



## ***Disciplinary Committee Rules***

*(These Rules were made by Council on 28 January 2014 and came into force on 3 February 2014)*

### **1. Definitions**

In these Rules the following expressions shall have the following respective meanings:-

Committee Hearing	the Association's Disciplinary Committee from time to time means the substantive hearing before a Tribunal to consider the merits of a Formal Complaint but does not include a pre-hearing review and hearing shall be construed accordingly
Investigation Committee representative	the person appointed by the Investigation Committee to represent that committee before the Tribunal to present the Formal Complaint
Legal Assessor	the solicitor or barrister instructed by the Committee to act as legal adviser in the Hearing of the Formal Complaint
Licence	an insolvency authorisation issued by the Association authorising an Individual Member to act as an Insolvency Practitioner under the Insolvency Act
Parties	means the Respondent or his representative and the Investigation Committee or its representative and 'party' shall be construed accordingly;
Record of Decision	means the document prepared on behalf of the Tribunal and approved by the Chairman of the Tribunal setting out the Tribunal's finding and Order and any terms and conditions on which the Order was made with brief reasons.
Respondent	any Member or (where applicable under Article 22A in the Association's Articles of Association) former Member or Student Member against whom a Complaint has been laid and which after investigation by the Investigation Committee the Secretary has put before the Committee.
Rules	the Rules hereby adopted as from time to time duly amended by Council.
Tribunal	any tribunal of the Disciplinary Committee appointed pursuant to Rule 5 to hear a Formal Complaint or a pre-hearing review and shall comprise on appointment two Individual Members of the Association and one Lay Member.

2. Expressions which are defined in Article 1 in the Association's Articles of Association and 1.1 of the Investigation Committee Rules shall, when used in these Rules, have the same meaning herein as therein.
3. References to "the Investigation Committee", "the Disciplinary Committee", "a Disciplinary Tribunal", "the Membership and Authorisation Committee", "the Appeal Committee" and "the Appeal Panel" shall be to the Committee from time to time appointed as such by Council and to Tribunals and Panels appointed by such Committees

### **The Disciplinary Committee**

4. The Committee shall consist of not less than seven persons, comprising:
  - a. at least five Individual Members; and
  - b. at least two persons each of whom is a Lay Member

and Council shall from time to time determine which members shall be Chairman and Vice-Chairman of the Committee.

5. If a Formal Complaint is referred to the Committee by the Investigation Committee the Chairman or Vice-Chairman of the Committee shall appoint a Tribunal to hear the Formal Complaint consisting of not less than three of its members of whom one shall be a Lay Member and shall also appoint the Chairman of each such Tribunal.
6. The Tribunal so appointed shall, in relation to that Formal Complaint, be competent to exercise all the functions and powers conferred on the Committee by these Rules.
7. If for any reason any member of the Tribunal is unable to attend the Hearing or if during the course of a Hearing is unable to continue to attend a Hearing, then:
  - a. providing they are not less than two in number, the remaining members of the Tribunal may continue with the Hearing, but if the Respondent is present they shall only do so if he consents; or otherwise
  - b. the Formal Complaint shall be re-heard by a new Tribunal.
8. If at any time the Chairman or Vice-Chairman of the Committee is of the opinion that it is for any reason impractical for the original Tribunal to complete the Hearing of a complaint, he shall direct that the Complaint be heard by a new Tribunal.

### **Procedure Prior to the Hearing**

9. The Respondent will be given not less than 30 Business Days' notice of the date, time and place for the hearing of the Formal Complaint. The Respondent may agree to waive or vary any requirement for notice of the date of the hearing. Such notice shall be accompanied by:-
  - a. a copy of the Formal Complaint ("the Complaint");
  - b. a summary of the facts relating to the Complaint ("the Summary"); and
  - c. copies of any documents and/or other material which the Investigation Committee

intends to present for the Hearing of the Formal Complaint.

