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Regulation 3A – Disciplinary (April 2020)

Preamble

1. Professional conduct is governed by a Code of Professional Conduct (“the Code”) published by the Board of Trustees which constitutes a term of the membership contract and is therefore binding on each Fellow, Chartered Member, Associate Member, Honorary Fellow, Companion or Affiliate of IChemE (each a “Member”) in whatever country they hold their membership. Alleged breaches of the Code may prove to be founded in fact and deserving of action so each must be investigated by the Board of Trustees. The principles of the investigation, and any subsequent disciplinary enquiry are that:
 - no-one is liable until so found,
 - any enquiry will be open and fair, and
 - proved breaches of the Code shall attract outcomes commensurate with the seriousness of the breach.
2. By approving these Regulations, the Board of Trustees delegates these powers to each of the Preliminary Investigation Committee (“PIC”), the Disciplinary Committee (“DC”) and Appeal Committee (“AC”), when appointed, to investigate and adjudicate on alleged breaches of By-laws and Code of Professional Conduct, and if a breach is established, to apply appropriate sanctions in accordance with the By-laws.
3. The Chief Executive will appoint the Clerk who will usually be the Finance and Business Support Director of the Institution, or an independent suitably experienced person.
4. The Board of Trustees will appoint a Professional Conduct Pool (“PCP”) of Members and Non-Members of the Institution from which each of the Preliminary Investigation Committee, Disciplinary Committee and Appeal Committee will be drawn.
5. The Preliminary Decision Maker (“PDM”) shall be a member of the Professional Conduct Pool, selected by the Chair of the Professional Conduct Pool.

What is misconduct?

1. The purpose of this disciplinary process is to consider allegations/ complaints of misconduct about Members of IChemE.
2. Misconduct would include but is not limited to behaviour that is:
 - 2.1. A breach of the Code (including a breach of the polices referred to in the Code);
 - 2.2. A breach of the By-laws;
 - 2.3. A criminal offence; and/ or
 - 2.4. Personal insolvency (dependent on the circumstances of that insolvency. Personal insolvency per se is not misconduct).
3. Misconduct may be about a Member in connection with either their professional or personal life.

The allegation/ complaint

4. For an allegation/ complaint to be considered under this disciplinary process, it must be about a Member’s conduct whilst they were a Member of IChemE and the allegation/ complaint shall usually be in writing.
5. The allegation/ complaint shall be made to the Clerk.

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6. If the Clerk recuses themselves because of a conflict of interest, the Chief Executive will appoint an appropriate individual to act as the Clerk for that particular matter.
7. On receiving an allegation/ complaint, the Clerk will:
 - 7.1. Ensure it is an allegation/ complaint about a Member's conduct whilst they were a Member of IChemE; and
 - 7.2. Consider whether the allegation/ complaint would be better dealt with under another process (for example if the Member is also a member of staff of IChemE, staff disciplinary procedures should take precedence). If so, the Clerk may refer the allegation/ complaint to that process.
8. The Clerk may ask for further detail from the Complainant and/ or any other relevant person (where appropriate) so that the Clerk understands the nature of the allegation/ complaint and who the allegation/ complaint is about. For this reason, anonymous complaints will not usually be considered under this disciplinary process.
9. If, having made reasonable enquiries, the Clerk is unable to understand the allegation/ complaint or whom it is about, the Clerk may recommend that the matter is closed and refer it to the Preliminary Decision Maker.
10. If the Clerk considers the allegation/ complaint to be wholly vexatious and/ or plainly trivial and/ or clearly has no merit, the Clerk may refer the allegation/ complaint to the Preliminary Decision Maker.
11. The Preliminary Decision Maker may determine that no further action should be taken for any of these reasons (i.e. it is not possible to understand it or it is wholly vexatious and/ or plainly trivial and/ or clearly has no merit) and that the matter should be closed. If the Preliminary Decision Maker decides to close the matter for any of these reasons, the Preliminary Decision Maker must inform the Clerk of the reasons for his/ her decision. If the Preliminary Decision Maker does not agree that the matter should be closed, the matter will progress to a PIC. If the Preliminary Decision maker agrees that the matter should be closed, the Clerk:
 - 11.1. May inform the Complainant and/ or Subject of the complaint about the Preliminary Decision Maker's decision and the reasons for that decision; and
 - 11.2. Must record why the Preliminary Decision Maker determined that the complaint was either wholly vexatious and/ or plainly trivial and/ or clearly had no merit.
12. If the allegation/ complaint is about a Member's conduct whilst they were a Member of IChemE and:
 - 12.1. The Clerk determines that it should be considered under this disciplinary process; and
 - 12.2. The Preliminary Decision Maker has not decided to close the matter,the Clerk must refer the allegation/ complaint to the Preliminary Investigation Committee.

