction imposed, if the Committee believes it to be appropriate to do so. There shall be no maximum fine and additionally or instead (as the Committee decides) unlimited costs shall be recoverable. Due regard, in setting the level of fines, will be given to formal guidelines on sanctions, the severity of the Complaint and statutory limits (including EU Directives). All fines and costs imposed shall be payable within 30 calendar days from the date of invoice and late payments shall be subject to interest at a reasonable rate (normally 8% over the Bank of England's base rate). An unpaid fine or costs shall be a debt enforceable before the English courts by any remedy available for contract debt. In accordance with Bye-law 5.4 (g), a Defendant may be expelled at the discretion of the Chief Executive Officer for non-payment of fines and/or costs imposed by any Conduct Committee.
- 9.17 In considering whether to impose a fine and the amount of any fine, the Disciplinary Committee may consider (among other things) the nature and seriousness of the breach, any other sanction and/or costs order to be made against the Defendant, and the personal/financial circumstances of the Defendant.
- 9.18 Where the Disciplinary Committee is of the opinion that there is no, or insufficient, evidence that facts or matters have occurred or arisen which render a Member, Student, Affiliate or Member Firm liable to disciplinary action under Bye-law 13 (liability to disciplinary action), the Disciplinary Committee shall dismiss the Complaint against the Defendant, without requiring the Defendant to give evidence.
- 9.19 The written decision and reasons of the Disciplinary Committee will be sent to the Defendant at their last Registered Address within 10 working days of the signing of the decision.
- 9.20 If the Defendant wishes to exercise their right to appeal, they shall notify the Institute in writing stating the grounds for the appeal, within 21 working days of being sent the decision of the Disciplinary Committee.
- 9.21 Sanctions and costs imposed upon the Defendant will be effective from the date of the notice which communicates the written decision to the Defendant, subject to these being postponed in the event of the right of appeal being exercised until that appeal has been abandoned or determined by the Appeal Committee.
- 9.22 The proceedings of the Disciplinary Committee will be held in public. All deliberations of the Disciplinary Committee will be held in private.
- 9.23 The Presenting Officer shall be entitled to be present at the hearing of the Disciplinary Committee, and shall be given a reasonable opportunity to present the Complaint against the Defendant.
- 9.24 A Legal Assessor may be appointed at the discretion of the Institute and shall be present at the hearing of the Disciplinary Committee unless their presence is not required by the Committee. The Legal Assessor will advise the Committee on any legal points which arise and all advice shall be given and/or repeated in the presence of the parties in attendance. The Legal Assessor does not form part of the decision-making process pertaining to the outcome of the hearing and is independent of the parties, the Institute and the Committee.
- 9.25 The conduct of the proceedings within the Disciplinary Committee is entirely at the discretion of the Chair.

