

PROFESSIONAL CONDUCT COMMITTEE PROCEDURE NOTE

Under the Rules, a Professional Conduct Committee shall be appointed from the lists kept for the purposes of Rule 9.8 (a) 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 Professional Conduct Committee appointed to consider any matter referred to it under the Rules.

1 GENERAL

- 1.1 A Professional Conduct Committee 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 A Professional Conduct Committee is guided by the "Members Professional Conduct Rules, Monitoring and Investigation Procedures, Disciplinary Rules and Procedures" (the "Rules") and "Sanctions Policy" in connection with bye law 15.
- 1.3 The failure by a Professional Conduct Committee to precisely follow the Rules and Procedures laid down therein shall not invalidate a decision made by such Professional Conduct Committee, save where a party can demonstrate that their rights have been fundamentally undermined by such failure.
- 1.4 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 INVESTIGATION OF A COMPLAINT TO THE PROFESSIONAL CONDUCT COMMITTEE

- 2.1 A Professional Conduct Committee shall in respect of any matter referred to it by the Director of Regulation under Rule 5.2.1:
 - 2.1.1 Consider the Complaint, Allegation or Relevant Information (as such terms are defined in the Rules) and any documentation provided to it by the Director of Regulation following his investigation, including any responses received from the Member or the Complainant;
 - 2.1.2 Make such further enquiries as it considers appropriate; and
 - 2.1.3 Convene a hearing with the Member concerned to consider the Complaint, Allegation or Relevant Information.

3 PROCEEDINGS OF THE PROFESSIONAL CONDUCT COMMITTEE

- 3.1 The proceedings of a Professional Conduct Committee are governed by Rule 5.3 of the Rules. Rule 5.3.2 permits the Professional Conduct Committee to determine its own procedures and to conduct a hearing in the manner in which it determines, having regard to the rights of all Parties and with due regard to the principles of natural and Constitutional Justice.
- 3.2 The procedures set out below are the procedures which have been adopted for the conduct of meetings of the Professional Conduct Committee and are subject always to the Rules.
- 3.3 At the start of any meeting of any Professional Conduct Committee the Chair shall establish that there is a quorum present and appoint a note taker for the meeting. A note shall be taken of all persons present at the meeting.
- 3.4 The members of any Professional Conduct Committee shall, prior to considering any matter referred to it under the Rules, consider whether there exists any conflict of interest which might impede any member of the Professional Conduct Committee from acting in relation to a particular matter. If such a conflict of interest exists or may be perceived to exist, the relevant

member shall decline to be part of the Professional Conduct Committee assigned to consider that matter. The matter shall be adjourned and an alternative member (or panel) shall be appointed from the panel of members nominated to the Professional Conduct Committee under the Rules.

- 3.5 Any Professional Conduct Committee hearing shall be held on the date and at the time and place specified in the notice to the Member referred to in Rule 5.2.2.
- 3.6 The hearing notice shall include a copy of the letter from the Director of Regulation which has issued to the Member under Rule 4.1.3(c) and shall clearly outline the details of the Allegation, Complaint or Relevant Information. This shall include details of the Rules which are alleged to have been breached by the Member (the "Alleged Breach(es)").
- 3.7 The hearing notice shall advise the Member of his or her right to be represented by his solicitor/counsel at the hearing.
- 3.8 A Professional Conduct Committee shall have the right, at its discretion, to amend or vary such hearing notice and to discontinue or adjourn any hearing at any stage. Any change in such notice shall be notified to the Member concerned.
- 3.9 In accordance with Rule 5.3.2 any Professional Conduct Committee shall have the right to call for submissions (whether written or oral) from the Complainant or the Member and from any witnesses which it considers to be relevant. This may be before any hearing is convened or during the course of any hearing. Such Professional Conduct Committee will consider any such submissions which it receives.
- 3.10 A Professional Conduct Committee shall be entitled to decide whether a hearing shall be in private or in public in accordance with the Rules.
- 3.11 At the start of any hearing the Chair shall introduce the panel and the role of any other person present, including any legal advisor to the Professional Conduct Committee.
- 3.12 The Chair shall explain clearly the purpose of the hearing and outline the procedure to be followed.
- 3.13 The Chair shall state clearly the Alleged Breach(es), referring, where appropriate, to any documentary evidence. Only those matters which have been notified in writing to the Member concerned, shall be dealt with at the hearing.
- 3.14 The Member will be expected to respond directly to the Professional Conduct Committee at the hearing and to answer the allegations. The Member may confer with his solicitor/counsel who may act as his or her representative.
- 3.15 The Chair, or through him/her, any panel member, may ask questions of the Member or the representative to ensure the issues are fully explored and the facts established.
- 3.16 The Member shall be asked whether there is any further information he or she wishes to have considered.
- 3.17 The Professional Conduct Committee will consider whether the points raised at the meeting require further investigation or clarification, or where further issues have come to light. The hearing may be adjourned to enable investigations to be completed before a decision is made. Where possible, the Member and representative shall be given an indication of the anticipated time required for such investigation and a date, time and place for an adjourned hearing.
- 3.18 Otherwise, the Chair shall explain that, following the Professional Conduct Committee's deliberation, it will come to a decision which shall be communicated to the Member in accordance with the Rules.

4 DECISION MAKING PROCESS

- 4.1 The decision of a Professional Conduct Committee shall be made in the absence of the Parties.
- 4.2 The Professional Conduct Committee shall review all the evidence produced at the hearing and decide what facts have been established and whether the conduct complained of amounts to a breach of the Rules.
- 4.3 The Professional Conduct Committee shall satisfy itself in respect of the allegations made and decide:
- (a) Whether the Alleged Breach(es) have been established;
 - (b) Whether Interim Measures are required;
 - (c) The existence of any mitigating or aggravating factors as set out in the Sanctions Policy;
 - (d) Any other considerations as set out in the Sanctions Policy;
 - (e) what (if any) sanction should be imposed having regard to the Sanctions Policy and Rule 5.4.1.

In arriving at any conclusions or in making any decision such Professional Conduct Committee shall take account of the guidance set out in the Sanctions Policy and shall have absolute discretion as to its decision in any case.

In arriving at its conclusions the Professional Conduct Committee is required to act reasonably and to base its conclusions on the balance of probabilities.

5 OUTCOME

- 5.1 The decision of a Professional Conduct Committee shall be communicated by the Committee to the Parties in writing in accordance with Rule 8.5.
- 5.2 Where the Professional Conduct Committee has decided to impose a sanction the sanction will take effect in accordance with Rule 5.3.9 on the date specified in the letter notifying the Member of the decision.
- 5.3 The letter shall advise the Member of the appeals process in accordance with the Rules and the Sanctions Policy.