Preliminary Investigation Committee ("PIC")

13. The Clerk will convene three individuals drawn from the Professional Conduct Pool to constitute the PIC for a matter. The PIC will consider the allegation/ complaint.
16. On receipt of the allegation/ complaint from the Clerk, the PIC may consider that the matter is vexatious and/ or trivial and/ or has no merit.
17. If the PIC considers the allegation/ complaint to be vexatious and/ or trivial and/ or has no merit, the PIC may decide that no further action should be taken and that the matter should be closed. If the PIC makes any of these decisions, the PIC:
 - 17.1. May inform the Complainant and/ or Subject of the complaint about its decision and the reasons for that decision; and

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- 17.2. Must record why it determined that the complaint was either vexatious and/ or trivial and/ or has no merit.
- 18. If 17 above does not apply, the PIC must consider:
 - 18.1. What aspects of the allegation/ complaint should be investigated to enable IChemE to determine whether there was any misconduct; and
 - 18.2. Whether to direct the Clerk to offer Early Resolution (following the Early Resolution process detailed at 28 to 32).

The investigation

- 19. On request by the PIC, the Clerk will appoint an Investigator to undertake the investigation for a matter. The Investigator for a matter may delegate any part of its investigation to others whom the Investigator considers appropriately placed to assist with the investigation.
- 20. The Investigator must follow the direction for investigation provided by the PIC. If the Investigator is unclear or unsure in relation to the matters to be investigated and the steps the Investigator should take, the Investigator should seek clarification from the PIC.
- 21. The steps the Investigator may undertake include:
 - 21.1. Asking for further detail from the Complainant and/ or any other relevant person (where appropriate);
 - 21.2. Putting the allegation/ complaint to the Subject of the complaint and to ask the Subject of the complaint to:
 - 21.2.1. comment on the underlying facts of that allegation/ complaint;
 - 21.2.2. provide any relevant background to the allegation/ complaint;
 - 21.2.3. provide any evidence relevant to the allegation/ complaint;
 - 21.2.4. provide the names of any witness to the allegation/ complaint for the Investigator to consider whether or not to contact them in line with his/ her direction from the PIC.
 - 21.3. Speaking to any relevant witness including the Complainant; and
 - 21.4. Seeking relevant expert advice.
- 22. The Investigator should produce a report for the PIC setting out:
 - 22.1. The steps he/ she has taken in relation to the investigation (to include who they have spoken to and what evidence they have gathered);
 - 22.2. A summary of the evidence obtained during the investigation;
 - 22.3. His or her recommendations to the PIC in relation to the next steps the Investigator considers should be taken; and
 - 22.4. Any other information the Investigator consider is relevant to enable the PIC to make a decision about what steps/ action should be taken next.

Preliminary Investigation Committee ("PIC")

- 23. On receipt of the investigation report from the Investigator, the PIC must consider whether:
 - 23.1. The matter should be closed because the allegation/ complaint is vexatious and/ or trivial and/ or has no merit and/ or there is no case to answer;
 - 23.2. To refer the allegation/ complaint to another process; or
 - 23.3. To refer the allegation/ complaint to the DC.
- 24. The PIC may ask the Investigator to undertake further steps as part of the investigation if the PIC considers further evidence/ clarification is required.
- 25. If the PIC considers the allegation/ complaint to be vexatious and/ or trivial and/ or has no merit and/ or there is no case to answer, the PIC:

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- 25.1. Must inform the Subject of the complaint about their decision and the reasons for that decision;
 - 25.2. The Complainant should also be informed about their decision and the reasons for that decision, save where there are issues of confidentiality and / or data protection which preclude this; and
 - 25.3. Must provide to the Clerk a record of why they determined that the complaint was either vexatious and/ or trivial and/ or has no merit and/ or there is no case to answer.
26. If the allegation/ complaint is referred to another process, the matter shall be closed under this process.
27. If the PIC decides to refer the allegation/ complaint to the DC, it must consider whether Early Resolution should be offered. If the PIC determines that Early Resolution should be offered, the process detailed at 28 to 32 shall be followed.