## **10. The Appeal Committee**

- 10.1 The Appeal Committee shall consist of a Lay Chair who shall be legally qualified, an additional Lay Member and a suitably qualified member of the Institute (in the grade of Associate or Fellow). The quorum shall be three. There shall be a majority decision.
- 10.2 The Chair of the Appeal Committee and/or the Appeal Committee may agree to hear the appeal if they are satisfied that the Disciplinary Committee:
  - (a) failed to act in accordance with the disciplinary regulations; or
  - (b) made an error in law or in fact; and
  - (c) that has had a material impact on the decision made.
- 10.3 The Appellant may appeal against the Disciplinary Committee's order within the period of 21 working days from the notice of the disciplinary order, serve notice and grounds of appeal. Where Notice of Appeal has been served, but no grounds of appeal, an application for an extension of the 21 working days' period for service of grounds of appeal shall be made in writing to the Chair within 21 days from the date of service of the written record of the Disciplinary Committee decision.
- 10.4 An application for leave to serve Notice of Appeal outside the 21 working days' time limit shall be made in writing to the Institute, setting out the reasons why notice of appeal could not reasonably have been given within the time limit, and be accompanied by documents or other material in support of the application including, where appropriate, a medical certificate or other confirmation of a medical condition.
- 10.5 On receipt of such an application, the Chair of the Appeal Committee shall consider the application together with the Committee appointed. Written notice of their decision will be given to the Appellant at the address specified in the application.
- 10.6 If, in the Chair's opinion, the circumstances are exceptional and the interests of justice so require they may admit the grounds of appeal outside the 21 working days' time period.
- 10.7 Where the Appellant serves a Notice of Appeal but fails, thereafter, to serve grounds of appeal within the 21 working days of the Disciplinary Committee order, the Disciplinary Committee's order shall take effect as if the Appellant had served a notice of withdrawal of the appeal on the last day of that period.
- 10.8 The Institute may, within 10 working days of receipt of an effective notice of appeal, respond to the Appellant's request for an appeal.
- 10.9 No less than 21 working days before the date appointed for the hearing of the appeal, the Institute shall provide the Appellant with the following:
  - (a) a copy of the Notice of Appeal and grounds of appeal;
  - (b) a copy of any answer to the appeal by the Institute;
  - (c) a copy of any documents or any other material submitted to the Investigation Committee or Disciplinary Committee that are relevant to the appeal.
- 10.10 The Appeal Committee may hear any witness or allow the production of any material that was not before any of the Conduct Committees which heard the matter at the first instance. Any new evidence shall be evidence that was not, and could not have been made available to any previous Committee or at first instance. The request to hear new evidence at the Appeal Committee shall be made in writing, to the Chair of the Appeal Committee appointed to hear the appeal, not less than 21 working days before the date fixed for hearing and give reasons for the application and specify the relevance to the grounds of appeal or the of the new evidence.

- 10.11 If a request made under Regulation 10.10 is granted, the Appellant shall immediately, and in any event no later than 10 working days before the hearing, provide a copy of the new material and of the new statement of any witnesses to be called at the hearing. If such documents are not provided within 10 working days of the hearing, the documents shall not be admitted for consideration without permission of the Appeal Committee
- 10.12 If leave is given to introduce new evidence, the other party may introduce evidence in rebuttal provided that they give copies of any material or statements they intend to rely upon and make available for the Appeal Committee, not less than 10 working days before the date fixed for hearing.
- 10.13 The Appellant will have the right to attend the hearing and should inform the Institute of their intention to attend, and any witnesses they are bringing on their behalf at least 10 working days before the meeting.
- 10.14 The Appellant may elect to send a Representative of their choice to attend on their behalf if the Appellant is not attending in person. All fees and expenses of the representative and witnesses shall be met in full by the Appellant. Further, the Appellant shall instruct their representative and witnesses of the date, time and venue of the hearing.
- 10.15 If the Appellant does not attend the hearing and is not represented at the hearing then, provided the Appeal Committee is satisfied that the notice required was served on the Appellant, the Committee may proceed with the hearing with the Appellant's absence. Before deciding to hear and determine any proceedings in the absence of an Appellant or their Representative, the Appeal Committee shall consider any representations, in writing or otherwise, submitted by or on behalf of the Appellant in response to the notice of the hearing and shall give any party present at the hearing an opportunity to be heard in regard to those representations.
- 10.16 The Presenting Officer may invite a Complainant and any individual who in the opinion of the Presenting Officer is an Interested Person to attend the hearing to give evidence.
- 10.17 The Chair of the Appeal Committee has discretion to grant an application for an adjournment for any hearing which has not begun. After the hearing has begun any application for adjournment shall be decided by the members of the Appeal Committee hearing the case.
- 10.18 If at any time during the hearing the Chair is of the opinion that it is impracticable or would be contrary to the interests of justice for the hearing to be continued or completed, the Chair shall direct that the Complaint against the Appellant be heard by a newly appointed Appeal Committee, which does not include any member of the previous Appeal Committee.
- 10.19 The Appeal Committee may decide:
- (a) to uphold the findings and sanctions of the Disciplinary Committee wholly or partly
  - (b) to vary or rescind the findings and sanctions of the Disciplinary Committee wholly or partly
  - (c) to make an award of costs against the Appellant in respect of the appeal.
  - (d) to direct that the Complaint shall be re-heard by a new Disciplinary Committee appointed under 9.1.
- 10.20 In accordance with Bye-law 5.4 (g), an Appellant may be expelled at the discretion of the Chief Executive Officer for non-payment of fines and/or costs imposed by any Conduct Committee
- 10.21 The decision of the Appeal Committee shall be final and there shall be no further right of appeal. There shall be no right of appeal to the Board or the Chief Executive Officer.
- 10.22 The Appellant will be informed in writing of the decision of the Appeal Committee within 10 working days of the hearing.

