

Effective date : 1 January 2021

## Institution of Chemical Engineers

### Guidance on the Disciplinary Procedure (April 2020)

#### 1 Preamble

- 1.1 Commitment to a shared code of conduct is a defining characteristic of a profession. The IChemE Code of Professional Conduct (the “Code”) is designed to guide Members to meet the standard of professional conduct as specified in the By-laws.
- 1.2 IChemE aspires to promote the highest standards of conduct, and consequently its Regulations and the Code are consistent with principles widely accepted amongst leading chemical engineering bodies worldwide. IChemE has also paid due regard to related guidance published by the Engineering Council.
- 1.3 When joining IChemE and in renewing their membership each year, all Members (as defined in paragraph 1 of the preamble to Regulation 3a) agree to abide by the Regulations and the Code and submit themselves to the published disciplinary procedure.
- 1.4 Allegations that a Member’s conduct has failed to meet the standards required by the Regulations, or the Code, will be investigated and considered under the procedures set out in IChemE’s Disciplinary Regulations.
- 1.5 This guidance has been prepared to assist Members who engage with the Disciplinary Regulations in any capacity, including as a member of a panel established under the Disciplinary Regulations. This guidance should be read alongside the Disciplinary Regulations and is intended to assist IChemE in achieving consistency and fairness in the application of the Disciplinary Regulations. This document is, however, only guidance: it is the procedure set out in the Disciplinary Regulations that is to be followed and the circumstances in any individual case may make it inappropriate to apply elements of this guidance.
- 1.6 The pool from which a Preliminary Decision Maker, or members of Preliminary Investigation, Disciplinary or Appeal committees may be drawn shall have no maximum number, but a minimum of 10 members. It is anticipated that members of the pool will usually serve terms of 3 years, and will either be lay members or Chartered Members or Fellows of IChemE.

#### 2 What is misconduct?

- 2.1 IChemE’s Code of Professional Conduct and the Disciplinary Regulations are the route through which IChemE promotes and maintains the ethical behaviour of its Members in the practice of chemical engineering. The Disciplinary Regulations are not intended to be used as a means of resolving a dispute that involves a Member, or of pursuing a vendetta against a Member.
- 2.2 Accordingly, the key issue to be considered in connection with complaints about or allegations made against Members is whether the conduct of the Member falls below the standards set out in the Code.
- 2.3 For example, individuals can and do hold different opinions on a variety of matters. Where the opinions themselves do not breach the Code, the Disciplinary Regulations are not the route through which those different opinions are to be tested or adjudicated. However, the Disciplinary Regulations may be the route through which the conduct of a Member, when debating or disagreeing, is examined.

Effective date : 1 January 2021

### **3 The allegation / complaint**

- 3.1 Any complaint or concern about a Member usually needs to be submitted in writing (which includes email and other permanent forms of communication).
- 3.2 A complaint or concern can be submitted in a number of ways:  
  
Using the [form available](#) on the IChemE website
  - 3.2.1 By post to:  
The Clerk  
Institution of Chemical Engineers  
Davis Building  
Railway Terrace  
Rugby  
CV21 3HQ
  - 3.2.2 By email to: [clerk@icheme.org](mailto:clerk@icheme.org)
- 3.3 If a complaint has been received by other means (e.g. by telephone), the complainant may be informed that their complaint may not be considered unless and until the complainant submits their complaint in writing. This does not prevent:
  - 3.3.1 a note being taken of the complaint received and being sent to the complainant for their confirmation;
  - 3.3.2 IChemE initiating a complaint based upon information it receives, provided the complaint is reduced to writing.
- 3.4 It is possible to receive and consider anonymous complaints. However, it should be remembered that decisions about a Member's conduct will be made on the basis of evidence and if a complainant refuses to give their identity that may significantly hamper any investigation. Also, it is potentially unfair for the Subject of the complaint not to know who his/her accusers are, or to test their evidence should the matter proceed to a formal disciplinary hearing. It is also possible for IChemE to institute disciplinary proceedings as a result of information it receives not in the form of a complaint from an individual or an institution, but for example from newspaper reports.
- 3.5 The Clerk will be appointed by IChemE's Chief Executive. The Clerk is the main administrator in relation to the Disciplinary Regulations and will be the first point of contact for all complaints.
- 3.6 On receipt of a complaint, the Clerk must first consider whether he/she has a conflict of interest meaning he/she should not participate in the matter. A conflict of interest arises where circumstances exist that would lead an objective observer to think that a Clerk might not be neutral. This could happen in a number of different circumstances, including:
  - 3.6.1 If the Clerk is related to the complainant, the Subject of the complaint or another person material to the complaint;
  - 3.6.2 If the Clerk has a close personal or business relationship with the complainant, the Subject of the complaint or another person (including a corporate entity) material to the complaint; or
  - 3.6.3 If there has been a dispute between the complainant or the accused and the Clerk.

