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**The Institution of Engineering and  
Technology**

**Guidance on the IET's Disciplinary  
Regulations**

(IET Disciplinary Regulations approved by  
the Board of Trustees on 3 October 2019)

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# The Institution of Engineering and Technology

## Guidance on the IET's Disciplinary Regulations

(IET Disciplinary Regulations approved by Board of Trustees on 3 October 2019)

### 1 **Introduction**

- 1.1 Commitment to a shared code of conduct is a defining characteristic of a profession. The IET's [Rules of Conduct](#)<sup>1</sup> are designed to guide members to meet the standard of professional conduct as specified in the [Bye-laws](#).
- 1.2 The IET aspires to promote the highest standards of conduct, and consequently, its Rules of Conduct are consistent with principles widely accepted amongst leading engineering bodies worldwide.
- 1.3 When joining the IET and in renewing their membership each year, all members agree to abide by the Rules of Conduct and submit themselves to the published disciplinary procedure.
- 1.4 Allegations that a member's conduct has failed to meet the standards required by the Rules of Conduct will be investigated and considered under the procedures set out in the IET's [Disciplinary Regulations](#)<sup>2</sup>. The Disciplinary Regulations have been approved by the IET's Board of Trustees and were prepared having regard to the Engineering Council's guidance for Professional Engineering Institutions.
- 1.5 This guidance has been prepared to assist all individuals who engage with the Disciplinary Regulations in any capacity, including as a member of a panel established under the Disciplinary Regulations. This guidance should be read alongside the Disciplinary Regulations and is intended to assist the IET in achieving consistency and fairness in the application of the Disciplinary Regulations. This document is, however, only guidance: it is the procedure set out in the Disciplinary Regulations that is to be

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<sup>1</sup> <http://www.theiet.org/about/governance/rules-conduct/>

<sup>2</sup> <http://www.theiet.org/about/governance/rules-conduct/disciplinary-regs/>

followed and the circumstances in any individual case may make it inappropriate to apply elements of this guidance.

- 1.6 When operating the disciplinary procedure and when making decisions under it, regard will be had to the principles of natural justice. Specifically, the IET and those acting in connection with this disciplinary procedure will act in a manner that is clear, open, fair, unbiased and proportionate.

## **2 Improper conduct**

- 2.1 The Rules of Conduct and the Disciplinary Regulations are the route through which the IET promotes and maintains the ethical behaviour of its members in the practice of science, engineering and technology. The Disciplinary Regulations are not intended to be used as a means of resolving a dispute that involves a member or of pursuing a grievance or vendetta against a member.
- 2.2 Accordingly, the key issue to be considered in connection with complaints about or allegations made against members is whether the conduct of the member falls below the standards set out in the Rules of Conduct.
- 2.3 For example, individuals can and do hold different opinions on a variety of matters. Where the opinions themselves do not breach the Rules of Conduct (e.g. equality law etc.), the Disciplinary Regulations are not the route through which those different opinions are to be tested or adjudicated. However, the Disciplinary Regulations may be the route through which the conduct of a member when debating or disagreeing is examined.

## **3 Allegation**

- 3.1 Any complaint or concern about a member's conduct needs to be made in writing (which includes email and other permanent forms of communication). Any person may make an allegation about a member, and the IET may raise its own complaints or concerns via an internal reference, to the Director or Governance and External Engagement.
- 3.2 A complaint or concern can be submitted in a number of ways:

- 3.2.1 Using the form available on the IET website.

- 3.2.2 By post to:  
The Director of Governance and External Engagement  
The Institution of Engineering and Technology  
Futures Place  
King's Way  
Stevenage  
Hertfordshire  
SG1 2UA.
- 3.2.3 By email to: [disciplinarycomplaints@theiet.org](mailto:disciplinarycomplaints@theiet.org).
- 3.3 If a complaint has been received by other means (e.g. by telephone), the complainant may be informed that their complaint may not be considered unless and until the complainant submits their complaint in writing. This does not prevent:
- 3.3.1 a note being taken of the complaint received and being sent to the complainant for their confirmation; or
- 3.3.2 the IET initiating a complaint based upon information it receives, provided the complaint is reduced to writing.
- 3.4 It is possible to receive and consider anonymous complaints. However, it should be remembered that decisions about a member's conduct will be made on the basis of evidence and if a complainant refuses to give their identity that may significantly hamper any investigation. Also, it is potentially unfair for the member complained about (the "accused member") not to know who their accusers are, or to test their evidence should the matter proceed to a formal disciplinary hearing.
- 3.5 As set out at Regulation 4.1, the Director of Governance and External Engagement will appoint a Complaint Secretary upon receiving a complaint or allegation about a member. This should happen promptly upon the complaint/allegation being received. See Section 7 for more information about the Complaint Secretary.

#### **4 Conflicts of interest**

- 4.1 Throughout the Disciplinary Regulations, reference is made to the need for those involved to consider whether there is a conflict of interest that would prevent their involvement in the process. It is particularly important for the Complaint Secretary and members of the Preliminary Investigation Panel, the Disciplinary Panel, the Independent Reviewer, and the Appeal Panel to consider conflicts of interest before

they participate in a disciplinary matter and keep the issue of conflicts of interest in mind while participating in the matter.

4.2 A conflict of interest arises where circumstances exist that would lead a fair-minded and informed observer to conclude that there was a real possibility that the individual may not make an objective determination of the issues that they have to resolve. It is important to note that the question to consider is not whether the individual is capable of making an objective decision, it is whether it *appears* that they may not do so: it is an objective test, not a subjective one.

4.3 Conflicts of interest arise in a number of ways, including:

4.3.1 if the individual is related to the complainant, the accused member or another person material to the complaint;

4.3.2 if the individual has a close personal or business relationship with the complainant, the accused member or another person (including a corporate entity) material to the complaint; or

4.3.3 if there has been a dispute between the complainant or the accused member and the individual.

4.4 If an individual is unsure whether they have a conflict of interest, they should seek advice from the Complaint Secretary (and the Complaint Secretary should seek advice from the Director of Governance and External Engagement).

4.5 Any individuals who are provided with the names of people and/or entities in connection with a disciplinary matter (whether for considering whether a conflict of interest arises or otherwise) must treat the names and the fact that they have been contacted by the Complaint Secretary as confidential.

## **5 Criminal proceedings or civil claims**

5.1 If criminal or civil proceedings that cover all or part of an allegation of misconduct are underway or are likely, the IET must consider whether the disciplinary procedure should be suspended until after the criminal or civil proceedings have concluded. This is to ensure that the IET's procedures do not affect the fairness of the court proceedings.

- 5.2 Regulation 1.2 says that any person who becomes aware of criminal or civil proceedings that relate to the alleged misconduct is to inform the Complaint Secretary of that fact. A wide understanding of “proceedings” should be taken – meaning that a person’s arrest or charge should be reported to the Complaint Secretary, as should a pre-action protocol letter saying that a claim will be brought.
- 5.3 As set out at Regulation 1.2, the decision as to whether to suspend the IET disciplinary procedure is taken by a single member of the Preliminary Investigation Board unless the allegation has been referred to a Disciplinary Panel, in which case it is made by the Chair of that Disciplinary Panel. Where a Preliminary Investigation Panel has been appointed (see Section 8), the “single member of the Preliminary Investigation Board” could be a member of the Preliminary Investigation Panel and that person would be entitled to consult the other panel members.
- 5.4 If criminal or civil proceedings commence or are likely when a disciplinary matter is at an appeal stage, the decision as to whether to suspend the progress of the appeal will be taken by the Chair of the Disciplinary Panel or a single member of the Preliminary Investigation Board (as described at paragraph 5.3 above).
- 5.5 Where there are civil or criminal proceedings underway (which includes where they are clearly being contemplated) which are directly connected to the matter being investigated or considered by the IET, it will usually be appropriate to suspend the IET process. Any decision to suspend the process will depend on the particular facts, and there may be circumstances where it is not appropriate to suspend the process (particularly if the matter has reached the appeal stage).
- 5.6 The Complaint Secretary will arrange for the decision maker to be given advice on the issues to take into account when deciding whether to suspend the IET disciplinary process.
- 5.7 Regulation 1.3 says that where a decision is made to suspend proceedings, the decision maker shall:
- 5.7.1 consider whether to inform the complainant of the decision to suspend proceedings and the reasons for that; and
  - 5.7.2 inform the accused member of the decision to suspend proceedings and

the reasons for that.

- 5.8 It will normally be appropriate to inform the complainant of a decision to suspend proceedings. The decision maker will need to record the reasons for not informing the complainant of their decision. The record will be kept by the Complaint Secretary.

## **6 Resignation or lapsing of membership**

- 6.1 During an active disciplinary matter, the accused member's membership may come to an end by virtue of:

6.1.1 the Board of Trustees accepting the member's resignation (in accordance with Bye-law 26); or

6.1.2 the member not paying their membership renewal fee (i.e. their membership lapsing).

- 6.2 Rule 33 of the Rules of Conduct states: "*Members agree that the Institution may pursue the disciplinary process under the Disciplinary Regulations in connection with any complaint against them received by the Institution while they are a member notwithstanding that their membership subsequently comes to an end, however that occurs (eg it lapses or they seek to resign).*"

- 6.3 If the accused member's membership comes to an end before the disciplinary process concludes, the Director of Governance and External Engagement (GEE) should be informed.

6.3.1 Where the Board of Trustees has accepted the member's resignation, the Director of GEE may decide whether the disciplinary process should continue.

6.3.2 In other situations, the Director of GEE should consider referring the question of whether the disciplinary process should continue to:

(i) the PIP; or

(ii) the Chair of the Disciplinary Panel (where the PIP has referred the matter to a Disciplinary Panel).



- 6.4 The following (non-exhaustive) matters should be taken into consideration when deciding whether the disciplinary process should continue:
- 6.4.1 the seriousness of the allegations of improper conduct;
  - 6.4.2 the professional registration status of the accused member; and
  - 6.4.3 the commitment of IET (charitable) resources (e.g. staff and volunteer time, or funds) involved in progressing the disciplinary matter.