- 10.23 Any sanctions, fines and/or costs made against the Appellant will be effective from the notice date.
- 10.24 A fine and/or costs may be levied on the Appellant by the Appeal Committee, in addition to any sanction imposed, if the committee believes it to be appropriate to do so. There shall be no maximum fine and additionally or instead (as the Committee decides) unlimited costs in respect of the appeal shall be recoverable. Due regard, in setting the level of fines, will be given to formal guidelines on sanctions, the severity of the Complaint and statutory limits (including EU Directives). All fines and costs imposed shall be payable within 30 calendar days from the date of the invoice and late payments shall be subject to interest at a reasonable rate (normally 8% over the Bank of England's base rate). An unpaid fine or costs shall be a debt enforceable before the English courts by any remedy available for contract debt.
- 10.25 The proceedings of the Appeal Committee will be held in public. All deliberations of the Appeal Committee will be held in private.
- 10.26 The Presenting Officer shall be entitled to be present at the hearing of the Appeal Committee and shall be given a reasonable opportunity to present the Complaint against the Appellant.
- 10.27 A Legal Assessor may be appointed at the discretion of the Institute, and shall be present at the hearing of the Appeal Committee unless their presence is not required by the Committee. The Legal Assessor will advise the Committee on any legal points which arise and all advice shall be given and/or repeated in the presence of the parties in attendance. The Legal Assessor does not form part of the decision making process pertaining to the outcome of the hearing. The Legal Assessor shall not have been the Legal Assessor for the Disciplinary Committee in the same case.
- 10.28 The conduct of the proceedings within the Appeal Committee is entirely at the discretion of the Chair.

## **11. Duty to co-operate with investigations and hearings of Conduct Committees**

- 11.1 Any Member, Student Affiliate or Member Firm requested to do so shall provide their full and prompt co-operation to the Presenting Officer of the Institute (or any person acting on behalf of the Presenting Officer) and any Conduct Committee in connection with an investigation or committee hearing involving the Member, Student, Affiliate or Member Firm.
- 11.2 Failure to co-operate shall constitute a breach of these regulations and may render the Member, Student, Affiliate or Member Firm liable to disciplinary action. Evidence of failure to co-operate with disciplinary proceedings includes, but is not limited to failure by the Member, Student, Affiliate or Member Firm to communicate, provide the requested information and/or answer queries by the Institute to specified timescales.

## **12. Public notification of findings**

- 12.1 With the exception of Cautions issued by the Regulatory Committee and Investigations Committee, a record of adverse decisions shall be published, as soon as practicable, in such manner as the Institute sees fit.

## **13. Register**

- 13.1 A permanent register shall be kept of all proceedings and outcomes of disciplinary cases.

#### **14. Written decisions**

- 14.1 Written decisions by the Conduct Committees shall be kept by the Institute of the proceedings of the Conduct Committees including the names of those present and the decisions reached.
- 14.2 The written decisions of the Conduct Committees are confidential to the parties involved in the disciplinary proceedings and not for wider circulation to the general public. In its regulatory and supervisory capacity, the Institute may share the written decision to other regulators where appropriate.

#### **15. Resignation**

- 15.1 In accordance with Bye-law 5.3, a Member, Student or Affiliate cannot resign from the Institute while a Complaint about them or any Member Firm to which they belong has been received by the Institute, until the matter has been finally settled and any fine or costs awarded against them have been paid in full.
- 15.2 A Member Firm cannot cease to be registered as a Member Firm of the Institute while a Complaint against the Member Firm has been received by the Institute, until the matter has been finally settled and any fine or costs awarded against the Member Firm been paid in full.