Effective date : 1 January 2021

- 3.7 If circumstances exist which objectively could be thought to be likely adversely to affect the Clerk's ability impartially to carry out his/her role, the Clerk must recuse him/her self and another will undertake that role, as set out in the Disciplinary Regulations (Regulation 3A 6).
- 3.8 Having acknowledged receipt of the complaint, the Clerk will need to consider whether the complaint raises a disciplinary matter. While the Clerk may ask questions of the complainant in order to clarify the allegation, he/she is not to undertake an investigation at this stage. At this stage, the Clerk's role is to receive the allegation or complaint and support the Preliminary Investigation Committee in its decision as to whether the complaint should be investigated or not, and what form any investigation will take.
- 3.9 As set out in the Disciplinary Regulations (Regulation 3A, 7 to 12), the Clerk should:
- 3.9.1 check that the complaint raises an allegation against an IChemE Member. For the avoidance of doubt, the Regulations will still apply and be followed where a Member resigns, or their membership lapses, after a complaint about them has been lodged with IChemE, and
- 3.9.2 consider whether the complaint would be better dealt with under a different IChemE policy or procedure, or be referred to another authority. This will not necessarily be the end of the disciplinary matter as it may be that the outcome of that other process gives rise to an issue that would then be appropriate for consideration under the Disciplinary Regulations.
- 3.10 At this stage, the Clerk may take the complaint at face value – this should not be mistaken for accepting that it is all true. Given the very preliminary nature of the matter, the Member against whom the complaint is made need not be notified of the complaint.
- 3.11 If Regulations 3A 9, 10 or 11 apply, the Clerk will need to consider informing each of the complainant and the Subject of the complaint about the decision (Regulation 3A 11.1). In general it is likely to be appropriate for both the complainant and the Subject of the complaint to be told of the action to be taken in response to the complaint and why. Factors potentially relevant to the decision include: whether doing so might impede an investigation by the police or other authority; any requests for confidentiality made by the complainant and the reasons for those requests; and the known possible impact upon the health and well-being of either person.
- 3.12 The Preliminary Decision Maker, who will be selected by the Chair of the Professional Conduct Pool (PCP), will be a member of the PCP from which the PIC, DC and AC members are drawn. The Preliminary Decision Maker will be appointed on a case by case basis. The Preliminary Decision Maker must first consider whether he/she has a conflict of interest meaning he/she should not participate in the matter according to the principles at 3.6 and 3.7 above. The Preliminary Decision Maker must not be appointed to the PIC, DC or AC which later deals with the complaint.
- 3.13 If Regulation 3A 12 applies, the Clerk must refer the complaint to the Preliminary Investigation Committee. The Clerk should provide the Preliminary Investigation Committee with the information it is likely to need to make the decisions with which it is charged. This is likely to include the written complaint received and any documents sent with it, a copy of IChemE's Code of Professional Conduct, a copy of the Disciplinary Regulations, and a brief report of any enquiries made by the Clerk.

