

Title	IOM Disciplinary Procedure
Owner	Head of Professional Development
Identity	190722
Version	1
Issued	22-Jul-2019

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Change Record

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1 Introduction

In its guidance¹ the Engineering Council states that: -

The Engineering Council has a duty through its Charter (Article 4.c.) to ‘provide guidance on the codes of conduct and disciplinary procedures of Licensed Members and Professional Affiliates’. Requirements to prescribe standards and procedures to the satisfaction of The Engineering Council Board are a condition for the issue of a Licence (Bye-law 15) or approval of Professional Affiliate status (Bye-law 24).

The International Institute of Obsolescence Management (IIOM) has resolved to achieve and maintain Professional Affiliate status on behalf of all IIOM Chapters. The IIOM International Board has therefore established, and will maintain, a Code of Conduct² and Disciplinary Procedure (this document) which aim to satisfy the requirements of the Engineering Council Board.

The Code of Conduct and Disciplinary Procedure are regularly reviewed. The IIOM International Board welcomes feedback and suggestions for improvements that may help to keep them relevant within IIOM and compliant with the requirements of the Engineering Council.

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¹ Engineering Council: *Guidance on Disciplinary Procedures*. Revision 2017/1. Approved 15-Jun-2017. Last accessed 22-Jul-2019 at <https://partner.engc.org.uk/institution-guidance/governance-guidance/>

² IIOM : *Professional Code of Conduct*. Identity 190711. Version 3. Issued 11-Jul-2019.

2 Scope

The IIOm International Board has resolved that the Code of Conduct and Disciplinary Procedure are applicable to all 'individual Institute Members' whether or not they are also Engineering Council Registrants. The rationale is that everyone should aspire to the same high standards in professional life. The definition of an individual Institute Member is an individual person within the category of Honorary Member, Fellow (FIIOM), Full Member (MIIOM), Associate (AIIOM), Affiliate, or Student.

The Code of Conduct and Disciplinary Procedure do not apply to 'corporate Institute Members' such as public companies, private companies, partnerships or academic institutions, but do apply to their representatives who are also 'individual Institute Members' in their own right.

For brevity, within this document 'individual Institute Members' are referred to as 'members'.

3 Principles

3.1 General

IIOm has no regulatory function and the Code of Conduct is not statutory. The Disciplinary Procedure is not constrained by legal provisions or precedent related to statutory tribunals.

The Disciplinary Procedure shall be conducted in private and be Subject to the conventions of confidentiality that normally apply to the IIOm International Board and IIOm Chapter Councils.

The Chair of the IIOm Chapter to which the Subject of the investigation is affiliated has the delegated authority from the IIOm International Board to invoke the Disciplinary Procedure.

In its capacity as governing body, the IIOm International Board shall be notified of the progress and outcome of each disciplinary case but must not be invited to ratify the finding and sanction, since it has not heard the evidence. If the International Board chooses to discuss a case, any persons who are or have been involved in the process shall absent themselves.

The Disciplinary Procedure comprises a Preliminary Investigation to determine whether there is a case to answer (see paragraph 4), and a Disciplinary Investigation to determine whether a breach has occurred and to decide sanctions (see paragraph 5). The Disciplinary Investigation is only invoked if the Preliminary Investigation finds that the Subject has a case to answer.

There shall be no presumption of liability until breach of Code of Conduct is admitted or proved. Decisions must be based on the appropriate standard of proof. Admitted or proved breaches should attract sanctions commensurate with their severity and any impact on others.

3.2 Timescale

The Chair of the IIOm Chapter shall establish timescales for each stage of the process and shall proactively monitor progress to completion. The aim should be to complete the Preliminary Investigation within 30 days, and to complete the Disciplinary Investigation within 90 days.

3.3 Qualifications of Participants

No one person shall participate in decision-making at more than one stage of the Disciplinary Procedure, i.e. as Investigator, Adjudicator, or member of a Disciplinary Panel or Appeals Panel.

All participants must be sufficiently independent to avoid any real or perceived bias or conflict of interest, and so shall not include members of the IOM International Board, members of IOM Chapter Boards, IOM direct employees, or employees of service providers. If an individual who is asked to serve has a conflict of interest they must declare it and disqualify themselves.

To be consistent with Engineering Council guidance the participants should be senior members with suitable experience and training concerning the Disciplinary Procedure. The challenge for IOM is that the arising rate for complaints is low, typically not more than one or two cases in a five year period, such that the throughput of cases is too small to sustain a pool of qualified members from within the institute on an ongoing basis.

