

SOCIETY OF CHARTERED SURVEYORS IRELAND  
**MEMBERS PROFESSIONAL CONDUCT RULES MONITORING AND  
INVESTIGATION PROCEDURES DISCIPLINARY RULES AND  
PROCEDURES**

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# 1 PART 1 - INTRODUCTION

## 1.1 Preamble.

These Rules of Conduct (hereinafter referred to as the "Rules") apply to all members of the Society (as defined below) The Rules and accountability procedures are designed to establish trust in the Society and its members, to protect the public, and uphold the reputation of the profession. They cover those matters for which individual members of the Society are responsible and accountable in their professional lives and also those matters which are the responsibility of Firms. The Rules provide a strong foundation for the Society and its members and are designed to protect the public and uphold the reputation of the profession. The Rules and procedures set out herein focus on our regulatory goals and adopt the six principles of better regulation:

- o Necessity
- o Effectiveness
- o Proportionality
- o Transparency
- o Accountability
- o Consistency

The Rules together with all Applicable Standards (as defined below) set out the principles by which members of the Society should be guided. For this reason, and to assist Members requiring further guidance, the Society from time to time prepares practice standards, guidance notes, codes of conduct, information notes and help sheets for use by Members. These can be found at [www.scsi.ie](http://www.scsi.ie).

The Rules are made by the Board of Directors under Article 10 of the Articles of Association March 2017 and Bye-Law 15 of the Bye-Laws.

The Rules set out the standards of professional conduct and practice expected of members of the Society. They are additional to Members' legal obligations, for example in the areas of discrimination, employment, data protection and health and safety.

The Rules will apply from 18<sup>th</sup> September 2018.

## 1.2 Definitions

The definitions contained in the Articles of Association of the Society and the Bye-Laws of the Society with the following additions shall apply to these Rules unless the context otherwise requires;

**"Allegation"** means an allegation or complaint in writing which raises a question as to whether a Member may be liable to disciplinary action;

**"Appeal Board"** means a board established pursuant to the Rules to hear appeals against decisions taken pursuant to these Rules.

**"Appellant"** means any Person seeking an appeal or review under Part 7 of these Rules;

**"Applicable Standards"** means any practice standards, guidance notes, codes of conduct, information notes and help sheets prepared by the Society;

**"Attached Classes"** means persons as defined by the Bye-Laws;

**"Bye-Laws"** means Bye-Laws of the Society for the time being in force pursuant to Article 10 of the Articles of Association of the Society;

**"Complaint"** means a complaint in writing made against a Member;

**"Complainant"** means, as the context may require, any person making a Complaint, Allegation or a provider of Relevant Information;

**"copies"** includes photocopies, electronic or digital copies, printed out material from computer or microfiche records and faxed or scanned copies, whichever is the most appropriate in the circumstances;

**"CPD Policy"** means the policy adopted by the Society, from time to time, that sets out the obligations of all Members of the Society to undertake appropriate continuing professional development of at least a prescribed minimum number of hours per annum as set out in the Society's guidance documentation relating to CPD; to maintain records of compliance with such policy; and the consequences for any Member for failure to comply with the CPD Policy.

**"Firm" means:**

- 1.2.1 the whole or part of any body corporate; or
- 1.2.2 a partnership; or
- 1.2.3 a limited liability partnership; or
- 1.2.4 an unincorporated practice of a sole practitioner.

**"Fixed Penalty"** means a Penalty imposed in accordance with Rule 5 of these Rules or the Sanctions Policy approved by SCoR;

**"Information"** means information which is provided in support of a Complaint or Allegation or which is received by the Society which raises a question as to whether a Member may be liable to disciplinary action;

**"Interim Measures"** means measures that may be taken by the Society or any duly constituted Committee of the Society pursuant to the Bye-Laws or these Rules including but not limited to temporary suspension or a requirement that a Member refrains from practicing all or part of the role of a surveyor pending the outcome of the Society's enquiry or that of another regulatory or judicial body;

**"Lay Member"** means a person who has never been a Member or a member of the Attached Classes;

**"Mandatory Standards"** means those practice standards, guidance notes and codes of conduct notified from time to time by the Society to its members and compliance with which is stated to be mandatory for Members;

**"Member"** shall include a member of any class in the Society, with the exception of Registered Quantity Surveyors and Registered Building Surveyors who are not members of the Society. The generic terms 'Member' or 'Members' are used hereinafter to refer to all of these categories of membership of the Society;

**"Parties"** means the Member whose case is being considered and the Complainant (if any);

**"Proceedings"** means any proceedings whether of a regulatory, civil or criminal nature which relate to a Member and which might reasonably be regarded as relating to the events included in the Complaint or Allegation;

**"Professional Conduct Committee"** means the committee of the Society as may from time to time be established pursuant to the Rules to investigate conduct of a Member;

**"Regulations"** means regulations of the Society for the time being in force pursuant to Article 10 of the Articles of Association;

**"Relevant Information"** means information which discloses the basis for an investigation in relation to the conduct of a Member under the disciplinary procedures;

**"Required documents"** means such documents and records as the Society has reasonably required to be supplied to the Society pursuant to Applicable Standards or as may be required in connection with any investigation under these Rules;

"Required information" means such information as the Society has reasonably required to be supplied to the Society pursuant to Applicable Standards or as may be required in connection with any investigation under these Rules;

"**Reviewer**" means any person appointed under Rule 10.11 of these Rules;

"**Sanctions Policy**" means the policy developed by SCoR relating to sanctions which may be imposed on Members, as the same may be amended from time to time;

"**SCoR**" means the Society's Standing Committee on Regulation;

"**Society**" means the Society of Chartered Surveyors Ireland;

"**Special Post**" means a method of delivery by which the delivery of the post can be confirmed, or a method of delivery specifically agreed between the Member or Applicant and the Society;

"**The Director of Regulation**" shall mean the person so appointed from time to time by the Society, and shall where the context so requires include any person who shall be authorised by the Director General of the Society or the Director of Regulation to carry out any of the functions conferred on the Director of Regulation by the Society.

### **1.3 Interpretation**

In these Rules, unless the context otherwise requires:

- (a) words denoting the masculine gender include the feminine and neuter genders and
- (b) vice versa;
- (c) words in the singular include the plural and words in the plural include the singular; and
- (d) references to "days" relate to calendar days.
- (e) Any Special Post shall be sent to the Member or Applicant's last known address recorded or known by the Society.