Effective date : 1 January 2021

#### 4 Preliminary Investigation Committee (“PIC”)

##### General

- 4.1 The PIC will usually be involved twice in any disciplinary matter. Its first task is to make decisions over whether, and if so what aspects of, a complaint should be investigated. Its second task is to decide, once an investigation is completed, whether, and if so upon what basis, the Subject of the complaint should be referred for disciplinary action. It may also consider whether Early Resolution should be offered (see paragraph 7 below).
- 4.2 It is desirable that the PIC should make its decisions quickly, ideally within 21 days of the referral by the Clerk.
- 4.3 The PIC is to be formed in accordance with Regulation 3A 13. As a matter of good practice, the Clerk should contact members of the Professional Conduct Pool who are Members of IChemE (as opposed to lay members) to ask them to form a PIC. When contacted by the Clerk and asked to form part of a PIC, individual members of the Professional Conduct Pool will be told the known names of the people and entities (companies, partnerships etc.) involved in the matter in order that the Professional Conduct Pool Member can consider whether he/she has a conflict of interest (see paragraph 3.6 above). The Clerk should not usually disclose what role each person/entity has in the matter; instead a list of names should be provided. The Professional Conduct Pool Member may ask the Clerk for further information in order to assist with identifying whether the person/entity is known to the Member, but this will not usually involve needing to provide any details of the allegation against the Subject of the complaint.
- 4.4 The Professional Conduct Pool members should treat the names of the people and entities and the fact that they have been contacted by the Clerk as confidential.

##### Referral from the Clerk

- 4.5 The PIC receives brief details of an allegation from the Clerk. At this stage, it is appropriate for the PIC to take the complaint at face value. It is likely that the majority of complaints will be referred for investigation. The PIC should only decide not to direct an investigation if it is satisfied that the complaint does not raise an issue of improper conduct worthy of further consideration. For example, a belief that allegations within the complaint are unlikely to be proved, would be difficult to investigate, or occurred a long time in the past, are not of themselves reasons not to proceed to an investigation.
- 4.6 When making the decision, it is suggested that the PIC identifies the key issues raised in the complaint and considers whether each could give rise to an issue of improper conduct under IChemE's Code. Again, the only basis upon which the PIC may stop the progress of a complaint at this stage is where it considers “the allegation / complaint to be vexatious and / or trivial and / or has no merit” (Regulation 3A 17.1): all other complaints are to be referred for investigation or Early Resolution
- 4.7 When referring a complaint for further investigation, it will greatly assist the Investigator if the PIC identify any issues to which attention should be paid, for example:
  - 4.7.1 Any specific elements of the Code that appear to have been breached;
  - 4.7.2 Any factual issues that ought to be further investigated;
  - 4.7.3 Any evidence (whether physical, witness of fact or expert) that should be sought;

Effective date : 1 January 2021

- 4.7.4 Any individuals who should be interviewed; and
- 4.7.5 Matters upon which expert evidence should be sought.
- 4.8 The purpose of this is to focus the Investigator's attention on the potential breaches of the Code. It is unlikely at this point to be appropriate to direct the Investigator to seek any underlying reasons for a complaint having been made (such as ulterior motives or wider disputes between individuals): it is to be expected that the Investigator will examine any explanation offered by the Subject of the complaint.
- 4.9 Where the PIC decides not to progress an investigation it will need to consider informing the complainant and must inform the Subject of the complaint about its decision (Regulation 3A 25.1 - 25.2). In general it is likely to be appropriate for both the complainant and the Subject of the complaint to be told of the action to be taken in response to the complaint and why. Factors potentially relevant to the decision include: whether doing so might impede an investigation by the police or other authority; any requests for confidentiality made by the complainant and the reasons for those requests; and the known possible impact upon the health and well-being of either person.

## 5 The Investigation

- 5.1 The cornerstone of any good disciplinary process is the quality of the investigation upon which the decision is based.
- 5.2 The Clerk will appoint an Investigator to investigate the complaint as directed by the PIC (Regulation 3A 19). The Clerk should not participate in the investigation. Care should be taken not to appoint an Investigator who is subject to a conflict of interest (see 3.6 above). The Investigator may delegate elements of the investigation but must maintain oversight and responsibility for it. In this guidance and the Disciplinary Regulations, references to "the Investigator" include individuals to whom the Investigator has delegated tasks.
- 5.3 The Investigator has a wide discretion over the conduct of the investigation. This includes deciding the scope and extent of enquiries made, provided the Investigator stays within the scope set by the PIC and carries out any specific actions requested by the PIC. For the majority of investigations, it will be appropriate for the Investigator to confine his/her enquiry to the factual matters immediately surrounding the alleged breach(es) of the Code. For example, it is unlikely to be appropriate to seek a detailed investigation as to why the Subject of the complaint acted as he/she did, but it would be appropriate to test or explore an account given by the Subject of the complaint.
- 5.4 Care should be taken in the investigation to ensure that it is carried out:
  - 5.4.1 as speedily as possible, as the quality of an individual's recollections diminishes over time and in order to best serve the interests of all involved; and
  - 5.4.2 neutrally and objectively. The aim of the investigation is to establish the facts: it is not to be undertaken in order to prove or to support any particular side or outcome.
- 5.5 It is to be remembered that it is not the purpose of the disciplinary regulations to resolve disputes between Members or Members and members of the public: it is to decide whether breaches of the Code occurred. The key point of the investigation is to establish the facts that give rise to the allegations or complaints. The amount of investigation required will depend on the nature of the allegations and will vary from case to case.

