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Disciplinary Procedure

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Legal basis



1. In accordance with Bylaws 32 and 33 of the Chartered Association of Building Engineers ("CABE") and Regulations 13,14,15,16,17 & 18 of the CABE Regulations, this document sets out the procedure to be followed where an allegation of conduct contravening the CABE Code of Professional Conduct constituting Misconduct (as defined below) is made against a member of CABE.
2. The aim of this procedure is to promote fairness and to ensure that where an allegation of Misconduct is made it will not automatically lead to the imposition of disciplinary sanctions. Both the Complainant and the CABE member will be given reasonable opportunity to present their case where an allegation is made and CABE considers that a disciplinary investigation is appropriate.
3. Responsibility for setting these procedures rests with the CABE Board of Directors ("the Board").
4. CABE reserves the right to apply appropriate alternative provisions to those set out in this document where the Regulations, Bylaws or the Code of Professional Conduct in force at the time relevant to the alleged offence differs from that referenced in this document.
5. These procedures will be subject to review and (where appropriate) amendment as and when directed by the Board or the Membership and Professional Standards Committee.
6. Abbreviations and definitions used in this document:
 - a. **Preliminary Investigation Panel (PIP)** – an executive panel charged with registering and validating complaints, undertaking investigations as necessary and providing secretariat to the Professional Conduct Committee, Disciplinary Panel and Appeals Panel.
 - b. **Professional Conduct Committee (PCC)** – a committee with delegated responsibility to act on behalf of the Board in accordance with these procedures.
 - c. **Disciplinary Panel (DP)** – a panel drawn from the PCC and charged with assessing complaints made against CABE members to determine whether they are accountable for Misconduct and determine what sanction should be imposed.
 - d. **Panel Advisors (PA)** – PCC members or other persons with relevant specialist knowledge and experience who, at the discretion of the DP's Chair, may attend disciplinary hearings to use their technical expertise to assist the DP in their deliberations.
 - e. **Appeals Panel (AP)** – a panel normally drawn from the PCC, whom have had no prior involvement in the disciplinary enquiry in question, and charged with assessing appeals to determine whether the decision(s) reached by the DP was unreasonable or any penalty imposed was manifestly excessive. The Appeal Panel will be drawn from the Membership and Professional Standards Committee in circumstances where the Subject is also registered with the Engineering Council.
 - f. **Association Clerk** – a suitably qualified person within the CABE executive charged with management of disciplinary procedures.
 - g. **Subject** – means a member of CABE who is the subject of an allegation of Misconduct.



- h. **Misconduct** – means conduct that:
- i) breaches the CABE Code of Professional Conduct
 - ii) amounts to unacceptable professional conduct within the standards expected in the Building Engineering profession
 - iii) in the circumstances falls significantly below the competence expected of a reasonably competent building engineering professional or otherwise amounts to significant professional incompetence in meeting the standards expected of the Building Engineering Profession
 - iv) may bring CABE or the Building Engineering profession into disrepute
 - v) is prejudicial to the interests of CABE; and/or
 - vi) fails to comply with a decision made or penalty imposed under this procedure.
- i. **Complainant** – means the maker of the allegation of misconduct and may be an employee or appointee of CABE.
- j. **Parties** – refers jointly to the Subject and the Complainant.

CABE Code of Professional Conduct

- 7. In accordance with Bylaw 32 CABE will publish a Code of Professional Conduct (hereinafter referred to as “the Code”) which has been prepared by the Membership and Professional Standards Committee and approved by the Board.
- 8. In coming to any decision relevant to their work, the PIP, PCC or Appeals Panel may make reference to the relevant iteration of the Code and any supporting guidance, but are not bound by that guidance in coming to a decision on any particular case.