10. Not less than 20 Business Days before the day fixed for the Hearing the Secretary may require the Respondent to state in writing within 10 Business Days of service of such notice of requirement, or such longer period as the Secretary may allow:
  - a. whether the Respondent accepts the Complaint and, if not, on what grounds he denies the Complaint;
  - b. whether the Respondent accepts the facts as stated in the Summary and, if not, the grounds for challenge;
  - c. if the Respondent accepts the Complaint, whether he has any explanation in mitigation;
  - d. whether or not the Respondent intends to attend and/or be represented at the Hearing
  - e. if he does not intend to attend but accepts the Complaint whether he has any points to make about his personal and /or financial circumstances in case the Tribunal wishes to make an order that a fine and/or a contribution to the costs be paid.
11. At least 15 Business Days before the day fixed for the Hearing, the Respondent shall provide to the Secretary for service on the Disciplinary Tribunal and the Investigation Committee's representative, eight copies of paginated and indexed bundles of all documents on which he intends to rely, unless the documents have been included amongst documents served in accordance with Rule 9 c above.
12. After the Investigation Committee has decided to refer a Complaint to the Disciplinary Committee as a Formal Complaint but before any Hearing the Secretary may require a Respondent to provide such further information and documents relating to the Formal Complaint as he thinks necessary for the just, expeditious and economic disposal of the case.
13. At least 15 Business Days before the day fixed for the Hearing, each Party shall provide to the Secretary for service on the Tribunal and the other Party eight copies of the written statements of the evidence to be given by any witness called by or on behalf of that Party, including any evidence of the Respondent. Any such written statement shall be signed and dated and shall include the name and address of the witness.
14. A Tribunal may permit the Parties to adduce such further evidence, information and documents relating to the Complaint as the Tribunal think necessary or desirable for the just expeditious and economic disposal of the Complaint.
15. A Tribunal may convene, either at its own motion or at the request of one or more of the Parties, to consider any preliminary issues or to give directions for securing the just, expeditious and economical disposal of the Complaint (the "Pre-Hearing Review"). With the consent of the Parties, the Pre-Hearing Review may be dealt with by the Chairman of the Tribunal alone and may be conducted in writing.
16. The Chairman of the Tribunal shall decide in his absolute discretion whether an application for postponement of a Hearing that has not commenced should be granted.
17. Any Notice or document required to be served under these Rules may be served personally or by first class post on the Respondent at the last known address appearing in the Register of Members in accordance with Article 16.2. Where documents are served by post, service is deemed to have been effected 48 hours after posting for the purposes of Rule 9 and all such Rules where a Notice

or document must be served on the Respondent. Any notice or document may be served by the Respondent by sending such notice or document to the Secretary by first class post to the Association's current registered office address (Valiant House, 4-10 Heneage Lane, London EC3A 5DQ).

18. A Tribunal may in its discretion hear two or more Complaints against a Respondent at the same Hearing and hear Complaints against two or more Respondents at the same Hearing.
19. Subject to Rules 21 and 22 the hearing will be in public.
20. Either of the Parties or any witness may make an application in writing to the Chairman of the Tribunal before the Hearing or an oral application to the Tribunal at a pre-hearing review or at the start of the Hearing, for the whole or any part of the Hearing to be held in private. A written application must be made within 10 Business Days of the date when notice of the hearing is given in accordance with Rule 9 but an oral application can be made at any time. An oral application for a hearing or part of a hearing to be held in private will be held in private.
21. The Tribunal Chairman or the Tribunal may decide that the public should be excluded from the whole or any part of a Hearing where it appears, having consulted the Parties, that the particular circumstances of the case outweigh the public interest in holding a public Hearing.
22. The Tribunal may at its own discretion direct that the public be excluded from the whole or any part of a hearing, if it appears to the Tribunal, having consulted the Parties, that to do so would be in the interests of justice or desirable having regard to the nature of the complaint or of the evidence to be given.
23. The name of a Respondent, the date, time and place of the Hearing and the terms of the legislation, regulation or guidance under which the Formal Complaint is brought-pre-hearing notice- will be published on the Association's website ([www.insolvency-practitioners.org.uk/](http://www.insolvency-practitioners.org.uk/)) not more than seven days in advance of the Hearing but if a written application has been made in accordance with Rule 20 no information will be given under this Rule unless the Tribunal Chairman has dismissed the application or directed that there should be no pre-hearing notice.