Effective date : 1 January 2021

- 5.6 When referring a matter to an Investigator, the PIC should identify the issues that should be focused on, but the Investigator is entitled to pursue any additional line or issue that appears appropriate.
- 5.7 The Investigator is entitled to make enquiries before the Subject of the complaint is informed of the allegation against him/her, and should identify and seek to speak with all relevant witnesses and obtain copies of relevant documentation.
- 5.8 In the course of the investigation, the Investigator may speak with a number of people who are not, or who turn out not to be, "relevant witnesses". This may be because they are merely a gateway to other relevant information (for example, a librarian able to direct the Investigator to an appropriate source material) or because they do not have any information relevant to the investigation (note, however, that a person who was present when an incident is alleged to have taken place but who says he/she has no recollection or did not see anything, may still be a "relevant witness"). The Investigator should make and retain a note of the discussion with a person who is not a relevant witness, but need not prepare a statement. Note that a person or postholder whom the PIC instruct the Investigator to interview will be a relevant witness.
- 5.9 When interviewing a relevant witness, a detailed note should be taken of the discussion, for which purpose it may be appropriate for the Investigator to be accompanied by a note taker. The record of the discussion should be shared with the witness who should be asked to agree with its contents or to make amendments.
- 5.10 As set out in the Disciplinary Regulations, at some point during the investigation, the Subject of the complaint may be informed of the factual allegation(s) and be invited to comment (Regulation 3A 21.2). The Subject of the complaint cannot be required or compelled to provide comment: equally, once he/she has been given a reasonable opportunity to comment and has declined to do so or not responded, the Investigator may progress the investigation and report to the PIC.
- 5.11 The Subject of the complaint must also be given the opportunity to provide any evidence or names of individuals he/she would like the Investigator to speak with (Regulation 3A 21.2.4). The Investigator should consider speaking with the named individuals but is not required to interview them if he/she does not consider that they would make a meaningful contribution to the issues under investigation.
- 5.12 At any point in the investigation, the Investigator may seek the guidance of the PIC. This might occur because there is information that suggests that the scope of the investigation should be significantly widened or narrowed, or because there is a technical point upon which the Investigator needs assistance. Equally, the Investigator may wish to update the PIC as to progress with the investigation. Any contact the Investigator has with the PIC should be done in writing and conducted through the Clerk. The Subject of the complaint and the person who made the complaint need not be notified since at this stage they are effectively witnesses.
- 5.13 Once he/she considers that the investigation is concluded, the Investigator must prepare a report for the PIC (Regulation 3A 22). The purpose of the report is to provide assurance to the PIC that an adequate investigation has been carried out and to provide them with the information upon which a decision can properly be made as to the action to be taken in respect of the complaint.
- 5.14 As set out in the Disciplinary Regulations, the report must set out:
- 5.14.1 The steps taken by the Investigator in relation to the investigation (Regulation 3A 22.1). For example, the report might provide information about:
- (i) The individuals with whom the Investigator has spoken;

