

MEMBERS PROFESSIONAL CONDUCT RULES – APPEALS BOARD HEARING

PROCEDURE NOTE

Under the Members Professional Conduct Rules Monitoring and Investigation Procedures Disciplinary Rules and Procedures (“Rules”) of the Society of Chartered Surveyors Ireland (“Society”) Members have the right to appeal decisions of a Professional Conduct Committee (the “PCC”) to an Appeals Board.

The Rules provide that an Appeals Board (“Appeals Board”) shall be appointed from the lists kept for the purposes of Rules 9.08 (a) and 9.12 and shall comprise a chair and two other panellists, at least one of whom shall be a Lay Member. This Procedure Note sets out guidance for any Appeals Board appointed to consider appeals against decisions made by a PCC and referred to the Appeals Board under the Rules.

1 GENERAL

- 1.1 An Appeals Board shall respect and abide by the constitutional principles of fair procedures and the ordinary rules of natural justice in adjudicating upon and determining the complaint.
- 1.2 An Appeals Board is guided by the Rules and "Sanctions Policy" in connection with bye law 15.
- 1.3 The failure by an Appeals Board to precisely follow the Rules and Procedures laid down therein shall not invalidate a decision made by such an Appeals Board, save where a party can demonstrate that their rights have been fundamentally undermined by such failure.
- 1.4 At the start of the hearing the Chairperson shall introduce the panel and the role of any persons present e.g. note taker or an advising counsel.
- 1.5 The Chairperson shall explain clearly the purpose of the hearing and outline the procedure to be followed.
- 1.6 The Chairperson, or through him/her, any panel member, may ask questions of the Member or their representative.
- 1.7 If there is a referral to an Appeals Board in relation to a Member who lives and practises his/her profession outside the Republic of Ireland, the provisions of these Rules shall be modified so far as is necessary to ensure that the case is heard and conducted fairly. In varying the provisions of these Rules in such cases the Chairperson of the Appeals Board, shall have regard to cost, communications and local conditions.
- 1.8 Where capitalised terms are used in this Procedure Note and are not otherwise defined they shall have the meaning ascribed to them in the Rules.

2 APPEALS TO THE APPEAL BOARD

- 2.1 The role of the Appeals Board shall be to hear appeals arising from PCC decisions in accordance with the powers and procedures set out in the Rules.
- 2.2 A Member may appeal to an Appeals Board against any finding of or penalty or sanction imposed by a PCC.
- 2.3 An appeal shall only be accepted by the Society if it is:
 - (a) in writing in the form prescribed by the Society from time to time;
 - (b) specifies the grounds relied on in support of the appeal or review; and

- (c) is received by the Society within 28 days of the date on which the decision being appealed has been notified to the Member.
- 2.4 A Member may withdraw their notice of appeal at any stage. In such circumstances the Appeals Board may make an award for costs against the Member in accordance with the Sanctions Policy.
- 2.5 The Appeals Board shall usually sit in public except when reviewing a decision relating to Interim Measures.
- 2.6 The Member who may be liable for disciplinary action or the Director of Regulation may request that an Appeals Board hearing in whole or in part shall be held in private. The Appeals Board may only grant such a request in whole or in part where it considers that exceptional circumstances apply which justify that decision.
- 2.7 The Parties to the appeal may not provide new evidence to the Appeals Board which was not presented to the PCC in relation to the decision under appeal without leave of the Appeals Board.
- 2.8 The Appeals Board shall determine its own procedures and shall conduct its hearings in the manner which it determines, at its absolute discretion, having regard to the rights of all Parties. This may include calling for submissions (whether written or oral) from any Complainant or the Member and from any witnesses who it considers to be relevant to the matters under consideration.
- 2.9 Where an Appeals Board is required to decide an issue:
 - (a) the matter shall be put to a vote;
 - (b) no member of the Appeals Board shall be allowed to abstain from voting on a matter; and
 - (c) the matter shall be decided by a simple majority.
- 2.10 The Appeals Board shall make its decision in relation to the appeal and in relation to costs in the absence of the Parties and shall communicate its decision in writing in accordance with Rule 8.5 of the Rules.
- 2.11 Only where the Appeals Board considers that the PCC erred in its decision or that the penalty or sanction imposed was disproportionate may the Appeals Board allow the appeal.
- 2.12 Where the Appeals Board allows the appeal it may either:
 - (a) set aside the PCC finding that the Member was liable to disciplinary action;
 - (b) vary the penalty or sanction imposed by the PCC to one of greater or lesser severity;
 - (b) refer the matter back to a PCC for a new hearing or consideration.
- 2.13 An Appeals Board may make such order for costs against the Member or the Society as it considers fair and reasonable in accordance with the Sanctions Policy.
- 2.14 The costs of any hearing shall be as set out in the Sanctions Policy.
- 2.15 Publication of all decisions under these Rules shall be in accordance with the SCoR publication policy as set out in the Sanctions Policy.
- 2.16 All Appeals Board decisions under these Rules shall be recorded on the Member's record in accordance with the provisions of the Sanctions Policy.

2.17 All decisions of an Appeals Board shall take effect from the date specified by the Appeals Board in the notice communicating its decision.