## **7 Complaint Secretary and Initial Stages**

- 7.1 The IET's Director of Governance and External Engagement will appoint a Complaint Secretary for each complaint. The Complaint Secretary will usually be a member of IET staff and may be a member of the IET's legal team.
- 7.2 On receipt of a complaint, the Complaint Secretary must first consider whether they have a conflict of interest meaning they should not participate in the matter (see Section 4). If circumstances exist which objectively could be thought to be likely adversely to affect the Complaint Secretary's ability to impartially carry out their role, the Complaint Secretary must inform the Director of Governance and External Engagement who will appoint a different Complaint Secretary.
- 7.3 Having acknowledged receipt of the complaint, the Complaint Secretary will need to consider whether the complaint raises a disciplinary matter. While the Complaint Secretary may ask questions of the complainant in order to clarify the allegation, they are not to undertake an investigation at this stage. At this stage, the Complaint Secretary's role is to receive the allegation or complaint and support the Preliminary Investigation Panel in making its decision as to whether the complaint should be investigated, and what form any investigation will take.
- 7.4 As set out in the Disciplinary Regulations (Regulations 4.3.1 to 4.3.3), the Complaint Secretary will refer the matter to a Preliminary Investigation Panel unless:
- 7.4.1 the complaint does not raise an issue of improper conduct against one or more members of the IET. For example, this may be because the individual complained about is not a member of the IET or because the allegation could never be a breach of the Rules of Conduct;

- 7.4.2 the issue (and/or the complainant) should be referred to the police or any other agency, authority, or body; and/or
- 7.4.3 the issue should be addressed under another procedure of the IET.
- 7.5 At this stage, the Complaint Secretary may take the complaint at face value – this should not be mistaken for accepting that it is all true. Given the very preliminary nature of the matter, the accused member need not be notified of the complaint before the Complaint Secretary takes the decision described at paragraph 7.3.
- 7.6 If the complaint relates to a time when the individual was not a member of the IET, the Complaint Secretary should still consider the matter as set out at paragraph 7.4 above.
- 7.7 If one (or more) of the conditions in Regulations 4.3.1 to 4.3.3 applies, as well as taking the appropriate action, the Complaint Secretary will need to consider informing each of the complainant and the accused member regarding their decision (Regulation 4.4.1 and 4.4.2). In general, it is likely to be appropriate for both the complainant and the accused member to be told of the action to be taken in response to the complaint and why. Factors potentially relevant to the decision include: whether doing so might impede an investigation by the police or other authority; any requests for confidentiality made by the complainant and the reasons for those requests; and the known possible impact upon the health and well-being of either person.
- 7.8 The Complaint Secretary should provide the Preliminary Investigation Panel with the information it is likely to need to make the decisions with which it is charged. This is likely to include the written complaint received and any documents sent with it, a copy of the Rules of Conduct, a copy of the Disciplinary Regulations, and a brief report of any enquiries made by the Complaint Secretary.

## **8 Preliminary Investigation Panel**

### **General**

- 8.1 The Preliminary Investigation Panel (“PIP”) will usually be involved twice in any disciplinary matter. Its first task is to make decisions over whether, and if so what aspects of, a complaint should be investigated. Its second task is to decide, once an investigation is completed, whether, and if so upon what basis, an accused member

should be referred for disciplinary action and, if so, whether to propose an Admitted Breach and Agreed Sanction.

- 8.2 It is desirable that the PIP should make its decisions quickly, ideally within 21 days of the referral by the Complaint Secretary of the complaint and (where applicable) the receipt of the Investigator's report. However, it must be recognised that members of the Preliminary Investigation Board are volunteers and therefore may have competing demands on their time.
- 8.3 The PIP is to be formed in accordance with Regulation 5.2 and 5.3. As a matter of good practice, the Complaint Secretary should contact members of the Preliminary Investigation Board to ask them to form a PIP. The Preliminary Investigation Board is made up of 15 members appointed by the Board of Trustees.
- 8.4 When contacted by the Complaint Secretary and asked to form part of a PIP, individual members of the Preliminary Investigation Board will be told the known names of the people and entities (companies, partnerships etc.) involved in the matter in order that the Preliminary Investigation Board member can consider whether they have a conflict of interest (see Section 4). The Complaint Secretary should not usually disclose what role each person/entity has in the matter; instead a list of names should be provided. The Preliminary Investigation Board member may ask the Complaint Secretary for further information in order to assist with identifying whether the person/entity is known to the member, but this will not usually involve needing to provide any details of the allegation itself or the role the person/entity plays in the matter.
- 8.5 If circumstances exist which objectively could be thought to be likely adversely to affect the Preliminary Investigation Board member's ability to impartially carry out their role, the Preliminary Investigation Board member must recuse themselves by informing the Complaint Secretary. If the conflict arises before the PIP meets to consider matters, the Complaint Secretary will appoint another to undertake that role.
- 8.6 The Preliminary Investigation Board members should treat the names of the people and entities and the fact that they have been contacted by the Complaint Secretary as confidential.

## **Referral from the Complaint Secretary**

- 8.7 The PIP receives brief details of an allegation from the Complaint Secretary. At this stage, it is appropriate for the PIP to take the complaint at face value. It is likely that the majority of complaints will be referred for investigation. The PIP should only decide not to direct an investigation if it is satisfied that the complaint does not raise an issue of improper conduct worthy of further consideration and it should give clear reasons for that decision (see paragraph 8.12 below). For example, a belief that allegations within the complaint are unlikely to be proved, would be difficult to investigate, or occurred a long time in the past, are not of themselves reasons not to proceed to an investigation although they could contribute to the reasons why the issue is “not worthy of further consideration”.
- 8.8 When making the decision, it is suggested that the PIP identifies the key issues raised in the complaint and considers whether each could give rise to an issue of improper conduct under the Rules of Conduct. Again, the only basis upon which the PIP may stop the progress of a complaint at this stage is that “the complaint does not raise an issue of improper conduct worthy of further consideration” (Regulation 5.4.1); all other complaints are to be referred for investigation.
- 8.9 When referring a complaint for further investigation, it will greatly assist the Investigator if the PIP identifies any issues to which attention should be paid, for example:
- 8.9.1 any specific elements of the Rules of Conduct that appear to have been breached;
  - 8.9.2 any factual issues that ought to be further investigated (Regulation 5.7.1);
  - 8.9.3 any individuals who should be interviewed (Regulation 5.7.1);
  - 8.9.4 any evidence (whether physical, witness of fact or expert) that should be sought (Regulation 5.7.2); and
  - 8.9.5 any matters upon which expert evidence should be sought.
- 8.10 The purpose of this is to focus the Investigator’s attention on the potential breaches of the Rules of Conduct. It is unlikely at this point to be appropriate to direct the Investigator to seek any underlying reasons for a complaint having been made (such as ulterior motives or wider disputes between individuals): it is to be expected that the Investigator will examine any explanation offered by the accused member.

- 8.11 As a matter of principle, the IET may investigate complaints the facts of which occurred at a time when the accused individual was not a member of the IET. This is because Bye-law 32 defines “improper conduct” as including “any conduct injurious to the IET” and that conduct does not have to have occurred when the accused individual was a member of the IET. Examples of circumstances in which a PIP might conclude that a member’s conduct was “worthy of further investigation” even though the accused individual was not a member of the IET at the time of the alleged improper conduct include:
- 8.11.1 the act or omission gives rise to a civil or criminal court making findings of fact after the accused member joins the IET; or
  - 8.11.2 the act or omission (if proven) is of such gravity that the accused member’s continued membership of the IET must be called into question.
- 8.12 Where the PIP decides not to progress an investigation, it must inform the complainant about its decision (Regulation 5.5.1) and also inform the complainant that they have a right to appeal against that decision. It is recommended that the PIP provides reasons for its decision. It is good practice for the Complaint Secretary to send the decision letter by electronic means so that the date of the decision letter and the date of delivery to the complainant are the same. This enables the 20 working days appeal period (see Section 17) fairly to run from the date of the decision letter.
- 8.13 Where the PIP decides not to progress an investigation, it must also consider informing the accused member regarding its decision (Regulation 5.5.2). In general, it is likely to be appropriate for the accused member to be told of the action to be taken in response to the complaint and why. Factors potentially relevant to the decision include: whether doing so might impede an investigation by the police or other authority; any requests for confidentiality made by the complainant and the reasons for those requests; and the known possible impact upon the health and well-being of either person.
- 8.14 If the PIP decides not to progress an investigation, the complainant may appeal against that decision (Regulations 5.6 and 15). The accused member does not have any right of appeal against a decision of the PIP.

## **9 Detailed Investigation**

- 9.1 The cornerstone of any good disciplinary process is the quality of the investigation upon which the decision is based.
- 9.2 The Complaint Secretary will appoint an Investigator to investigate the complaint as directed by the PIP (Regulation 6.1). The Complaint Secretary should not participate in the investigation. Care should be taken not to appoint an Investigator who is subject to a conflict of interest (see Section 4). The Investigator does not have to be an employee of IET. The Investigator may delegate elements of the investigation (Regulation 6.1), but must maintain oversight and responsibility for it. In this guidance and the Disciplinary Regulations, references to “the Investigator” include individuals to whom the Investigator has delegated tasks.
- 9.3 The Investigator has a wide discretion over the conduct of the investigation. This includes deciding the scope and extent of enquiries made, provided the Investigator stays within the scope set by the PIP and carries out any specific actions requested by the PIP. For the majority of investigations, it will be appropriate for the Investigator to confine their enquiry to the factual matters immediately surrounding the alleged breach(es) of the Rules of Conduct. For example, it is unlikely to be appropriate to seek a detailed investigation as to why the accused member acted as they did, but it would be appropriate to test or explore an account given by the accused member.
- 9.4 Care should be taken in the investigation to ensure that it is carried out:
- 9.4.1 as speedily as possible, as the quality of an individual’s recollections diminishes over time and in order to best serve the interests of all involved; and
  - 9.4.2 neutrally and objectively. The aim of the investigation is to establish the facts: it is not to be undertaken in order to prove or to support any particular side or outcome.
- 9.5 It is to be remembered that it is not the purpose of the disciplinary procedure to resolve disputes between members or between members and members of the public: it is to decide whether breaches of the Rules of Conduct occurred. The key point of the investigation is to establish the facts that give rise to a complaint that “improper

conduct" has occurred. The amount of investigation required will depend on the nature of the allegations and will vary from case to case.

- 9.6 When referring a matter to an Investigator, the PIP should identify the issues that should be focused on, but the Investigator is entitled to pursue any additional line or issue that appears appropriate.
- 9.7 The Investigator is entitled to make enquiries before the accused member is informed of the allegation against them, and should identify and seek to speak with all relevant witnesses and obtain copies of relevant documentation.
- 9.8 In the course of the investigation, the Investigator may speak with a number of people who are not, or who turn out not to be, "relevant witnesses". This may be because they are merely a gateway to other relevant information (for example, a librarian able to direct the Investigator to an appropriate source material) or because they do not have any information relevant to the investigation (note, however, that a person who was present when an incident is alleged to have taken place but who says they have no recollection or did not see anything may still be a "relevant witness"). The Investigator should make and retain a note of the discussion with a person who is not a relevant witness, but need not prepare a statement. Note that a person or postholder whom the PIP instruct the Investigator to interview will be a relevant witness.
- 9.9 When interviewing a relevant witness, a detailed note should be taken of the discussion, for which purpose it may be appropriate for the Investigator to be accompanied by a note taker or to record the discussion (with the interviewee's permission). The record of the discussion should be shared with the witness who should be asked to agree with its contents or to make amendments (Regulation 6.3). The Disciplinary Regulations state that relevant witnesses should sign their statements.
- 9.10 As set out in the Disciplinary Regulations, at some point during the investigation, the accused member must be informed of the factual allegation(s) and be invited to comment (Regulation 6.2.2). They must also be told how it is said that the alleged facts amount to "improper conduct" and be invited to comment (Regulation 6.2.3). The accused member cannot be required or compelled to provide comment. However, it should be noted (and the Investigator may bring this to the accused member's

attention) that Rule 32 of the Rules of Conduct states that members shall co-operate with the Disciplinary Regulations and co-operate with an investigation. If, after having been given a reasonable opportunity to comment, an accused member declines or fails to respond to the Investigator, the Investigator may progress the investigation which might include making a report to the PIP without the accused member's input and/or reporting that the accused member has not engaged with the investigation.