Effective date : 1 January 2021

- (ii) Research or other desktop enquiries or research undertaken in connection with the allegation;
  - (iii) Contact made with the Subject of the complaint and any relevant witnesses;
  - (iv) If the Investigator has not been able to speak to any relevant witnesses and/or the Subject of the complaint, the attempts the Investigator made to speak to the relevant witnesses and/or the Subject of the complaint.
- 5.14.2 All the evidence that the Investigator has obtained (Regulation 3A 22.2).  
. In some cases this might be done simply by providing a copy of the statements prepared, other, more complex cases may require a summary, for example because a number of people were spoken to who were not relevant witnesses. This may be summarised in the form of a list with the evidence itself in an appendix.
- 5.14.3 A recommendation for the next steps/action to be taken (Regulation 3A 22.3). In preparing the recommendation, the Investigator should refer to Regulation 3A 23. In the report, the Investigator may suggest different recommendations for different elements of the complaint and in some situations may make alternative recommendations which might reflect the different conclusions that the PIC may reach on the information provided. In drafting the report, the Investigator may wish to draw attention to:
- (i) What the Subject of the complaint has said in relation to the allegation; or
  - (ii) Other lines of enquiry involving other Members that the PIC may wish to be investigated.
- 5.14.4 Other information that the Investigator considers is relevant to the decision the PIC is being asked to consider (Regulation 3A 22.4). This is likely to include the Code, the Disciplinary Regulations and this guidance. In some circumstances it may be appropriate for the Investigator's report to identify conclusions that the PIC might draw from the evidence gathered and set out in the report and to point out where there is corroboration or a lack of corroboration and what is merely second or third hand evidence to which less weight might be attached than first hand evidence.
- 5.15 In the report, the Investigator may identify other decisions or requests that the PIC might make, such as requesting an investigation into other matters or Members. However, as regards the particular complaint, the PIC may only take one of the actions set out in Regulation 3A 23 (and it is recommended that the report makes explicit reference to those options) or request the Investigator to pursue a further specified line of enquiry (Regulation 3A 24).

## **6 Preliminary Investigation Committee 2**

- 6.1 The second task of the PIC is to decide whether, and if so upon what basis, the Subject of the complaint should be referred for disciplinary action. The PIC should meet to discuss the Investigator's report. That meeting does not have to be physically face-to-face but will, ideally, be by video conference or telephone conference.
- 6.2 The PIC should consider the Investigator's report but is not bound by any conclusions or recommendations made by the Investigator. It is bound to take one of the courses of action set out in Regulation 3A 23.

Effective date : 1 January 2021

- 6.3 The PIC is not deciding whether or not the Subject of the complaint did or did not do the acts complained of; it is deciding whether there is sufficient evidence to show that the Subject of the complaint *may* have breached the Code.
- 6.4 In making that decision, the PIC should take the following steps for each allegation in the following order:
- 6.4.1 Satisfy itself that the Investigator has undertaken an adequate investigation in accordance with the Disciplinary Regulations. If it is not satisfied, the PIC may return the report to the Investigator, identifying the further steps it considers should be undertaken;
- 6.4.2 Review the evidence set out in the Investigator's report and, taking the evidence against the Subject of the complaint at its highest<sup>1</sup>, consider whether no further action should be taken in relation to all or part of the complaint or allegation (Regulation 3A 23.1);
- 6.4.3 If satisfied that further action should be taken, the PIC should decide whether the matter or elements of it should be referred to another body or procedure (Regulation 3A 23.2);
- 6.4.4 If taking none of the steps above in relation to any one of the allegations, the Disciplinary Regulations state that the PIC should either propose an Early Resolution (Regulation 3A 27) or refer the matter to a Disciplinary Committee (Regulation 3A 23.3). In practice, the PIC must have identified the information required to refer the matter to a Disciplinary Committee before deciding to propose an Early Resolution. See the further guidance below (in particular 6.7 on Disciplinary Committee and 7.3 on Early Resolution).
- 6.5 The PIC should provide brief reasons for its decision, which should be made in writing.
- 6.6 Where the PIC decides that no further action is to be taken, it must ask the Clerk to send its decision to the Subject of the complaint and may ask the Clerk to send its decision to the person who made the complaint (Regulation 3A 25.1 & 25.2). In general it is likely to be appropriate for both the complainant and the Subject of the complaint to be told of the decision taken by the PIC and why. Records of the complaint, including the evidence, should not be maintained beyond the time limit for any appeal.
- 6.7 Where the PIC refers the complaint to a Disciplinary Committee or recommends Early Resolution it must provide to the Clerk the information that is needed to prepare (see Regulation 34). In the case of Early Resolution, this information is needed because if the Subject of the complaint rejects the Early Resolution, the Clerk is to progress the matter to a Disciplinary Committee (see Regulation 3A 32). Thus, it is recommended that the PIC decides what it is going to refer to a Disciplinary Committee before it decides whether it will recommend an Early Resolution.
- 6.8 The PIC should determine whether any criminal or civil court proceedings related to the alleged misconduct are likely or underway. If so, and a referral under 6.7 above is made, then the PIC should consider suspending the procedure after referral, until court proceedings, including any appeal, are complete.