## **2 PART 2 - RULES OF CONDUCT**

Members are subject at all times to the Bye-Laws and without prejudice to the generality of the Bye-Laws including Bye-Law 15 this Part 2 sets out the Rules and procedures which apply to Members in relation to their practice as a Member. Failure by a Member to comply with the Bye-Laws and/or the Rules may lead to action by the Director of Regulation and Professional Conduct Committee under these Rules.

## Personal and Professional Standards

### **2.1 Ethical and professional behaviour**

Members shall at all times act with integrity and avoid conflicts of interest and avoid any actions or situations that are inconsistent with its or their professional obligations.

### **2.2 Conduct**

Members are expected to conduct themselves in accordance with the Rules.

A non-exhaustive list of conduct which is regarded as a breach of the Rules entitling the Society to impose disciplinary sanctions on a Member is set out in Clause 17 of the Sanctions Policy.

### **2.3 Competence**

Members shall carry out their professional work with due skill, care and diligence and with proper regard for all technical standards, Applicable Standards and Mandatory Standards.

The failure by a Member to comply with a Mandatory Standard may lead to action by the Director of Regulation and the Professional Conduct Committee under these Rules.

### **2.4 Service**

Members shall carry out their professional work in a timely manner and with proper regard for standards of service and customer care which may reasonably be expected of them.

### **2.5 Continuing Professional Development ("CPD")**

Members shall plan, undertake, record and evaluate appropriate continuing professional development in accordance with the CPD Policy and, on request, provide the Society with evidence that they have done so in accordance with the Society's CPD Policy and in accordance with Part 5 of these Rules.

### **2.6 Solvency**

Members shall ensure that their personal and professional finances are managed appropriately. An undischarged bankrupt cannot continue as a member of the Society after the date he becomes an undischarged bankrupt, but he may reapply for membership of the Society upon becoming discharged from bankruptcy.

Where a Member has entered into a personal insolvency arrangement pursuant to the Personal Insolvency Act 2012 he shall notify the Society of entering into such arrangement and this may be referred by the Director of Regulation to the Professional Conduct Committee for investigation under these Rules.

## 2.7 Duty of Confidentiality

A Member shall keep confidential all matters coming within his relationship with his clients. These matters may only be disclosed with the consent of the client, where required by law or by direction of a Court.

## 2.8 Information to be provided to the Society

Members shall submit any required information in a timely manner and in such form as SCoR may reasonably require.

## 2.9 Co-Operation

Members shall co-operate fully with the staff of the Society and any person appointed by the Director of Regulation. Any failure to co-operate with the provisions of these Rules is a matter which may render a Member liable to disciplinary action. Members shall also co-operate fully with any person appointed by SCoR.

## Conduct of Business

### 2.10 Training

Members who operate as a Firm shall have in place the necessary procedures to ensure that all its staff are properly trained and competent to do their work in accordance with these Rules and all applicable legislation. This shall include ensuring that systems are in place to facilitate professional staff in attending courses and completing professional development in compliance with the CPD Policy.

### 2.11 Complaints handling

Members who operate as a Firm shall have in place an internal complaints procedure, which shall be committed to writing and be furnished to any client making a complaint to the relevant Member or the Member's Firm. Such Members shall ensure that an individual is appointed to handle complaints within their Firm and that the written internal complaints procedure identifies that individual and that a log is maintained of all complaints. The internal complaints procedure shall advise clients of their right to complain to the Society or any other named relevant authority or body.

### 2.12 Client Moneys

Members shall preserve the security of client moneys entrusted to the care of the Member or a Member's Firm in the course of its practice or business and shall comply with all legislation in relation to the holding of and safekeeping of client moneys. This obligation shall not apply to a



Member who is not required by virtue of his role in an organisation to comply with legislation in relation to the holding of and safekeeping of client moneys.

#### **2.13 Professional Indemnity Insurance**

Members shall ensure that all previous and current professional work is covered by adequate and appropriate professional indemnity insurance cover which meets standards approved by SCoR. This obligation shall not apply to a Member who is not required by virtue of his role in an organisation to take out and maintain professional indemnity insurance cover.

#### **2.14 Advertising**

Members shall advertise or promote their services only in a truthful, tasteful and appropriate manner having reference and regard to all relevant advertising standards, codes and practices.

#### **2.15 Incapacity etc.**

Members who operate as a Firm which has a sole principal (i.e. a sole practitioner or a sole director in a corporate practice) shall have in place appropriate arrangements in the event of that sole principal's death or incapacity or other extended absences.

### **3 PART 3. MONITORING AND INSPECTION PROCEDURES IN RELATION TO MEMBERS**

The Director of Regulation shall be entitled on behalf of the Society to monitor compliance by Members with the requirements of the Society and to carry out inspections of Members' business premises under these Rules.

#### **3.1 The Role of the Director of Regulation**

The Director of Regulation may require a Member to;

- 3.1.1 give required information whether or not such information has been submitted to the Society already;
- 3.1.2 provide evidence of compliance with the Society's CPD Policy.
- 3.1.3 produce to the Director of Regulation the original or copies of any documents;
- 3.1.4 produce to the Society or its representative any required documents. Where originals are removed by the Society's representative copies shall be provided to the Member;
- 3.1.5 supply an explanation in relation to required information or required documents.

#### **3.2 CPD Policy**

The Director of Regulation shall have the right, as provided for in Part 5 of these Rules, to impose a Fixed Penalty on any Member for failure to comply with the CPD Policy.

### 3.3 Inspections

- 3.3.1 The Society shall be entitled to inspect a Member's business premises for the purpose of monitoring a Member's compliance with the Rules or in connection with any investigation of a Member pursuant to these Rules. The Society's policy for inspections includes provision for regular inspections but the Society shall operate a system which priorities inspections in accordance with risk.
- 3.3.2 The Society may arrange to inspect a Member's business premises or such other location as it may reasonably require to access. Such inspection may either be:
- (a) at a time and place agreed or notified by the Director of Regulation; or
  - (b) upon production of a letter of authorisation from the Director of Regulation, an unannounced inspection at the place where the Member carries out their professional work.
- 3.3.3 As soon as possible at or after an inspection, the Society shall confirm in writing to the Member details of the information or documents supplied or inspected, and a brief account of any explanation given at the inspection.
- 3.3.4 Where appropriate the Director of Regulation or his representative may prepare a report on the inspection which may be used for regulatory purposes including as evidence of noncompliance with the Society's Rules in any disciplinary proceedings or where required by law be passed to other regulatory bodies and/or An Garcia Siochana.

