

Investigation Committee Rules

(These Rules were made by Council and came into force on December 2015)

1. Definitions

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

Adverse Findings	includes any previous finding, Order or orders by a committee of the Association including the finding of a prima facie case whether or not followed by a warning, sanction or costs;
Articles	the articles of association of the Association for the time being in force
Complainant	any person or persons who brings to the attention of the Secretary, any facts, acts or matters which may amount to a Complaint as defined and will include the personal representatives of that person in the event he or she dies before the Complaint has been finally dealt with;
Complaint	any facts, acts or matters which show the Relevant Person may have become liable to disciplinary action in accordance with Article 66. Facts, acts or matters which cannot be supported by evidence will not be treated as a Complaint;
Consent Order	an order made by the Investigation Committee in accordance with Rule 5 of these Rules;
Formal Complaint	a Complaint referred by the Investigation Committee to the Disciplinary Committee under Rule 4.5.1;
Lay Member	any person who is not or has not been an Individual Member of the Association or qualified to act as an Insolvency Practitioner;
Notice	any document, including a letter, to be given in writing required to be given, delivered or sent to a Member under or in connection with these Rules which may be given or sent by pre-paid post addressed to them at their Registered Address;
Registered Address	the address registered with the Association in accordance with Article 16.2;

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| Register of Members | the register of Members created and maintained in accordance with Article 16; |
| Relevant Person | the Member or (where applicable under Article 22A in the Articles) former Member or Student Member against whom the Complaint has been laid; |
| the Committee | the Investigation Committee; |
| these Rules | the Rules as from time to time duly amended by Council. |
- 1.2 Expressions which are defined in Article 1 in the Articles shall, when used in these Rules, have the same meanings herein as therein.
- 1.3 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 Committees from time to time appointed as such by Council and to Tribunals appointed by such Committees and references to the Rules of any such Committee shall be to the Rules of that Committee as adopted or amended from time to time and to any regulations made thereunder by any such Committee.
- 1.4 No objection will be upheld to any technical error or defect in the process leading to the Committee’s decisions or the terms of any decision or Order made by it provided the Relevant Person has not been treated unfairly or suffered prejudice.

2. Complaints Procedure

- 2.1 Every Member shall promptly report to the Secretary any conduct on the part of another Member which they consider may constitute misconduct within the meaning of Article 66.1 of the Articles and bring discredit upon a Member or the Association or its Members or any part of its membership or the profession of Insolvency Practitioner. Each such report shall be considered in the first instance in accordance with Rule 2.2.
- 2.2 Where facts, acts or matters come to the attention of the Secretary he will in the first instance consider whether or not they indicate the Member may have become liable to disciplinary action. If there is such an indication he will treat the matter as a Complaint and each such Complaint shall be referred to and determined by the Committee. Where there is no such indication the person providing the facts, acts or matters will be informed and subject to Rule 2.3, the matter closed.
- 2.3 Any dispute relating to a decision by the Secretary made under Rule 2.2 that facts, acts or matters should not be treated as a Complaint shall be referred to and determined by the Committee in accordance with Rule 2.4.
- 2.4 If a dispute is referred to the Committee under Rule 2.3 the Secretary shall put before the Committee a summary of the material facts, acts and matters together with any relevant documentation.
- 2.4.1 The Committee will decide on the dispute and whether or not the Member may have become liable to disciplinary action.
- 2.4.2 If it is the Committee’s opinion that the facts, acts or matters do not indicate that the Member may have become liable to disciplinary action, the matter will be closed.
- 2.4.3 If it is the Committee’s opinion that the Member may have become liable to disciplinary action the matter will be treated as a Complaint.

3. The Investigation Committee

- 3.1 The Committee shall consist of not less than five persons comprising:
 - 3.1.1 at least four Individual Members; and
 - 3.1.2 at least five Lay Members.
- 3.2 In addition to the persons appointed pursuant to Rule 3.1, Council may from time to time appoint persons who are members of another relevant professional body as co-opted members of the Committee, each such person to be appointed for such term as Council may in each case determine and during such period of appointment, each such person shall be a member of the Committee but shall not be relevant for the purposes of determining whether a quorum is present or be entitled to vote at meetings of the Committee.
- 3.3 The quorum for meetings of the Committee shall be three of whom at least one shall be an Individual Member and one shall be a Lay Member, provided that if more than one Lay Member is present at any meeting, that meeting shall not be quorate unless a corresponding number (less one) of Individual Members is also present.