Confidentiality of evidence

- 9. All information submitted as part of the disciplinary and complaints process will be held in accordance with the CABE Privacy Statement. However, normally the outcome of a professional disciplinary enquiry identifying Misconduct will be notified to the Engineering Council and appropriately published in the public interest. Should the Subject wish CABE to withhold notification to the Engineering Council or publication, he or she must make a written request to CABE with reasons why the Subject believes notification would not be in the public interest. CABE will consider the request and inform the Subject of the decision as soon as practicable. CABE will not consider any request not in writing, or any written request received more than 14 days after the day on which the Subject was notified of the outcome of the disciplinary proceedings.
- 10. Any relevant evidence or correspondence submitted by a Complainant as part of a complaints process will be made available in the interests of fairness and transparency to the member (hereinafter referred to as “the Subject”) against whom the complaint is made.
- 11. Parties will only be able to submit evidence belonging to or originating from a third party for use in CABE’s disciplinary enquiry, where they are able to confirm to CABE that they have sought and obtained the third party’s express consent.

Litigation, arbitration and legal proceedings

- 12. Complainants and Subjects must inform CABE immediately if they intend to or have initiated litigation, arbitration or any other legally binding process in relation to the matters raised in the complaint or if any of the matters being considered are subject to criminal proceedings.
- 13. With the exception of cases where the public interest demands more immediate action, enquiry into any complaint subject to litigation, criminal proceedings or any other legally binding process will be suspended until the relevant process has concluded.

Conviction for a relevant criminal offence



14. In accordance with paragraph 6 (c) of the Code, members are required to notify CABE within 14 days if they are convicted of a relevant criminal offence (as defined in the Code).
15. Members are required to co-operate with any investigation into their conduct and where they have been convicted of a relevant criminal offence, this includes disclosing details of the judgment and sentence and any other details of the case that may be needed reasonably to assist in the determination of the disciplinary proceedings.
16. The PCC may impose any disciplinary sanction on any member convicted of a relevant criminal offence, as would be available for any other disciplinary matter (see below).
17. Where a member convicted of a relevant criminal offence is considered to pose a risk to public safety PIP may in its absolute discretion recommend the PCC convene an expedited disciplinary hearing. Any expedited hearing is required to conform to the full standard hearing process (see paragraphs 64 to 68).

Bankruptcy, insolvency and arrangements with creditors

18. In accordance with paragraph 6 (c) of the Code, members are required to notify CABE within 14 days if at any time they become insolvent (as defined in the Code) or receive an adverse civil court judgment.
19. The PCC will evaluate such circumstances on the basis of evidence provided in order to determine whether it remains in the public interest for the member to continue to be accredited by CABE.
20. The PCC may apply any of the disciplinary sanctions available for any other professional disciplinary matter in relation to these circumstances (see below).

Disciplinary censure by another professional association or body

21. In accordance with paragraph 6 (c) of the code, it is a requirement that members notify CABE within 14 days if they have been subject to disciplinary sanction by another professional association or body.
22. Members are required to co-operate fully with CABE's enquiries into any disciplinary sanction they have been subjected to and, where requested, attend a disciplinary oral hearing.
23. The PCC may apply any of the disciplinary sanctions available for any other professional disciplinary matter in relation to these circumstances (see below).

Preliminary Investigation Panel (PIP)

24. The PIP will consist of the Association Clerk (or an independent legal person appointed by the Chief Executive) and the CABE Senior Executive Team member with responsibility for CABE's disciplinary processes, excluding the Chief Executive (or in their absence, another Senior Executive).
25. The role of the PIP is to:
 - receive complaints and consider if they are within the authority of CABE to investigate
 - assemble necessary evidence and decide whether there is sufficient evidence to justify an investigation in accordance with the terms of this disciplinary procedure; and
 - if in the opinion of the PIP there is sufficient evidence to commence an investigation in accordance with the terms of this disciplinary procedure, refer the complaint to the PCC.