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<sup>1</sup> "taking the evidence against the Subject of the complaint at its highest" involves accepting credible facts as accurate and resolving any disputes of fact against the Subject of the complaint.

Effective date : 1 January 2021

- 6.9 The information to be given by the PIC to the Clerk under paragraph 6.7 must include the following:
- 6.9.1 The factual issues giving rise to the improper conduct (Regulation 3A 34.1). These can be given in summary and/or bullet point form and can refer to other documents and evidence. The PIC needs to set out what it is that the Subject of the complaint did (or failed to do) that amounts to improper conduct.
  - 6.9.2 How the factual issues amount to improper conduct (Regulation 3A 34.2). The PIC need to identify the specific paragraphs of the Code that were breached by the Subject of the complaint and, as appropriate, how and why the Subject of the complaint's actions or inactions fell below the required standard.
- 6.10 Where the matter progresses to a Disciplinary Committee, the information to be given under paragraph 6.7 must also be sent to the Investigator.

## **7 Early Resolution**

- 7.1 The purpose of the Early Resolution process is to enable minor or straight forward breaches of the Code to be addressed without the formality of the Disciplinary Committee. It should not be used in situations where the conduct is such that it could result in the suspension or termination of a person's membership of IChemE (see Regulation 3A 29).
- 7.2 The Early Resolution process is not a negotiation with the Subject of the complaint. It involves the PIC making a proposal to the Subject of the complaint and he/she accepting that proposal in its entirety or not. If the Early Resolution proposal is not accepted by the Subject of the complaint, the matter progresses to the Disciplinary Committee.
- 7.3 When deciding to propose an Early Resolution, the PIC must identify:
- 7.3.1 The relevant factual matters that (if the Subject of the complaint accepts them) give rise to the improper conduct; and
  - 7.3.2 The sanction that will be applied (if the Subject of the complaint accepts the Early Resolution).
- 7.4 As set out in the Disciplinary Regulations (Regulation 3A 30), the PIC must provide the Clerk with the information required.
- 7.5 The Clerk will write to the Subject of the complaint to provide the information set out at Regulations 3A 30 & 31. The Clerk may wish to ensure that the Subject of the complaint receives the communication, for example by seeking a confirmation of receipt.
- 7.6 Where the Early Resolution was proposed prior to Investigation, the Clerk should seek PIC guidance if the Subject of the complaint seeks to accept the proposal after the deadline set in accordance with Regulation 3A 31.1
- 7.7 Where the Early Resolution was proposed after Investigation, if the Subject of the complaint wishes to accept the Early Resolution after the deadline set in accordance with Regulation 3A 31.1:
- 7.7.1 If the Clerk has not yet sent to the Subject of the complaint the confirmation required under Regulation 3A 34, the Clerk should accept the late agreement and the Early Resolution will apply.

Effective date : 1 January 2021

- 7.7.2 If the Clerk has sent to the Subject of the complaint the confirmation required under Regulation 3A 34, the Clerk will refer the Subject of the complaint's purported acceptance to a Member of the PIC who will decide whether the late agreement should be accepted. The PIC Member should not usually accept the late agreement unless the Subject of the complaint provides exceptional reasons for his/her delay.