Early Resolution

28. The PIC may direct the Clerk to offer Early Resolution.
29. Early Resolution is to be used for minor incidents of misconduct, therefore the PIC cannot impose either the sanction of suspension of membership or expulsion from membership through Early Resolution.
30. Should the PIC direct the Clerk to offer Early Resolution, the PIC will provide the Clerk with the following information:
- 30.1. The relevant facts and the misconduct that the Subject of the complaint is invited to agree; and
 - 30.2. The sanction that the Subject of the complaint is invited to accept.
31. The Clerk will write to the Subject of the complaint setting out the information in 30 above in addition to:
- 31.1. The date by which the Subject has to confirm whether they accept the Early Resolution that has been offered;
 - 31.2. How the Subject of the complaint should indicate their acceptance;
 - 31.3. That if the Subject of the complaint does not agree to Early Resolution and/ or respond to the offer of Early Resolution by the date offered by the Clerk, the matter will be referred to the DC.
32. If the Subject of the complaint does not accept the offer of Early Resolution within the specified time, the Clerk will refer the matter to the DC.

Referral to the Disciplinary Committee (“DC”)

33. If the PIC refers the matter to the DC, the Clerk will convene three individuals drawn from the Professional Conduct Pool to constitute the DC for a matter. Each DC will include at least one person who is not a Member of the IChemE.
34. The PIC will ask the Clerk to confirm to the Subject of the complaint:
- 34.1. The facts that could amount to misconduct;
 - 34.2. How those facts could amount to misconduct (and the basis for considering it is misconduct)
 - 34.3. When the hearing will take place for the DC to consider the matter;
 - 34.4. When the Investigator will send to the Subject of the complaint the evidence and material that will be presented to the DC at the hearing and details of any witnesses that will be called;
 - 34.5. That the Subject of the complaint has the right to:

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- 34.5.1. make written submissions and provide any evidence (including witnesses) in support of their case to the DC and the date by which the submissions and evidence has to be provided to the DC;
 - 34.5.2. be represented at any hearing but that the IChemE will not be responsible for any costs incurred by the Subject of the complaint;
 - 34.5.3. bring a supporter to support them at the hearing;
 - 34.6. The identity of the members of the DC and a statement of how the Subject of the complaint may object to the inclusion of a member of the DC; and
 - 34.7. A copy of this process and the Code of Professional Conduct/ By-laws (where appropriate).
35. The Subject of the complaint may object to the inclusion of any individual on the DC on the grounds of a conflict of interest. To submit an objection, the Subject of the complaint will provide the objection, with reasons, to the Clerk in writing. The Chair of the DC will consider the Subject of the complaint's objection and will either reject the objection (giving reasons) or will direct the Clerk to replace the individual objected to. If the Subject of the complaint objects to the Chair of the DC, the President will consider the objection.
36. Prior to the date of the Formal Hearing, the Chair of the DC may deal with any procedural issues that may arise.

Formal Disciplinary Committee ("DC") Hearing

37. The PIC may appoint one of the PIC, the Investigator or any appropriate person (e.g. a member of staff, a solicitor or a barrister) to present the case against the Subject of the complaint ("the PIC's Representative").
38. The Subject of the complaint shall be allowed to conduct their own case, or to be represented by any appropriate person (e.g. a friend, a solicitor or a barrister) (but IChemE will not be responsible for any costs incurred by the Subject of the complaint).
39. Both the PIC and the Subject of the complaint shall inform the Clerk of the identity of the person presenting the case and that information will be provided to the other party and to the Chair of the DC prior to the formal hearing.
40. The DC may appoint a legal adviser (who should be legally trained) to provide it with advice in connection with the allegation/ complaint and the hearing.
41. The Clerk and/ or an appointed note taker shall attend to keep a note of the hearing and prepare a record of proceedings.
42. The DC may admit any evidence it considers fair and relevant to the matter before it.
43. Any evidence that either the PIC or the Subject of the complaint wishes to rely on at the hearing must be disclosed to the other party in sufficient time as determined by the Chair of the DC in advance of the hearing.
44. The hearing will be conducted in private.
45. The DC has discretion over the conduct of the Formal Hearing. However, the Formal Hearing will usually include the following:
- 45.1. The Chair will open the hearing;
 - 45.2. The PIC's Representative will present the evidence and information, including calling any live witnesses (where appropriate);
 - 45.3. The Subject of the complaint (or their delegate/ representative) will present the evidence and information, including calling any live witnesses (where appropriate), in response to the allegation;
 - 45.4. Both the PIC's Representative and the Subject of the complaint (or their delegate/ representative) must be given the opportunity to ask questions of any witnesses called to give evidence. The DC may ask questions of any witness;

