

Disciplinary Procedure

(to be read in conjunction with the Code of Professional Ethics)

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ACCOUNTING TECHNICIANS IRELAND

DISCIPLINARY PROCEDURE

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1 OBJECTIVE

The objective of this Procedure is to promote adherence to the highest possible standards of professional and business conduct, efficiency and competency by Members and Students by providing a system for the purpose of investigating the activities and affairs of, and, where appropriate, disciplining, Members and Students.

Members, affiliates, fellows, honorary and student members are encouraged to familiarise themselves with the fundamental principles and expected professional conduct, which is detailed in the Code of Professional Ethics.

2 DEFINITIONS AND INTERPRETATION

2.1 Definitions

Unless the context otherwise requires, in this Procedure:

"Appellant" means a Respondent who has appealed a finding and/or Order of a Disciplinary Tribunal in accordance with Clause 18;

"Appeal Tribunal" means a tribunal, appointed under Clause 18 to hear an appeal;

"Board" means the Board of Directors of Accounting Technicians Ireland;

"Complaint" means any complaint, allegation, expression of concern, matter or event touching or apparently touching upon the conduct (whether by act or omission), behaviour, performance or affairs of any Member or Student in respect of any of the matters mentioned in Clause 4 whether brought to the attention of the Head of Professional Conduct by a Complainant or otherwise coming to the attention of the Head of Professional Conduct;

"Complainant" means a person (other than an officer or employee of the Institute) who brings a Complaint to the attention of the Head of Professional Conduct;

"Complaints Committee" means the committee appointed under Clause 5.1.1;

"Disciplinary Bodies" means the Complaints Committee, the Disciplinary Panel, any Disciplinary Tribunal and any Appeal Tribunal and **"Disciplinary Body"** means any of them;

"Disciplinary Panel" means the panel of persons appointed under Clause 5.1.2;

"Disciplinary Tribunal" means a tribunal appointed under Clause 14 to hear a Formal Complaint;

"Formal Complaint" means a Complaint that has been referred to a Disciplinary Tribunal by the Complaints Committee in accordance with this Procedure;

"Head of Professional Conduct" means the Head of Professional Conduct of the Institute for the time being by whatever title he or she may be called or any deputy to such person, or any person acting in such capacity by the direction of the Board;

"Insolvency Event" means the occurrence in relation to a Member or Student of any of the following circumstances;

- (i) (in the Republic of Ireland) he is adjudicated a bankrupt; or
- (ii) (in Northern Ireland) an interim order or a bankruptcy order is made against him under Part VIII or IX of the Insolvency (Northern Ireland) Order 1989 (as amended or re-enacted from time to time) or a voluntary arrangement in respect of his affairs is approved under Part VIII of that Order; or
- (iii) anything analogous to any of the foregoing happens to him under the law of any other jurisdiction;

"Institute" means Accounting Technicians Ireland;

"Lawyer" includes any person who is or was a practising solicitor or practising barrister or a judge in the Republic of Ireland or Northern Ireland or who is or was a practising solicitor, barrister or analogous lawyer or a judge in any other jurisdiction;

"Member" means a person who has been admitted to Membership, Affiliate Membership, Fellowship, or Honorary Membership of the Institute;

"Order" means, as the case may be, an order of a Disciplinary Tribunal made under Clause 17.4, an order of an Appeal Tribunal made under Clause 21 or a consent order made under Clause 12 or an order for costs under Clause 22;

"Respondent" means any Member or Student in respect of whom a Formal Complaint has been referred to a Disciplinary Tribunal; and

"Student" means a person who has been admitted to Student Membership of the Institute.

2.2 Interpretation

Unless the context otherwise requires, in this Procedure:

- 2.2.1 words denoting any gender include all genders and words denoting the singular include the plural and vice versa;

- 2.2.2 any reference to any statutory provision, or to any order or regulation shall be construed as a reference to that provision, order or regulation as extended, modified, replaced or re-enacted from time to time whether before or after the date of this Procedure) and all regulations and orders from time to time made thereunder or deriving validity therefrom;
- 2.2.3 any reference to a clause is, unless otherwise stated, a reference to a clause of this Procedure; and
- 2.2.4 headings are for convenience only and shall not affect the construction of this Procedure;

3 DUTIES

- 3.1 It shall be the duty of every Member and Student to co-operate fully at every phase of the disciplinary process provided for under this Procedure. It shall be the duty of every Member and Student (including such Members and Students who are not involved in, or the subject of, the said disciplinary process) to provide such information, explanations, documents and computer and other electronic records as the Head of Professional Conduct, the Complaints Committee, the Disciplinary Panel, a Disciplinary Tribunal, an Appeal Tribunal, or any person appointed by a Disciplinary Body to assist it in performing its functions under this Procedure, as the case may be, may consider necessary to enable it or him or her to carry out its or his or her duties under this Procedure. Each Disciplinary Body shall be entitled to avail of all powers conferred on it by section 192A of the Companies Act 1990 (as inserted by section 36 of the Companies (Auditing and Accounting) Act 2003).
- 3.2 Where an Order is made pursuant to this Procedure by a Disciplinary Tribunal or an Appeal Tribunal for the withdrawal of any authorisation, licence or permit the Respondent or, as the case may be, the Appellant concerned, shall thereupon deliver up to the Head of Professional Conduct all relevant certificates, licences and authorisations affected by the Order.

4 LIABILITY OF MEMBERS AND STUDENTS TO DISCIPLINARY ACTION

- 4.1 A Member or a Student shall be liable to disciplinary action in accordance with this Procedure in any of the following cases:-
 - 4.1.1 If, in the course of carrying out his professional duties or otherwise, he or she has been guilty of misconduct. For this purpose, misconduct is any act or default likely to bring discredit to himself, the Institute or the profession of accountancy; or
 - 4.1.2 if he or she has performed his or her professional work or duties of his or her employment or conducted his or her practice inefficiently or incompetently to such an extent, or on such a number of occasions, as to bring discredit to himself or herself, the Institute or the profession of accountancy; or