## 4 PART 4- INVESTIGATION PROCESS

The Society is entitled to investigate Complaints or Allegations against Members and to take action on receipt of Relevant Information. The Director of Regulation shall be entitled on behalf of the Society to investigate Complaints or Allegations against Members and to take action on receipt of Relevant Information. This Part 4 describes the procedure to be followed by the Director of Regulation on behalf of the Society upon the receipt of a Complaint or Allegation or receipt of Relevant Information.

### 4.1 Complaints Procedure

- 4.1.1 On receipt of a Complaint, Allegation or any Relevant Information the Director of Regulation shall:
- (a) make any further enquiries which he considers necessary;
  - (b) consider whether there exists other Proceedings relating to the alleged conduct of the Member and whether in those circumstances it is appropriate for the Society to investigate the conduct of the Member or whether such investigation should be stayed pending the outcome of such Proceedings;

- (c) if he shall so decide, stay any investigation pending the outcome of such Proceedings;
- (d) consider whether an alternative remedy exists, whether pursuant to a statutory framework such as the Property Services Regulatory Authority ("PSRA") or otherwise relating to the alleged conduct of the Member and if so provide information on a non-directive basis to the Complainant as to the remedies which may be available to him.

Proceedings shall not be regarded as finally determined for the purposes of this section until any appeal (including an appeal by way of case stated), rehearing or retrial in relation to those proceedings has been determined.

4.1.2 The Director of Regulation shall write to the Member against whom a Complaint or Allegation has been made or in respect of whom Relevant Information has been received:

- (a) informing him of the Allegation, Complaint or Relevant Information;
- (b) providing him with copies of any documentation received or obtained by the Society which the Director of Regulation considers to be relevant;
- (c) inviting him to provide a written response to the Allegation, Complaint or Relevant Information within a period specified by the Director of Regulation;
- and
- (d) advising him that any response may be disclosed to the maker of the Allegation, Complaint or provider of the Relevant Information (if any) for comment.

4.1.3 Having considered any representations (whether written or oral) made or provided by the Member and having made any further enquiries he considers necessary (including seeking comments from any person deemed relevant to the preliminary investigation) the Director of Regulation shall:

- (a) consider whether the matter is appropriate for a Fixed Penalty, in which event he shall be entitled to issue a Fixed Penalty for such matters as are specified in Part 5 of these Rules or in the Sanctions Policy;
- (b) decide, having regard to the matters alleged in the Allegation, Complaint or Relevant Information and the public interest, whether or not to refer the Allegation, Complaint, or Relevant Information to the Professional Conduct Committee for further action under these Rules;
- (c) inform the Member and any Complainant of the decision and his reasons for making such decision, this may include as the context so requires informing

the Member and any Complainant of the right to have the decision reviewed under Rule 4.1.4.

- 4.1.4 A Member and any Complainant shall be entitled to have any decision of the Director of Regulation made under Rule 4.1.3 (a) and (b) reviewed by a Reviewer in accordance with Rule 8.

## **5. Part 5 - Continued Professional Development**

This Part 5 sets out the policy and procedures to be followed by the Director of Regulation in regulating the CPD Policy;

### **5.1 Members Obligation and Consequences for failure to comply with CPD Policy**

Failure by any Member to comply with the mandatory CPD requirement under the Society's CPD policy will lead to automatic sanction by the Director of Regulation in accordance with Rule 5.2 and may, at the discretion of the Director of Regulation, lead to possible further referral by the Director of Regulation to the Professional Conduct Committee under these Rules.

### **5.2 Sanction for breach of CPD Policy**

5.2.1 **on a first breach**, the Director of Regulation shall caution the member against repeating the breach of the CPD Policy. The caution will be maintained on the Member's file for a period of five years from the date of issue.

**In addition**, if a member fails to rectify their failure to comply with the CPD policy within 28 days from the date on which they are advised of the failure to comply with the CPD Policy and issued with a caution, a Fixed Penalty will be levied against the Member in the amount of €150.

Failure to discharge the Fixed Penalty within the time prescribed for payment will lead to an automatic increase in the level of the Fixed Penalty to €300.

If the member rectifies their failure to comply with the CPD policy within 28 days from the date on which they are advised of the failure to comply with the CPD Policy, the monetary fine will not be levied against the Member, but the first breach caution will still remain on the members record.

5.2.2 **on a second breach**, which occurs within five years of the first breach, a Fixed Penalty will be levied in the amount of €250. Failure to discharge the Fixed Penalty

within the time prescribed for payment will lead to an automatic increase in the level of the Fixed Penalty to €500.

5.2.3 **on a third breach**, but within five years from the first breach, the Director of Regulation shall refer the complaint to the Professional Conduct Committee for further action under these Rules.

### **5.3 Right to be advised of decision**

The Director of Regulation shall inform the Member of the decision to impose a sanction under this Part 5 and his reasons for making such decision, this may include as the context so requires informing the Member of the right to have the decision reviewed under Rule 5.6.

### **5.4 Correction of Members record on administrative error on part of Society**

Where there is an administrative mistake, on the part of the Society, any caution registered in such a situation may be expunged from the Members record and any monetary Fixed Penalty paid, returned to the Member.

### **5.5 Obligation on Member to make good any shortfall in CPD requirement**

In all situations, where a Member has failed to comply with the CPD Policy, the Member must make good and authenticate the shortfall in CPD in advance of the next CPD audit, which is carried out annually, having being requested to do so by the Director of Regulation.

### **5.6 Right to have decision reviewed**

A Member shall be entitled to have any decision of the Director of Regulation made under this Part 5 reviewed by a Reviewer in accordance with part 8.

## **6 PART 6 - PROFESSIONAL CONDUCT COMMITTEE RULES AND PROCEDURES.**

This Part 6 describes the role and responsibility of the Professional Conduct Committee and its rules and procedures.