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- 45.5. The DC may at any time, exercise its discretion to adjourn the hearing;
 - 45.6. Before the DC retires to consider the matter, both the Subject of the complaint and the PIC's Representative will have the opportunity to summarise their case to the DC, with the Subject of the complaint (or their delegate/ representative) being given the opportunity to speak last;
 - 45.7. After each party has summarised their case, the PIC's Representative and the Subject of the complaint (or their delegate/ representative) will leave the DC Hearing Room. However, the PIC's Representative and the Subject of the complaint (or their delegate/ representative) and, where appropriate any witness, may be called back to address any point for clarification purposes; and
 - 45.8. The DC may suspend the formal hearing at any stage to consult privately amongst themselves or with the DC's legal adviser. The Clerk and/ or note-taker, and any legal adviser may be present during those consultations but may not take part in any decision making.
46. If the complaint is admitted, the only steps remaining are to hear mitigation and to decide the sanction.

The DC's Decision

47. Any decision reached by the DC may be reached by a simple majority and does not have to be reached unanimously.
48. Having heard from the PIC's Representative and the Subject of the complaint (or their delegate/ representative), the DC will determine the facts on the balance of probabilities.
49. If the DC considers that the Subject of the complaint has not engaged in misconduct the DC will dismiss the allegation/ complaint.
50. The DC may give its decision on the day of the hearing or may adjourn the hearing to consider the issues.
51. If the DC considers that the Subject of the complaint has engaged in misconduct the DC will consider whether a sanction should be imposed and which sanction.
52. The DC may hear from the PIC's Representative and the Subject of the complaint in relation to any mitigating or aggravating factors that they consider are relevant to the sanction to be imposed.
53. As soon as practicable following the hearing the DC will give its decision and reasons which will be communicated to the Subject of the complaint in writing by the Clerk who will also inform the Subject of the complaint of the right of appeal. The outcome should be provided to the Subject no later than 28 days from the formal hearing.
54. The DC will direct the Clerk whether to inform the Complainant of the outcome of the allegation/ complaint. The Complainant should be informed about the decision and the reasons for that decision, save where there are issues of confidentiality and / or data protection which preclude this. The Complainant has no right of appeal.
55. The Clerk will notify the Board of Trustees of the outcome of the allegation/ complaint.
56. The Clerk will consider whether to notify the Engineering Council and any other relevant body of the outcome of the allegation/ complaint. and must notify any relevant body where appropriate.

Sanctions

57. The DC may impose one or more of the following sanctions:
 - 57.1. Provide guidance to the Subject of the complaint which the Subject of the complaint is to follow;
 - 57.2. Issue a written warning to the Subject of the complaint;

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- 57.3. Require the Subject of the complaint to attend training on specified matters within a specified period of time;
- 57.4. Reprimand the Subject of the complaint;
- 57.5. Require the Subject of the complaint to apologise to another person in connection with the allegation/ complaint;
- 57.6. Suspend the Subject of the complaint's membership privileges;
- 57.7. Impose a period of suspension on the Subject of the complaint; and/ or
- 57.8. Expel the Subject of the complaint.

Failure to comply

- 58. Should the Subject of the complaint fail to comply with the sanction imposed by the DC, that would be an issue of misconduct, the result of which could be a further, more severe sanction being imposed.

Published

- 59. If the Subject of the complaint is expelled or suspended from membership, the DC shall (unless it determines there are reasons not to do so), arrange for the decision to be published.
- 60. If a complaint or allegation of misconduct is dismissed, the DC may, and at the request of the Member shall, arrange for the decision to be published.

Appeal Committee ("AC")

- 61. Appeals to the IChemE must be made by the Subject of the complaint within one calendar month of the decision letter from the Clerk. The Subject of the complaint may appeal either or both of the DC's findings that the Subject of the complaint engaged in misconduct and the sanction imposed.
- 62. To make an appeal, the Subject of the complaint must write to the Clerk setting out:
 - 62.1. The ground(s) of appeal;
 - 62.2. The reasons for the appeal;
 - 62.3. The matters relied upon in support of the appeal; and
 - 62.4. Why the decision is considered unfair.
- 63. Appeals can only be made on one or more of the following grounds:
 - 63.1. The decision is unjust (e.g. there was a serious procedural error or other irregularity that renders the decision unfair or unsafe);
 - 63.2. The decision is wrong (e.g. it was not supported by the evidence or based on an error or misunderstanding);
 - 63.3. The sanction imposed was disproportionate to the gravity of the misconduct that was determined to have taken place; or
 - 63.4. Evidence, relevant to the case, has come to light which was not considered during the hearing and which could not have been reasonably produced at the hearing.
- 64. In the event of an appeal, the decision of the DC will not be carried out until the appeals procedure is concluded.
- 65. The Complainant has no right of appeal.
- 66. Appeals to a regulatory body must be made in accordance with that body's procedures.