### The Hearing

24. Subject to Rules 10, 11 and 13 the Respondent is entitled to make written representations or to appear in person before a Tribunal or to be represented by a solicitor or barrister or with the agreement of the Tribunal a member of the Association or any other person.
25. If the Respondent does not attend the Hearing provided the Tribunal is satisfied that he has been given notice in accordance with Rule 9 it may proceed in the Respondent's absence. A Respondent is deemed present when he appears by his representative.
26. The Investigation Committee may be represented by a solicitor or barrister or member of the Association's secretariat or a Member of the Association.
27. The Committee may appoint a solicitor or barrister to act as Legal Assessor at the Hearing of a Formal Complaint including any pre-hearing review.
28. The Hearing shall be conducted in accordance with the principles of natural justice but subject to that in such manner as the Tribunal may determine.
29. At the start of the Hearing the Legal Assessor will read out the Formal Complaint and ask the Respondent whether he accepts or denies it. The Investigation Committee representative will then

outline the case and, subject to Rules 11,12 and 13 produce any documents or call any witness to give evidence. The Respondent may then present his case, and, subject to Rules 11, 12 and 13 produce any documents and call any witness to give evidence. A witness, including a Respondent, may be questioned by or on behalf of the other Party and may be questioned by the Tribunal. The Respondent will have the opportunity to make the final address to the Tribunal.

30. The Tribunal may deliberate in camera in the absence of the Parties at any time.
31. A shorthand or stenograph note of the proceedings may be taken or an electronic recording of them made on behalf of the Tribunal.
32. The strict rules of evidence will not apply. The Tribunal will consider the evidence and whether or not the Formal Complaint has been proved on the civil standard of proof. Subject to these Rules the Tribunal may adopt any method of procedure which it may consider fair and which gives each Party the opportunity to present his case. Evidence will not be taken on oath.
33. No objection made by or on behalf of a Respondent to any technical fault in the Complaint or in the procedure adopted by the Tribunal shall be upheld by a Tribunal provided that the proceedings are fair and have been conducted in accordance with the requirements of natural justice.
34. In the event of dissent among members of the Tribunal the decision of the majority will prevail. The fact that the decision is a majority one will be disclosed and the reasons for both the majority and minority conclusions will be given.
35. On finding that the Formal Complaint has been proved in whole or in part, the Investigation Committee Representative will inform the Tribunal of any previous Adverse Finding against the Respondent and may apply for costs but before any Order is made the Respondent may address the Tribunal.

### . Finding and Order

36. If the Tribunal makes a finding against the Respondent that the Complaint is proved in whole or in part it may make any one or more of the following Orders against that Respondent, as it considers appropriate having regard to all the relevant circumstances surrounding the complaint including the Tribunal's view as to the nature and seriousness of the Complaint in so far as found proved, the circumstances of the Respondent both financial and personal and any matters the Tribunal considers to be relevant:
  - a. that the Respondent be excluded (or suspended for such period as the Tribunal may determine) from Membership of the Association for such period as the Tribunal may determine;
  - b. that the Respondent's Licence be revoked;
  - c. that the Respondent be ineligible for a Licence for such period and then subject to compliance with such conditions as the Tribunal may determine;
  - d. that the Respondent be severely reprimanded;
  - e. that the Respondent be reprimanded;
  - f. that the Respondent be fined a specified sum;
  - g. that no further action be taken;

- h. that the Respondent gives a written undertaking to the Association to take such steps as may in the opinion of the Tribunal be necessary or desirable to remedy or alleviate the situation giving rise to the proven Complaint. In the event that a Respondent is not willing to give such an undertaking or fails to comply with any such undertaking, the Tribunal may reconvene and determine the matter in accordance with this Rule as if the matter had just been found proved under Rule 35.
37. Any Order of the Tribunal may also include a direction that the Respondent shall obtain, at the Respondent's own expense, advice in regard to the Respondent's competence, practice management or state of health and for such further training from such sources as the Tribunal may prescribe, and to implement the advice or to undertake any such the training..
38. An Order may be made upon such terms and conditions (if any) as the Tribunal may consider appropriate.
39. If the Tribunal finds the Formal Complaint has been proved in whole or in part it may order the Respondent to pay to the Association by way of costs such sum as the Tribunal may determine.
40. Where a Tribunal makes a finding that the whole Complaint was not proved it shall be open to the Respondent to request the Tribunal to make an Order directing the Association to pay all or part of the Respondent's costs reasonably incurred since referral of the Formal Complaint but any such costs awarded shall be proportionate to the nature of the Complaint and shall only be ordered if the Tribunal considers that the referral of the Complaint by the Investigation Committee was in any way improper or unreasonable in the circumstances.
41. Any Order made under Rules 36 and 39 shall, unless the Respondent has given notice of appeal against the Order pursuant to Rule 50, take effect upon the expiry of the period of fifteen Business Days referred to in that Rule and accordingly in the case of any Order made under Rule 36 a, the name of the Respondent shall be struck off the Register of Members the date on which such period expires and the Respondent shall thereupon cease to be a Member of the Association.
42. All fines and costs payable pursuant to an Order under Rule 36 and/or 39 shall be paid to the Association within 20 Business Days of the date of service of such Order pursuant to Rule 46 below, or within such longer period as the Tribunal may in its absolute discretion determine.
43. Any fines or costs which have not been paid within 20 Business Days of service of the Order pursuant to Rule 46 below shall attract interest at the annual rate of eight per cent over base rate for the time being (or such other rate as Council may from time to time determine) such interest to be calculated from the date 20 Business Days after service of the Tribunal's Record of Decision to judgment for the recovery of the debt.
44. All written material provided by either the Investigation Committee or the Respondent in connection with any disciplinary proceedings shall remain confidential at all times and shall not be disclosed except:
- a. Where disclosure to any other person is necessary in connection with the disciplinary proceedings for the purpose of obtaining their assistance as a witness or to provide other evidence;
  - b. Where advance notice of a hearing is given in accordance with Rule 23;
  - c. To appointed representatives and legal advisers;
  - d. To a Respondent's partners when he is employed in a firm or partnership;