### **6.1 Role of the Professional Conduct Committee**

The Role of the Professional Conduct Committee shall be to investigate complaints, hear disciplinary cases and exercise the disciplinary powers of the Society as set out in the Bye-Laws, Rules and Regulations in accordance with the powers and procedures set out in these Rules.

## 6.2 Investigation of a complaint by the Professional Conduct Committee:

6.2.1 Where the Director of Regulation refers a matter to the Professional Conduct Committee for consideration under these Rules, the Professional Conduct Committee:

- (a) shall consider the Complaint, Allegation or Relevant Information; and any documentation provided to it by the Director of Regulation following his investigation, including any responses received from the Member or the Complainant;
- (b) shall make such further enquiries it considers appropriate (to include enquiries with any relevant authorities);
- (c) may arrange any investigation meeting as the Professional Conduct Committee considers appropriate or required with the Complainant, Member or any relevant witness whether to make further enquiries or to seek to establish any relevant facts.

6.2.2 Having considered the Complaint, Allegation or Relevant Information, the Professional Conduct Committee:

- (d) may dismiss the Complaint, Allegation or Relevant Information on grounds that it is frivolous or vexatious; or does not disclose a prima facie case of breach of these Rules;
- (e) impose a appropriate sanction on the Member concerned, including a Fixed Penalty, where, following investigation the Professional Conduct Committee has determined that facts have been established or admitted and that in the circumstances a hearing is not warranted or required; and/or
- (f) convene a disciplinary hearing with the Member concerned in relation to the Complaint, Allegation or Relevant Information.

6.2.3 Notice of any investigation meeting or disciplinary hearing of the Professional Conduct Committee will be provided by the Society to the Complainant, Member concerned and any relevant witness, as the case may be, by Special Post.

## 6.3 Proceedings of the Professional Conduct Committee

6.3.1 Where an investigation meeting or disciplinary hearing has been convened by the Professional Conduct Committee the investigation meeting or disciplinary hearing shall be held on the date and at the time and place specified in the notice convening the meeting or hearing.

6.3.2 The Professional Conduct Committee shall have the right to consider requests for adjournments from any party, and, at its absolute discretion, to postpone or

reschedule some or all of any part of an investigation meeting or disciplinary hearing as it determines having regard to any such request or the circumstances.

- 6.3.3 The Professional Conduct Committee shall determine its own procedures and shall conduct any investigation meeting or disciplinary hearing in the manner which it determines, at its absolute discretion, having regard to the rights of all Parties and with due regard to the principles of natural and Constitutional justice. This may include calling for submissions (whether written or oral) from the Complainant or the Member and from any witnesses who it considers to be relevant to the matters under consideration.
- 6.3.4 Where the Professional Conduct Committee is of the opinion that the attendance of a witness is necessary to establish factual matters in dispute or for the fair disposal of any matter the witness shall be so advised and that the non-attendance of any such witness may lead to the Complaint, Allegation or Relevant Information being dismissed.
- 6.3.5 The Professional Conduct Committee will usually convene a hearing in private when considering the possibility of Interim Measures.
- 6.3.6 The Professional Conduct Committee shall usually convene a hearing in private when considering the possibility of all measures other than Interim Measures but shall have the right, at its absolute discretion to convene a hearing in public.
- 6.3.7 The Professional Conduct Committee shall consider the submissions and evidence presented to it and representations made to it prior to making its decision. The decision of the Professional Conduct Committee will be made in the absence of the Parties. The Professional Conduct Committee shall communicate its decision in writing to the Parties in accordance with Rule 9.5 of these Rules.
- 6.3.8 If the Professional Conduct Committee is satisfied, having regard to the seriousness of the Allegation, Complaint or Relevant Information and the public interest or the interests of a Member, that Interim Measures are required:
- (a) the Professional Conduct Committee may impose Interim Measures.
  - (b) where there has been a change of circumstances, on the application of the Member, or of his own volition, the Director of Regulation shall refer a case back for review of a decision to impose Interim Measures by a Professional Conduct Committee.
  - (c) the Professional Conduct Committee shall have the power at its discretion to conclude Interim Measures in any case.
- 6.3.9 Where Interim Measures have been imposed by the Professional Conduct Committee the Committee shall be entitled to convene a further hearing to consider whether further action is required in relation to the Complaint, Allegation or Relevant Information.

6.3.10 If the Professional Conduct Committee is satisfied that the alleged breach has been established and, if so, that it warrants a disciplinary sanction to be imposed on a Member pursuant to these Rules, the Professional Conduct Committee may impose a sanction in accordance with Rule 6.4.

6.3.11 The decision of the Professional Conduct Committee shall take effect on the date specified in any letter notifying the Member of the decision. In the event of an appeal by the Member no fine shall become payable until the determination of the Appeal but all other penalties shall continue until the determination of the Appeal.

#### **6.4 Sanctions which may be imposed by the Professional Conduct Committee**

6.4.1 The Professional Conduct Committee may determine that any of the following sanctions may be imposed on a Member:

- (a) caution the Member against repeating the conduct or action which has resulted in the liability to disciplinary action;
- (b) reprimand the Member;
- (c) suspend the Member for a period not exceeding 12 months;
- (d) require the Member to give one or more undertakings as to future conduct;
- (e) fine the Member up to a maximum figure specified in the Sanctions Policy - Fines, Costs and Administration Fees approved by SCoR;
- (f) impose conditions on the Member's continued membership of the Society;
- (g) expel the Member from membership of the Society;
- (h) make an order requiring a Member to take a specified action (which shall include but shall not be limited to directing that the Member makes restitution in such manner and to such person as the Professional Conduct Committee directs), and stating the penalty imposed if the Member fails to comply with that action.

The Professional Conduct Committee may impose more than one of the sanctions listed above.

6.4.2 The Professional Conduct Committee may cancel any action taken in relation to a Member under these Rules upon the death of a Member who has been subject to investigation.

### **7 PART 7 - APPEALS**

This Part 7 sets out the procedures to be followed in the event of an appeal against a decision made by the Professional Conduct Committee.

7.1 The role of the Appeal Board shall be to hear appeals arising from Professional Conduct Committee decisions in accordance with the powers and procedures set out in the Rules.