Consideration of an appeal by the Appeal Committee ("AC")

- 67. Upon receiving written notice of an appeal, the Clerk will refer the appeal to the Chair of the Professional Conduct Pool who will ensure that the appeal has been made on one of the grounds

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set out in 63. If the appeal does not relate to one of the grounds of appeal set out in 63, the Chair of the Professional Conduct Pool will write to the Subject of the complaint to confirm that the appeal has been rejected on the basis that it has not been made on one of the grounds set out in 63.

68. If the appeal has been made on one of the grounds set out in 63, the Chair of the Professional Conduct Pool will either:
- 68.1. Summarily accept the appeal and refer the matter back to the DC under 84; or
 - 68.2. Confirm that an AC should be formed and ask the Clerk to convene an AC.
69. The Clerk should update the Subject of the complaint in relation to the decision of the Chair of the Professional Conduct Pool.
70. If the Chair of the Professional Conduct Pool confirms that an AC should be formed, the Clerk will convene three individuals drawn from the Professional Conduct Pool to constitute the AC for a matter. Each AC will include at least one person who is not a Member of the IChemE.
71. The AC will ask the Clerk to confirm to the Subject of the complaint:
- 71.1. When the hearing will take place for the AC to consider the matter;
 - 71.2. The date by which any additional material must be received;
 - 71.3. That the Subject of the complaint has the right to:
 - 71.3.1. be represented at any hearing but that the IChemE will not be responsible for any costs incurred by the Subject of the complaint;
 - 71.3.2. bring a supporter to support them at the hearing;
 - 71.4. The identity of the members of the AC and a statement of how the Subject of the complaint may object to the inclusion of a member of the AC; and
 - 71.5. A copy of this process and the Code of Professional Conduct/ By-laws (where appropriate).
72. The Subject of the complaint may object to the inclusion of any individual on the AC on the grounds of a conflict of interest. To submit an objection, the Subject of the complaint will provide the objection, with reasons, to the Clerk in writing. The Chair of the AC will consider the Subject of the complaint's objection and will either reject the objection (giving reasons) or will direct the Clerk to replace the individual objected to. If the Subject of the complaint objects to the Chair of the AC, the President will consider the objection.
73. Prior to the date of the Formal Hearing, the Chair of the AC may deal with any procedural issues that may arise.

Formal Appeal Committee ("AC") Hearing

74. The AC procedure will include the following:
- 74.1. The opportunity for the Subject or their representative to address the AC;
 - 74.2. The opportunity for the PIC or the PIC's Representative to address the AC; and
 - 74.3. The opportunity for the AC to ask questions of the Member and the PIC or the PIC's Representative.
75. Both the PIC and the Subject of the complaint shall inform the Clerk of the identity of the person presenting the case and that information will be provided to the other party and to the Chair of the AC prior to the formal hearing.
76. The AC may appoint a legal adviser (who should be legally qualified) to provide it with advice in connection with the appeal and the hearing.
77. The Clerk and/ or an appointed note taker shall attend to keep a note of the hearing and prepare a record of proceedings.

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78. Any evidence that either the PIC or the Subject of the complaint wishes to rely on at the hearing must be disclosed to the other party in sufficient time as determined by the Chair of the AC in advance of the hearing.

79. The hearing will be conducted in private.

The AC's Decision

80. Any decision reached by the AC may be reached by a simple majority and does not have to be reached unanimously.

81. The AC's decision will be provided in writing and will include reasons. The decision and reasons will be conveyed to the Subject of the complaint as soon as practicable following the decision being made.

82. In disposing of an appeal, the AC may:

- 82.1. Dismiss the appeal; or
- 82.2. Allow the appeal in whole or in part.

83. If allowing any part of the appeal, the AC must also quash that part of the decision appealed against and either:

- 83.1. Dismiss the complaint; or
- 83.2. Where allowing an appeal against a finding of misconduct, refer the matter for fresh consideration by the DC; or
- 83.3. Where allowing an appeal against a sanction only, substitute for the sanction any other sanction that could have been imposed by the DC.

84. Fresh consideration by the DC will be undertaken in accordance with the relevant paragraphs of this procedure and by a freshly convened DC.

85. The AC may at any time, exercise its discretion to adjourn the proceedings.