- 9.11 The accused member must also be given the opportunity to provide any evidence or names of individuals with whom they would like the Investigator to speak (Regulation 6.2.4). The Investigator should consider speaking with the named individuals but is not required to interview them if they do not consider that they would make a meaningful contribution to the issues under investigation.
- 9.12 At any point in the investigation, the Investigator may seek the guidance of the PIP (Regulation 6.4). This might occur because there is information that suggests that the scope of the investigation should be significantly widened or narrowed, or because there is a technical point upon which the Investigator needs assistance. Equally, the Investigator may wish to update the PIP as to progress with the investigation. Any contact the Investigator has with the PIP should be done in writing and conducted through the Complaint Secretary. The accused member and the complainant need not be notified since at this stage they are effectively witnesses.
- 9.13 Once they consider that the investigation is concluded, the Investigator must prepare a report for the PIP (Regulation 6.5). The purpose of the report is to provide assurance to the PIP that an adequate investigation has been carried out and to provide them with the information upon which a decision can properly be made as to the action to be taken in respect of the complaint. The report will be provided to the accused member (Regulation 6.7) but not the complainant.
- 9.14 As set out in the Disciplinary Regulations, the report must set out:
- 9.14.1 the allegation made about the accused member (Regulation 6.5.1). This should be in sufficient detail to enable the PIP to understand the basis of the allegation and the nature of the alleged improper conduct.
  - 9.14.2 the steps taken by the Investigator in relation to the investigation (Regulation 6.5.2). For example, the report might provide information about:



- (i) the individuals with whom the Investigator has spoken and an outline of what they say in relation to the allegation. In some cases this might be done simply by providing a copy of the statements prepared, other, more complex cases may require a summary, for example because a number of people who were spoken to were not relevant witnesses;
- (ii) research or other desktop enquiries or research undertaken in connection with the allegation;
- (iii) contact made with the accused member and any relevant witnesses; and
- (iv) if the Investigator has not been able to speak to any relevant witnesses and/or the accused member, the attempts the Investigator made to speak to the relevant witnesses and/or the accused member.

9.14.3 all the evidence that the Investigator has obtained (Regulation 6.5.3). This may be summarised in the form of a list with the evidence itself in an appendix.

9.14.4 the issues that the PIP is asked to consider (Regulation 6.5.4). This might include identifying elements of the Rules of Conduct that may be engaged. It is recommended that express reference is made to Regulation 7.1.

9.15 As well as preparing a report as described at paragraph 9.14, the Investigator should provide separate documents that:

9.15.1 provide a recommendation as to the next steps/action to be taken by the PIP (Regulation 6.6.1); and

9.15.2 provide the PIP with any other information that the Investigator considers is relevant to the decision the PIP is being asked to consider (Regulation 6.6.2). This is likely to include the Rules of Conduct, the Disciplinary Regulations and this guidance. In some circumstances, it may be appropriate for the Investigator to identify conclusions that the PIP might draw from the evidence gathered and/or to point out where there is

corroboration or a lack of corroboration and what is merely second or third hand evidence to which less weight might be attached than first hand evidence.

9.16 In preparing the recommendation, the Investigator should refer to Regulation 7.1. The Investigator may suggest different recommendations for different elements of the complaint and in some situations may make alternative recommendations which might reflect the different conclusions that the PIP may reach on the information provided. In their recommendation, the Investigator may wish to draw attention to:

9.16.1 what the accused member has said in relation to the allegation; or

9.16.2 other lines of enquiry involving other members that the PIP may wish to be investigated.

9.17 The recommendation is for the PIP alone, it will not be provided to the accused member or the complainant.

## **10 Preliminary Investigation Panel 2**

10.1 The second task of the PIP is to decide whether, and if so upon what basis, an accused member should be referred for disciplinary action. The PIP should meet to discuss the Investigator's report and recommendation. That meeting does not have to be physically face-to-face but will, ideally, be by video conference or telephone conference.

10.2 The PIP should consider the Investigator's report and recommendation but is not bound by any conclusions or recommendations made by the Investigator. It is bound to take one of the courses of action set out in Regulation 7.1.

10.3 The PIP is not deciding whether the accused member did or did not do the acts complained of; it is deciding whether there is sufficient evidence to show that the accused member *may* have breached the Rules of Conduct.

10.4 In making that decision, the PIP should take the following steps for each allegation in the following order:

- 10.4.1 Satisfy itself that the Investigator has undertaken an adequate investigation in accordance with the Disciplinary Regulations. If it is not satisfied, the PIP may return the report to the Investigator, identifying the further steps it considers should be undertaken;
- 10.4.2 Review the evidence set out in the Investigator's report and, taking the evidence against the accused member at its highest<sup>3</sup>, consider whether no further action should be taken in relation to all or part of the complaint or allegation. This might be based on one of the grounds set out at Regulation 7.1.1;
- 10.4.3 If satisfied that further action should be taken, the PIP should decide whether the matter or elements of it should be referred to another body or procedure (Regulation 7.1.2);
- 10.4.4 If taking none of the steps above in relation to any one of the allegations, the Disciplinary Regulations state that the PIP should either propose an Admitted Breach and Agreed Sanction ("ABAS") (Regulation 7.1.3) or refer the matter to a Disciplinary Panel (Regulation 7.1.4). In practice, the PIP must have identified the information required to refer the matter to a Disciplinary Panel before deciding to propose an ABAS. See the further guidance below (in particular paragraph 10.8 on Disciplinary Panel and paragraph 11.3 on ABAS).
- 10.5 The PIP should only give a direction that an ABAS should be offered (Regulation 8.2) where it appears clear that the accused member is likely to agree to the facts that give rise to the breach of the Rules of Conduct. This might occur where the accused member has been convicted of a criminal offence or a court of competent jurisdiction has made findings of fact that give rise to the potential breach of the Rules of Conduct (e.g. that the individual unlawfully discriminated against a person).
- 10.6 The PIP should provide brief reasons for its decision, which should be recorded in writing. If it decides that no further action should be taken (paragraph 10.4.2 above), the PIP should bear in mind that its reasons may be subject to appeal by the

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<sup>3</sup> *"taking the evidence against the accused member at its highest"* involves accepting credible facts as accurate and resolving any disputes of fact against the accused member.

complainant.

- 10.7 Where the PIP decides that no further action is to be taken, it must ask the Complaint Secretary to send its decision and the reasons for the decision to the accused member and the complainant (Regulation 7.2.1). The complainant may appeal that decision (Regulations 7.2.2 and 15). It is normally good practice for the Complaint Secretary to send the decision letter by electronic means so that the date of the decision letter and the date of delivery to the complainant are the same. This enables the 20 working days appeal period (see Section 17) fairly to run from the date of the decision letter.
- 10.8 Where the PIP refers the complaint to a Disciplinary Panel (whether or not it recommends an ABAS), it must provide to the Complaint Secretary the information that is needed to prepare the allegation for the Disciplinary Panel (see Regulation 7.3 and 7.4). Where an ABAS is to be proposed, this information is needed because if the accused member rejects the ABAS, the Complaint Secretary is to convene a Disciplinary Panel (see Regulation 8.4). Thus, it is recommended that the PIP decides what it is going to refer to a Disciplinary Panel before it decides whether it will recommend an ABAS.
- 10.9 The information to be given by the PIP to the Complaint Secretary under paragraph 10.8 must include the following:
  - 10.9.1 The factual issues giving rise to the allegation of improper conduct (Regulation 7.4.1). These can be given in summary and/or bullet point form and can refer to other documents and evidence. The PIP needs to set out what it is that the accused member did (or failed to do) that allegedly amounts to improper conduct.
  - 10.9.2 How the factual issues amount to improper conduct (Regulation 7.4.2). The PIP needs to identify the specific paragraphs of the Rules of Conduct that were allegedly breached by the accused member and, as appropriate, how and why the accused member's actions or inactions fell below the required standard.
  - 10.9.3 Since the purpose behind the Rules of Conduct and the Disciplinary Regulations is to maintain standards rather than to punish, an explanation of how, as a result of the accused member's alleged breach of the Rules of

Conduct, the accused member's practice is impaired (required by Regulation 7.4.3). By identifying the manner in which the accused member's practice is impaired, the accused member may be able to identify how to avoid breaching Rules of Conduct in the future. A member's practice may be impaired for a number of reasons including behaviour falling below the expected standard, lack of competence, ill-health and through having been convicted of a criminal offence.

10.10 Where the matter progresses to a Disciplinary Panel, the PIP will need to appoint a Presenter (paragraph 13.10) and inform the Complaint Secretary of the identity of that person. The Presenter may be the Investigator or some other person.

## **11 Admitted Breach and Agreed Sanction ("ABAS")**

11.1 The purpose of the Admitted Breach and Agreed Sanction ("ABAS") process is to enable minor or straight forward breaches of the Rules of Conduct to be addressed without the formality of the Disciplinary Panel. It should not be used in situations where the conduct is such that it could result in the suspension or termination of a person's membership of the IET (see Regulations 12.1.6 and 12.1.7). Only in exceptional circumstances (for example, where the misconduct is conviction of a criminal offence which is not directly related to the member's practice) should it be used where the accused member is to be formally admonished (see Regulation 12.1.4).

11.2 The ABAS process is not a negotiation with the accused member (Regulation 8.1), neither is it a summary determination of the facts and imposition of an outcome on the accused member. It involves the PIP making a proposal to the accused member and them accepting that proposal in its entirety or not. If the ABAS proposal is not accepted by the accused member, the matter progresses to the Disciplinary Panel.

11.3 When deciding to propose an ABAS, the PIP must identify:

11.3.1 the specific factual matters that (if the accused member accepts them) give rise to the breach of the Rules of Conduct<sup>4</sup>; and

11.3.2 the sanction that will be applied (if the accused member accepts the ABAS).

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<sup>4</sup> The factual matters that the accused member is asked to accept need to establish the breach of the Rules of Conduct but need not be the same as all of the factual matters that may be subject to referral to the Disciplinary Panel.