- 7.2** A Member may appeal to the Appeal Board against any finding of or penalty or sanction imposed by a Professional Conduct Committee.
- 7.3** 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.
- 7.4** A Member may withdraw his notice of appeal at any stage. In such circumstances the Appeal Board may make an award for costs against the Member in accordance with the Sanctions Policy.
- 7.5** The Appeal Board shall usually sit in public except when reviewing a decision relating to Interim Measures.
- 7.6** The Member who may be liable for disciplinary action or the Director of Regulation may request that an Appeal Board hearing in whole or in part shall be held in private. The Appeal Board may only grant such a request in whole or in part where it considers that exceptional circumstances apply which justify that decision.
- 7.7** The Parties may not provide new evidence to the Appeal Board which was not presented to the Professional Conduct Committee in relation to the decision under appeal without leave of the Appeal Board.
- 7.8** The Appeal 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 and with due regard to the principles of natural and Constitutional justice. This may include calling for submissions (whether written or oral) from the Complainant or the Member and from any witnesses who it considers to be relevant to the matters under consideration.
- 7.9** The Appeal 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 9.5 of these Rules.
- 7.10** Only where the Appeal Board considers that the Professional Conduct Committee erred in its decision or that the penalty or sanction imposed was disproportionate may the Appeal Board allow the appeal.
- 7.11** Where the Appeal Board allows the appeal or the review it may either:
- (a) set aside the Professional Conduct Committee finding that the Member was liable to disciplinary action;
  - (b) vary the penalty or sanction imposed by the Professional Conduct Committee to one of greater or lesser severity;
  - (c) refer the matter back to a Professional Conduct Committee for a new hearing or consideration.

- 7.12 All decisions of an Appeal Board shall take effect from the date specified by the Appeal Board in the notice communicating its decision.

## **8 PART 8 - REVIEWERS**

This Part 8 sets out the rules and procedures applicable to a Reviewer pursuant to these Rules:

- 8.1 The role of a Reviewer shall be to review administrative decisions by the Director of Regulation made under Rule 4.1.3(a) and (b), and Part 5 in accordance with the powers and procedures as set out in the Rules.
- 8.2 A Member or any Complainant may request a review by a Reviewer of a decision by lodging his request for a review on the prescribed form within 14 days of service on the Member or any Complainant of the notification of the decision of the Director of Regulation.
- 8.3 Any request for review of a Fixed Penalty shall be lodged with the Society together with the appropriate administration fee as set out in the Sanctions Policy.
- 8.4 A request for review of a Fixed Penalty shall be referred to the Reviewer who shall, having reviewed the matter, either confirm the penalty or propose modifications to the penalty and may make an order as to the costs of the review.
- 8.5 Where a Member or any Complainant has requested a review of a decision of the Director of Regulation (other than a review of the decision to impose a Fixed Penalty) the Reviewer shall consider that request and shall make such enquiries as he considers appropriate (including of the Member or any Complainant and the Director of Regulation).
- 8.6 The Reviewer may set aside or vary the decision of the Director of Regulation or, of his own initiative, refer the matter to the Professional Conduct Committee for further consideration.
- 8.7 The Reviewer shall issue his decision in writing to the Member and any Complainant and the Director of Regulation and the decision shall take effect from the date specified in the notice to the Member and any Complainant. The decision of the Reviewer shall be final.

## **9 PART 9 - RULES AND PROCEDURES APPLICABLE TO ALL PROCEEDINGS**

This Part 9 sets out the rules and procedures applicable to all proceedings by the Professional Conduct Committee or Appeals Board under these Rules.

- 9.1 If there is a referral to a Professional Conduct Committee or Appeal Board in relation to a person who lives and practices his 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 Chairman or Vice Chairman of the Professional Conduct Committee and Appeal Board, shall have regard to cost, communications and local conditions.
- 9.2 The costs of any hearing shall be as set out in the Sanctions Policy.
- 9.3 Where a Professional Conduct Committee or Appeal Board is required to decide an issue:

- (a) the matter shall be put to a vote;
- (b) no member shall be allowed to abstain from voting on a matter; and
- (c) the matter shall be decided by a simple majority.

**9.4** A Professional Conduct Committee or Appeal 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.

**9.5** All Professional Conduct Committee or Appeal Board decisions under these Rules shall be notified by the Society to the Member by Special Post within 14 days of the conclusion of the relevant hearing.

**9.6** Publication of all decisions under these Rules shall be in accordance with the SCoR publication policy as set out in the Sanctions Policy.

**9.7** All Professional Conduct Committee decisions under these Rules shall be recorded on the Member's record in accordance with the provisions of the Sanctions Policy.

**10 PART 10 - CONSTITUTION OF PROFESSIONAL CONDUCT COMMITTEE AND APPEAL BOARD**

This Part 10 sets out the role of SCoR and constitution of the Professional Conduct Committee and Appeal Board pursuant to these Rules.

**Establishment and Constitution**

**10.1** SCoR shall ensure that the Professional Conduct Committee and Appeal Board are appointed and maintained in accordance with these Rules.

**10.2** All appointments to the Professional Conduct Committee and Appeal Board shall be made in accordance with criteria set by SCoR.

**10.3** The period of office for members of the Professional Conduct Committee and Appeal Board shall be three years from the date of appointment or the remainder of such period, if filling a casual vacancy.

**10.4** Members of the Professional Conduct Committee and Appeal Board may be re-appointed for a further consecutive period of up to three years.

**10.5** No member of the Council or of SCoR may be appointed to any of the Professional Conduct Committee and Appeal Board for the purposes of these Rules.

**10.6** No member of any of the Professional Conduct Committee and Appeal Board may sit in adjudication on a hearing of any case if he has:

- (a) previously been appointed as a Reviewer on that case; or
- (b) sat as a member of any other committee, panel or board in relation to that case; or
- (c) has adjudicated on the case elsewhere in any other capacity.

**10.7** All appointments to panels or appointments of a Reviewer to determine individual cases will be made by the Society's staff, from the lists maintained at Rule 10.8 following selection criteria set by SCoR.

### **SCoR**

**10.8** SCoR shall be responsible for securing the appointment to, and the maintenance of:

- (a) lists of panel members to sit on the Professional Conduct Committee and Appeals Board;  
and
- (b) a list of Reviewers from the Professional Conduct Committee and Appeals Board.

**10.9** SCoR shall oversee the delivery of programmes of education and training for the Professional Conduct Committee and Appeals Board.