- 4.1.3 if he or she has committed any breach of this Procedure or any regulations made pursuant thereto; or
 - 4.1.4 if he or she has failed or neglected to respond adequately or at all to correspondence or other communications from an officer, the Head of Professional Conduct or an employee of the Institute or any person acting on behalf of any committee of the Institute or failed to co-operate fully with any enquiry or investigation being conducted by or on behalf of the Institute; or
 - 4.1.5 if he or she has failed to satisfy a judgment debt in any jurisdiction individually, or as a partner; or
 - 4.1.6 if an Insolvency Event occurs in relation to him or her; or
 - 4.1.7 if he or she has failed to comply with an order under Clause 11.6 or 17.6 or failed duly to implement the advice obtained pursuant to such an order.
- 4.2 Members and Students shall be liable to disciplinary action whether or not they were Members, or Students at the time of the occurrence giving rise to their becoming so liable and whether or not their Membership or Student status is under suspension at such time.
- 4.3 Where a Member or Student has:
- 4.3.1 before a Court of competent jurisdiction in Ireland or elsewhere pleaded guilty to or has been found guilty of any offence involving dishonesty, violence, indecency, subversion, drug trafficking, money laundering, tax evasion, breach of companies legislation or complicity in any such offences or has in any civil proceedings been found to have acted fraudulently or dishonestly; or
 - 4.3.2 been prohibited from being a director of a company by reason of any order made under sections 150 or 160 of the Companies Act 1990 of the Republic of Ireland or Article 4 of The Directors Disqualification (NI) Order 2002 of Northern Ireland or any analogous legislation in any other jurisdiction (not set aside on appeal or otherwise); or
 - 4.3.3 been the subject of an adverse finding (not set aside on appeal or otherwise) in respect of his conduct by a Disciplinary Tribunal of any accountancy body that comes within the supervisory remit of the Irish Auditing and Accounting Supervisory Authority, or any other regulatory body that is for the time being prescribed for the purposes of this Clause 4 by regulation made by the Board; or
 - 4.3.4 been the subject of an adverse finding (not set aside on appeal or otherwise) in respect of his conduct by inspectors appointed under Part 2 of the Companies Act 1990 of the Republic of Ireland or Articles 424-437

of The Companies Order (NI) 1924 of Northern Ireland or any analogous legislation in any other jurisdiction,

it shall be presumed, unless the contrary is established, that such conviction or finding or prohibition constitutes proof of misconduct.

- 4.4 If, after a Complaint is brought or comes to the attention of the Head of Professional Conduct, a Member or Student tenders his resignation, such resignation shall not be effective until all disciplinary action relating to that Complaint has been finally concluded.

5 APPOINTMENT OF DISCIPLINARY BODIES

- 5.1 The Board shall appoint:

5.1.1 a Complaints Committee; and

5.1.2 a Disciplinary Panel.

- 5.2 Each person so appointed shall be appointed for a term of five years. Any such appointment may be renewed for one subsequent term. No person who is an employee of the Institute may be appointed.

- 5.3 No person shall be a Member of the Complaints Committee and the Disciplinary Panel at the same time.

- 5.4 No person who is a member of the Board shall be a member of a Disciplinary Body. However, if during the course of a hearing of a Formal Complaint a member of the Disciplinary Tribunal hearing that Formal Complaint or during the course of a hearing of an appeal, a member of the Appeal Tribunal hearing that appeal is elected or appointed to the Board he or she may take up his or her position on the Board and shall continue in office as a member of such Disciplinary Tribunal or Appeal Tribunal (as the case may be) until such hearing is finalised.

- 5.5 No person who has been a member of the Board, may, within one year of the date upon which he ceased to be a member of the Board, be a member of the Complaints Committee or the Disciplinary Panel.

- 5.6 The Board shall have power to pay remuneration to and the reasonable expenses of members of the Disciplinary Bodies.

- 5.7 The Complaints Committee shall have power to make such regulations (not being inconsistent with the express provisions of this Procedure) as may be considered by them necessary for the performance of its functions under this Procedure.

- 5.8 The Board shall from time to time appoint persons (who may be employees of the Institute) to act as registrars to provide administrative support to the

Complaints Committee, the Disciplinary Panel, any Disciplinary Tribunal and any Appeal Tribunal.

- 5.9 The Board may terminate a person's membership of a Disciplinary Body on the grounds of serious misconduct or incapacity.

6 COMPOSITION OF THE COMPLAINTS COMMITTEE

- 6.1 The Complaints Committee shall consist of not less than five persons of whom the majority shall be persons who are not Members of the Institute. The Board may appoint from time to time persons to fill any vacancy that arises in the membership of the Complaints Committee but the Complaints Committee may act notwithstanding any vacancy in its body.

- 6.2 The quorum for meetings of the Complaints Committee shall be three persons, so long as at least one of the attendance thereat consists of a member of the Committee who is not a Member of the Institute. Any meeting of the Complaints Committee at which a quorum is present shall be competent to exercise all the functions and powers conferred upon the Complaints Committee by this Procedure.

- 6.3 The Complaints Committee may delegate such of its functions and powers to sub-committees of its own Members as it may deem necessary or convenient. Any sub-committee so formed shall, in the exercise of the functions and powers so delegated, conform to any regulations that may be imposed on it by the Complaints Committee.

- 6.4 The Board shall from time to time appoint a chairman of the Complaints Committee.

- 6.5 The Complaints Committee may in order to assist it in carrying out its investigative and other functions under this Procedure, use the services of such one or more persons (whether or not employees or Members of the Institute) as it sees fit.

7 COMPOSITION OF THE DISCIPLINARY PANEL

- 7.1 The Disciplinary Panel shall consist of not less than nine persons. A majority of the members of the Disciplinary Panel shall be persons who are not Members of the Institute at least three of whom shall be lawyers. Not less than three Members of the Disciplinary Panel shall be Members of the Institute. The Board may appoint from time to time persons to fill any vacancy that arises in the membership of the Disciplinary Panel.

- 7.2 The Board shall from time to time appoint a chairman of the Disciplinary Panel.

8 RIGHT TO MAKE A COMPLAINT

It shall be the right of any person to bring to the attention of the Head of Professional Conduct any Complaint.

9 PROCESSING OF COMPLAINTS BY THE HEAD OF PROFESSIONAL CONDUCT

9.1 The Head of Professional Conduct may, if he or she considers it appropriate to do so, attempt to resolve any Complaint by conciliation or in some other way not involving disciplinary action under this Procedure. If any such attempt is successful the Head of Professional Conduct shall take no further action with respect to such Complaint unless new facts or matters come to light which in the view of the Head of Professional Conduct require the Complaint to be reopened.

9.2 The Head of Professional Conduct shall convey each Complaint to the Complaints Committee unless it has been resolved under Clause 9.1.

10 COMPLAINTS COMMITTEE MAY DEFER CONSIDERATION

The Complaints Committee may defer consideration of any Complaint in order:

10.1 to enable the Complaints Committee, or any person so authorised on its behalf, to obtain such information, explanations and/or books, records, computer records and documents as it considers necessary to perform its functions under this Procedure: and/or

10.2 to allow for any other investigation or adjudication which in the opinion of the Committee is relevant to the subject matter of the Complaint to be completed.

11 INVESTIGATION OF COMPLAINTS BY THE COMPLAINTS COMMITTEE

11.1 Subject to clause 10, the Complaints Committee shall investigate the Complaint in order to decide whether or not a prima facie case has been made out that the Member or Student concerned is liable to disciplinary action under this Procedure.