The Chair of the IOM Chapter may need to mitigate this problem, when necessary, by seeking suitable participants externally, e.g. by requesting assistance from other professional institutes that are Professional Affiliates or Licentiates of the Council.

4 Preliminary Investigation

Please refer to Figure 1.

The Originator of a complaint should submit it to the Chair of the IOM Chapter to which the Subject is affiliated. The Originator may, or may not, have an association with the Institute. If necessary, the officers of IOM will help the Originator by forwarding the complaint as needed.

Once a complaint has been received a Preliminary Investigation shall decide whether or not there is a case to answer. Such investigation, which is an administrative, not judicial, process, is performed by an Investigator appointed by the Chair of the IOM Chapter. The Subject of the complaint should be informed that a complaint has been received and be kept informed of developments; evidence submitted by the Originator should be disclosed to the Subject and vice versa.

The investigation shall determine first, whether the alleged misconduct would, if admitted or proved, lie within the ambit, or jurisdiction, of the Disciplinary Panel; and second, whether there is, or could be, enough evidence to justify an inquiry.

A decision of no case to answer shall be communicated to the Originator along with the basis for the decision, for example this could be lack of jurisdiction or insufficient evidence.

The Originator is allowed up to 30 days in which to seek leave to appeal against a no case to answer decision. The Chair of the IOM Chapter shall appoint an Adjudicator, who must be independent of the situation, to consider both the Originator's application for leave to appeal and the appeal itself.