### **Professional Conduct Committee**

**10.10** A Professional Conduct Committee shall be appointed from the lists kept for the purposes of Rule 10.8 (a) and shall comprise a chair and two other panelists, at least one of whom shall be a Lay Member.

### **Reviewers**

**10.11** A Reviewer shall be appointed to consider reviews from the list kept for the purposes of Rule 10.8 (b).

### **Appeal Board**

**10.12** An Appeal Board shall be appointed from the list kept for the purposes of Rule 10.8 (a) and shall comprise a Lay Member as chairman and two other panelists.

### **Complaints**

**10.13** Any complaint about the conduct or performance of a member of the Professional Conduct Committee Appeal Board or a Reviewer shall be referred by the Society for consideration by the Chairman of SCoR.

### **Validity of Proceedings**

**10.14** The validity of any proceedings of any of the Professional Conduct Committee, Appeal Board or a decision of a Reviewer shall not be affected by any vacancy among any of the members of the Professional Conduct Committee or Appeal Board or, by any defect, in the election or appointment of any such member, panelist or Reviewer.

## **11 PART 11 - GENERAL AND MISCELLANEOUS PROVISIONS.**

### **11.1 Communication with Members**

The Society may communicate with Members by any of the following:

- (a) post
- (b) fax
- (c) electronic or digital communication
- (d) telephone
- (e) in person

### **11.2 Delivery and Service of Documents and Notices**

Documents will be considered to have been delivered and served upon a Member or Applicant where they are

- (a) given to him personally; or
- (b) sent to him by post to his last known address recorded or known by the Society (documents sent by post shall be properly addressed and pre-paid); or
- (c) sent to him by Special Post

## **SANCTIONS POLICY**

### **SECTION 1**

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#### **PART A - INTRODUCTION**

This Sanctions Policy (the "Policy") sets out the Society's approach to the application of disciplinary sanctions to a Member under the Rules. The Policy should be referred to by the Director of Regulation, the Reviewer, the Professional Conduct Committee and Appeal Board when issuing Fixed Penalty Notices, imposing sanctions or considering appeals under the Rules. The Policy is designed to supplement the Rules and does not replace or override the Rules. Where there is a conflict between the Rules and the Policy, the Rules shall prevail.

The Policy shall take effect from 18<sup>th</sup> September 2018.

#### **Definitions**

Expressions and terms when used in the Policy shall have the meanings ascribed to them in the Articles of Association of the Society, the Bye-Laws of the Society and the Rules unless the context otherwise requires.

In the Policy, the term "Relevant Decision Maker" means where the context so requires the Director of Regulation, the Reviewer, the Professional Conduct Committee and the Appeal Board.

#### **1 Policy Approach**

- 1.1 The Society has developed the Policy to ensure that a fair and consistent approach is taken in relation to Members that face disciplinary action.
- 1.2 The Policy provides general guidance on how disciplinary sanctions should be applied and is designed to inform Members who find themselves involved in a disciplinary process. It supports the Society's intention that Members who are disciplined are assisted, where possible, through help and guidance in bringing them into compliance with the Rules as well as having a system for the imposition of proportionate and dissuasive sanctions where breaches of the Rules are established.
- 1.3 The Policy will be reviewed by the Society from time to time and may be amended and/or replaced as the Society considers appropriate.
- 1.4 The Policy provides for:
  - Fixed Penalties
  - Sanctions which may be imposed by the Relevant Decision Maker

- Administration Fees
- Costs

1.5 Any fine or compensation payable pursuant to the Policy is payable in Euro.

## **2 Status of the Policy**

2.1 Those making decisions on the application of the Society's disciplinary sanctions should be guided by the Policy. No provision in the Policy should override the requirement for the Relevant Decision Maker to take account of the individual circumstances of each case when making a decision.

2.2 The decision as to whether any sanction is required and the level of such sanction is a matter for the Relevant Decision Maker who shall have an absolute discretion in reaching any decision under the Rules and this Policy.

## **3 Principles of Natural and Constitutional Justice**

3.1 The Society is committed to ensuring that its processes are compatible with the principles of Natural and Constitutional justice.

## **PART B. GENERAL CONSIDERATIONS**

The following general considerations apply to decisions by a Relevant Decision Maker. These lists are indicative only and non-exhaustive.

4 What are the relevant factors when considering the sanction for a breach

4.1 The relevant factors when considering the sanction for a breach are:

- The seriousness of the breach;
- Whether the breach involved wrong doing/blame/recklessness or dishonesty;
- The damage to the public or consumers and the amount of any loss as a result of such damage;
- Whether the breach involved client money;
- The Member's level of experience in practice;
- Where relevant, the length of time over which the breach occurred;
- The number and frequency of any breaches;
- The duration of the breach(es);
- Risk of damage to the Society's and/or Members' professional reputation;

## 5 General mitigating factors

### 5.1 General mitigating factors are:

- Steps taken to rectify breaches and to put things right, or to avoid a repeat of the breach in the future;
- Responsibility taken by the Member for any failings;
- Whether the Member notified the Society of the breach;
- Any admission and/or regret expressed;
- Any steps taken by the Member to compensate the client concerned;
- Willingness to assist the Society;
- Ill health, family or particular personal issues of the Member;
- The Member's responsiveness to the Society's request for information and the manner of the Member's engagement with the Society;

## 6 General aggravating factors

### 6.1 General aggravating factors are:

- The extent to which the Member has benefited or stood to benefit from the breach and the number or frequency of the breach(es);
- The deliberate concealment of relevant facts;
- The Member's responsiveness to the Society's request for information, the manner of the Member's engagement with the Society and/or the failure of the Member to engage with the Society.

## PART C - OTHER CONSIDERATIONS

### 7 Other matters to be considered by a Relevant Decision Maker in making its decisions

#### 7.1 The following matters should also be considered by a Relevant Decision Maker in making its decisions:

- Necessity - The necessity to deter the Member and other Members from future non-compliance
- Effectiveness - The need to ensure that any sanction is effective to achieve the Society's objective as regards the Member's conduct.
- Proportionality - The penalty must be proportionate to the breach and all the circumstances.
- Transparency - The necessity for the Society's functions and decision making processes to be transparent.