- 11.4 As set out in the Disciplinary Regulations (Regulation 8.2), the PIP must provide the Complaint Secretary with the information required at Regulations 8.3.1, 8.3.2 and 8.3.3 *and* the information that will be passed to the Disciplinary Panel if the accused member does not accept the ABAS.
- 11.5 The Complaint Secretary will write to the accused member to provide the information set out at Regulation 8.3. The Complaint Secretary may wish to ensure that the accused member receives the communication, for example by seeking a confirmation of receipt.
- 11.6 If the accused member wishes to accept the ABAS after the deadline set in accordance with Regulation 8.3.4:
- 11.6.1 if the Complaint Secretary has not yet sent to the accused member the letter required under Regulation 10.1, the Complaint Secretary should accept the late agreement and the ABAS will apply.
- 11.6.2 if the Complaint Secretary has sent to the accused member the letter required under Regulation 10.1, but has not sent to the accused member the evidence and material that will be presented to the Disciplinary Panel (see Regulation 10.1.4), the Complaint Secretary will refer the accused member's purported acceptance to a member of the PIP who will decide whether the accused member's late agreement should be accepted. The PIP member should usually accept the accused member's late agreement.
- 11.6.3 If the Complaint Secretary has sent to the accused member the letter required under Regulation 10.1 and the evidence and material that will be presented to the Disciplinary Panel (see Regulation 10.1.4), the Complaint Secretary will refer the accused member's purported acceptance to a member of the PIP who will decide whether the accused member's late agreement should be accepted. The PIP member should not usually accept the accused member's late agreement unless the accused member provides exceptional reasons for their delay.
- 11.7 If the accused member accepts the ABAS, the IET will record the matter and inform the complainant that the matter has been concluded, but the complainant will not be told the outcome of the ABAS (Regulation 8.5).

11.8 In exceptional circumstances (e.g. where there are a number of different allegations arising from connected or related facts), the PIP may decide to offer an ABAS for some of the alleged improper conduct and to refer the more serious allegations to a Disciplinary Panel. If doing this, the PIP should consider only making its referral to the Disciplinary Panel after the time for accepting the ABAS has expired. It is likely to be desirable for all allegations (including those not disposed through ABAS) to be referred to the Disciplinary Panel at the same time.

## **12 Disciplinary Panel**

12.1 The Disciplinary Panel is to be formed in accordance with Regulation 9.2. It exists in order to determine whether there has been a breach of the Rules of Conduct and if so, what sanction (if any) should apply.

12.2 When contacted by the Complaint Secretary and asked to form part of a Disciplinary Panel, individual members of the Disciplinary Board will be told all of the names of the people and entities (companies, partnerships etc.) involved in the matter in order that the Disciplinary Board member can consider whether they have a conflict of interest (see Section 4) (Regulation 9.3). The Complaint Secretary should not usually disclose what role each person/entity has in the matter; instead a list of names should be provided. The Disciplinary Board member may ask the Complaint Secretary for further information in order to assist with identifying whether the person/entity is known to the member, but this will not usually involve needing to provide any details of the allegation itself or the role the person/entity plays in the matter.

12.3 The Disciplinary Board members should treat the names of the people and entities and the fact that they have been contacted by the Complaint Secretary as confidential.

12.4 If circumstances exist which objectively could be thought to be likely adversely to affect the Disciplinary Board member's ability impartially to review the evidence and make a decision as part of the Disciplinary Panel, the Disciplinary Board member must inform the Complaint Secretary that they cannot form part of the Disciplinary Panel. If the conflict arises before the Formal Hearing starts, the Complaint Secretary will appoint another to undertake that role.

- 12.5 Once the members of the Disciplinary Panel have been identified, the Chair of the Disciplinary Board will nominate one of their number to be the Chair of that Disciplinary Panel (Regulation 9.2).

### **13 Preparation for the Formal Hearing**

- 13.1 The Formal Hearing may be held in person or remotely. If held remotely, the simultaneous communication arrangements must provide both video and audio to each participant in the hearing such that they have the opportunity to see and to hear the other participants (e.g. by Teams, Zoom or other video conferencing facility). The IET (usually through the Complaint Secretary) will take steps to ensure parties are aware of which communication method is to be used so that steps can be taken to ensure accessibility and compatibility, including considering what alternative arrangements may be appropriate in order to avoid postponement and delays.
- 13.2 The Complaint Secretary must write to the accused member to provide the details set out at Regulation 10.1. Save in exceptional circumstances:
- 13.2.1 the communication at Regulation 10.1 should be sent at least one month before the date upon which the Disciplinary Panel will consider the matter;
  - 13.2.2 the date by which the evidence and material described at Regulation 10.1.4 is to be sent should be at least two weeks before the date upon which the Disciplinary Panel will consider the matter; and
  - 13.2.3 the date by which the evidence and material described at Regulation 10.1.5 is to be sent should be at least one week after the date at Regulation 10.1.4 of the Disciplinary Regulations (paragraph 13.2.2 above).
- 13.3 The Complaint Secretary should also make it clear that if the accused member does not provide the evidence and material described at Regulation 10.1.5 in advance of the formal hearing, the Disciplinary Panel may not allow him or her to rely on that evidence or material (in accordance with Regulation 10.7.7).
- 13.4 It is also good practice for the Complaint Secretary to ask the accused member whether they have any support needs that they wish to be taken into account in respect of any Disciplinary Panel Hearing (e.g. reasonable adjustments for a disability or support of a mental health issue).



- 13.5 In the event that the accused member objects to the inclusion of a named individual as part of the Disciplinary Panel, the Complaint Secretary shall refer the matter to the Chair of the Disciplinary Panel (or the Chair of the Disciplinary Board if the objection is to the Chair of the Disciplinary Panel) (as set out at Regulation 10.2). The Chair will consider the reasons provided by the accused member and make such enquiries as are appropriate before making a decision. The enquiries might include contacting the objected to Disciplinary Panel member to check any factual matters asserted by the accused member. The Chair must provide written reasons for their decision.
- 13.6 As set out at Regulation 10.4, the Chair of the Disciplinary Panel may deal with any procedural issues that may arise. These may include, for example: requests for an extension of time within which to carry out an element of the procedure; requests that the Disciplinary Panel invites a particular member to attend the hearing (exercising the power at Regulation 9.5); or any other matter. Upon receiving a request, the Chair should usually invite comment from the other party (i.e. the Presenter if the request comes from the accused member or the accused member if the request comes from the Presenter). The Chair should not usually seek the view of the complainant. The Chair may seek the views of other members of the Disciplinary Panel (but does not have to do so).
- 13.7 Regulation 10.3 says that the Complaint Secretary will write to the complainant to inform them of the time and date of the hearing, and invite them to attend the hearing. The regulation says that complainant does not have an automatic right of audience which means that they do not have the right to address the Disciplinary Panel. The reason for this is that the Disciplinary Procedure is the process through which the IET regulates its membership and is not a means through which an individual may seek redress or judgment against an IET member. The complainant may be called as a witness to give evidence to the Disciplinary Panel.
- 13.8 When writing to parties and witnesses, the Complaint Secretary may wish to take steps that their communications are received, for example by seeking a confirmation of receipt and/or using other contact details provided by the individual to inform them that a communication has been sent.
- 13.9 The accused member, the Presenter, witnesses (if any) and any representatives should make every effort to attend the formal hearing. However, a party may request

a postponement or adjournment of the formal hearing by applying to the Chair of the Disciplinary Panel (usually via the Complaint Secretary). The application should be in writing (unless the request arises during the hearing itself, in which case it can be made orally) and should give an explanation for their request to postpone or adjourn. Illness or other reasonable non-availability of the accused member, Presenter or an important witness is likely to be a reasonable basis for postponing or adjourning the hearing; the illness or non-availability of a particular legal representative is unlikely to be a reasonable basis since another lawyer is likely to be able to provide adequate representation.

13.10 The IET's formal hearings are held in private. The Disciplinary Panel has discretion to allow the attendance at the hearing of any person.

13.11 As set out at Regulation 10.5:

13.11.1 the PIP will appoint a person to present the case against the accused member (the "Presenter"). That person could be legally qualified, one of the PIP members, the Investigator, or another person.

13.11.2 the accused member may appoint a person to represent them. That person could be legally qualified or not. The accused person should provide their representative's details to the Complaint Secretary.

## **14 The Formal Hearing**

14.1 The accused member, witnesses and any representatives should make every effort to attend the formal hearing. If for some reason the Presenter is unable to attend the formal hearing, it is anticipated that the PIP (through the IET's legal team) will be able to appoint alternative representation other than at short notice.

14.2 Where the accused member or a key witness fails to attend without good cause, the Disciplinary Panel may decide to proceed with the formal hearing in that person's absence. Before doing so, the Disciplinary Panel should satisfy itself (usually by making enquiries of those at the formal hearing) that the individual who has failed to attend was properly notified of the date, time and place of the formal hearing. If the accused member or a key witness fails to attend the first hearing arranged but has previously engaged with the investigation, it will usually be good practice for the IET to

re-arrange the meeting to an alternative date in order to give the accused member or the key witness a further opportunity to attend.

- 14.3 As well as the person appointed to keep a note (Regulation 10.7.1) and the optional legal assessor (Regulation 10.6), the Disciplinary Panel may request that the Complaint Secretary provides someone to assist with the running of the formal hearing (referred to as the “Clerk” in this guidance). The Clerk and the note taker could be the same person.
- 14.4 As set out in the Disciplinary Regulations, the Disciplinary Panel has discretion over how the formal hearing will run but it must include the matters set out at Regulation 10.7. A key factor for the Disciplinary Panel in exercising its discretion is the fairness of the process. References to the “accused member” include their representative (unless otherwise stated). The following would be a suitable procedure for a simple allegation (but note that no Disciplinary Panel is bound by this suggestion):
- 14.4.1 The Chair ensures that all parties (in particular the Disciplinary Panel members, the accused member and the Presenter) are present and ready to proceed.
- 14.4.2 The Chair and Clerk ensure that all parties are agreed over the documents that each should have in connection with the hearing.
- 14.4.3 The Presenter opens the case by briefly outlining the allegation(s) against the accused member.
- 14.4.4 The Presenter calls witnesses and takes the Disciplinary Panel through any documents. In respect of witnesses:
- (i) The Presenter asks questions;
  - (ii) The accused member asks questions;
  - (iii) The Disciplinary Panel asks any questions;
  - (iv) The Presenter has the opportunity to ask questions that arise from anything raised during the accused member’s or the Disciplinary Panel’s questions;

- (v) The Chair has discretion as to whether any witness may be present during the hearing, other than when giving evidence.
- 14.4.5 The accused member calls witnesses and takes the Disciplinary Panel through any documents. The accused member's representative may not give evidence themselves or on behalf of the accused member. In respect of witnesses:
- (i) The accused member asks questions;
  - (ii) The Presenter asks questions;
  - (iii) The Disciplinary Panel asks any questions;
  - (iv) The accused member has the opportunity to ask questions that arise from anything raised during the Presenter's or the Disciplinary Panel's questions;
  - (v) The Chair has discretion as to whether any witness may be present during the hearing, other than when giving evidence.
- 14.4.6 The Presenter addresses the Disciplinary Panel on the evidence that they have heard.
- 14.4.7 The accused member addresses the Disciplinary Panel on the evidence that they have heard.
- 14.4.8 The Disciplinary Panel retires to consider whether the Rules of Conduct have been breached (see Section 15).
- 14.4.9 The Disciplinary Panel returns and announces its decision as to whether the Rules of Conduct have been breached by the accused member.
- 14.4.10 Where the Rules of Conduct have been breached (see Section 16):
- (i) The Presenter may address the Disciplinary Panel. In particular, they may inform the Disciplinary Panel of any aggravating or mitigating factors of which the IET is aware. For example, previous

disciplinary or criminal findings involving the accused member or particular support or roles they have undertaken for the IET;

- (ii) The accused member may address the Disciplinary Panel, in particular to inform it of any issues or factors they wish it to have in mind when considering what sanction, if any, to apply to the accused member.