26. The PCC will meet as and when required and will have at least 9 members, which must include:
- i) two lay persons (i.e. a person who is not a CABE member or otherwise affiliated with CABE in any way) appointed following interview by the Chair of the PCC and/or an appropriate member of the Senior Executive Team
 - ii) an independent Chair (The Chair) with suitable legal experience or other suitable relevant experience (who is not a CABE member or otherwise affiliated with CABE in any way) appointed following interview by an appropriate member of the Senior Executive Team
 - iii) six CABE members with extensive professional experience which may include past Presidents, past Vice Presidents and members of the CABE Technical Expert Panel; and
 - iv) any other CABE member with suitable professional expertise requested to attend the proceedings of the PCC or DP in order to advise on a matter of particular expertise.
27. No member of the PCC will be a sitting member of either the CABE Membership and Professional Standards Committee or the CABE board.
28. On a case by case basis, one Lay member of the PCC, will be denoted as the Vice-chair and will assume the responsibilities of the PCC Chair where the Chair is absent or where a DP is reconvened following appeal.
29. It is the responsibility of PCC members, as and when required to convene and form the DP which will make final determinations on complaints/allegations at Disciplinary Panel Hearings (as referred to below).
30. Disciplinary Panel Hearings will be convened as and when required, at which the DP will assess complaints made against CABE members to determine whether the evidence shows on the balance of probabilities that the CABE member is liable for Misconduct. The DP will thereafter determine what sanctions should be imposed, if such a finding is made. Disciplinary hearings will be convened more frequently as and when required.
31. Disciplinary hearings will be quorate provided that the Disciplinary Panel are present. The DP will be chosen by the Chair and PIP and must consist of at least 3 PCC members including, but not limited to:
- the Chair or a Lay Person; and
 - a CABE Member.
- The Chair and PIP may also request that additional members of the PCC or other suitably expert persons as necessary attend a disciplinary hearing to aid and support the DP in their deliberations. Those additional members of the DP as convened shall be referred to as Panel Advisors.
32. Disciplinary hearing decisions will be agreed by majority vote. Each member of the DP will receive and must cast a single vote. Panel Advisors will not be permitted to vote.
33. Members of the PCC will be subject to collective responsibility for the decisions reached by the DP.
34. Members of the PCC will be required to sign appropriate non-disclosure agreements and must treat all of the information of which they become aware in strict confidence.
35. The PCC will act in accordance with the procedures set out in this document.

Disciplinary Process

Requirements for an allegation of Misconduct



36. A complaint must be made in writing or a written summary of it agreed between the PIP and the Complainant and accompanied by copies of documentation relevant to it.
37. Where a Complainant cannot for any reason submit the complaint in writing, CABA may choose to agree alternative ways in which the complaint can be recorded.
38. Complaints must identify the nature of Misconduct in line with the grounds set out in paragraph 6 (h).
39. CABA will not investigate allegations which are made anonymously. Where an alleged incident occurred more than one year prior to the receipt of the allegation, CABA shall not be obliged to investigate an allegation of Misconduct.

Legal proceedings and authority of higher regulatory bodies

40. In considering an allegation of Misconduct, any committee shall be entitled to rely on a certificate of criminal conviction and/or transcript of criminal court's judgment as evidence of the offence committed, or the decision of a civil court or tribunal as evidence of the issues determined by that court or tribunal.
41. If the Subject is regulated by a superior body (e.g. regulation by Building Safety Regulator) the PIP will direct the Complainant to refer the complaint to that body prior to CABA and the PIP considering the complaint.
42. With the exception of cases where the public interest demands more immediate action, enquiry into any complaint that is being investigated by a superior body will be suspended until the relevant process has concluded.

Standard of proof

43. Subject to the provisions of this procedure and CABA's Regulations the relevant committee or panel may find an allegation of Misconduct proven or confirm a finding that an allegation of Misconduct is proven provided it is satisfied on the evidence available that it is more likely than not to be true.
44. If CABA determine at any stage of an investigation that, on the basis of the evidence submitted, there is no real prospect of an allegation of Misconduct being successfully proved, that case will be closed and the Complainant will be informed of the reasons why in writing. The PIP may inform Subjects of the nature and origin of any complaint made against them that does not meet CABA's standard of proof.

