

# COMPLAINTS AND DISCIPLINARY PROCEDURE

(EFFECTIVE 1 JULY 2017)

## INTRODUCTION

1. This Complaints and Disciplinary Procedure sets out the process by which concerns about a member's conduct are investigated and, where appropriate, penalties imposed.
2. The provisions of this Procedure are deemed to be Rules of the Institute in accordance with Rule 33. Terms defined in the Rules carry the same meaning here.

## INITIATING THE COMPLAINTS PROCESS

### Receipt of complaints

3. A person may complain to NZIQS about the conduct of a member. NZIQS can only receive complaints about individual members and not against firms, as firms are not members.
4. A complaint must be in writing and contain the complainant's name and contact details.
5. Complaints will be received, in the first instance, by the Executive Director, who must review each complaint. The Executive Director may ask the complainant to provide further details or information.

### Own motion investigations

6. If the Council has information in its possession that raises one or more questions about the appropriateness of the conduct of a member, it may:
  - a) of its own motion, refer the information to the Executive Director to be investigated under this Procedure as if it were a complaint; or
  - b) if a complaint on the same matter has already been made, continue to investigate the matter even if the complaint is subsequently withdrawn.
7. In the remainder of this Procedure, the term **complaint** includes matters being investigated in accordance with clause 6.

### Initial steps

8. The Executive Director must:
  - a) provide the member with a copy of the complaint; and
  - b) allow the member a reasonable opportunity to provide an initial written response to the complaint.
9. No member may resign from membership of NZIQS if a complaint has been made against him or her until any investigation and/or disciplinary process has been concluded.

## COMPLAINT TO BE CONSIDERED BY THE COUNCIL

10. After allowing the member a reasonable opportunity to provide a response, the Executive Director must refer the complaint to the Council.

### Options available to the Council

11. The Council must promptly assess the complaint and decide, in light of the nature and circumstances, the action(s) the NZIQS should take in relation to the complaint. The NZIQS Council may:
  - a) refer the complaint to a Professional Conduct Committee;
  - b) refer the complaint to the New Zealand Police or to another regulatory authority or professional body to which the member belongs;
  - c) put the complaint on hold so that it can be addressed through an alternative disciplinary, dispute resolution or court process; or
  - d) take no further action on the complaint.
12. In making a decision under clause 11, the Council may consider whether:
  - a) the complaint is frivolous or vexatious or not made in good faith;
  - b) the alleged conduct is trivial or insufficiently serious to warrant further investigation;
  - c) a complaint of the same or similar subject-matter has already been received and dealt with;
  - d) the complaint is substantially or primarily about fees or a commercial or legal dispute;
  - e) the complaint is more appropriately addressed through an alternative disciplinary, dispute resolution or court process;
  - f) the complainant or the person alleged to be aggrieved does not wish action to be taken or continued; and/or
  - g) investigation is no longer practicable or desirable given the elapse of time.
13. Within 10 working days of the Council making a decision under clause 11, the Executive Director must provide the member and any complainant with written notice of the decision and the reasons for it.

## PROFESSIONAL CONDUCT COMMITTEES

### Membership

14. The Council must maintain a panel of members and laypersons who it considers suitable and qualified for appointment to Professional Conduct Committees (the **Committee Panel**).
15. Within 10 working days of the Council making a decision under clause 11(a) to refer a complaint to a Professional Conduct Committee (**Committee**), the Executive Director will appoint a Committee from the Committee Panel to investigate the complaint.
16. Every Committee appointed to investigate a complaint must include one layperson and two members.
17. The Executive Director must give the member and the complainant written notice of the membership of the Committee. The member and the complainant may, within five working days of receiving that notice, request changes to the membership of the Committee. The Executive Director must have regard to this request, but is not required to comply with it.

### Investigations

18. A Committee must investigate a complaint as it thinks fit and may regulate its own procedure, subject to the requirements of natural justice.
19. While investigating a complaint, the Committee may:
  - a) appoint a legal advisor approved by NZIQS to advise the Committee on matters of law, procedure and evidence;
  - b) appoint an investigator approved by NZIQS to collect information required by the Committee and to investigate complaints;
  - c) appoint a special advisor approved by NZIQS to advise the Committee on technical issues; and/or
  - d) with the agreement of the complainant and the member, refer the complaint to be addressed through an alternative dispute resolution process, for example, conciliation, mediation or arbitration.

20. The Committee may request, receive and/or make copies of any statement, document or information that may, in its opinion, assist it to deal effectively with the complaint, whether or not that information, document or evidence would be admissible in a court of law.
21. Before making a decision under clause 22, the Committee must:
  - a) provide the member with a copy of all information (other than privileged material) before the Committee; and
  - b) allow the member a reasonable opportunity to provide evidence and a written response to the complaint; and
  - c) allow the member a reasonable opportunity to be heard by the Committee, either personally or by a representative.