11.2 Before reaching a decision as to whether or not such a prima facie case has been made out, the Complaints Committee shall:

11.2.1 provide to the Member or Student concerned, where the Complaint has been brought to the attention of the Head of Professional Conduct in writing, a copy of such writing and, where the Complaint was brought to the attention of the Head of Professional Conduct otherwise than in writing or came to the attention of the Head of Professional Conduct otherwise than as a result of a Complaint made by a Complainant, a synopsis prepared by the Head of Professional Conduct of the Complaint

together with brief details of the material then before the Committee and upon which it proposes to base its decision as to whether or not a prima facie case has been made out; and

11.2.2 give the Member or Student an opportunity of making written representations to it as he or it may consider appropriate to the deliberations of the Committee.

In addition the Complaints Committee may, in its absolute discretion, give the Member or Student concerned, the Complainant (if there is one) and the Head of Professional Conduct an opportunity of being heard before it. If the Complaints Committee gives any of such persons such an opportunity it shall offer a like opportunity to the other(s) of them.

11.3 If the Complaints Committee is of the opinion that a prima facie case has not been made out in respect of any Complaint, it shall so notify in writing the Member or Student concerned and, if there is one, the Complainant, giving the reasons for its decision.

11.4 If the Complaints Committee is of the opinion that a prima facie case as aforesaid has been made out, it may in its absolute discretion:

11.4.1 decide that no further action be taken on the Complaint or any specified part of it; or

11.4.2 decide that the Complaint should rest on the file of the Member or Student concerned for a period of up to two years, in which case the matter will be treated as rendering the Member or Student concerned liable to disciplinary action and that whilst no action in respect thereof will on this occasion be taken, it may subsequently be taken in the event of a further Complaint concerning the Member or Student concerned being considered by the Complaints Committee. The Member or Student concerned must agree that the matter can be left to lie on their file. If agreement is not given the Complaints Committee may proceed to deal with the case in accordance with any of the provisions in this Clause 11; or

11.4.3 decide that, notwithstanding such prima facie case, further consideration of the whole or part of the Complaint be deferred on such terms and conditions as it considers appropriate, whether for either or both of the following purposes, namely:

- (a) to enable the Complaints Committee to obtain such information, explanations, documents and computer and other electronic records as it considers necessary, or
- (b) if the substance of the Complaint is the failure of the Member or Student concerned to satisfy a judgment debt or the occurrence of an Insolvency Event in relation to the Member or Student, to

enable the Complaints Committee to monitor any steps taken by the Member or Student concerned to deal with the matter; or

11.4.4 deal with the whole or part of the Complaint under Clause 12, or

11.4.5 refer the whole or part of the Complaint to a Disciplinary Tribunal as a Formal Complaint,

and the Complaints Committee shall notify, in writing, the Member or Student concerned, and, (if there is one), the Complainant, that a prima facie case has been made out against the Member or Student concerned, and which course of action, of those listed in this Clause 11, the Complaints Committee intends to take and the reasons for its decision.

11.5 In deciding whether a matter ought to be referred to a Disciplinary Tribunal, the Complaints Committee shall be entitled to take into account any facts or matters which may have been considered by the Complaints Committee on a previous occasion in relation to the Member or Student concerned.

11.6 Without prejudice to any other action it may take, if the Complaints Committee is of the opinion that a Complaint under consideration by it indicates that a Member may be or may have been managing his or her practice inefficiently or incompetently, it may order that Member to obtain advice from such sources as the Committee may direct and in that event the Member shall duly implement the advice so obtained.

11.7 Where a Complaint concerning the conduct of a Student has been referred to the Complaints Committee, the results of any Institute examination taken by the Student which have not yet been notified to him shall not be so notified until either the Complaints Committee has decided not to refer a Complaint to a Disciplinary Tribunal or, if such Complaint is referred, it has been disposed of in accordance with this Procedure: provided that, if an Order that he is unfit to become a Member is made against the Student, the results shall not, in any event, be notified.

12 **CONSENT ORDERS**

12.1 Where the Complaints Committee decides to deal with the Complaint under this Clause 12, the following provisions of this Clause 12 shall apply.

12.2 The Complaints Committee may, with the agreement of the Member or Student concerned, make:

12.2.1 any one or more of the Orders which, on finding a Formal Complaint proved, a Disciplinary Tribunal would have power to make in respect of a Respondent by virtue of:

- (a) Clause 17.4.1 (d) (e) or (f);

(b) Clause 17.4.2 (e) or (f),

according to whether the Respondent is a Member or Student; and

12.2.2 an Order that the Member or Student concerned shall pay to the Institute a specified sum by way of costs.

12.3 Any such Order may be made upon such terms and conditions (if any) as the Complaints Committee may, in its absolute discretion, consider appropriate.

12.4 Before making any Order under Clause 12.2, the Complaints Committee shall serve on the Member or Student concerned a notice describing the action which it proposes to take if the Member or Student agrees, and specifying the Order which it would make in that event.

12.5 A notice under Clause 12.4 must:

12.5.1 be in or substantially in such form as may be prescribed by regulations made by the Complaints Committee;

12.5.2 explain the extent to which the finding of the Complaints Committee would be published and/or otherwise communicated to others; and

12.5.3 state that, if the Member or Student concerned does not agree in writing to the proposed action within a stated period, of not less than fourteen days a Complaint will be referred to a Disciplinary Tribunal which, in the event of its finding that Complaint proved in whole or in part, would have available to it the complete range of Orders mentioned in Clauses 17.4.1 and 17.4.2 depending on whether he or it is a Member or Student.

12.6 At the same time as serving a notice under Clause 12.4 on the Member or Student concerned, the Complaints Committee will advise the Complainant (if there is one) that the Member or Student concerned has been offered the opportunity to consent to an Order under this Clause 12.

12.7 If, within the period stated in the notice (or such extended period, if any, as the Complaints Committee, in its absolute discretion, may allow), the Member or Student concerned agrees in writing to the Complaints Committee proceeding as proposed in the notice, the Committee shall make the Order specified in the notice unless, having regard to any further information, which it has received whether from the Member or Student concerned, the Complainant, the Head of Professional Conduct or any other source whatever, it is of the opinion:

12.7.1 that a lesser or no penalty is appropriate, in which case it shall impose a lesser or no penalty, as the case may be;

12.7.2 that a smaller or no sum is appropriate by way of costs, in which case it shall order a smaller sum to be paid by way of costs or make no order as to costs, as the case may be;

12.7.3 that no prima facie case exists, in which case it shall so find; or

12.7.4 that a greater penalty is appropriate, in which case:

(a) if such greater penalty is one that the Complaints Committee may order under Clause 12.2, before taking any action that goes beyond that described in the notice served under Clause 12.4 it shall serve on the Member or Student concerned a supplemental notice identifying the further information and indicating the extent of such greater penalty as the Complaints Committee intends imposing; or

(b) if such greater penalty is not one that the Complaints Committee may order under Clause 12.2, the Complaints Committee shall either refer the Complaint to the Disciplinary Tribunal or, if in its absolute discretion it considers it appropriate, reconsider the Complaint in accordance with the provisions of Clause 10 and, in either such case, any reference to Complaint in this Procedure shall, where necessary, be deemed to include such further information.