- Accountability - The need to demonstrate to the Society and to other Members that the Society takes appropriate and proportionate action in order to protect the public interest and promote regulatory compliance.
- Consistency with the principles of Natural justice and Constitutional justice.

## **8 Reasons for penalty**

- 8.1 In every case reasons should be given in writing for the decision made in relation to a particular penalty or sanction.

## **PART D - FIXED PENALTIES**

### **9 What is a Fixed Penalty and when is it applicable**

- 9.1 A Fixed Penalty is a fixed fine payable and/or caution imposed in accordance with the Rules by the Member for a breach of the Rules.
- 9.2 A Fixed Penalty is only applicable to a breach of the following Rules:
- Rule 2.5 and Part 5 - Continuing Professional Development.
  - Rule 2.8 - Information to be provided to the Society.

This list will be reviewed by the Society from time to time and may be amended as the Society considers appropriate.

### **10 How Is a monetary Fixed Penalty Calculated**

- 10.1 Please refer to Section 2 of the Sanctions Policy: Fines, Costs and Administration Fees for further details about the level of Fixed Penalties and how they are calculated.

### **11 Review/Modification of a Fixed Penalty**

- 11.1 A Member may request a review of the imposition of a Fixed Penalty.
- 11.2 A Reviewer may review and, where appropriate modify a Fixed Penalty. Where this occurs the Fixed Penalty may be modified in such manner as the Reviewer may determine.
- 11.3 If the Member has paid a monetary Fixed Penalty but is referred to the Professional Conduct Committee because of a continuing breach of the Rules then the Professional Conduct Committee should have regard to the fact that the Society has received payment for the monetary Fixed Penalty when it is considering imposing any fine.
- 11.4 If the Member has not paid a monetary Fixed Penalty and continues to be in breach of the Rules, and is referred to the Professional Conduct Committee then the Professional Conduct

Committee should have regard to the fact that the monetary Fixed Penalty has not been paid when considering the level of any fine it may decide to impose.

## **PART E - PROFESSIONAL CONDUCT COMMITTEE AND APPEAL BOARD**

### **12 Imposition of penalties**

- 12.1 The Professional Conduct Committee may impose one or more of the penalties referred to in Rule 6.4.1.
- 12.2 A caution may be imposed by the Relevant Decision Maker if the Member's breach is minor, unintentional and is unlikely to be repeated.
- 12.3 A reprimand may be imposed by the Relevant Decision Maker if it is determined that the breach has been established but, taking into account the factors set out in clauses 4,5,6 & 7, it is decided that the breach should be acknowledged but that a reprimand will be a proportionate sanction. Depending on the severity of the breach, the reprimand will remain on the disciplinary file maintained by the Society relating to the Member for 2 years from the date of notification to the Member of the reprimand .
- 12.4 A Member may be suspended from membership for periods up to 12 months. The timescale for any suspension will be specified in the decision to suspend the Member.

### **13 Undertakings**

- 13.1 In some cases a Professional Conduct Committee (or Appeal Board on appeal) may decide to request undertakings from the Member as well as imposing another penalty such as a caution, reprimand or fine. The Professional Conduct Committee (or Appeal Board on appeal) may do this in order to ensure that the Member refrains from continuing/repeating the conduct or action causing the contravention. The Professional Conduct Committee (or Appeal Board on appeal) may require the Member to take a course of action such as apologise personally or publicly to a person.
- 13.2 Where it has been determined by the Relevant Decision Maker that the standard of the Member's professional work has fallen short of that reasonably to be expected, or instructions have been accepted from a client where the Member does not have the necessary competence, the Relevant Decision Maker may require the Member to:
- Refrain from practicing in a particular specialism, or
  - Practice that specialism under supervision , or
  - Refrain from practicing a specialism until he has satisfied the Society of his competence in that field.

13.3 A timescale for compliance with the terms of an undertaking will usually form part of the undertaking itself. Every undertaking will contain a statement that a breach of such undertaking will result in automatic referral to a Professional Conduct Committee.

13.4 A failure to comply with an undertaking may be considered to be misconduct liable to further sanction.

#### **14 Fines, Costs and Administration Fees**

14.1 For the level of fines, costs and administration fees which the Society may impose, please refer to Section 2 of the Sanctions Policy.

#### **15 Conditions on a Member's continued membership of the Society**

15.1 Conditions on a Member's continued membership of the Society should be specific, measurable, achievable, realistic and time bound.

15.2 If a Professional Conduct Committee (or Appeal Board on appeal) imposes conditions it should state whether a breach of these conditions by the Member will lead to automatic expulsion or removal, or whether further disciplinary action is appropriate.

#### **16 Making of an Order requiring a Member to take a specified action**

16.1 The Professional Conduct Committee (or Appeal Board on appeal) may make an order requiring a Member to take specific action to rectify a breach or to make restitution for an established breach. The Professional Conduct Committee (or Appeal Board on appeal) shall specify what is required to be done and the timescale for such action to be taken. The Professional Conduct Committee (or Appeal Board on appeal) shall specify the consequences of failure to take such action.

#### **17 Misconduct and Grounds for Expulsion**

17.1 In the absence of extenuating circumstances, the following are examples of instances likely to result in a Professional Conduct Committee or Appeal Board making or upholding a decision to expel a Member:

- Gross, persistent or willful failure of a Member to comply with any of the Rules, any provisions of the Society's Memorandum of Association or Articles of Association or Bye-Laws;
- Fraud, dishonesty or a lack of integrity on the part of a Member;
- Conviction of a Member for a serious criminal offence;
- Gross incompetence or recklessness in relation to the conduct or management of professional activities on the part of a Member;

- Persistent and/or serious failure by a Member to co-operate with the Society or its staff;
- Breach by a Member and/or failure to comply with a required undertaking previously given to the Society, or failure to give an undertaking without reasonable excuse;
- Gross mismanagement of finances by a Member;
- Misappropriation of clients' money by a Member; or
- Actions likely to damage the Society's reputation.

17.2 The above list at Clause 17.1 is not an exhaustive list and each case must be considered on its own facts. The Relevant Decision Maker is given discretion to apply the most appropriate sanctions in any particular case.

18 The Professional Conduct Committee may impose more than one penalty

18.1 The Professional Conduct Committee (or Appeal Board on appeal) may impose more than one of the penalties provided for in the Policy or the Rules. Where the Member is expelled, the Professional Conduct Committee (or Appeal Board on appeal) may also impose a fine, undertaking or conditions.