- e. Where information is disclosed in a public hearing;
- f. To an insurer where disclosure is required in accordance with the terms of a policy of insurance.

### Record of Decision and Publicity

- 45. Whenever the Tribunal finds that a Formal Complaint has been proved in whole or in part, a written record of its finding and Order with brief reasons (Record of Decision) will be prepared by the Legal Assessor for approval by the Tribunal and the Tribunal will cause that Record to be published unless it shall in its absolute discretion otherwise determine.
- 46. A copy of the Record of Decision will be sent to the Respondent at his Registered Address as soon as reasonably practicable after it has been approved by the Chairman of the Tribunal.
- 47. If the Tribunal finds the Formal Complaint wholly not proved the finding and Order shall not be published unless the Respondent so requests.
- 48. No such publication of any finding or Order shall be made prior to the expiry of the period permitted by these Rules for the giving of notice of appeal or, if notice of appeal is given and the Respondent proceeds with the appeal, until after the appeal has been heard.
- 49. Unless the Tribunal in its absolute discretion otherwise directs, any such publication shall state the name of the Respondent and the finding and Order made against the Respondent but may omit any reference to the name of any other person concerned in the Complaint or appeal. .

### Appeals

- 50. When the Tribunal makes a finding under Rule 35 and an Order under Rules 36 and/or 39, the Respondent may within 15 Business Days of the date of that finding and Order-from the date the Record of Decision was served in accordance with Rule 46- give notice of appeal against such finding and/or Order to the Secretary in accordance with these Rules. A Respondent may give notice of appeal against a finding alone.
- 51. Subject to Rule 52 any such notice of appeal shall state the grounds of appeal and the grounds so stated shall not thereafter be amended except with the leave of the Appeal Tribunal appointed to hear such appeal.
- 52. Where a Respondent has given notice of appeal in accordance with Rule 50 above but has not provided grounds of appeal, he may apply to the Secretary for an extension of time not exceeding 15 Business Days which will be granted. Failure to provide grounds by the end of the last day of the extended time allowed will mean the appeal will not proceed and there will be publication of the Tribunal's decision in accordance with Rule 45.
- 53. Where a Respondent gives a valid notice of appeal with grounds then, as soon as reasonably practicable after an Appeal Panel has been appointed, the Tribunal shall provide to that Panel and if necessary to the Respondent, copies of its findings and Order (Record of Decision) and if so requested by the Respondent or the Association a transcript of the Hearing.
- 54. After the expiry of 15 Business Days for the giving of notice and grounds of appeal (Rule 50) or the time permitted under Rule 52 for service of grounds, a Respondent may apply in writing to the Chairman or Vice-Chairman of the Appeal Committee for permission to give notice and grounds or grounds of appeal out of time. Any such application must give reasons for the failure to give notice and grounds within the required time.

55. The Chairman or Vice-Chairman of the Appeal Committee shall not give permission for a Respondent to give notice of appeal and grounds or grounds unless he is satisfied that the Respondent could not reasonably have been expected to give notice or grounds within the required time and having regard to all the circumstances it is in the interests of justice that permission should be given.