12.8 If the Member or Student does not, within the period stated in the notice or supplemental notice (or such extended period as the Complaints Committee in its absolute discretion may have allowed), agree in writing to the Complaints Committee proceeding as proposed in such notice, the Complaints Committee shall refer a Complaint to a Disciplinary Tribunal.

13 REFERRAL OF COMPLAINTS TO A DISCIPLINARY TRIBUNAL

If the Complaints Committee decides to refer the whole or part of any Complaint to a Disciplinary Tribunal, it shall send (through, if there is one, the registrar of the Disciplinary Panel) to the chairman or, if the chairman is not available, the vice-chairman of the Disciplinary Panel and to the Member or Student concerned the following material:

13.1 a copy of any written communication received by the Head of Professional Conduct or the Complaints Committee in respect of the Complaint or where the same was not in writing the Head of Professional Conduct 's synopsis;

13.2 a summary of the material that was considered by the Complaints Committee;

13.3 a copy of any written representations made by the Complainant;

- 13.4 a copy of any written representations made by the Member or Student concerned;
- 13.5 if the Complaints Committee considered facts or matters of the type identified in Clause 11.5 or additional information of the type referred to in Clause 12.7 a summary of such facts, matters or information;
- 13.6 a copy of the notification from the Complaints Committee to the Member or Student concerned that a prima facie case has been made out against the Member or Student concerned; and
- 13.7 the Formal Complaint that is to be considered by the Disciplinary Tribunal.

14 **DISCIPLINARY TRIBUNALS**

- 14.1 When a Formal Complaint is referred to a Disciplinary Tribunal by the Complaints Committee, the chairman of the Disciplinary Panel or, failing him, the vice-chairman of such Committee shall appoint a Disciplinary Tribunal from the members of the Disciplinary Panel to hear the Formal Complaint. The Tribunal shall consist of a lawyer, who is not a Member of the Institute, as chairman and one person who is a Member of the Institute and one person who is not a Member of the Institute. No former member of the Complaints Committee who has been concerned with the Complaint which is the subject of the Formal Complaint shall be eligible for appointment to such Disciplinary Tribunal.
- 14.2 If, for any reason, prior to the time fixed for the hearing of the Formal Complaint, any member of the Disciplinary Tribunal becomes unable to act the chairman or, failing him, the vice-chairman of the Disciplinary Panel shall co-opt another eligible person from the Disciplinary Panel to act in his place.
- 14.3 If, for any reason, any member of the Disciplinary Tribunal (other than the chairman thereof) is, during the course of the hearing, unable to continue to attend the hearing, the remaining members, provided that they are not less than two in number, may continue with the hearing, but if the Respondent is present they shall do so only if he consents. Save as aforesaid the Formal Complaint shall be re-heard by a new Disciplinary Tribunal appointed by the chairman or, failing him, the vice-chairman of the Disciplinary Panel in accordance with Clause 14.1.
- 14.4 If at any time during the hearing of a Formal Complaint, the Disciplinary Tribunal is of the opinion that it is for any reason inappropriate for it to complete the hearing, the chairman or failing him the vice-chairman of the Disciplinary Panel shall appoint a new Disciplinary Tribunal to re-hear the Formal Complaint.

14.5 Where a Formal Complaint is reheard pursuant to Clauses 14.3 or 14.4, none of the members of the original Disciplinary Tribunal may be appointed to the new Disciplinary Tribunal.

15 **CONSIDERATION OF FORMAL COMPLAINTS BY DISCIPLINARY TRIBUNAL**

15.1 As soon as practicable after its appointment, the Disciplinary Tribunal shall notify the Respondent, the Complaints Committee and, if there is one, the Complainant of the time (which shall not be sooner than 42 days from the date of such notification) and place fixed for the hearing of the Formal Complaint.

15.2 The Disciplinary Tribunal shall give the Respondent the opportunity of:-

15.2.1 attending and being heard at the hearing of the Formal Complaint;

15.2.2 if he so desires, being represented before the Disciplinary Tribunal by counsel or by a solicitor or by a Member of the Institute;

15.2.3 in addition to being given in advance of the hearing the material as provided for under Clause 15.5, hearing the evidence against him;

15.2.4 cross-examining witnesses called by the person or persons presenting and prosecuting the Formal Complaint;

15.2.5 adducing the documentary evidence;

15.2.6 calling witnesses to give evidence on his behalf; and

15.2.7 making such submissions as he wishes to the Disciplinary Tribunal.

15.3 The Disciplinary Tribunal shall give the person or persons presenting and prosecuting the Formal Complaint under Clause 15.8 the opportunity of:

15.3.1 attending and being heard at the hearing of the Formal Complaint;

15.3.2 adducing documentary evidence;

15.3.3 calling witnesses (including, if desired, any Complainant) to give evidence;

15.3.4 cross-examining witnesses called by the Respondent; and

15.3.5 making such submissions as he or they wish to the Disciplinary Tribunal.

15.4 If the Complaint giving rise to a Formal Complaint was brought to the attention of the Head of Professional Conduct by a Complainant, the Complainant may attend any hearing of the Disciplinary Tribunal relating to that Complaint even if the Disciplinary Tribunal determines that the hearing shall be held in private.

Any Complainant attending a hearing shall do so as an observer only and shall not have any right of audience save as provided in Clause 16.3.

- 15.5 At least twenty eight days in advance of the hearing, the Head of Professional Conduct shall deliver to the Respondent copies of or a summary of any documents or other materials, if any, which, in addition to those made available to the Respondent under Clause 13, the person or persons presenting and prosecuting the Formal Complaint intend to rely on, and a list of such witnesses as he or they propose calling at the hearing.
- 15.6 At least fourteen days in advance of the hearing, the Respondent shall deliver to the Head of Professional Conduct a summary of the arguments to be presented in his defence, together with copies of such supporting documents as he proposes to rely on, and a list of such witnesses as he proposes calling on his behalf at the hearing. If either the Respondent or the person or persons appointed under Clause 15.8 proposes to rely on expert evidence, the expert's report must be served on the other party at least fourteen days in advance of the hearing. However, no failure by the Respondent to comply with this Clause 15.6 shall restrict the Respondent's rights under Clause 15.2. The Respondent shall not be precluded from raising any argument or relying on any document which was not included in the material so delivered or calling any witness who was not included in the list of witnesses so delivered.
- 15.7 If the Respondent does not attend the hearing fixed as aforesaid, then, the Tribunal may, in its absolute discretion, either:
- 15.7.1 provided the Disciplinary Tribunal is satisfied that notice of that hearing was given to the Respondent, proceeded to hear the Formal Complaint in the absence of the Respondent; or
- 15.7.2 adjourn the hearing to such other date, venue and time as the Disciplinary Tribunal may in its absolute discretion, determine.
- and the Disciplinary Tribunal shall give to the Respondent notice of its decision.
- 15.8 The Complaints Committee shall:
- 15.8.1 appoint a Member of the Institute, or
- 15.8.2 appoint a lawyer, who may be an employee of the Institute, or
- 15.8.3 instruct a solicitor to brief counsel,
- to present and prosecute such Formal Complaint before the Disciplinary Tribunal appointed to hear such Formal Complaint and to appear on any appeal therefrom before the Appeal Tribunal appointed to hear such appeal.
- 15.9 A Disciplinary Tribunal may instruct a solicitor to act, or to brief counsel to act, as legal assessor on the hearing of any Formal Complaint.