4. Conduct of Investigations

- 4.1 The Committee shall have power by Notice served on the Relevant Person to call for and it shall be the duty of every Relevant Person to provide and if so requested by the Committee to use best endeavours to procure that any third party stipulated by the Committee shall provide within such time as may reasonably be prescribed by the Committee, such further information including books, papers and records, as the Committee considers necessary, to enable it to decide whether or not there is a prima facie case against the Relevant Person. Every such Relevant Person shall also, if so requested by the Committee, provide access where possible to premises at which any such books, papers and records may be kept.
- 4.2 Where a request is made under 4.1 and the Relevant Person fails to comply with any such request within the time prescribed by the Committee, such failure may be treated as a Complaint under Rule 2.2.
- 4.3 The Committee may, at its discretion and with or without notice to the Relevant Person, approach third parties and request information from them where it considers that information to be relevant and necessary to the exercise of its functions under these Rules.
- 4.4 Before reaching a decision as to whether or not there is a prima facie case against the Relevant Person, the Committee shall give the Relevant Person the opportunity of making final written representations with regard to any or all of the facts, matters or information whatsoever which the Committee may consider in reaching such decision and may in its absolute discretion give the Relevant Person a reasonable opportunity of being heard before it.
- 4.5 If the Committee is of the opinion on the information then before it that a prima facie case has been made out against the Relevant Person, it shall consider all the relevant circumstances surrounding the Complaint and any previous Adverse Findings made against the Relevant Person, and then it shall in its absolute discretion as soon as reasonably practicable, either:
 - 4.5.1 refer the whole or any part of the Complaint as a Formal Complaint to the Disciplinary Committee; or
 - 4.5.2 make a Consent Order pursuant to Rule 5; or
 - 4.5.3 write a warning letter to the Relevant Person in such terms as the Committee shall determine; or
 - 4.5.4 order that no further action be taken on the Complaint, or on any specified part of it

- 4.6 If the Committee finds that the Complaint does not disclose a prima facie case, it shall dismiss the Complaint.
- 4.7 The Committee may appoint any person or persons as its agent for the purposes of carrying out a review of any of the information requested by the Committee pursuant to Rule 4.1 or to initiate any other investigations which the Committee considers to be necessary.
- 4.8 The Committee may appoint a solicitor, barrister or member of staff to represent the Committee at any stage and before any Disciplinary Tribunal.
- 4.9 Where the Committee finds that a prima facie case has been made out and takes action under Rules 4.5.3 or 4.5.4, it may also order that the Relevant Person pay a specified sum in respect of the costs incurred in the investigation of the Complaint subject to the following:
 - 4.9.1 any costs order will only be made under this Rule when the Committee is satisfied that it would be reasonable in all the circumstances to make such an order taking into account acts or omissions on the part of the Relevant Person in his approach and response to the Complaint and
 - 4.9.2 the Relevant Person has been given an opportunity to provide written representations to the Committee on why such an order should not be made.

5. Consent Orders

- 5.1 If the Committee is of the opinion that a prima facie case has been made out against the Relevant Person, and that the case is one which is appropriate to be dealt with under this Rule it may with the agreement of the Relevant Person, make a Consent Order, which shall specify that the Relevant Person be subject to:
 - 5.1.1 any one or more of the orders in Rules 36.d to 37 of the Disciplinary Committee Rules;
 - 5.1.2 an order for payment of costs to the Association in such an amount as the Committee may in its discretion decide.
- 5.2 Before making any Consent Order under Rule 5.1, the Committee shall first give written Notice to the Relevant Person which shall be in, or substantially in, such form as the Committee may approve and shall:
 - 5.2.1 invite the Relevant Person to agree in writing to an order being made against him;
 - 5.2.2 specify the order or orders which the Committee proposes to make;
 - 5.2.3 state the sum to be paid in respect of costs and the date by which that sum must be paid if different to the other terms of the Consent Order;
 - 5.2.4 state whether (if the Relevant Person is a Member of Council) he is required to tender his resignation to Council;
 - 5.2.5 explain that if the Relevant Person declines to give his agreement to the proposed course, or fails to do so within the period of time specified in the Notice, a Formal Complaint will be referred to the Disciplinary Committee and in the event of a Disciplinary Committee Tribunal finding the Formal Complaint proved in whole or in part, it would have available to it the complete range of orders set out in Rules 5.3 and 5.4 of the Disciplinary Committee Rules;
 - 5.2.6 draw the attention of the Relevant Person to the provisions of Rule 5.4; and
 - 5.2.7 state that the Consent Order will be published.