14.4.11 The Disciplinary Panel retires to consider what sanction, if any, to impose as a result of the breach of the Rules of Conduct.

14.4.12 The Disciplinary Panel returns and announces the sanction, if any, to be imposed as a result of the breach of the Rules of Conduct.

14.5 The Disciplinary Panel has the power to refuse to admit any evidence. However, it should use that power sparingly as it is not a court of law and the rules of evidence do not apply to the hearing. The Disciplinary Panel may admit an item of evidence (for example “hearsay”, in the form of an overheard conversation) but will need to consider carefully the weight that they attach to that evidence during its deliberation (Regulation 10.7.6). A key factor that the Disciplinary Panel will wish to have in mind when considering whether to refuse to admit an item of evidence is the fairness of the procedure. Fairness is to apply to both the accused member and the Presenter. In the majority of situations, it is unlikely that findings that the accused member (or other witness) has previously breached the Rules of Conduct or committed an unconnected criminal offence will be relevant to the question of whether the Rules of Conduct have been breached on this occasion and the Disciplinary Panel should refuse to admit the evidence<sup>5</sup>.

14.6 The Disciplinary Panel may adjourn the formal hearing at any point (Regulation 10.7.8). It may do so on its own motion or at the request of one or both of the parties, but should always seek the views of both parties before doing so. When making a decision about whether to adjourn, the Disciplinary Panel must take into account the impact that any delay in hearing the matter will have on the fairness to all involved. When adjourning (which includes breaking for lunch), the Disciplinary Panel should state the date and time at which it will reconvene or the method by which the date and time to reconvene

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<sup>5</sup> But it may be relevant to the question of what sanction to be imposed – see paragraph 16.3.

will be communicated to the parties (which will usually be through the Complaint Secretary).

## **15 Deliberation and Decision**

- 15.1 At the end of the formal hearing, the Disciplinary Panel should retire (or ask all others to leave the room) to consider the evidence it has heard.
- 15.2 The Disciplinary Panel is entitled to ask the note taker and the legal adviser (if any) it appointed to join them (Regulation 10.7.10). Neither the note taker nor the legal adviser may participate in the decision making – they are there to assist by reminding the Disciplinary Panel of what was said during the formal hearing, with legal advice (in the case of the legal adviser only), and in drafting the decision and reasons. It is good practice for the legal adviser to provide to the accused member and the Presenter at least an outline of the legal advice given to the Disciplinary Panel.
- 15.3 Save in the most exceptional of circumstances, the Disciplinary Panel should not speak with or communicate with either the accused member or the Presenter without the other knowing about (i.e. seeing (if written) or having the opportunity of hearing (if oral)) the communication and having the opportunity to comment upon the communication.
- 15.4 If the Disciplinary Panel thinks that it will take some time to reach its decision, it should consider telling the accused member and the Presenter that they may leave and provide a time and date upon which the decision will be announced (Regulation 11.3).
- 15.5 The Disciplinary Panel should first consider the factual and opinion evidence it has heard and decide what the facts are in respect of any relevant areas of dispute. The Disciplinary Panel is to decide what the facts are on the basis of whether they are more likely than not – i.e. on the balance of probabilities (Regulation 11.1).
- 15.6 Having determined what the facts are, the Disciplinary Panel should then consider whether those facts mean that the accused member has breached the Rules of Conduct. In doing this, the Disciplinary Panel should identify specifically the Rule of Conduct that has been breached and how the facts (the conduct or behaviour) lead to that breach.
- 15.7 In the majority of cases, it will be appropriate for the Disciplinary Panel to inform the accused member and the Presenter of its decision on whether the Rules of Conduct

have been breached, and to hear from the parties before deciding what sanction (if any) is to be applied to the accused member. An example of an exception to this is where the accused member has not attended the formal hearing.

- 15.8 The Disciplinary Panel may announce its decision orally to the accused member and the Presenter. If it does so, it need not give all its reasons but should ensure that it gives the information relevant to sanction set out at Section 16. It must then make a written record of its decision and the reasons for the decision which will be sent by the Complaint Secretary to the accused member and the PIP, in accordance with Regulation 11.4. At the same time, the Complaint Secretary must notify the accused member of their right of appeal. It is good practice for the Complaint Secretary to send the decision letter by electronic means so that the date of the decision letter and the date of delivery to the accused member are the same. This enables the 20 working days appeal period (see Section 17) fairly to run from the date of the decision letter.
- 15.9 The Disciplinary Panel may give informal guidance to any accused member who has appeared before it (Regulation 11.2). This is not a disciplinary power and cannot be used to sanction an accused member. The Disciplinary Panel may however, wish to pass comment to an accused member. If the Disciplinary Panel considers using this power, it may wish to seek advice as to the limits of its guidance.
- 15.10 Under Regulation 11.5, the Disciplinary Panel must inform the Engineering Council (or other regulatory body) where the sanction imposed (suspension or expulsion) will lead to the termination of the accused member's professional registration. This notification should take place after the period for appealing the Disciplinary Panel's decision has expired (20 English working days).

## **16 Sanctions**

- 16.1 Before determining what sanction to apply, the Disciplinary Panel should consider what mitigating and what aggravating features are present.
- 16.2 Mitigating features include:
- 16.2.1 the accused member admits the allegation;
  - 16.2.2 genuine and evidenced remorse;

- 16.2.3 limited experience within the profession;
  - 16.2.4 the conduct was unintentional or unwitting;
  - 16.2.5 the misconduct involved a single incident (unlikely to be applicable if the conduct involves discrimination);
  - 16.2.6 the misconduct arose in heat of the moment rather than being planned (unlikely to be applicable if the conduct involves discrimination);
  - 16.2.7 the accused member co-operated with the investigation;
  - 16.2.8 the accused member has taken voluntary steps to remedy or rectify the impact of the conduct;
  - 16.2.9 there is evidence of steps taken to prevent reoccurrence;
  - 16.2.10 previous good character;
  - 16.2.11 evidence of genuine financial hardship (applicable when it has had a direct impact on the commission of the conduct);
  - 16.2.12 particular personal circumstances that explain the conduct. (The Disciplinary Panel should be alert to personal circumstances that may explain the conduct but which may also indicate a risk to the public in the accused member's on-going practice);
  - 16.2.13 character references (only of limited applicability and very much dependent on the nature of the offence and the role and identity of the referee).
- 16.3 Aggravating factors may include:
- 16.3.1 premeditation;
  - 16.3.2 actions motivated by financial gain;
  - 16.3.3 corruption/gross deception;
  - 16.3.4 the coercion of others, in particular sub-ordinates;



- 16.3.5 the encouragement or involvement of others;
  - 16.3.6 persistent conduct or conduct over a long period of time;
  - 16.3.7 attempts to hide the misconduct or to lay blame or responsibility elsewhere;
  - 16.3.8 the effect on the complainant (or other victim) or particular vulnerability of the complainant (or other victim);
  - 16.3.9 actions accompanied by discriminatory behaviour (does not require an intention to discriminate);
  - 16.3.10 actions in breach of trust;
  - 16.3.11 actions amounting to bullying or harassment;
  - 16.3.12 the accused member holding position of responsibility within the profession and/or Institution;
  - 16.3.13 previous disciplinary findings for similar offences;
  - 16.3.14 a lack of remorse or insight;
  - 16.3.15 failure to comply with an investigation.
- 16.4 The above are not exhaustive lists.
- 16.5 When deciding what sanction or sanctions to apply to the accused member, the Disciplinary Panel should apply the least harsh sanction that is commensurate with the breach of the Rules of Conduct and the background of the accused member. The principal aim of sanctions is to protect the public rather than to punish the individual (although sanctions may be punitive in effect). Sanctions may also be used to deter future misconduct by providing a disincentive. The Disciplinary Panel may only apply those sanctions listed at Regulation 12.1.
- 16.6 Where the accused member is found to have committed more than one breach of the Rules of Conduct, each breach and the possible sanction to be applied should be considered separately, but having done so, the Disciplinary Panel should consider

whether a separate sanction should be applied for each breach or a single overarching sanction.

16.7 The range of sanctions that are available are:

16.7.1 The Disciplinary Panel to provide **guidance** to the accused member (Regulation 12.1.1). 'Guidance' is treated as having no punitive effect. It is to be used to inform the accused member of the requirements of the Rules of Conduct, often in combination with one of the sanctions below. Guidance would usually include identifying how to avoid breaching the Rules of Conduct in the future and steps that could be taken in order to practise or behave in a manner that is compliant with the Rules of Conduct.

16.7.2 Issue a **written warning** to the accused member (Regulation 12.1.2). This is the lowest form of formal sanction that can be seen as having a punitive effect. The warning should identify the breach of the Rules of Conduct and warn the accused member as to their future conduct.

16.7.3 Require the accused member to attend **training** (Regulation 12.1.3). This should usually be used in combination with another sanction and should not be viewed as having a punitive effect.

- (i) If training is required, then the Disciplinary Panel should identify the training and consider requesting evidence that the training has been undertaken from the accused member.
- (ii) The decision should make clear the consequence of not undertaking the training, for example fresh disciplinary proceedings.
- (iii) The Disciplinary Panel can state that "unless" the training is undertaken, a specific further, more severe sanction from the list may be imposed.

16.7.4 **Admonish** the accused member (Regulation 12.1.4). This is a more serious sanction than a "written warning". The particular breach of the Rules of Conduct should be identified and the accused member admonished for the breach.