- 15.10 A Formal Complaint may only be withdrawn with the consent of the chairman of the Disciplinary Tribunal appointed to hear that Formal Complaint.
- 15.11 A Disciplinary Tribunal may, on the application of the person appointed under Clause 15.8, agree to the amendment of the terms of a Formal Complaint, provided it is satisfied that the Respondent would not be unfairly prejudiced thereby.
- 15.12 If, during the course of hearing a Formal Complaint, it becomes apparent to a Disciplinary Tribunal that the Respondent may be liable to disciplinary action in accordance with this Procedure in relation to matters not the subject matter of the Formal Complaint, it may bring those matters to the attention of the Head of Professional Conduct.
- 15.13 A Disciplinary Tribunal shall have a general discretion to grant extensions of time, adjournments and postponements where it considers it fair and proper to do so.

16 HEARINGS OF DISCIPLINARY TRIBUNALS TO BE IN PUBLIC

- 16.1 All hearings by a Disciplinary Tribunal will be held in public unless:

- 16.1.1 not later than 14 days before the date set for the hearing, an application is made to the Disciplinary Tribunal by the Complainant (if there is one), the Respondent or the Complaints Committee to have the hearing or part of it held in private; and

- 16.1.2 the Disciplinary Tribunal, in its absolute discretion, determines that the holding in public of any hearing or any part thereof would be inappropriate.

If the Disciplinary Tribunal determines that any hearing or any part thereof should not be held in public, then that hearing or the relevant part thereof shall be held in private.

- 16.2 On receipt of an application under Clause 16.1, the Disciplinary Tribunal will inform the Complainant (if there is one), the Respondent and the Complaints Committee of the fact that application has been made to the Disciplinary Tribunal to have the whole or part of the hearing held in private and invite the said persons (and any other person it considers may be affected) to make such written submissions, if any, as they wish on the issue of whether or not the hearing, or the part of the hearing in issue, should be heard otherwise than in public.
- 16.3 In addition the Disciplinary Tribunal may, in its absolute discretion, give each of the Respondent, the Complainant (if there is one) and the Complaints Committee (and any other person it considers may be affected) an opportunity of being heard before it in relation to whether or not the hearing or any part thereof should be heard in private. If the Disciplinary Tribunal gives any of such

persons such an opportunity it shall offer a like opportunity to the other or others of them. Any such hearing shall be in private.

- 16.4 A Disciplinary Tribunal may only determine that it would be inappropriate to hold a hearing (whether in whole or in part) in public on the grounds that morals, public order, national security, the interests of juveniles or the protection of the private life of any person (including the Respondent or the Complainant) so requires, or there are, in the opinion of the Disciplinary Tribunal, special circumstances where publicity would prejudice the interests of justice.
- 16.5 A Disciplinary Tribunal shall not consider an application to have a hearing held in private which is brought otherwise than in accordance with the provisions of this Clause 16 and, in particular, shall not consider an application which is not brought within the time period specified in Clause 16.1.
- 16.6 A Disciplinary Tribunal may require any person attending a hearing (whether held in public or private) to give their name and address.
- 16.7 A Disciplinary Tribunal may expel from a hearing any person who is or becomes disruptive to the proceedings of such Disciplinary Tribunal or who fails to comply with Clause 16.6.

17 **FINDINGS AND ORDERS OF DISCIPLINARY TRIBUNALS**

- 17.1 If a Disciplinary Tribunal appointed to hear a Formal Complaint finds that the Formal Complaint has been proven in whole or in part in accordance with the standard of proof applicable under Clause 17.2, it shall make a finding to that effect; but if it finds that the Formal Complaint has not been proven in accordance with such applicable standard of proof, it shall dismiss the Formal Complaint. In either case the Disciplinary Tribunal shall give reasons for its finding.
- 17.2 Subject to the presumption of misconduct that may arise under the provisions of Clause 4.3, a Formal Complaint against a Respondent shall not be proved in whole or in part unless and until it has been proved by the Complaints Committee to the satisfaction of the Disciplinary Tribunal in accordance with the standard of proof applicable under this Clause 17.2. The standard of proof applicable shall be proof "on the balance of probabilities".
- 17.3 In circumstances where the presumption of misconduct arises under the provisions of Clause 4.3, the Formal Complaint against a Respondent arising from such misconduct shall be deemed to be proved unless and until the Respondent establishes to the satisfaction of the Disciplinary Tribunal in accordance with the standard of proof applicable under this Clause 17 that the said presumption shall not apply, at which point the Formal Complaint against the Respondent shall not be proved in whole or in part unless and until it has been proved by the Complaints Committee to the satisfaction of the Disciplinary

Tribunal in accordance with the standard of proof applicable under this Clause 17.

- 17.4 If a Disciplinary Tribunal makes a finding that a Formal Complaint has been proved in whole or in part, it may make any one or more of the following Orders against the Respondent as it considers appropriate having regard to the status of the Respondent, the Disciplinary Tribunal's views as to the nature and seriousness of the Formal Complaint, any previous Complaint in respect of which a finding or a finding and an order have been made against the Respondent and any other circumstances that the Disciplinary Tribunal considers relevant:

17.4.1 If the Respondent is a Member:

- (a) that he be excluded from membership of the Institute;
- (b) that he be suspended from membership of the Institute for such a period as the Disciplinary Tribunal thinks fit;
- (c) that any authorisation or licence or permit held by him be withdrawn;
- (d) that he be severely reprimanded;
- (e) that he be reprimanded; and
- (f) that he be fined a sum not exceeding €30,000.

17.4.2 If the Respondent is a Student:

- (a) that he be excluded from student membership of the Institute;
- (b) that he be suspended from student membership of the Institute for such a period as the Disciplinary Tribunal thinks fit;
- (c) that he be declared unfit to become a Member;
- (d) that he be disqualified from such examination or examinations of the Institute (or such part or parts thereof) as shall be specified in the Order, not being an examination (or a part thereof) the result of which shall have been duly notified to him by the Institute prior to the date of the Order;
- (e) that he be severely reprimanded; and
- (f) that he be reprimanded.

