

FOR MEMBERS OF THE INSTITUTE OF REFRIGERATION

As reviewed by the IOR Board of Trustees on 29th June 2020

“The primary purpose of disciplinary proceedings is not to punish, but to protect the public, to maintain public confidence in the integrity of the profession, and to uphold proper standards of behavior.” Lord Collins, R (on the application of Coke-Wallis) v ICAEW, Supreme Court, 2011.

1 Introduction

An essential function of professional Institutes is self-regulation: the setting and regulation by members of appropriate standards of professional competence. The Engineering Council requires, through its Charter and Bye-laws, that the IOR have a Code of Professional Conduct and supporting disciplinary and appeals procedures.

2 Scope

This is primarily aimed at the handling of complaints against Engineering Council registrants received by licensed IOR members but may be applicable to non-registrant members. It is also applicable if the IOR becomes aware that a registrant has been convicted of, or accepted a caution for, a relevant criminal offence.

3 Principles of IOR disciplinary procedure

- Whether conducted in public or in private, it should be clear, open, fair, unbiased and proportionate;
- All persons involved should respect the confidentiality of the proceedings;
- No person should participate in decision-making in more than one stage of the procedure in any particular case;
- While the procedure is the responsibility of the IOR governing body, it should delegate authority in order to comply with the third principle above;
- Judgement by peers. Staff may provide secretarial support and procedural advice but should not influence or participate in the decision-making process, even if they are members of the Institute;
- Presumption of no liability until breach of Code of Professional Conduct admitted or proved. Decisions should be based on the appropriate standard of proof (see 5.5 below).
- Proved breaches of the Code of Professional Conduct should attract sanctions commensurate with the seriousness of the breach.
- Training should be given to those involved in assessing and adjudicating complaints;
- Clear timescales should be established for each stage of the procedure and progress should be actively monitored by a senior staff member;
- Records should be maintained for a defined minimum period.

4 Authority

The IOR Code of Professional Conduct for Members and disciplinary procedures are an annex to the Rules of the IOR as agreed by the Board of Trustees and referred to in the Constitution.

The Board of Trustees has the power to remove or impose other sanctions on a member should the charity trustees decide that it is in the best interests of the Institute that the member in question should be removed from membership, and pass a resolution to that effect. [see clause 4 of the IOR Constitution of 3.5.16]

The Board of Trustees is responsible for publishing these Rules governing its disciplinary procedure, covering preliminary investigations, disciplinary hearings, burden of proof, sanctions, appeals and publication of outcomes on its website, in the members' area.

A member who resigns, or whose membership lapses through non-payment of fees or subscriptions, after a complaint against him has been lodged with the IOR, shall be deemed to remain in membership until completion of the disciplinary process.

5 Components of the Procedure

5.1 The Code of Professional Conduct clearly sets out expectations in respect of professional competence and behaviour in such a way that any legitimate complaint against a member can be framed as an alleged breach of a provision of the code. It was agreed by Council on 2nd March 2017 and is published on the website in the members' area together with the Disciplinary procedure and circulated to new members. The Code is reviewed at appropriate intervals and at least every 2 years.

5.2 Once a complaint has been received a Preliminary Investigation will decide whether or not there is a case to answer. Such investigation can be conducted by a small panel, or even one nominated member of the IOR. The investigation should first determine whether the alleged misconduct would, if admitted or proved, lie within the ambit, or jurisdiction, of the Disciplinary Panel. If so, evidence should be assembled to assess the validity of the complaint. The subject of the complaint should be informed and kept informed of developments; evidence submitted by the complainant should be disclosed to the subject and vice versa.

A decision of "no case to answer" will result in the dismissal of the complaint. The subject and the complainant should be informed of the reason for the decision (lack of jurisdiction or insufficiency of evidence). Records of the complaint, including the evidence, need not be maintained beyond the time limit for any appeal by the complainant against the decision. A finding that there was a "case to answer" should result in a referral to a Disciplinary Panel. A minor case to answer should not be summarily or informally dealt with within this stage of the procedure. The Preliminary Investigation should determine whether any criminal or civil court proceedings related to the alleged misconduct are likely or under way. If so, then the disciplinary hearing should not proceed until court proceedings, including any appeal, are complete, since the court proceedings might otherwise be prejudiced. 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 conduct. An adverse court verdict should not in itself form the basis of a complaint.

5.3 The disciplinary hearing should be conducted by a panel of not fewer than three senior, experienced and trained members. The Disciplinary Panel should have a Chairman who reports directly to the governing body. The Panel acts as impartial assessors of the complaint. They also decide sanctions from a list prescribed in Regulations and advise the governing body of their finding. Panel members should be independent. A person who has participated in a Preliminary Investigation should not act as a member of the Panel for the same case. If possible, a legal adviser should attend all hearings.

5.4 The disciplinary process involves the collection, examination and clarification of evidence. The complainant and the subject should have timely access to evidence and responses. Where the allegation relates to matter of a specialised nature the Panel should consider engaging an independent expert witness. The Panel may make a decision after examining the evidence or, in more serious or complex cases, organise an extended hearing to which all parties are invited.

For extended disciplinary hearings consideration may be given to inviting a legal adviser to attend to advise on the legal process but not to vote on the decision. Parties involved should be entitled to bring to the hearing a "next friend" who may even be a lawyer whom they may pay to represent them, including to speak on their behalf. Consideration should be given to adjourning the hearing if the subject is unable to be present or represented as it is in the interests of all parties that they attend wherever possible to present their cases. Even if the subject fails to appear on the day, a brief adjournment should be considered to allow enquiries to be made.