- 16.7.5 Require the accused member to **apologise** to another person in connection with the complaint (Regulation 12.1.5). This should not be viewed as having a punitive effect. This should usually be used in combination with another sanction. The “person” could be an individual or a corporate body. The Disciplinary Panel should identify the particular conduct or action of the accused member over which the apology should be given, by when and request evidence that the apology has been given.
- 16.7.6 Impose a period of **suspension** on the accused member’s subscription (Regulation 12.1.6). This is a more serious sanction than admonishing the accused member. The period of suspension should be identified and may extend beyond the duration of the accused member’s current paid subscription.
- 16.7.7 **Expel** the accused member (Regulation 12.1.7). This is the most serious sanction and, where not suspended, cannot be used in combination with any other sanction as it involves the permanent expulsion of the accused member from the IET.
- 16.8 The Disciplinary Regulations permit the Disciplinary Panel to impose more than one sanction. Only one sanction with punitive effect should be imposed in respect of each finding of misconduct, but (except in the case of expulsion) other sanctions may be given alongside it.
- 16.9 The Disciplinary Regulations entitle the Disciplinary Panel to suspend a sanction upon condition that the accused member does not engage in further improper conduct for a specified period (Regulation 12.2). It is recommended that this is only used in connection with “punishments” (i.e. written warning, admonishment, suspension and expulsion).
- 16.10 It should be noted in the written decision that if the accused member fails to comply with the sanction imposed by the Disciplinary Panel after the period for an appeal has expired, that would itself be a disciplinary issue, the result of which could be a further, more severe sanction being imposed (Regulation 13).
- 16.11 The Disciplinary Regulations require the Complaint Secretary to inform the accused member of the Disciplinary Panel’s decision and reasons. If the accused member has

been suspended or expelled, the Disciplinary Panel should inform the accused member that Regulation 14.1 requires the publication of the decision and if the accused member wishes to ask the Panel not to publish the decision (and sanction), how they can do so (and by when). If sanction is announced at the hearing, this should usually be done immediately after the sanction has been announced.

- 16.12 The Disciplinary Panel should ask the Complaint Secretary to inform the complainant that the matter has been concluded (Regulation 14.3). It should be noted that the complainant does not have a right of appeal from the decision of the Disciplinary Panel.

## **17 Appeals**

- 17.1 The Disciplinary Regulations provide for two types of appeal:

17.1.1 Appeal by the complainant (Regulation 15) – see Section 18; and

17.1.2 Appeal by the accused member (Regulation 16) – see Section 19.

## **18 Appeals by the complainant**

- 18.1 The complainant may only appeal against:

18.1.1 a decision by the PIP that the complaint does not raise an issue of improper conduct worthy of further investigation (Regulation 5.6); or

18.1.2 after a detailed investigation, a decision by the PIP to take no further action (Regulation 7.2.2).

- 18.2 The complainant has no right of appeal against the decision of:

18.2.1 the Complaint Secretary not to refer a complaint to a PIP (Regulation 4.5);

18.2.2 the Disciplinary Panel (Regulation 15.1); or

18.2.3 the Independent Reviewer (Regulation 15.8).

- 18.3 In deciding not to refer a complaint, the Complaint Secretary will simply have determined that the complaint: does not raise an allegation of improper conduct against one or more members of the IET; the issue (and/or the complainant) should be referred

to the police or any other agency, authority or body; or the issue should be addressed under another procedure of the IET (in accordance with Regulation 4.3).

- 18.4 The Independent Reviewer will have decided whether, in light of the information before them, the PIP's decision was reasonable (in accordance with Regulation 15.5) – they will not have taken the decision again nor will they have substituted their decision for that of the PIP.

### **Making an appeal**

- 18.5 Any appeal must be in writing and contain certain specified information. As set out in Regulation 15.2, to make an appeal, the complainant must send written notice of appeal to the Complaint Secretary within 20 English working days of being informed of the decision, setting out:

- 18.5.1 the decision being appealed;
- 18.5.2 the reason(s) for making the appeal; and
- 18.5.3 any facts or matters in support of the appeal.

- 18.6 An appeal “in writing” includes email and other permanent forms of communication. It may be submitted in a number of ways, including by post or by email, and must be addressed to the Complaint Secretary.

- 18.7 If an appeal has been received by other means (e.g. by telephone), the complainant may be informed that their appeal may not be considered unless and until they submit their appeal in writing.

- 18.8 The Complaint Secretary should consider the appeal to check whether it contains the information specified in Regulation 15.2 (paragraph 18.5 above). If any of the specified information is missing, the Complaint Secretary should request promptly the missing information from the complainant, explaining that it should be provided without delay and for this purpose only the Complaint Secretary may extend the deadline for submitting an appeal by five (English) working days. However, it is always the responsibility of the person making the appeal to comply with the requirements for submitting an appeal.

- 18.9 As set out in Regulation 15.3, the Complaint Secretary, upon receiving an appeal from the complainant, will select a person from the pool of persons maintained for the purposes of appeals under Regulation 18.1 to be the Independent Reviewer. This should happen promptly upon the appeal being received. In the event that no one from the pool of persons is available, the Complaint Secretary will ask the President to write to the President of another Professional Engineering Institution to seek a nomination of a suitable person to consider the appeal.
- 18.10 The Complaint Secretary should provide the Independent Reviewer with sufficient identifying details of the complainant and the accused member for the purposes of the Independent Reviewer considering, in the first instance, whether there is a conflict of interest that would prevent their involvement in the appeal process (see Section 4).
- 18.11 As set out in Regulation 15.4, the Complaint Secretary will provide the Independent Reviewer with:
- 18.11.1 the information that was before the PIP in making the decision being appealed; and
  - 18.11.2 the written notice of appeal provided by the complainant.

### **Consideration by the Independent Reviewer**

- 18.12 On receipt of an appeal, the Independent Reviewer must first consider whether they have a conflict of interest meaning they should not participate in the matter (see Section 4). If circumstances exist which objectively could be thought to be likely adversely to affect the Independent Reviewer's ability impartially to carry out their role, the Independent Reviewer must inform the Complaint Secretary who will appoint a different Independent Reviewer.
- 18.13 Consideration of appeals under Regulation 15 is a paper-based exercise. It will not usually be necessary for the Independent Reviewer to contact a complainant and/or the accused member. If the Independent Reviewer considers it necessary to contact a complainant and/or the accused member, they should do so via the Complaint Secretary and not directly themselves.
- 18.14 As set out in Regulation 15.5, the Independent Reviewer should then consider the material provided to them and decide whether, in the light of the information before

them, the PIP's decision was reasonable. The Independent Reviewer is not taking the decision again nor are they substituting their own decision for that of the PIP. Rather, they are reviewing the decision to consider whether it is a decision that the PIP could reasonably have reached on the basis of the information before the PIP at the time and in light of the reasons set out by the complainant for making the appeal.

18.15 The Independent Reviewer should also consider whether the process that was followed in reaching the decision was in accordance with the Disciplinary Regulations and was fair. The following are likely to be relevant to the Independent Reviewer's consideration as to whether proper process was followed:

- 18.15.1 The PIP directed itself correctly as to the issue it was to decide;
- 18.15.2 The PIP addressed each of the substantive allegations raised by the complainant in the complaint;
- 18.15.3 The PIP reached a finding on each of the substantive allegations raised by the complainant in the complaint;
- 18.15.4 The findings that the PIP reached on each of the substantive allegations raised by the complainant were based on the evidence before the PIP at the time it took its decision;
- 18.15.5 The PIP failed to take into account all relevant considerations;
- 18.15.6 The PIP took into account irrelevant considerations;
- 18.15.7 The PIP failed to consider a possible, reasonable area for investigation in respect of the alleged misconduct by the accused member;
- 18.15.8 The alleged improper conduct was considered in the context of the Rules of Conduct; and/or
- 18.15.9 The process that was followed in reaching the decision was in accordance with the Disciplinary Regulations and/or fair.

18.16 If proper process was not followed, the Independent Reviewer should then consider whether the failure was such as to impair the PIP's decision in such a way as to make it unreasonable.

- 18.17 The Independent Reviewer may seek guidance and advice (including legal advice) from or through the Complaint Secretary (who may, in turn, seek guidance or instruction from the Director of Governance and External Engagement and/or legal advice).
- 18.18 As set out in Regulation 15.6, if the Independent Reviewer concludes that the PIP's decision was reasonable, they will reject the appeal. In these circumstances, the Independent Reviewer will inform the complainant (via the Complaint Secretary) of the decision and the reasons for the decision. The Independent Reviewer will also consider informing the accused member about the complaint, the appeal, the Independent Reviewer's decision, the reasons for their decision and the reasons for so informing them.
- 18.19 As set out in Regulation 15.7, if the Independent Reviewer concludes that the PIP's decision was not reasonable, they will accept the appeal. In these circumstances, the Independent Reviewer will inform the complainant (via the Complaint Secretary) of the decision and the reasons for the decision. The Independent Reviewer will also consider informing the accused member about the complaint, the appeal, the Independent Reviewer's decision, the reasons for their decision, and the reasons for so informing them.
- 18.20 Where the Independent Reviewer accepts the appeal and the appeal was against a decision by the PIP that the complaint did not raise an issue of improper conduct worthy of further investigation (i.e. "PIP1 stage"), the Independent Reviewer will direct the Complaint Secretary to refer the matter back to the (same) PIP for consideration under Regulation 5.7 together with reasons for accepting the appeal.
- 18.21 Where the Independent Reviewer accepts the appeal and the appeal was against a decision by the PIP to take no further action (i.e. "PIP2 stage"), the Independent Reviewer will direct the Complaint Secretary to refer the matter back to the (same) PIP instructing it to consider directing the Investigator to take further action and/or consider the matter afresh under Regulation 7.1.
- 18.22 In exceptional circumstances, the Independent Reviewer may wish to recommend that the matter is referred to a differently constituted PIP.



- 18.23 The decision of the Independent Reviewer should be recorded in writing. It should make clear whether the PIP's decision was:
- 18.23.1 reasonable and the appeal is rejected; or
  - 18.23.2 not reasonable and the appeal is accepted.
- 18.24 The Independent Reviewer should set out succinct reasons for their decision, including their findings in respect of each of the reasons submitted by the complainant in support of the appeal.
- 18.25 In reaching their decision on the appeal (and/or in deciding whether to inform the accused member of information relating to the complaint, the appeal and/or their decision, and/or in connection with the recording of their decision and reasons for their decision), the Independent Reviewer may seek guidance and advice (including procedural guidance and legal advice) from or through the Complaint Secretary (who may, in turn, seek guidance or instruction from the Director of Governance and External Engagement and/or legal advice).
- 18.26 The Independent Reviewer should inform the complainant (via the Complaint Secretary) in writing of their decision.
- 18.27 At this stage, the accused member against whom the complaint of misconduct is made need not be informed of the appeal, but this should be considered on the particular facts and in light of the nature of the information relating to the accused member. As above, the Independent Reviewer may seek guidance and advice from the Complaint Secretary on this point. The Independent Reviewer's decision on this point, and their reasons for the decision, should also be recorded in writing.

## **19 Appeal by the accused member**

### **Making an appeal**

- 19.1 The accused member may only appeal against a decision by the Disciplinary Panel (Regulation 16.1). The accused member may appeal either, or both of, the Disciplinary Panel's finding that they engaged in improper conduct or / and the sanction imposed (Regulation 16.3).