17.4.3 An Order that no further action be taken on the Formal Complaint.

17.4.4 An Order for costs under Clause 22.

- 17.5 Any such Order may be made upon such terms and conditions (if any) as the Disciplinary Tribunal may in its absolute discretion, consider appropriate.
- 17.6 Any such Order may also include a direction that the Respondent obtains advice from such source as the Disciplinary Tribunal may from time to time prescribe and in that event the Respondent shall duly implement the advice so obtained.
- 17.7 Subject to Clause 18.8, an Order of the Disciplinary Tribunal shall take effect from the expiry of the appeal period referred to in Clause 18.2. Notice of any finding or Order of the Disciplinary Tribunal shall as soon as practicable be given to the Respondent and, if there is one, to the Complainant and to the Complaints Committee.

18 **APPEALS AND APPOINTMENT OF APPEAL TRIBUNAL**

18.1 A Respondent may appeal against a finding or Order of a Disciplinary Tribunal on the grounds that:

18.1.1 the finding is wrong; and/or

18.1.2 the Order is excessive; and/or

18.1.3 the finding and/or the Order is flawed because of a serious procedural or other irregularity in the proceedings before the Disciplinary Tribunal; and/or

18.1.4 that the award of costs against him is manifestly excessive.

No appeal shall lie solely on the question of costs.

18.2 If a Respondent wishes to appeal a finding or Order of a Disciplinary Tribunal, he must within 21 days (or such longer period as the chairman or failing him the vice-chairman of the Disciplinary Panel may allow) of the date of the service upon him of such Order, give notice of appeal to the Head of Professional Conduct. Any such notice shall:

18.2.1 state the grounds of appeal and the grounds so stated shall not thereafter be amended except with the leave of the Appeal Tribunal appointed to hear such appeal; and

18.2.2 if the Order appealed against is exclusion or suspension from membership of the Institute, be accompanied by a bank draft payable to the Institute for any costs directed to be paid under Clause 22 unless the chairman or, failing him, the vice-chairman of the Disciplinary Panel, in his absolute discretion, considers that to require such a bank draft would unfairly prejudice the Respondent's ability to appeal.

- 18.3 As soon as practicable after the receipt of a notice of appeal, the Head of Professional Conduct shall (through, if there is one, the registrar of the Disciplinary Panel) inform the chairman or, failing him, the vice-chairman of the Disciplinary Panel who shall as soon as practicable thereafter appoint an Appeal Tribunal from the Members of the Disciplinary Panel. The Appeal Tribunal shall consist of a lawyer, who is not a Member of the Institute, as chairman, one person who is a Member of the Institute and one person who is not a Member of the Institute. No former member of the Complaints Committee or member of the Disciplinary Panel who has been concerned with the Complaint or Formal Complaint which is the subject of the appeal shall be eligible for appointment to such Appeal Tribunal.
- 18.4 If, for any reason, prior to the time fixed for the hearing of the Appeal, any Member of the Appeal Tribunal becomes unable to act, the chairman or, failing him, the vice-chairman of the Disciplinary Panel shall co-opt another eligible person from the Disciplinary Panel to act in his place.
- 18.5 If for any reason any member of the Appeal Tribunal (other than the chairman thereof) is, during the course of the hearing, unable to continue to attend the hearing, the remaining Members, provided that they are not less than two in number, may continue with the hearing, but if the Appellant is present they shall do so only if he consents. Save as aforesaid the appeal shall be reheard by a new Appeal Tribunal appointed by the chairman or, failing him, the vice-chairman of the Disciplinary Panel.
- 18.6 If at any time during the course of the hearing of an appeal the Appeal Tribunal is of the opinion that it is for any reason inappropriate for it to complete the hearing, the chairman or, failing him, the vice-chairman of the Disciplinary Panel shall appoint a new Appeal Tribunal to re-hear the appeal.
- 18.7 Where an appeal is re-heard pursuant to Clauses 18.5 or 18.6, none of the Members of the original Appeal Tribunal may be appointed to the new Appeal Tribunal.
- 18.8 If notice of appeal is served on the Head of Professional Conduct in accordance with Clause 18.2 the Order of the Disciplinary Tribunal shall not have effect until the appeal has been withdrawn or determined and, where determined, it shall only have effect in accordance with the Order of the Appeal Tribunal.

19 HEARING OF APPEALS BY APPEAL TRIBUNAL

- 19.1 As soon as practicable after its appointment, the Appeal Tribunal shall notify the Appellant, the Complaints Committee and, if there is one, the Complainant of the time (which shall not be sooner than 42 days from the date of such notification) and place fixed for the hearing of the appeal.
- 19.2 Unless the Appellant, the Complaints Committee and the Appeal Tribunal agree otherwise, appeals shall be conducted and heard as follows:

- 19.2.1 in the case of an appeal on the grounds set out in Clause 18.1.1 (or an appeal which includes those grounds), the appeal (or that part of the appeal, as the case may be) on such grounds shall be by way of rehearing and shall be conducted and heard as though at first instance, in which case, the Complaints Committee shall first present its case to the Appeal Tribunal with the same burden and standard of proof as applied before the Disciplinary Tribunal and the Appellant may then present its case; and
- 19.2.2 in the case of an appeal made on the grounds set out in Clauses 18.1.2, 18.1.3 or 18.1.4 (or an appeal which includes those grounds), the appeal (or that part of the appeal, as the case may be) on such grounds shall be heard in such manner as the Appeal Tribunal appointed to hear such appeal may, in its absolute discretion, direct.
- 19.3 The Appeal Tribunal appointed to hear an appeal may, in its absolute discretion, admit any evidence not presented at the hearing of the Formal Complaint by the Disciplinary Tribunal. If either the Appellant or the person or persons appointed under Clause 15.8 wish to introduce any new evidence not presented at the hearing of the Formal Complaint by the Disciplinary Tribunal they shall give the other notice of such desire, including a summary of the new evidence, at least 14 days prior to the date set for the hearing of the appeal.
- 19.4 The Appeal Tribunal shall give the Appellant the opportunity of:-
- 19.4.1 attending and being heard at the hearing of the appeal;
 - 19.4.2 if he so desires, being represented before the Appeal Tribunal by counsel or by a solicitor or by a Member of the Institute;
 - 19.4.3 hearing the evidence put forward by or on behalf of the Complaints Committee;
 - 19.4.4 cross-examining witnesses called by the person or persons appointed under Clause 15.8;
 - 19.4.5 adducing documentary evidence;
 - 19.4.6 calling witnesses to give evidence on his behalf; and
 - 19.4.7 making such submissions as he wishes to the Appeal Tribunal.
- 19.5 The Appeal Tribunal shall give the person or persons appointed under Clause 15.8 (as applicable) the opportunity of:
- 19.5.1 attending and being heard at the hearing of the appeal;
 - 19.5.2 adducing documentary evidence;