### **Outcomes**

22. Upon completion of its investigation, the Committee must decide the action to be taken in relation to the complaint. The Committee may:
  - a) refer the complaint to the Disciplinary Board;
  - b) recommend that the Council impose conditions that the member must comply with or requirements for professional development or training that he or she must fulfil;
  - c) determine that no further action should be taken in relation to the complaint.
23. The Committee may only decide, under clause 22(a), to refer the complaint to the Disciplinary Board if it considers there are reasonable grounds to believe that grounds exist to discipline the member, as set out in clause 37.
24. If the Committee's decision under clause 22 is not unanimous, the decision of the majority of the Committee is the decision of the Committee.
25. Within 10 working days of the Committee making a decision under clause 22, the Committee must provide the member, any complainant and the Council with written notice of the decision and the reasons for it.

## **DISCIPLINARY BOARDS**

### **Membership**

26. The Council must maintain a Disciplinary Panel of members and lawyers who it considers suitable and qualified for appointment to the Disciplinary Board to hear a particular matter. To be eligible for appointment to the Disciplinary Panel, a lawyer must be a barrister and solicitor of the High Court of New Zealand of not less than 7 years' practice.
27. Appointments to the Disciplinary Panel are for a term of two years, which may be renewed no more than three times.
28. Within 10 working days of a Committee making a decision under clause 22(a) to refer a complaint to the Disciplinary Board, the Executive Director will appoint a Disciplinary Board from the Disciplinary Panel to hear the matter.
29. Every Disciplinary Board appointed to hear a matter must include:
  - a) one lawyer as chairperson; and
  - b) two members.
30. The Executive Director must give the member and the Committee written notice of the membership of the Disciplinary Board. The member and the Committee may, within five working days of receiving that notice, request changes to the membership of the Disciplinary Board. The Executive Director must have regard to this request, but is not required to comply with it.

### **Representation**

31. Where a Committee decides under clause 22(a) to refer a complaint to the Disciplinary Board, the Committee must appoint a representative for the purposes of the Disciplinary Board process and hearing.
32. A member may participate in the Disciplinary Board process and hearing personally and/or by a legal representative.

## Hearings

33. The Disciplinary Board must conduct a hearing and may regulate its own procedure, subject to the requirements of natural justice.
34. At a Disciplinary Board hearing:
  - a) the member and the Committee have the right to make submissions and present evidence;
  - b) evidence may be presented either in person or in writing; and
  - c) with the Disciplinary Board's permission, each party may cross-examine the other party's witnesses.
35. The Disciplinary Board may receive as evidence any statement, document or information that may, in its opinion, assist it to deal effectively with the matter, whether or not that information, document or evidence would be admissible in a court of law.
36. The Disciplinary Board may take notice of and accept as conclusive any finding of fact made by a court, tribunal or decision-maker in a dispute resolution process. Before doing so, the Disciplinary Board must:
  - a) give the member notice of the finding of fact and the intention to accept it; and
  - b) allow the member a reasonable opportunity to provide evidence or submissions in response.
37. After conducting a hearing, the Disciplinary Board must decide whether or not there are grounds for disciplining the member. A member may be disciplined if:
  - a) the member has contravened the Rules, including the Code of Conduct;
  - b) the member has performed quantity surveying services in a negligent or incompetent manner;
  - c) the member has conducted him or herself (whether by act or omission) in a manner that is likely to bring discredit to NZIQS and/or the quantity surveying profession;
  - d) the member has been convicted of a criminal offence that reflects on his or her fitness to be a member of NZIQS;
  - e) the member has failed to comply with any conditions imposed by NZIQS or the Disciplinary Board or the Appeal Board.
38. If the Disciplinary Board decides under clause 37 that there are grounds for disciplining the member, it may:
  - a) censure the member;
  - b) issue a written warning to the member;
  - c) order the member to pay to NZIQS a financial penalty not exceeding \$5,000;
  - d) impose conditions that the member must comply with or requirements for professional development or training that he or she must fulfil (**conditions**);
  - e) impose a conditional suspension that will take effect if the member has not fulfilled specified conditions by a date set by the Disciplinary Board;
  - f) suspend the member from membership:
    - i) for a certain period; or
    - ii) until the member has fulfilled conditions specified by the Disciplinary Board;
  - g) expel the member from NZIQS; and/or
  - h) order the member to pay to NZIQS part or all of the costs and expenses of the Committee's investigation and/or the proceedings before the Disciplinary Board.
39. If the Disciplinary Board's decisions under clauses 37 and/or 34 are not unanimous, a decision of the majority of the Disciplinary Board is a decision of the Disciplinary Board.
40. The Disciplinary Board must provide the member, the Committee, any complainant and the Council with written notice of its decision and the reasons for it.