Precautionary suspension

45. If the Subject is convicted of a relevant criminal offence under health and safety legislation or charged with or convicted of any indictable criminal offence the MPSC may suspend him with immediate effect, on the basis of a majority vote.
46. Unless determined otherwise by the MPSC, a Subject who is suspended shall not, throughout the period of suspension, be permitted to use any designation or initials appropriate to membership and may not attend or vote at any general meetings of the members.
47. Unless determined otherwise by the MPSC, the period of suspension shall continue until the conclusion of any disciplinary proceedings or investigations.
48. A Subject who is suspended may request the lifting of the suspension by making written representations to the MPSC within 10 working days of the suspension being imposed.
49. A Subject who is suspended may apply in writing at intervals of no less than 4 weeks requesting the MPSC review the suspension.



50. Within 20 working days of receiving an allegation of Misconduct, the PIP shall:
- Contact the Complainant to acknowledge receipt; and
 - Assess whether it is necessary to seek any further information or documentation in relation to the allegation of Misconduct from the Complainant or elsewhere and, if so, request it.
51. As soon as is reasonably practicable the PIP shall determine whether the complaint is within the remit of CABA to address and whether there are sufficient grounds to proceed with the investigation into the allegation of Misconduct.
52. If the PIP determines that there are insufficient grounds to investigate the allegation of Misconduct it shall inform the Complainant of this in writing.
53. If the PIP determines that there are sufficient grounds to proceed with the investigation into the allegation of Misconduct they shall send the Subject formal written notice of the allegation of Misconduct and make available copies of any relevant documentation submitted by the Complainant or obtained from any other source that affected its decision to investigate and require a written response from the Subject.
54. Within 20 working days of receiving a notice from the PIP in accordance with paragraph 53 (above), the Subject shall submit a written response stating whether he admits or denies the allegation of Misconduct and must provide copies of any documentation upon which he wishes to rely.
55. Once evidence has been received in accordance with paragraphs 50 and 54 (above), the PIP shall prepare a summary of the complaint and refer the allegation of Misconduct to the next available scheduled DP with any supporting documentation received from the Complainant and/or Subject.

Assessment of complaints by the Professional Conduct Committee

56. The PCC shall consider matters referred to it by the PIP under paragraph 55 (above) unless the PIP decides to cancel the referral on the ground that new information has been provided since the referral by the PIP to the PCC leading to a conclusion that there is no realistic prospect of a finding that the allegation of Misconduct is proven.
57. Once evidence from both Parties has been received the PCC shall organise a hearing by the DP to consider the allegation of Misconduct. Where deemed suitable, hearings may be conducted online.
58. Where deemed appropriate the PIP may, in agreement with the Chair, decide that a complaint will be assessed by examination of papers rather than by oral hearing. In these instances, the Association Clerk will prepare a summary of the complaint which will be issued to the Subject and the Complainant. Within 28 days of issue of the summary, the Parties must provide CABA with any comment or further representations they wish to be considered by the DP. Once the 28-day period has lapsed the case summary, evidence and further representations will be referred to the next available scheduled DP and the complaint reviewed in accordance with paragraphs 61, 62, 63 & 66-69.
59. Not less than 28 days prior to the Disciplinary Hearing, CABA will notify both the Complainant and Subject of the Disciplinary hearing date.
60. CABA may issue further instructions to the Complainant and/or the Subject, prior to the hearing date, where it is deemed necessary to aid the understanding of the DP.
61. The DP and Panel Advisors (if applicable) will be provided with copies of the evidence disclosed for review before the disciplinary hearing.