- 19.2 The accused member has no right of appeal against the decisions of a PIP (Regulation 16.1).
- 19.3 Appeals to a regulatory body must be made in accordance with that body's procedures (Regulation 16.2).
- 19.4 As set out in Regulation 16.3, to make an appeal, the accused member must send written notice of appeal to the Complaint Secretary within 20 English working days of the decision letter. In cases where there is a disparity between the date of the decision letter and the date of delivery, the Complaint Secretary when considering whether an appeal has been made in time should consider whether any unfairness might be caused to the accused member in rejecting their appeal as being out of time, and may seek legal advice as appropriate (see further paragraph 19.10 below).
- 19.5 Any appeal must be in writing and contain certain specified information. As set out in Regulation 16.4, to make an appeal, the accused member must send written notice of appeal to the Complaint Secretary setting out:
- 19.5.1 the ground(s) of appeal (see paragraph 19.11 below);
  - 19.5.2 the reasons for the appeal;
  - 19.5.3 the matters relied upon in support of the appeal; and
  - 19.5.4 why the decision is considered unfair.
- 19.6 An appeal "in writing" includes email and other permanent forms of communication. It may be submitted in a number of ways, including by post or by email, and must be addressed to the Complaint Secretary.
- 19.7 If an appeal has been received by other means (e.g. by telephone), the accused member may be informed that their appeal may not be considered unless and until they submit their appeal in writing.
- 19.8 The Complaint Secretary should promptly acknowledge receipt of the appeal with the accused member.
- 19.9 The Complaint Secretary should consider the appeal to check whether it contains the information specified in Regulation 16.4 (paragraph 19.5 above). If any of the specified

information is missing, the Complaint Secretary should request promptly the missing information from the accused member, explaining that it should be provided without delay and for this purpose only the Complaint Secretary may extend the deadline for submitting an appeal by five English working days. However, it is always the responsibility of the person making the appeal to comply with the requirements for submitting an appeal. The Complaint Secretary should make it clear that if the accused member does not provide the missing specified information within the set timescale, the appeal may not be allowed to proceed.

19.10 Where an appeal is made, or information is provided by the accused member, outside of the prescribed 20 English working days, the accused member should provide an explanation as to why they missed the prescribed period. Any question as to whether to accept the appeal (or accept the provision of previously missing information) should be referred by the Complaint Secretary to the President for determination. The President will consider factors including the need for finality in the process, the fairness to all parties involved and the reasons given for the delay, and:

19.10.1 where the Complaint Secretary has extended the deadline by up to five working days as referred to at paragraph 19.9 above, the President should usually agree to the extension.

19.10.2 where there is a disparity between the date of the decision letter and the date of delivery of the decision letter to the accused member (see paragraph 19.4 above), the President should place particular weight on unfairness that might be caused to the accused member in rejecting an appeal as being out of time.

19.10.3 the President may seek legal advice as they consider appropriate.

19.11 As set out in Regulation 16.5, an appeal by an accused member can only be made on one or more of the following grounds:

19.11.1 The decision is unjust (e.g. there was a serious procedural error or other irregularity that renders the decision unfair or unsafe);

19.11.2 The decision is wrong (e.g. that it was not supported by the evidence or based on an error or misunderstanding);

19.11.3 Evidence, relevant to the case, has come to light which was not considered during the hearing and which could not reasonably have been produced at the hearing;

19.11.4 The sanction imposed is disproportionate to the gravity of the misconduct.

### **Initial consideration by the President of an Appeal by the Accused Member**

19.12 As set out in Regulation 17.1, the Complaint Secretary, upon receiving an appeal from the accused member, will refer the appeal to the President. This should happen promptly upon the appeal being received.

19.13 The Complaint Secretary should provide the President with the accused member's written notice of appeal. The President may request any further information from the Complaint Secretary that the President considers necessary to reach their decision (see paragraph 19.15 below), although it is anticipated that the President would not usually require any such additional information.

19.14 On receipt of an appeal, the President must first consider whether they have a conflict of interest meaning they should not participate in the matter (see Section 4). If circumstances exist which objectively could be thought to be likely adversely to affect the President's ability impartially to carry out their role, the President must inform the Complaint Secretary who will instead refer to the matter to one of the Deputy and/or Vice Presidents.

19.15 Where the President has considered and concludes that they do not have a conflict of interest, they should promptly consider the appeal and make their decision. They will either:

19.15.1 summarily accept the appeal and refer the matter back to a freshly convened Disciplinary Panel for fresh consideration (Regulations 17.1.1 and 17.10); or

19.15.2 confirm that an Appeal Panel should be convened.

19.16 It is recommended that the decision of the President be set out in writing with succinct reasons for the decision.

19.17 The Complaint Secretary will write to the accused member setting out the President's decision (Regulation 17.2).

### **Convening of an Appeal Panel**

19.18 Where the President has confirmed that an Appeal Panel be convened, the Complaint Secretary will convene an Appeal Panel of three individuals drawn from a pool of persons independent of the Preliminary Investigation Board and Disciplinary Board maintained for purposes of appeals, and identify a Chair of the Appeal Panel, in accordance with Regulation 18.

19.19 Where there is no existing "pool of persons", one may be created through the following process. At least three other Professional Engineering Institutions will be contacted and their President asked to nominate two individuals suitable to be on an Appeal Panel. The Complaint Secretary will use those individuals as the "pool of persons".

19.20 The Appeal Panel exists in order to determine whether the appeal should be dismissed or allowed (in whole or part) – see paragraphs 19.54 and 19.55 below.

19.21 The Complaint Secretary will inform proposed members of the Appeal Panel of the identity of the accused member, the complainant, and any relevant witnesses in order that the proposed members can each consider whether there are any conflicts of interest affecting their ability to be on the Appeal Panel (Regulation 18.2) (see Section 4). It is good practice for the Complaint Secretary to inform proposed members also of the known names of any other people and entities (companies, partnerships etc.) involved in the appeal in order that they can consider whether they have a conflict of interest. The Complaint Secretary should not usually disclose what role each person/entity has in the matter (e.g. whether they are the complainant, accused member or a witness); instead a list of names should be provided. A proposed member of the Appeal Panel may ask the Complaint Secretary for further information in order to assist with identifying whether the person/entity is known to them, but this will not usually involve needing to provide any details of the allegation or appeal itself or the role the person/entity plays in the matter.

19.22 If circumstances exist which objectively could be thought to be likely adversely to affect the individual's ability impartially to carry out their role as Appeal Panel member (including to review and evaluate evidence and make a decision on the appeal, and/or

(where relevant) to act as Chair of the Appeal Panel), the proposed member must recuse themselves by informing the Complaint Secretary who should then appoint another individual to undertake that role.

- 19.23 Any member of the Appeal Panel, or proposed member, should treat the names of the people and entities and the fact that they have been contacted by the Complaint Secretary as confidential.
- 19.24 Once the members of the Appeal Panel have been identified, they will agree amongst themselves who will Chair the appeal and to assist with that decision the Complaint Secretary may propose which of them might take that role.

### **Preparing for an Appeal Hearing**

- 19.25 The Complaint Secretary should provide the Appeal Panel with the information it is likely to need to make the decisions with which it is charged. This is likely to include the written appeal received and any documents sent with it, the written decision of the President, a copy of the Rules of Conduct, a copy of the Disciplinary Regulations, the decision being appealed (i.e. the Disciplinary Panel's decision) and the documents that were provided to the Disciplinary Panel. Save in exceptional circumstances, the date by which this material is to be provided to the Appeal Panel should be at least two weeks before the date upon which the Appeal Panel will consider the appeal.
- 19.26 Any meeting or hearing of the Appeal Panel may be held in person or remotely. If held remotely, the simultaneous communication arrangements must provide both video and audio to each participant in the hearing such that they have the opportunity to see and to hear the other participants (e.g. by Teams, Zoom or other video conferencing facility) (Regulation 18.3). The IET (usually through the Complaint Secretary) will take steps to ensure parties are aware of which communication method is to be used so that steps can be taken to ensure accessibility and compatibility, including considering what alternative arrangements may be appropriate in order to avoid postponement and delays.
- 19.27 As set out in Regulation 17.4, the Complaint Secretary will write to the accused member setting out:

19.27.1 the time and date on which the Appeal Panel will consider the matter;

- 19.27.2 the date by which any additional information that the accused member wants the Appeal Panel to consider must be received;
  - 19.27.3 that the accused member has the right to attend any Appeal Panel hearing and be represented at any hearing but that the IET will not be responsible for any costs incurred by the accused member;
  - 19.27.4 the identity of the members of the Appeal Panel and a statement of how the accused member may object to the inclusion of a member of the Appeal Panel.
- 19.28 Save in exceptional circumstances, the communication referred to at paragraph 19.27 above should be sent to the accused member at least one month before the date upon which the Appeal Panel will consider the matter.
- 19.29 The Complaint Secretary may wish to ensure that the accused member receives the communication, for example by seeking a confirmation of receipt and or using other contact details provided by the accused member to inform them that a communication has been sent.
- 19.30 Where an Appeal Panel hearing is to be held, the accused member making the appeal, the Presenter, witnesses (if any) and any representatives should make every effort to attend the appeal hearing. However, a party may request a postponement or adjournment of the appeal hearing by applying to the Chair of the Appeal Panel (usually via the Complaint Secretary). The application should be in writing (unless the request arising during the hearing itself, in which case it can be made orally) and should give an explanation for their request to postpone or adjourn. Illness or other reasonable non-availability of the accused member, Presenter or an important witness is likely to be a reasonable basis for postponing or adjourning the hearing; the illness or non-availability of a particular legal representative is unlikely to be a reasonable basis since another lawyer is likely to be able to provide adequate representation.
- 19.31 It is good practice for the Complaint Secretary also to:
- 19.31.1 inform the accused member of the documents being provided to the Appeal Panel (see paragraph 19.25);
  - 19.31.2 provide the accused member with the identity of the Presenter; and

- 19.31.3 ask the accused member whether they have any support needs that they wish to be taken into account in respect of any Appeal Panel hearing (e.g. reasonable adjustments for a disability or support for a mental health issue).
- 19.32 The Complaint Secretary should inform the accused member that, as set out in Regulation 17.5, the accused member may object to the inclusion of any individual on the Appeal Panel by providing the objection, with reasons, to the Complaint Secretary in writing. If the accused member raises such an objection, the Chair of the Appeal Panel will consider the objection in accordance with Regulation 17.5 and will either reject the objection (giving reasons) or will direct the Complaint Secretary to replace the individual to whom the accused member has objected. If the accused member objects to the Chair, the President will consider the objection. The Chair (or the President, as relevant) will consider the reasons provided by the accused member and make such enquiries as are appropriate before making a decision. The enquiries might include contacting the objected to Appeal Panel member to check any factual matters asserted by the accused member. The Chair or the President (as relevant) should provide written reasons for their decision.
- 19.33 The Disciplinary Panel should appoint a Presenter to attend any appeal hearing and inform the Complaint Secretary of the identity of that person. The Presenter may be the person who presented the case before the Disciplinary Panel, the Investigator, or some other person and could be legally qualified. Whilst each appeal should be considered on its own facts and circumstances, it will usually be appropriate for the Presenter to be the same individual who acted as Presenter at any Disciplinary Panel hearing.
- 19.34 The Complaint Secretary will appoint a person to keep a note of any Appeal Panel hearing (Regulation 18.4) and may assist the Appeal Panel in appointing a legal assessor (Regulation 18.5).
- 19.35 As set out in Regulation 17.3, and subject to Regulation 17.6, an Appeal Panel will have discretion over the procedure to be followed and prior to the Appeal Panel hearing, the Chair of the Appeal Panel may deal with any procedural issues that may arise. Procedural issues may include, for example: requests for an extension of time within which to carry out an element of the procedure; requests that the Appeal Panel invite a particular member to attend the hearing; or any other issue. Upon receiving a request, the Chair should usually invite comment from the other party (i.e. the



Presenter if the request comes from the accused member or the accused member if the request comes from the Presenter). The Chair may seek the views of other members of the Appeal Panel, the Complaint Secretary and legal advice (but does not have to do so). The Chair will make a decision and provide brief reasons for the decision, which the Complaint Secretary will ensure the parties receive.