- 19.5.3 calling witnesses (including, if desired, any Complainant) to give evidence;
- 19.5.4 cross-examining witnesses called by the Appellant; and
- 19.5.5 making such submissions as they wish to the Appeal Tribunal.
- 19.6 If the Complaint giving rise to the appeal was brought to the attention of the Head of Professional Conduct by a Complainant, the Complainant may attend at the hearing of the appeal even if the Appeal Tribunal determines that the hearing shall be held in private. Any Complainant attending a hearing shall do so as an observer and shall have no right of audience save as provided in Clause 20.3.
- 19.7 If the Appellant does not attend the hearing fixed as aforesaid, then the Appeal Tribunal may, in its absolute discretion, either:
- 19.7.1 provided that the Appeal Tribunal is satisfied that notice of that hearing was given to the Appellant or Appellants, dismiss the appeal; or
- 19.7.2 adjourn the appeal hearing to such other date, venue and time as it may, in its absolute discretion, determine,
- and the Appeal Tribunal shall give to the Appellant notice of the dismissal or adjourned hearing.
- 19.8 If the Appeal Tribunal dismisses an appeal pursuant to Clause 19.7 and the Appellant applies to have the appeal re-listed for hearing within 21 days of the Notice of Dismissal being sent to the Appellant, the Appeal Tribunal may re-list the appeal if, in its absolute discretion, it is satisfied that the non-attendance of the Appellant at the appeal was, for some reason which merits the reversal of the dismissal.
- 19.9 The Appeal Tribunal may instruct a solicitor to act, or to brief counsel to act, as legal assessor on the hearing of any appeal.
- 19.10 An appeal may only be withdrawn with the consent of the chairman of the Appeal Tribunal appointed to hear that appeal.
- 19.11 An Appeal Tribunal may, on the application of the Appellant, agree to the amendment of the terms of an Appeal.
- 19.12 If, during the course of hearing an appeal, it becomes apparent to an Appeal Tribunal that the Appellant may be liable to disciplinary action in accordance with this Procedure in relation to matters not the subject matter of the appeal, it may bring those matters to the attention of the Head of Professional Conduct.
- 19.13 An Appeal Tribunal shall have a general discretion to grant extensions of time, adjournments and postponements where it considers it fair and proper to do so.

20 **APPEALS TO BE HEARD IN PUBLIC**

20.1 All appeals heard before an Appeal Tribunal will be held in public unless:

20.1.1 not later than 14 days before the date set for the hearing, an application is made to the Appeal Tribunal by the Complainant (if there is one), the Appellant or the Complaints Committee to have the hearing or part of it held in private; and

20.1.2 the Appeal Tribunal, in its absolute discretion, determines that the holding in public of any hearing or any part thereof would be inappropriate.

If the Appeal Tribunal determines that any hearing or any part thereof should not be held in public then, that hearing or the relevant part thereof shall be held in private.

20.2 On receipt of an application under Clause 20.1, the Appeal Tribunal will inform the Complainant (if there is one), the Complaints Committee and the Appellant of the fact that an application has been made to the Appeal Tribunal to have the whole or part of the hearing held in private and invite the said persons (and any other person it considers may be affected) to make such written submissions, if any, as they wish on the issue of whether or not the hearing, or the part of the hearing in issue, should be heard otherwise than in public.

20.3 In addition the Appeal Tribunal may, in its absolute discretion, give each of the Appellant, the Complainant (if there is one) and the Complaints Committee (and any other person it considers may be affected) an opportunity of being heard before it in relation to whether or not the hearing or any part thereof should be heard in private. If the Appeal Tribunal gives any of such persons such an opportunity it shall offer a like opportunity to the other or others of them. Any such hearing shall be in private.

20.4 An Appeal Tribunal may only determine that it would be inappropriate to hold a hearing (whether in whole or in part) in public on the grounds that morals, public order, national security, the interests of juveniles or the protection of the private life of any person (including the Respondent or the Complainant) so requires, or there are, in the opinion of the Appeal Tribunal, special circumstances where publicity would prejudice the interests of justice.

20.5 An Appeal Tribunal shall not consider an application to have a hearing held in private which is brought otherwise than in accordance with the provisions of this Clause 20 and, in particular, shall not consider an application which is not brought within the time period specified in Clause 20.1.

20.6 An Appeal Tribunal may require any person attending a hearing (whether held in public or private) to give their name and address.

- 20.7 An Appeal Tribunal may expel from a hearing any person who is or becomes disruptive to the proceedings of the Appeal Tribunal or who fails to comply with Clause 20.6.

21 FINDINGS AND ORDERS OF APPEAL TRIBUNAL

- 21.1 On any appeal, the Appeal Tribunal may affirm, vary or rescind any finding or Order of the Disciplinary Tribunal in respect of which the appeal was brought, and may substitute any other finding or Order (on such terms and conditions (if any) as it, in its absolute discretion, considers appropriate) which the Disciplinary Tribunal might have made on the original Formal Complaint, or may, if the Appeal Tribunal, in its absolute discretion, considers it appropriate, order that the Formal Complaint which resulted in the finding or Order of the Disciplinary Tribunal in respect of which the appeal was brought be heard de novo by a different Disciplinary Tribunal. An Appeal Tribunal may also make an order for costs under Clause 22.
- 21.2 An Order of the Appeal Tribunal shall take effect as from the date thereof unless the Appeal Tribunal, in its absolute discretion, directs that it shall take effect from some other date (not being earlier than the date of the Order appealed against) as shall be specified in the Order.
- 21.3 Notice of any finding or Order of the Appeal Tribunal (together with the reasons therefor) shall as soon as practicable be given to the Appellant, and, if there is one, to the Complainant and to the Complaints Committee.

22 COSTS

- 22.1 In addition to such other Orders as may be made by a Disciplinary Tribunal or an Appeal Tribunal (including an Order that no further action be taken) a Disciplinary Tribunal or an Appeal Tribunal may, in its absolute discretion, direct that the Respondent or Appellant, as the case may be, pay the Institute such sum for costs as the Disciplinary Tribunal or Appeal Tribunal may, in its absolute discretion, determine.
- 22.2 In determining such sum for costs:
- 22.2.1 the Disciplinary Tribunal may take account of any and all fees, costs and expenses of whatsoever nature incurred by or on behalf of the Head of Professional Conduct, the Institute, the Complaints Committee, the Disciplinary Panel and the Disciplinary Tribunal, where applicable, in relation to the Complaint and Formal Complaint; and
- 22.2.2 the Appeal Tribunal may take account of such fees, costs and expenses as the Disciplinary Tribunal may take account of, as well as any and all fees, costs and expenses of whatsoever nature incurred by or on behalf of the Appeal Tribunal and by or on behalf of the Head of Professional Conduct, the Institute, the Complaints Committee, the Disciplinary Panel and the Disciplinary Tribunal, where applicable, in relation to the appeal.