62. The DP and Panel Advisors must:



- a. ensure that they read the relevant papers prior to attending the meeting
 - b. identify any conflict of interest they may have with either the Complainant or Subject in hearing the case and notify the Independent Chair immediately
 - c. refrain from making any comment on the merits or otherwise of the case verbally or using any other form of communication prior to the Disciplinary Hearing being convened unless there is to be a preliminary discussion to clarify any issues.
63. PCC members whom have any real or potential conflict of interest may not be chosen to attend the Disciplinary Hearing.
64. Both the Complainant and Subject may choose to be represented at the disciplinary hearing by a legal adviser or have someone attend to provide moral support.
65. Where necessary, CAGE will arrange for a suitably competent and independent translator to attend a hearing to assist the Complainant and/or Subject, at no cost to the parties. The use of translators appointed by or known to the parties at hearings is prohibited.
66. CAGE reserves the right to request that any individual in attendance at a disciplinary hearing leave, if they are deemed to be obstructing the progress of the hearing.
67. The format of CAGE's Disciplinary Hearing will be decided by the Chair, on a case by case basis, but will normally incorporate the following:
- both the Complainant and Subject being given the opportunity to state their case to the DP and to draw their attention to supporting documents
 - both the Complainant and Subject being afforded the opportunity to cross examine the other party
 - the DP and Panel Advisors having the opportunity to question the Complainant and Subject, at any time
 - both the Complainant and Subject being given the opportunity to give a closing speech.
68. At the close of the hearing the Parties (if present) shall leave and the DP shall come to one or more of the following decisions:
- a. that further information or advice is required in order to come to a decision in relation to one or more alleged breach; at which time the CAGE executive will be charged with obtaining such information or advice and the case will be referred to the next Disciplinary Hearing.
 - b. that, where the enquiry has been conducted by paper only, a oral hearing may be required in order to come to a decision in relation to one or more alleged breach; in which case a hearing will be arranged in accordance with these rules
 - c. that the Subject is liable for Misconduct in relation to one or more alleged breach; or
 - d. that the Subject is not liable for Misconduct in relation to one or more alleged breach.
69. The decision and reasoning of the DP will be recorded for communication to the Complainant and Subject, as detailed in paragraph 70 below.
70. Once a decision is reached in relation to all the alleged breaches, the Chair will close the hearing and the Complainant and member will be informed of the outcome of the hearing electronically and in hard copy.

Disciplinary sanctions



71. Where there is a finding of Misconduct the DP may impose the following sanctions:
- a. for a finding of Misconduct:
 - i. require the Subject to give an undertaking in writing to refrain from continuing or repeating the conduct which is found to have constituted the contravention
 - ii. write to the Subject reprimanding the Subject and formally request further training or directions as to taking a particular action or actions to avoid future breach of the Code of Professional Conduct.
 - b. for a more serious finding of Misconduct including a finding of unacceptable professional conduct or significant professional incompetence:
 - i. suspend the Subject from membership of the Association until the satisfactory completion of training and/or other measures and for such period as the Board may determine; or
 - ii. reduce the Subject's membership grade and prohibit them from re-obtaining a higher grade until the satisfactory completion of training and/or other measures and for such period as the Board may determine; or
 - iii. expel the Subject from the Association where their continued membership is not in the public interest, as determined by the board.
72. The decision and reasons will be recorded and communicated in writing to both the Complainant and the Subject by electronic means and in hard copy by recorded delivery within 10 working days of the decision being made or (where required) ratified. The notice must set out reasons for the DP's decision and, if appropriate, must inform the Subject of his right to appeal.
73. The DP is required to obtain authorisation from CABE's Membership and Professional Standards Committee, for any sanction it seeks to impose on a member who is also registered with the Engineering Council.

Suspension

74. Where a Subject is suspended from the register in accordance with Regulation 16 of the CABE Regulations, the PCC will set out:
- a. the time period of suspension; and/or
 - b. any mitigating actions required of the Subject prior to removal of the suspension; and/or
 - c. any conditions relating to the suspension of the Subject.