### **Appeal Panel Hearings**

- 19.36 The proceedings of the Appeal Panel, including any hearings, are held in private. However, the Appeal Panel has discretion to allow the attendance at any Appeal Panel hearing of any person.
- 19.37 As set out in Regulation 17.3, and subject to Regulation 17.6, an Appeal Panel will have discretion over the procedure to be followed. Whilst the Appeal Panel has discretion over the procedure to be followed, it must include the matters set out in the Regulations (summarised in this guidance at paragraph 19.42). A key factor for the Appeal Panel in exercising its discretion is the fairness of the process.
- 19.38 The accused member, any witnesses (if any) and any representatives should make every effort to attend any Appeal Panel hearing. If for some reason the Presenter is unable to attend the hearing, it is anticipated that the Complaint Secretary (through the IET's legal team) will be able to appoint alternative representation other than at short notice.
- 19.39 Where the accused member or any witness or representative fails to attend without good cause, the Appeal Panel may decide to proceed with the hearing in that person's absence. Before doing so, the Appeal Panel should satisfy itself (usually by making enquiries of those at the hearing) that the individual who has failed to attend was properly notified of the date, time and place of the hearing. If the accused member or a witness or representative fails to attend the first hearing arranged but has previously engaged with the proceedings, it will usually be good practice to re-arrange the hearing to an alternative date in order to give the accused member or witness or representative a further opportunity to attend.
- 19.40 The Appeal Panel may adjourn the formal hearing at any point (Regulation 17.11). It may do so on its own motion or at the request of the accused member or the Presenter or both, but should always seek the views of both the accused member and the

Presenter before doing so. When making a decision about whether to adjourn, the Appeal Panel must take into account the impact that any delay in hearing the matter will have on the fairness to all involved. When adjourning (which includes breaking for lunch), the Appeal Panel should state the date and time at which it will reconvene or the method by which the date and time to reconvene will be communicated to the parties (which will usually be through the Complaint Secretary).

19.41 As well as the person to keep a note and the optional legal assessor, the Appeal Panel may request that the Complaint Secretary provides someone to assist with the running of the hearing (referred to as the “Clerk” in this guidance). The Clerk and the note taker could be the same person.

19.42 Whilst the Appeal Panel has discretion over how any hearing will run, subject to matters set out in the Regulations and to the fairness of the process when exercising any discretion, the following would be a suitable procedure for a simple appeal (but note that no Appeal Panel is bound by this suggestion). References to “Appellant” below are to the accused member making the appeal and include their representative (unless otherwise stated):

19.42.1 The Chair ensures that all parties (in particular the Appeal Panel members, the Appellant and the Presenter) are present and ready to proceed and introduces those present.

19.42.2 The Chair and Clerk ensure that all parties are agreed over the documents that each should have in connection with the hearing.

19.42.3 The Appellant opens the case by briefly outlining the appeal.

19.42.4 The Presenter may make a brief reply.

19.42.5 The Appellant takes the Appeal Panel through any documents and calls any witnesses. The Appellant’s representative may not give evidence themselves or on behalf of the Appellant. If there are witnesses the sequence set out at paragraph 14.4.5 can be followed (with “appellant” replacing “accused member”).

19.42.6 The Presenter responds by taking the Appeal Panel through any documents and calling any witnesses (if any). If there are witnesses, the

sequence set out at paragraph 14.4.4 can be followed (with “appellant” replacing “accused member”).

- 19.42.7 The Appellant addresses the Appeal Panel on the submissions (and evidence) that they have heard.
  - 19.42.8 The Presenter addresses the Appeal Panel on the submissions (and evidence) that they have heard.
  - 19.42.9 The Appeal Panel retires to consider the appeal (see further below).
  - 19.42.10 The Appeal Panel returns and announces its decision on the appeal.
- 19.43 If a party wishes to introduce new evidence, the Appeal Panel has the power to admit or to refuse to admit that evidence. Key factors that the Appeal Panel will wish to have in mind when considering whether to admit or refuse to admit an item of evidence are:
- 19.43.1 the reason(s) why the evidence was not provided to the Disciplinary Panel;  
and
  - 19.43.2 the fairness to the process in admitting or not admitting the evidence.  
Fairness is to apply to both the appellant and the Presenter.

### **Appeal Panel Deliberations including following a Hearing**

- 19.44 When making a decision, including at the end of any Appeal Panel hearing, the Appeal Panel should retire (or ask all others to leave the room) to consider the appeal and evidence it has heard.
- 19.45 The Appeal Panel is entitled to ask the Clerk, note taker and the legal assessor (if any) it appointed to join them. Neither the Clerk, note taker nor the legal assessor may participate in the decision making – they are there solely to assist (as relevant) by reminding the Appeal Panel of what was said during the hearing, with legal advice (in the case of the legal assessor only), with procedural advice (in the case of the Clerk and the legal assessor) and in drafting the decision and reasons of the Appeal Panel. It is good practice for the legal assessor to provide to the Appellant and the Presenter at least an outline of any legal and procedural advice given to the Appeal Panel.

- 19.46 Save in the most exceptional of circumstances, the Appeal Panel should not speak with or communicate with either the Appellant or the Presenter without the other knowing about (i.e. seeing (if written) or having the opportunity of hearing (if oral)) the communication and having the opportunity to comment upon the communication.
- 19.47 If the Appeal Panel thinks that it will take some time to reach its decision, it should consider telling the accused member and the Presenter that they may leave and provide a time and date upon which the decision will be announced.
- 19.48 The Appeal Panel should consider the ground/s upon which the accused member has made the appeal and whether the ground/s on which the appeal is based has/have been established (on the balance of probability) on the evidence it has heard – that is (as relevant to the appeal in question):
- 19.48.1 whether the decision was unjust (for example, there was a serious procedural error or other irregularity that rendered the decision unfair or unsafe);
  - 19.48.2 whether the decision was wrong (for example, because it was not supported by the evidence or it was based on an error or misunderstanding);
  - 19.48.3 that there is relevant evidence which has come to light and which was not considered by the Disciplinary Panel and which could not have been reasonably produced at that hearing but which the Appeal Panel considers makes the Disciplinary Panel's decision unfair; or
  - 19.48.4 the sanction imposed was disproportionate to the gravity of the misconduct.
- 19.49 Where the Appeal Panel decides to allow an appeal against sanction only and substitutes for the sanction any other sanction that could have been imposed by the Disciplinary Panel, it should exercise caution in considering the substitution of a more draconian sanction. In circumstances where the Appeal Panel is minded to impose a more severe sanction, it should consider Section 16 above and consider inviting the Appellant and the Presenter to address it on sanctions (if it has not already done so, for example, where the appeal is against sanction only).

- 19.50 When deciding what sanction(s) to apply, the Appeal Panel should apply the least harsh sanction that is commensurate with the breach of the Rules of Conduct and the background of the accused member. The principal aim of sanctions is to protect the public rather than to punish the individual (although sanctions may be punitive in effect). Sanctions may also be used to deter future misconduct by providing a disincentive.
- 19.51 The Appeal Panel may only apply those sanctions listed at Regulation 12.1. For further guidance on the imposition of sanctions, see Section 16 above.
- 19.52 It is desirable that the Appeal Panel should make decisions quickly, ideally within seven days of the appeal meeting or hearing. However, it must be recognised that members of the Appeal Panel are volunteers and therefore may have competing demands on their time.
- 19.53 The Appeal Panel's decisions will be provided in writing and include reasons and will be conveyed to the Appellant and the Presenter by the Complaint Secretary. The Appeal Panel may announce its decision orally at the hearing to the Appellant and the Presenter. If it does so, it need not give all its reasons at that stage but should explain that it will subsequently provide them with a written decision with reasons.

### **Appeal Panel Decisions**

- 19.54 Having considered the appeal, and in accordance with Regulation 17.8, the Appeal Panel may:
- 19.54.1 dismiss the appeal; or
  - 19.54.2 allow the appeal in whole or part.
- 19.55 As set out in Regulation 17.9, if the Appeal Panel decides to allow any part of the appeal, it must quash that part of the decision appealed against and either:
- 19.55.1 dismiss the complaint; or
  - 19.55.2 where allowing an appeal against a finding of improper conduct, refer the matter for fresh consideration by the Disciplinary Panel; or

- 19.55.3 where allowing an appeal against a sanction only, substitute for the sanction any other sanction that could have been imposed by the Disciplinary Panel.
- 19.56 If the Appeal Panel upholds or imposes a sanction, the Appeal Panel should also decide the date from which the sanction applies. The Appeal Panel should note in the written decision that if the accused member fails to comply with any sanction imposed on them that would itself be a disciplinary issue, the result of which could be a further, more severe sanction being imposed. This is consistent with Regulation 13 and paragraph 16.10 of this guidance.
- 19.57 If the accused member has been suspended or expelled, the Appeal Panel (through the Complaint Secretary) should inform the accused member that the decision will be published (unless the Appeal Panel determines that there are reasons not to do so, having first invited the accused member to make representations in respect of publication). If sanction is announced at the hearing, this should usually be done immediately after the sanction has been announced. If the appeal has resulted in a complaint of improper conduct against the accused member having been dismissed, the Appeal Panel may, and at the request of the accused member shall, arrange for the decision to be published.
- 19.58 In accordance with Regulation 11.5, the Complaint Secretary must inform the Engineering Council (or other regulatory body) where the sanction imposed (suspension or expulsion) may lead to the termination of professional registration, and inform the accused member of this.