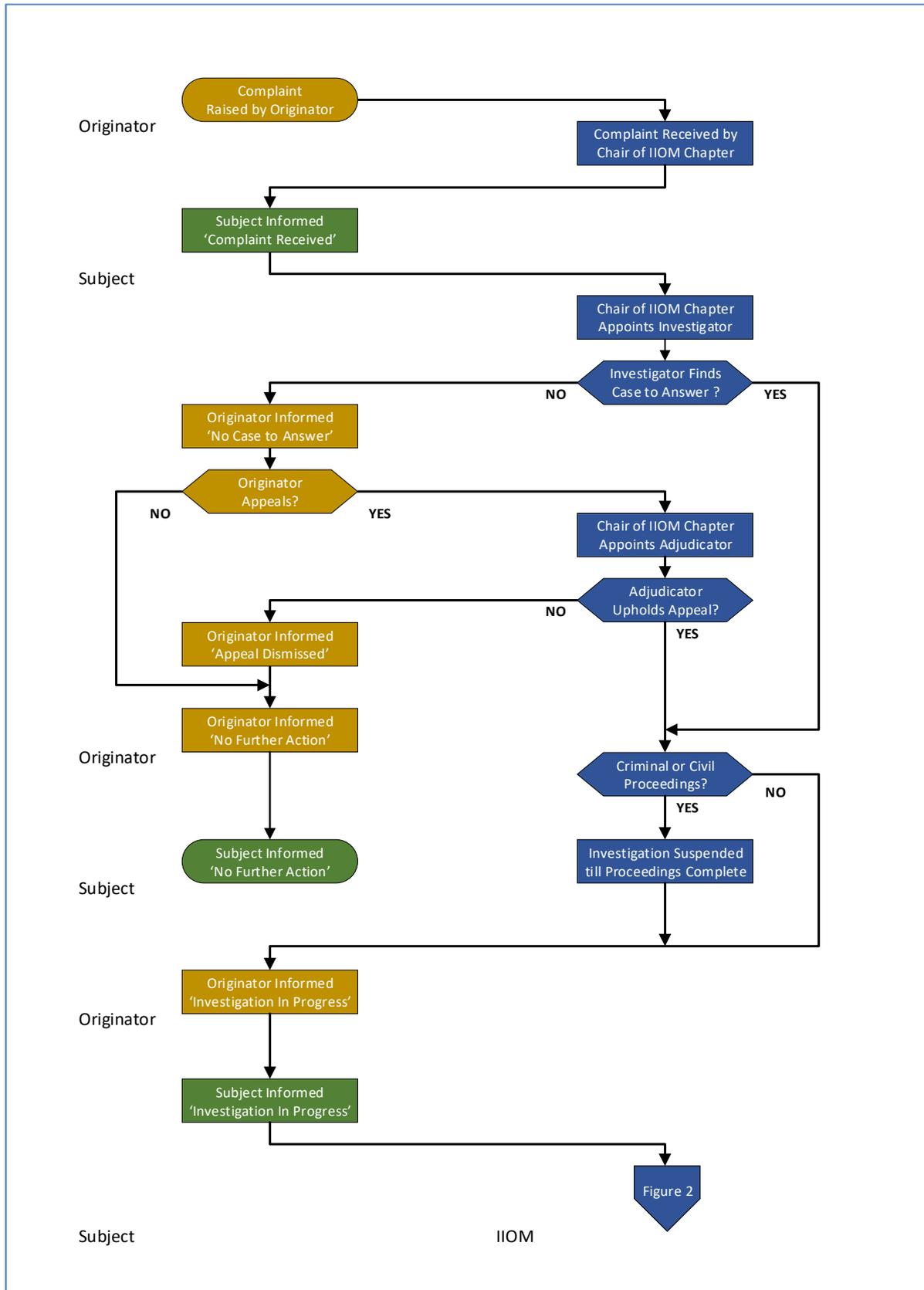


Figure 1 Preliminary Investigation

The most likely grounds for leave to appeal against a no case to answer decision are jurisdiction or procedure, but please refer to general guidance on leave to appeal given in paragraph 5.6.

If there are valid grounds for appeal the Adjudicator must then review the material presented to the Preliminary Investigation, the record of its decision and any additional evidence admitted before deciding whether or not to overrule the no case to answer decision.

If the Originator did not appeal the no case to answer decision within the 30 day time limit, or an appeal was lodged but refused, then the complaint shall be dismissed. Records of the complaint, including the evidence, shall not be maintained beyond the 30 day time limit.

A finding that there was a case to answer must result in a Disciplinary Investigation. The case to answer shall be framed in detailed and particular terms, clearly related to the Code of Conduct, such that the Subject can understand the allegation against them.

The Originator and Subject shall each be advised of the referral, and that an investigation is in progress. A minor case to answer must not be summarily or informally dealt with within the Preliminary Investigation.

The Preliminary Investigation shall determine whether any criminal or civil court proceedings related to the alleged misconduct are likely or under way. The Disciplinary Investigation cannot begin 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 Investigation 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 Disciplinary Investigation

Please refer to Figure 2.

The Disciplinary Investigation is conducted by a Disciplinary Panel appointed by the Chair of the IOM Chapter to which the Subject is affiliated.

5.1 Formation of Disciplinary Panel

The Disciplinary Panel shall comprise not fewer than three senior, experienced, and trained persons who must be independent of the situation. A person who has participated in a Preliminary Investigation shall not act as a member of the Disciplinary Panel for the same case. The Disciplinary Panel shall have a Chair who reports directly to the Chair of the IOM Chapter.