- 22.3 Save as provided in Clause 22.4, neither a Respondent nor an Appellant, as the case may be, shall be entitled to any award of costs as against the Head of Professional Conduct, the Institute, the Complaints Committee, the Disciplinary Panel, the Disciplinary Tribunal or the Appeal Tribunal or any other party whatsoever in relation to any fees, costs and expenses of whatsoever nature incurred by or on behalf of the Respondent or the Appellant, as the case may be, in relation to the Complaint, Formal Complaint or the appeal.
- 22.4 If a Complaint is found not proven in whole or in part, the Respondent or the Appellant (as the case may be) may apply to the Disciplinary Tribunal or the Appeal Tribunal for his costs. However, costs do not automatically follow the event. The Disciplinary Tribunal or the Appeal Tribunal may direct that the Institute pay the Respondent or the Appellant such sum for costs as the Disciplinary Tribunal or the Appeal Tribunal may determine, up to the maximum level as decided upon from time to time by the Board, upon consideration of the following factors:
- 22.4.1 the extent to which the Disciplinary Bodies acted reasonably in the exercise of their respective duties;
- 22.4.2 the financial prejudice to the Respondent or Appellant concerned if an order for costs was not to be made in his favour,
- 22.4.3 whether it is just and reasonable to award costs; and
- 22.4.4 the need for Disciplinary Bodies to make reasonable and apparently sound decisions without the Institute suffering financial prejudice if those decisions are successfully challenged.
- 22.5 The Appeal Tribunal may, in its Order, reduce or increase any costs ordered by the Disciplinary Tribunal in addition to any Order it may make in relation to the costs of the appeal.
- 22.6 Any such costs ordered by a Disciplinary Tribunal or an Appeal Tribunal shall be paid within twenty-one days of the date of the service upon the Respondent or Appellant, as the case may be, of the Order in respect of costs save that, subject to Clause 18.2.2, if notice of appeal in accordance with Clause 18.2 is given, such costs shall not be payable until the determination of the appeal, and then subject to any Order made by the Appeal Tribunal in relation thereto.

23 **PUBLICATION OF FINDINGS AND ORDERS**

- 23.1 Where the Complaints Committee makes a consent Order under Clause 12, it shall cause such consent Order to be published as soon as practicable and in such a manner as it thinks fit.
- 23.2 Whenever a Disciplinary Tribunal makes an Order under Clause 17 it shall deliver to the Head of Professional Conduct, in writing, its findings (including any reasoning leading to such findings) or a summary of such findings and

reasoning and its Order. The Head of Professional Conduct shall cause same to be published as soon as practicable in accordance with the policy for publication from time to time adopted by the Board; provided that if the Disciplinary Tribunal has ordered that no further action be taken on the Formal Complaint neither its findings (or the reasoning leading to such findings or a summary of the findings or reasoning) nor its Order shall be published unless the Respondent so requests.

- 23.3 Whenever an Appeal Tribunal makes an Order under Clause 21 it shall deliver to the Head of Professional Conduct, in writing, its findings (including any reasoning leading to such findings) or a summary of such findings and reasoning and its Order. The Head of Professional Conduct shall cause same to be published as soon as practicable in accordance with the policy for publication from time to time adopted by the Board; provided that if the Appeal Tribunal has ordered that no further action be taken on the original Formal Complaint neither its findings (or the reasoning leading to such findings or a summary of the findings or reasoning) nor its Order shall be published unless the Appellant so requests.
- 23.4 Every publication of an Order of a Disciplinary Tribunal or an Appeal Tribunal shall include the name of the Respondent or Appellant, except that where the Disciplinary Tribunal or the Appeal Tribunal held the hearing in private and the sanction imposed was under Clauses 17.4.1 (d), (e), (f), or 17.4.2 (e) or (f), the relevant tribunal may, but only if it considers that there are compelling reasons for not publishing the name of the Respondent or the Appellant, order that the name of the Respondent or the Appellant is not to be published.
- 23.5 Nothing in this Clause 23 shall prevent:
- 23.5.1 any Disciplinary Tribunal or Appeal Tribunal from communicating with any Respondent, Appellant or Complainant or the Head of Professional Conduct in relation to any matter concerning a Formal Complaint or an appeal or from announcing details of any Order or finding at any hearing (whether held in public or private);
 - 23.5.2 the Complaints Committee, the Disciplinary Panel or any Disciplinary Tribunal or Appeal Tribunal making any report on its activities to the Board; or
 - 23.5.3 the Head of Professional Conduct maintaining a register of findings and orders in accordance with Clause 24.

24 REGISTER OF FINDINGS AND ORDERS

- 24.1 The Head of Professional Conduct shall maintain a register of all findings and Orders made by the Disciplinary Tribunals and Appeal Tribunals and of all Orders made under Clause 12.2.

- 24.2 Such register shall be open to inspection by Members of the Institute and Members of the public during normal opening hours at the head office of the Institute.
- 24.3 Each entry in such register shall include:
- 24.3.1 details of the Formal Complaint (or, in the case of an Order made under Clause 12.2, the Complaint) giving rise to the finding and/or Order;
 - 24.3.2 details of the finding and/or Order;
 - 24.3.3 the name and address of each person against whom the finding and/or Order is made except that in the case of an Order made under Clause 12.2 such names and addresses shall only be included where the sanction imposed specifically included publication of those details; and
 - 24.3.4 the Member or Student number (as appropriate) of each person against whom the finding and/or Order is made.
- 24.4 No entry shall be made in such register of any finding or Order of a Disciplinary Tribunal until the expiry of the appeal period referred to in Clause 18.2.
- 24.5 The entry of an Order (and any finding giving rise to such Order) shall be deleted from such register after:
- 24.5.1 if it is an Order made under Clause 12.2, 2 years from the date the Order becomes effective;
 - 24.5.2 if it is an Order made under Clause 17.4 (other than under those paragraphs of clause 17.4 referred to in clause 24.5.3 or Clause 24.6), 5 years from the date the Order becomes effective; and
 - 24.5.3 if it is an Order under Clause 17.4.1(b) or Clause 17.4.2(b), 5 years from the date the Order becomes effective or the lifting of the suspension whichever is later.
- 24.6 The entry of an Order under Clause 17.4.1(a), or 17.4.2(a), shall remain permanently in such register.
- 24.7 If any person believes that an error has been made in any entry in such register, he or she may apply to the Head of Professional Conduct to have the error rectified. If the Head of Professional Conduct determines that an error has been made the Head of Professional Conduct shall duly rectify the register.

25 **RECOVERY OF FINES AND COSTS**

- 25.1 Any sum imposed by way of fine or any sum payable under any Order for costs made pursuant to Clause 22 shall be deemed to be a contract debt due from the Respondent or Appellant in question to the Institute and shall be recoverable by

the Institute by action. If any such sum is not paid within four months of the due date, the Respondent:

25.1.1 if a Member, shall be excluded from membership of the Institute unless the Board otherwise decides; or

25.1.2 if a Student, shall be excluded from student membership of the Institute and will be precluded from becoming a Member unless the Board otherwise decides.