- 5.3 If within the period stated in any Notice sent under Rule 5.2 the Relevant Person gives his written agreement delivered to the Office to the order in the terms set out in the Notice the Committee shall make the Consent Order.
- 5.4 If within the period stated in the Notice sent under Rule 5.2 the Relevant Person provides further information in writing to the Committee delivered to the Office that Notice shall be deemed to be withdrawn and of no effect.
- 5.5 If the Committee, having regard to the further information provided is of the opinion:
- 5.5.1 that the proposed Consent Order should be varied it will so decide and issue a further Notice in accordance with Rule 5.2; or
 - 5.5.2 that the terms of the Complaint should be varied it will so decide and reconsider the varied Complaint and having done so act in accordance with Rule 4.5 or Rule 4.6; or
 - 5.5.3 that a prima facie case has been made and that the Complaint is not suitable to be dealt with by a Consent Order it will so decide and act in accordance with either Rule 4.5.1 or Rule 4.5.3 or Rule 4.5.4; or
 - 5.5.4 that there is no prima facie case it will so decide and it shall dismiss the Complaint; or
 - 5.5.5 that its original decision was correct and the proposed Consent Order should be reoffered it will so decide and issue a further Notice in accordance with Rule 5.2
- 5.6 If the Committee decides after reconsideration of the Complaint as varied under Rule 5.5.2 to proceed under Rule 5.1 then it shall issue a further Notice in accordance with Rule 5.2.
- 5.7 The provisions of Rule 5.4 shall not apply to a further Notice issued under Rule 5.5 or Rule 5.6.
- 5.8 If the Relevant Person declines or fails, within the time fixed by the Committee to give his written agreement to the Committee proceeding as proposed in the Notice sent under Rule 5.2, the Committee shall refer the matter including the Complaint to the Disciplinary Committee as a Formal Complaint.
- 5.9 The Committee shall cause the name of the Relevant Person and the terms of each Consent Order to be published as soon as reasonably practicable and in such manner as it thinks fit.

6 Reference to the Disciplinary Committee

- 6.1 If the Committee decides to refer the whole or any part of a Complaint to the Disciplinary Committee, the secretary of the Committee will inform the Relevant Person of that decision in writing as soon as reasonably practicable after that decision has been taken.
- 6.2 Every Formal Complaint shall be in such form as determined by the Committee and sent to the Disciplinary Committee and to the Relevant Person with a summary of the material facts which were considered by the Committee together with a summary or copies of any representations made by the Relevant Person.
- 6.3 The Formal Complaint and the summary referred to in Rule 6.2 shall be prepared by the secretary of the Committee and approved by the Committee.

7. Rejection of Prima Facie Case

If the Committee is of the opinion that a prima facie case has been made out against the Relevant Person and it has decided to take steps in accordance with Rule 4.5.3 or 4.5.4 but within 20 business days of the date of the letter informing him of the Committee's decision, the Relevant Person rejects the finding of a

prima facie case, the Committee may reconsider the Complaint and if it remains of the view that there is a prima facie case, refer the whole or any part of the Complaint as a Formal Complaint to the Disciplinary Committee under Rule 4.5.1 and in accordance with Rules 6.1, 6.2 and 6.3.

8. Reference to Membership and Authorisation Committee

- 8.1 Where matters are brought to the attention of the Committee which it has dealt with under these Rules, which in its opinion may affect whether the Relevant Person continues to be a fit and proper person to hold an Insolvency Authorisation, it may refer the matter to the Membership and Authorisation Committee.
- 8.2 If the Committee decides to refer a matter to the Membership and Authorisation Committee the secretary of the Committee will inform the Relevant Person of that decision in writing as soon as reasonably practicable after that decision has been taken.
- 8.3 Every matter referred under Rule 8.2 shall be in such form as determined by the Committee and sent to the Membership and Authorisation Committee with a summary of the material facts which were considered by the Committee together with a summary of or copies of any representations made by the Relevant Person.

9. Service on a Member's Registered Address

Any Notice or document required to be served under these Rules may be served personally or by first class post on the Relevant Person 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 5.2 and all such rules where a Notice or document must be served on the Relevant Person.

10. Assistance and Information

- 10.1 If the Committee is of the opinion that facts, acts or matters coming to its attention indicate that a Member may be performing or managing his practice inefficiently, it may by Notice in writing to that Member require him to obtain at his or its own expense advice from such source as the Committee may prescribe and any such Member shall not unreasonably refuse to implement such advice.
- 10.2 In exercising its powers under these Rules, the Committee will treat all information obtained by it in the course of its activities as confidential but may in such circumstances as it deems appropriate disclose any such information:
- 10.2.1 to any individuals appointed to review complaints arising out of the Association's functions as a Recognised Professional Body; or
 - 10.2.2 to the Secretary of State, Department for Business, Innovation & Skills, any Recognised Professional Body and any self-regulating organisation which Council determines for the purposes of this Rule to be a relevant professional body; or
 - 10.2.3 as required by law; or
 - 10.2.4 in connection with and for the purpose of the transfer of appointments to other Insolvency Practitioners; or
 - 10.2.5 so far as is necessary for the proper performance by the Association of its statutory or regulatory duties; or
 - 10.2.6 to its legal advisers as and when necessary.