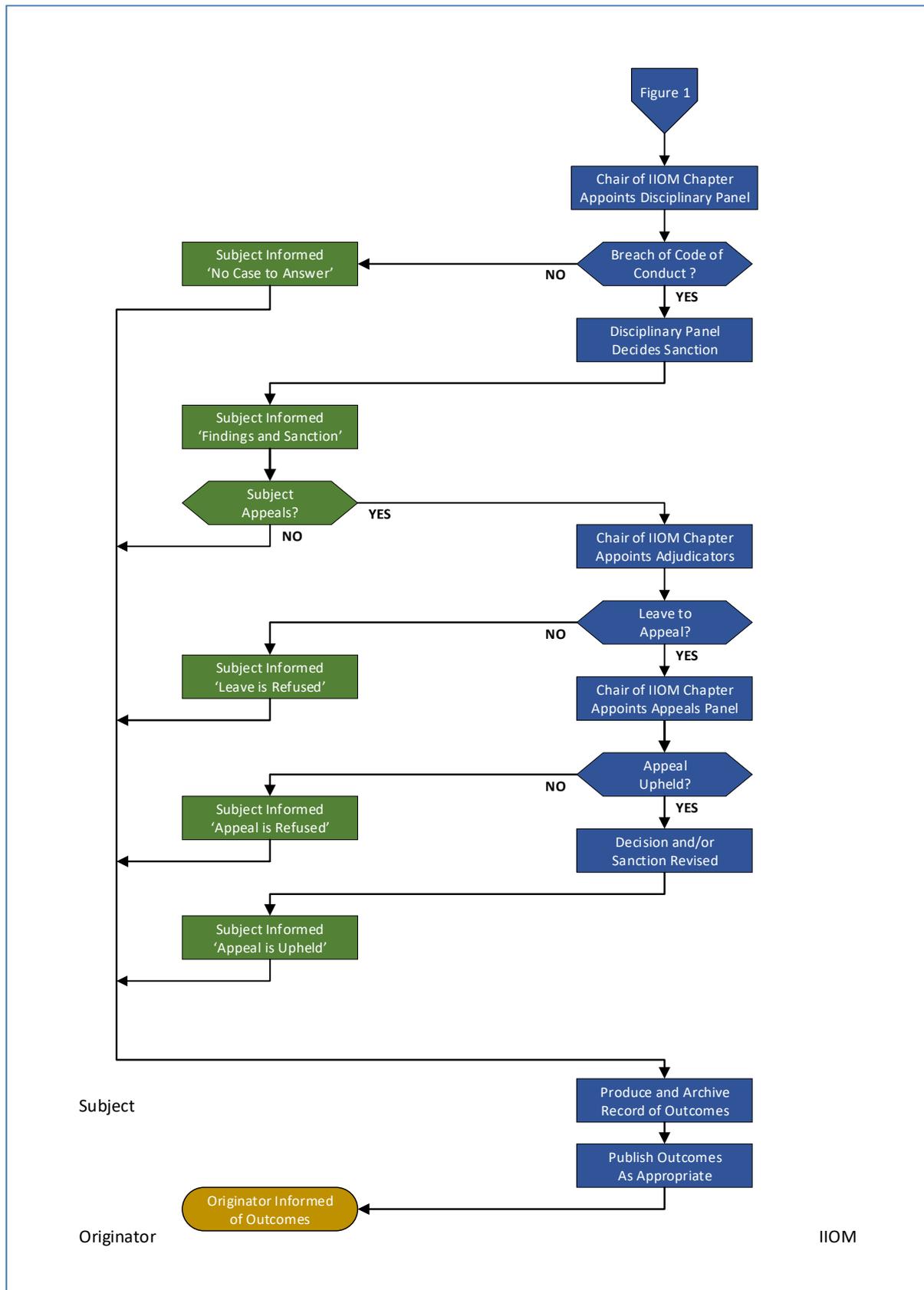


Figure 2 Disciplinary Procedure

5.2 Examination of Written Evidence

The Disciplinary Procedure involves the collection, examination and clarification of evidence. Prejudicial material that is irrelevant to the case to answer should not be presented to the Disciplinary Panel. The Originator and the Subject shall have timely access to evidence and responses.

Where the complaint relates to matter of a specialised nature, or the evidence requires technical analysis or interpretation, the Disciplinary Panel should consider engaging an independent expert witness.

The Disciplinary Panel may make a decision as to whether the Subject is in breach of the Code of Conduct, and what sanction should apply, on the basis of the written evidence only. Alternatively the Panel may convene an extended hearing.

5.3 Extended Hearing

The parties to the case are the Presenter of the complaint (on behalf of the Originator) and the Subject. For relatively straightforward cases the Originator may be permitted to present the complaint in person without the services of a Presenter.

The Presenter would normally be a person appointed by the Chair of the Disciplinary Panel for the purpose. However, although the Code of Conduct is not statutory and IOM does not have a regulatory function, there may be circumstances the Panel may decide to employ a lawyer to present the complaint – for example, where the complaint should be enquired into in the public interest whether or not the Originator wishes to pursue it. The reason is that there needs to be a clear division between the person presenting and the persons hearing the complaint so that there can be no suggestion of conflict of interest.

Parties involved should be entitled to invite to the hearing either: -

- a lawyer, whom they may pay to represent them, including to speak on their behalf; or
- a non-lawyer 'McKenzie Friend' ³, who may support, quietly advise and take notes for them but may not speak on their behalf.

Either party should be required to give reasonable advance notice if they intend to be legally represented, so that the other party can arrange legal representation if considered necessary.

An Originator of a complaint who is not presenting in person should be invited or permitted to attend the hearing (accompanied if desired by a 'friend') and may be called as a witness, but should have no automatic right of audience.

³ As defined at courtwithoutalawyer.co.uk/mckenzie-friends.html Last accessed 22-Jul-2019.

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 hearing should be conducted with transparent fairness. It comprises a statement by the Presenter of the complaint (or their representative) and evidence to support it (with any cross-examination of witnesses) followed by a rebuttal by the Subject (or their 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, and Panel members should take account only of evidence which is presented, or elicited in cross-examination, during the hearing. Unlike in a court, however, hearsay evidence may be admissible.

A Subject 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 Investigation has reached its decision. If this decision is that the Subject be expelled from membership, their deemed membership will allow that to be effected and shown on the record should they ever seek to rejoin the same IOM Chapter, a different IOM Chapter, or another institution.

5.4 Burden of Proof

The burden of proof is normally the civil standard, the 'balance of probabilities'. Judicial guidance indicates that the standard of proof should be appropriate to the gravity of the matter and the likely consequences if the alleged breach of the Code of Conduct is upheld.