## APPEAL BOARD

### Right to appeal

41. A member may appeal against the decision of or penalty imposed by the Disciplinary Board on the grounds that:
  - a) the Disciplinary Board failed to take into account all relevant matters or took into account irrelevant matters in deciding that grounds for discipline existed;
  - b) the decision of the Disciplinary Board is manifestly at odds with the evidence presented at the hearing;
  - c) the process followed by the Disciplinary Board did not comply with these Rules and/or natural justice; and/or
  - d) the penalty imposed by the Disciplinary Board is unfair or excessive in light of the gravity of the member's conduct.
42. Notice of a member's intention to appeal must be provided to the Committee, the Disciplinary Board and the Council within 20 working days of the date on which the member received written notice of the Disciplinary Board's decision.
43. An appeal notice must be in writing and state the grounds of the appeal.

### Effect of Disciplinary Board decisions

44. A decision of the Disciplinary Board imposing a penalty on a member under clause 34 will not take effect until:
  - a) expiry of the 20 working day period within which the member can give notice of his or her intention to appeal, if no appeal notice is lodged; or
  - b) if an appeal notice is lodged, the Disciplinary Board's decision is confirmed by the Appeal Board.

### Membership

45. The Council must maintain an Appeal Panel of members and lawyers who it considers suitable and qualified for appointment to the Appeal Board to hear a particular matter. To be eligible for appointment to the Appeal Panel, a lawyer must be a barrister and solicitor of the High Court of New Zealand of not less than 7 years' practice.
46. Appointments to the Appeal Panel are for a term of two years, which may be renewed no more than three times.
47. Within 10 working days of receipt of an appeal notice, the Executive Director will appoint an Appeal Board from the Appeal Panel to hear the matter.
48. Every Appeal Board appointed to hear a matter must include:
  - a) one lawyer as chairperson; and
  - b) two members.
49. The Executive Director must give the member and the Committee written notice of the membership of the Appeal Board. The member and the Committee may, within five working days of receiving that notice, request changes to the membership of the Appeal Board. The Executive Director must have regard to this request, but is not required to comply with it.

### Hearings

50. The Appeal Board must conduct a hearing and may regulate its own procedure, subject to the requirements of natural justice.
51. The member and the Committee's representative have the right to make submissions to the Appeal Board.
52. Subject to clause 53, the Appeal Board may receive as evidence any statement, document or information that may, in its opinion, assist it to deal effectively with the matter, whether or not that information, document or evidence would be admissible in a court of law.
53. An Appeal Board hearing is to be conducted on the basis of the evidence presented to the Disciplinary Board. The member and/or the Committee's representative may only present new evidence:
  - a) where there are good reasons for doing so; and
  - b) with the Appeal Board's permission.

## Outcomes

54. After hearing an appeal, the Appeal Board:
  - a) must decide whether to confirm or vary the decision of the Disciplinary Board;
  - b) may impose any penalty that the Disciplinary Board could have imposed under clause 38(a)-(g); and
  - c) may order the member to pay to NZIQS part or all of the costs and expenses of the Committee's investigation, and/or the proceedings before the Disciplinary Board and/or Appeal Board.
55. If the Appeal Board's decisions under clause 54 are not unanimous, a decision of the majority of the Appeal Board is a decision of the Appeal Board.
56. The Appeal Board must provide the member, the Committee, any complainant and the Council with written notice of its decision and the reasons for it.
57. A decision of the Appeal Board is final and takes immediate effect.

## CONFIDENTIALITY AND PUBLICATION OF DECISIONS

58. The investigations and decisions of Professional Conduct Committees are confidential except:
  - a) to the extent referred to in any decision of the Disciplinary Board and Appeal Board (to which clauses 59 to 61 below apply); or
  - b) as agreed between the complainant, the member and the Committee.
59. Subject to clauses 60 and 61, decisions of the Disciplinary Board and Appeal Board are not confidential and may be published or made publicly available as the Council considers appropriate.
60. If, having regard to the interests of any person and to the public interest, the Disciplinary Board and/or Appeal Board (as relevant) is satisfied that it is desirable to do so, it may decide to keep confidential:
  - a) the name of any person involved in proceedings before that Board;
  - b) any evidence or information presented before that Board; and/or
  - c) the decision of that Board, or part thereof.
61. A decision of the Disciplinary Board must not be published or made publicly available until:
  - a) expiry of the 20 working day period within which the member can give notice of his or her intention to appeal, if no appeal notice is lodged; or
  - b) if an appeal notice is lodged, written notice is given of the Appeal Board's decision.

## ENFORCEMENT

62. Any financial penalty or costs and expenses that a member is ordered to pay to NZIQS under this Procedure is recoverable from the member as a due debt to NZIQS. The existence of a due debt is sufficiently proved by production of:
  - a) this Procedure and the Rules;
  - b) the declaration of the member on his or her application for membership; and
  - c) a copy of the decision(s) of the Disciplinary Board and/or Appeal Board, certified by the Executive Director as a true copy.