Right to appeal

75. If the Complainant or the Subject wishes to appeal against the decision of the DP, he or she must first submit the grounds for appeal in writing to CABE's Chief Executive within 10 working days of the decision or notification of the decision (whichever is the later).
76. Examples of grounds of appeal include:
- a. serious errors in the procedure followed by the DP
 - b. the imposition of an unreasonably excessive sanction by the DP; and
 - c. new material and/or evidence has been disclosed that could not have reasonably been disclosed to the DP prior to the Disciplinary Hearing.

77. The Chief Executive and the Technical Director attended by the DP Chair will consider the grounds for appeal in accordance with paragraph 75:



- a. unless it is decided that the grounds for appeal are entirely without merit or show no reasonable prospects of the appeal succeeding, the appellant shall be invited to submit forthwith a letter setting out detailed particulars of the grounds which will be sent to an Appeals Panel
- b. if it is decided that the grounds for appeal are entirely without merit or show no reasonable prospects of the appeal succeeding, the appellant shall be so informed

78. The Appeal Panel will normally be made up of three Members of the PCC, whom have no prior involvement with the disciplinary enquiry and will consist of:

- the PCC Chair or Lay Person (acting as Chair); and
- two CABE Members.

79. In circumstances where the Subject is also registered with the Engineering Council, the Appeal Panel will be made up of three members of the Membership and Professional Standards Committee.

80. The Complainant and Subject may also seek leave to appeal to the Engineering Council in circumstances where the Appellant has exhausted CABE's appeal procedure and remains dissatisfied with the way the complaint has been dealt with.

81. Where leave is granted, the Appeal Panel will convene to consider whether the original decision reached by the DP was unreasonable or any penalty imposed was manifestly excessive.

82. At the discretion of the Appeal Panel's Chair, the Appeal Panel may consult with other persons with relevant specialist knowledge and experience, who may use their expertise to assist the Appeal Panel in their deliberations.

83. Having reviewed the available evidence, the Appeal Panel may:

- a. ask that the original DP review the material submitted in the original submission and in support of the appeal and reconsider its recommendation
- b. require a further hearing to be arranged, at the earliest available date, at which a newly-constituted DP (with a different Chair) would determine an appropriate outcome that CABE and the Parties would be bound by
- c. decide that the appeal should not be upheld and should be dismissed; or
- d. request further information before coming to a decision.

84. Once the Appeal Panel has reached a decision this will be confirmed in writing to the Subject and Complainant in writing within 10 working days of the Appeal hearing.

Independent appeals tribunal



85. If a Complainant member is not satisfied with the outcome of CABE's internal appeals process, they have the right to request referral to the Construction Industry Council Independent Appeal Tribunal.
86. The request must be received by CABE by recorded delivery in writing within 28 days of being notified of the outcome of the appeal process.
87. CABE will then provide information on how the Construction Industry Council Independent Appeal Tribunal process can be commenced.
88. The Construction Industry Council Independent Appeal Tribunal will not rehear the case, but will determine whether or not the decision of the CABE is to be upheld or referred back to CABE. Costs may be awarded as part of this process.

Publication of disciplinary proceedings

89. Where the PCC decides that a member is liable for Misconduct and has imposed a disciplinary penalty, the nature of the breach and the penalty will be published in accordance with CABE's Publication Policy.

Recording of complaints and disciplinary matters

90. In accordance with the CABE privacy policy, CABE retains the right to hold any evidence submitted or disclosed as part of a complaints process in perpetuity.

Public interest

91. CABE shall retain the right to act immediately in suspending a member from the register or issuing a letter of direction if it is believed that their continued benefit of membership could put members of the public at risk but must institute an enquiry forthwith.

Electronic communication

92. CABE reserves the right for members of its Committees and Panels to reach any of the decisions/ determinations detailed in this document and communicate the same to each other, via the use of electronic communication.

We're here to help

If you have any queries about the Disciplinary Procedure, please contact us. You can also find out further information at cbulde.com.

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