Where serious misconduct, rather than lack of competence, is alleged, or where loss of livelihood would result, the criminal standard, 'beyond reasonable doubt' is likely to be appropriate. There are no other 'in between' standards.

The Disciplinary Panel should make clear to the parties which standard is being applied to a particular case. However, the standard of proof applies only to decisions relating to disputed facts. Whether or to what extent the proven facts amount to professional misconduct or fitness to practise is for the Disciplinary Panel to judge.

5.5 Choice of Sanction

If the complaint is admitted or upheld, the Disciplinary Panel determines which section of the Code of Conduct has been breached, hears any mitigation, and decides the sanction.

Sanctions may be: -

- permanent expulsion from membership of the Institute including removal from the Register of Practitioners and withdrawal of rights to use of postnominals (if applicable); or

- suspension of membership, or membership privileges, which might nevertheless permit access to facilities for maintenance of Continuing Professional Development (CPD) or retraining during suspension; or
- removal from the Register of Practitioners and withdrawal of rights to use of postnominals without expulsion from membership, again to allow for access to CPD or retraining; or
- reprimand accompanied by advice on future actions or retraining; or
- restorative measures as may be proposed and facilitated by the Disciplinary Panel, and which are entirely acceptable to both the Originator and Subject.

Fines are not appropriate for professional bodies, since sanctions do not represent punishment. Similarly, terms such as 'accused', 'offence', 'guilty', 'verdict' and 'penalty' should be avoided.

5.6 Leave to Appeal

A decision that there has been a breach of the Code of Conduct, the basis for the decision, and details of the sanction shall be communicated to the Subject.

The Subject is allowed up to 30 days in which to seek leave to appeal against the decision or sanction. Leave to appeal is not granted automatically and one or more specific grounds must be identified. The normally recognised grounds for appeal are:

- jurisdiction (whether the alleged misconduct would be within the scope of the provisions of the Code of Conduct, Articles of Association at IIOm International or IIOm Chapter level, or the Delegation Agreement between IIOm International and the IIOm Chapter to which the Subject is affiliated); or
- procedure was not followed (i.e. the provisions of this document); or
- perversity (the decision was perverse in the light of the evidence); or
- new evidence (which could not reasonably have been produced previously); or
- 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.

The Chair of the IIOm Chapter shall appoint no fewer than three Adjudicators to consider whether or not there are valid grounds to allow the appeal. If there are, the Chair of the IIOm Chapter shall appoint, with minimum delay, an Appeals Panel which should comprise not fewer than three senior, experienced, and trained persons who must be independent of the situation. A person who has participated in a Preliminary Investigation or Disciplinary Panel shall not act

as a member of the Appeals Panel for the same case. The Appeals Panel shall have a Chair who reports directly to the Chair of the IOM Chapter.

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. If the appeal is refused and, as a result of sanctions imposed the Subject loses their professional registration, then the Subject shall be advised that they may have a right of appeal to the Engineering Council.

6 Records of Proceedings

The Chair of the IOM Chapter shall ensure that an impartial record is made of every Preliminary Investigation and of each stage of a Disciplinary Investigation. The record should comprise:

- A copy of all written evidence submitted;
- A summary of any oral evidence in support of the alleged breach and in rebuttal or mitigation, including any salient points elicited in cross-examination;
- A summary of decision made and reasons.

Summaries should be in a form similar to minutes of a meeting: they are not required to be verbatim records but should contain sufficient detail for a reviewer to understand the issues and to be able to judge whether the proceedings had been fairly and properly conducted. Summaries of hearings should not be written by a person who has played any other part in any stage of the proceedings, and should be approved by the Panel chairman.

The summary of the Panel's reasons for its decision should be disclosed to both parties with the notification of the decision. Any further disclosure, for example in the event of an appeal, should be made equally (in both timing and content) to both parties.

Unless a complaint has been dismissed during the Preliminary Investigation, the completed records shall be archived by IOM International for a minimum period of six years.

Where a member has been expelled from IOM and/or registration with the Engineering Council, the summary shall be kept beyond any minimum period specified for re-application. Written (and, if taken, audio) evidence should not normally be kept beyond expiry of any period of notice to appeal.

7 Right to Publish Details

IOM reserves the right to publish details of established breaches of the Code of Conduct, which will 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.

IOM shall inform the Engineering Council of any expulsion, whether or not the Subject is registered by the Institution. This requirement anticipates the possibility that the Subject is registered through a different institution.

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