## **19 The penalties which the Appeal Board can impose**

19.1 If the Appeal Board allows an appeal by the Member and varies either the Professional Conduct Committee's finding or penalty, it may impose the same range of penalties as the Professional Conduct Committee. It may vary the penalty imposed to one of greater or lesser severity than that previously imposed.

19.2 In addition, the Appeal Board may refer the matter back to the Professional Conduct Committee for a new hearing or re-consideration.

## **PART F-COSTS**

### **20 Payment of Costs**

20.1 In addition to any fine or penalty, the Relevant Decision Maker may also require that the Member pay the Society the costs reasonably and necessarily incurred by it in the matter. The Society may set rates from time to time and may publish them on the Society's website.

**THE SANCTIONS POLICY**  
**SECTION 2**  
**FINES, COSTS AND ADMINISTRATION FEES**

**INTRODUCTION**

This section sets out the details of fines and costs which may be imposed according to the Rules.

**1 Fines**

1.1 The policy of the Society is that Fixed Penalty fines will be imposed for breaches of the following Rules:

- Rule 2.5 and Part 5 Continuing Professional Development (fines which may be imposed for breaches of the CPD Policy are set out in Rules 5.2.1 - 5.2.3).
- Rule 2.8, Information to be provided to the Society.

1.2 Pursuant to Rules 6.4.1 (e) and 7.11 (b), the Professional Conduct Committee and Appeal Board respectively may impose a fine up to a maximum of €50,000 per breach. This maximum limit will be subject to periodical review.

1.3 Where fines (including Fixed Penalty fines) have been imposed by a Relevant Decision Maker for breaches of the Rules, the following penalty may be imposed upon the Member for failure to discharge the said fine (including Fixed Penalty Fine) as provided for in the relevant decision, the Rules and this Sanctions Policy:

<b>Delay in Time in complying with Rule</b>	<b>Members - level of fine or penalty which may be imposed</b>
1 - 28 days late	€150
29 - 56 days late	€250
57 - 84 days late	Refer to Professional Conduct Committee

The fines specified above are cumulative.

Information will be considered to be late when it has not been submitted by the due date. Unless provided otherwise the due date will be the date set out in the correspondence from the Society. The correspondence will state that a Fixed Penalty

will be imposed if specific information is not received by the Society by a specified date.

## 2 COSTS

2.1 The costs which may be imposed are as follows:

<b>Cost</b>	<b>Amount</b>
Hearing costs*	To be charged by reference to the costs actually incurred by the Society, taking into account, without limitation the elements listed below.
Investigation and Inspection costs of Society's Regulation Department	€75 per hour
Disciplinary costs of Society's Regulation Department	€75 per hour

\*The Society is entitled to charge the Member concerned the actual costs incurred by the Society. This may include, but will not be limited to, the following costs and expenses:

- Panel Members expenses
- Legal Costs
- Recording
- Hire of venue
- Teleconferencing costs for virtual hearings
- Expert Costs

### 3 Administration Fees

Fees	Amount
Fixed Penalty - may apply an administration fee for review by a Reviewer	€100 per Fixed Penalty

### 4 REVIEW OF FINES, COSTS AND ADMINISTRATION FEES

- 4.1 The basis of the fines, penalties and costs contained in this section has been approved by the Society and will be periodically reviewed.

**THE SANCTIONS POLICY****SECTION 3****PUBLICATION OF REGULATORY/DISCIPLINARY MATTERS****1 Introduction**

- 1.1 This section sets out the Society's approach to the circumstances in which and the proceedings in relation to which regulatory/disciplinary matters may be published.

**2 Policy Approach**

- 2.1 The Society believes that there are circumstances in which it is essential for members of the public, Members' clients and potential clients to be aware of an individual Member's disciplinary record. There are, however, other circumstances where it is appropriate to record regulatory breaches without identifying the individual concerned.
- 2.2 Where a Member has breached the CPD Policy on two occasions, within a five-year period, as provided for in Rule 5.2, the Society will publish on the Society's website a list of members who are non-compliant for a second time. This publication to remain on the website for a period of one year from imposition of sanction.
- 2.3 The Society, at its discretion, may arrange to publish any decisions of the Professional Conduct Committee and/or the Appeals Board in such a manner as the Society may think fit.
- 2.4 All proceedings and deliberations of the Professional Conduct Committee and the Appeals Board unless made in public shall be confidential and Members shall, as a matter of professional obligation, maintain such confidentiality.
- 2.5 Where a case is to be heard in public before the Professional Conduct Committee or the Appeals Board a notice will be placed on the Society's website and if appropriate a notice may be placed in the national press and a press release may also be issued. Such notice will include the date, time and location of the hearing as well as a brief summary of the complaint. It will not include the name of the Member against whom the complaint has been made.
- 2.6 Decisions or orders of the Professional Conduct Committee and the Appeals Board may be disclosed, at the discretion of the Society and depending on the gravity of the breach, to other regulatory, disciplinary or law enforcement bodies either pursuant to a reporting obligation or where it is considered necessary to do so and the disclosure is not unlawful.
- 2.7 Sanctions and/or penalties imposed by the Professional Conduct Committee and/or the Appeals Board will be published as soon as practicable provided the Professional Conduct Committee and/or the Appeals Board has not directed otherwise, and the time allowed under the Rules for



appealing the decision of the Professional Conduct Committee and/or the Appeals Board has elapsed.

2.8 Without prejudice to the generality of clause 2.7 in the event that, following a decision of the Professional Conduct Committee and/or the Appeals Board, a Member is to be suspended or excluded from membership of the Society such suspension or expulsion shall be published.

2.9 Unless provided otherwise publication may be by way of one or more of the following:

- Inclusion on the website of the Society
- Notice in the Surveyor Journal;
- Notice in a national or local newspaper;
- Press release; or
- Inclusion on a public register;

## **Regulatory Matters**

### **3 Fixed Penalties**

3.1 A list setting out the number of Fixed Penalties (publication for breaches of the CPD Policy are provided for at Section 3, point 2.2 of this Policy) issued during the previous quarter, including the subject matter thereof will be placed on the Society's website. This information will remain on the Society's website for 12 months from its date of publication on the Society's website and individual Members will not be identified.