The hearings should be conducted with transparent fairness. They comprise a statement by the investigator (or his/her representative) of the complaint and evidence to support it (with any cross-examination of witnesses) followed by a rebuttal (by the subject or his/her representative) with evidence (which is also open to cross-examination). Additionally, evidence may include written statements, at the Panel's discretion. Neither party should be "ambushed" with new evidence which has not been disclosed in advance.

A complainant may be invited or permitted to attend the proceedings (accompanied if desired by a "next friend").

A member who resigns after a complaint has been made, or whose membership would be terminated for non-payment of subscriptions, should be deemed to remain in membership until the disciplinary process has reached its decision. If this decision is that the person be expelled from membership, his/her deemed membership will allow that to be effected and shown on the record should he/she ever seek to re-join the same or another Institute. This should be stated in the Bye-laws, Articles of Association or Regulations to which a member should assent at the time of joining the IOR.

5.5 The burden of proof is normally the civil standard, the "balance of probabilities".

5.6 If the complaint is admitted or upheld, the Panel determines which section of the Bylaws, Regulations or Code of Professional Conduct has been breached, hears any mitigation and decides the sanction. Sanctions may be exclusion from membership, withdrawal of the practising certificate, suspension of membership or membership privileges (which might nevertheless permit access to facilities for maintenance of CPD or retraining during suspension), reprimand accompanied by advice on future actions or retraining. Fines are generally regarded as not appropriate for professional bodies, since sanctions do not represent punishment. Similarly, terms such as “accused”, “offence”, “guilty”, “verdict” and “penalty” are best avoided. However, an order for costs could in some circumstances be appropriate, for example if the Institute had found it necessary to engage a lawyer.

5.7 A right of appeal should exist. This right should be available to the complainant following the preliminary stage and to the subject following the disciplinary hearing stage. A reasonable time limit for lodging an appeal should be specified in Regulations. The appeal process consists of two parts: leave to appeal and, if granted, a hearing by an Appeal Panel. The Appeal should be considered by persons who have had no contact with the case beforehand. The Institute might decide to have a legal advisor in attendance for either or both parts of the process.

Permission to appeal is not granted automatically and specific grounds should be identified. The normally recognised grounds for appeal are:

- Jurisdiction (whether the alleged misconduct would be within the scope of the provisions of the Bylaws or the code of conduct);
- Procedure (was not followed);
- Perversity (the decision was perverse in the light of the evidence);

New evidence (which could not reasonably have been produced at the original hearing).and additionally for an appeal against a Disciplinary Panel decision:

- Proportionality (the sanction was disproportionate to the gravity of the breach)

The argument under each ground must stand on its own. Leave to appeal may be granted on two or even more grounds, but should not be granted in response to an accumulation of individually insufficient arguments under two or more grounds.

An appeal against “no case to answer” should be considered by one person independent of the Institute. In these circumstances only, leave to appeal and the appeal itself may be considered as a single process and be conducted by the same person. If there are valid grounds for appeal he/she should review the material presented to the Preliminary Investigation, the record of its decision and any additional evidence admitted. If the independent reviewer decides that there is a “case to answer” the Institute should refer the case to a Disciplinary Panel.

Leave to appeal against a Disciplinary Panel decision should be considered by a panel of three members. If leave to appeal is granted the Institute should with minimum delay convene an Appeal Panel comprising at least three senior persons including one lay person independent of the Institute. It should be as independent of the governing body as is practical bearing in mind the need to understand and weigh specialist subject matter. The appeal hearing should follow the same principles as the disciplinary hearing, modified to suit the accepted grounds for appeal; a full re-hearing is not essential in all circumstances.

If the appeal is upheld the Appeal Panel may reverse the decision of the Disciplinary Panel or uphold its decision but reduce the sanction.

5.8 Appeal to the Engineering Council is only available if a member, in losing his/her membership as a result of disciplinary action by the IOR, also loses his/her registration and the IOR's appeals process has been exhausted. This appeal is carried out under the relevant Engineering Council Regulation. Complaints not amounting to an appeal to the Engineering Council in respect of other matters may result in the Engineering Council discussing the case with the IOR concerned only to confirm that the procedure approved as part of the licensing process had been followed.

5.9 While the Engineering Council should be notified of the progress and outcome of a disciplinary case it should not be invited to ratify the finding and sanction, since it has not heard the evidence. If the governing body chooses to discuss a case, any person who is or has been involved in the process should absent him/herself.

5.10 The IOR reserves the right to publish details of established breaches of the Code of Professional Conduct, which should in the case of a registrant include informing the Engineering Council. This might in fairness extend to publishing, at the request of the subject, notification that a complaint has not been upheld. The IOR must inform the Engineering Council of any expulsion, whether or not the individual is registered by the Institute.

Where a complaint is upheld and the appeal process exhausted, the Engineering Council is responsible for informing any other Institutes of which the registrant is known to be a member, so that they may decide what action should be taken. This is particularly important if the person is registered through an Institute other than that which has carried out the disciplinary procedure.

5.11 If an individual who is asked to serve on any panel has a conflict of interest in relation to any part of the allegations, or has a connection with the subject or the complainant which creates a real danger of bias, or which could cause others to think it could influence his/her decision, he/she should declare it and disqualify him/herself from participating.