## **8 Referral to the Disciplinary Committee ("DC")**

- 8.1 The Disciplinary Committee is to be formed in accordance with Regulation 3A 33, with at least one member of the Disciplinary Committee not being a Member of IChemE. It is preferable for two of the members of the Disciplinary Committee not to be Members of IChemE, however this is not compulsory. The DC exists in order to determine whether or not there has been a breach of the Code and if so, what sanction (if any) should apply.
- 8.2 When contacted by the Clerk and asked to form part of a Disciplinary Committee, individual members of the Professional Conduct Pool will be told all of the names of the people and entities (companies, partnerships etc.) involved in the matter in order that the Professional Conduct Pool member can consider whether he/she has a conflict of interest (8.4 below). The Clerk should not usually disclose what role each person/entity has in the matter; instead a list of names should be provided. The Professional Conduct Pool member may ask the Clerk for further information in order to assist with identifying whether the person/entity is known to the member, but this will not usually involve provision of any details of the allegation against the Subject of the complaint.
- 8.3 The Professional Conduct Pool members should treat the names of the people and entities and the fact that they have been contacted by the Clerk as confidential.
- 8.4 A conflict of interest arises where circumstances exist that would lead an objective observer to think that a Professional Conduct Pool member might not be neutral. This could happen in a number of different circumstances, including:
- 8.4.1 If the Professional Conduct Pool member was a member of the PIC which referred the matter to the Disciplinary Committee;
- 8.4.2 If the Professional Conduct Pool member is related to the complainant, the Subject of the complaint or another person material to the complaint;
- 8.4.3 If the Professional Conduct Pool member has a close personal or business relationship with the complainant, the Subject of the complaint or another person (including a corporate entity) material to the complaint; or
- 8.4.4 If there has been a dispute between the complainant or the Subject of the complaint and the Professional Conduct Pool member.
- 8.5 If circumstances exist which objectively could be thought to be likely adversely to affect the Professional Conduct Pool member's ability impartially to review the evidence and make a decision as part of the Disciplinary Committee, the Professional Conduct Pool member must inform the Clerk that he/she will not form part of the Disciplinary Committee.
- 8.6 Once the members of the Disciplinary Committee have been identified, the Chair of the Professional Conduct Pool will nominate one of their number, who should be a Member of IChemE, rather than a lay member, to be the Chair of that Disciplinary Committee.

Effective date : 1 January 2021

- 8.7 In the event that the Subject of the complaint objects to the inclusion of a named individual as part of the Disciplinary Committee, the Clerk shall refer the matter to the Chair (as set out at Regulation 3A 35). The Chair will consider the reasons provided by the Subject of the complaint and make such enquiries as are appropriate before making a decision. The enquiries might include contacting the objected to Disciplinary Committee member to check any factual matters asserted by the Subject of the complaint. The Chair must provide written reasons for his/her decision.

## 9 Formal Disciplinary Committee (“DC”) Hearing

- 9.1 The Clerk must write to the Subject of the complaint as set out at Regulation 3A 34. Save in exceptional circumstances:
- 9.1.1 the communication at Regulation 3A 34 should be sent at least one month before the date upon which the Disciplinary Committee will consider the matter;
- 9.1.2 the date by which the evidence and material described at Regulation 3A 43 is to be sent should be at least two weeks before the date upon which the Disciplinary Committee will consider the matter.
- 9.2 The Clerk should also make it clear that if the Subject of the complaint does not provide the evidence and material described at Regulation 3A 43 (to include the names of any witnesses or experts the Subject of the complaint intends to invite to attend the hearing) in advance of the formal hearing, the Disciplinary Committee may not allow him or her to rely on that evidence or material.
- 9.3 As set out at Regulation 3A 37, the PIC will appoint a person to present the case against the Subject of the complaint. That person could be legally qualified, one of the PIC members or, as indicated at Regulation 3A 37, the Investigator.
- 9.4 The Chair of the Disciplinary Committee may deal with any procedural issues that may arise. These may include, for example: requests for an extension of time within which to carry out an element of the procedure; requests that the Disciplinary Committee invite a particular Member to attend the hearing; or any other matter. Upon receiving a request, the Chair should usually invite comment from the other party (i.e. the PIC’s Representative if the request comes from the Subject of the complaint or the Subject of the complaint if the request comes from the PIC’s Representative). The Chair should not usually seek the view of the person who made the complaint. The Chair may seek the views of other members of the Disciplinary Committee (but does not have to do so).
- 9.5 The Subject of the complaint, the PIC’s Representative and any representatives should make every effort to attend the formal hearing. However, a party may seek to postpone the formal hearing by applying to the Chair of the Disciplinary Committee (usually via the Clerk). The application should give an explanation for their wish to postpone. Illness or other reasonable non-availability of the Subject of the complaint or an important witness is likely to be a reasonable basis for postponing the hearing; the illness or non-availability of a particular legal representative is unlikely to be a reasonable basis since another lawyer is likely to be able to provide adequate representation.
- 9.6 IChemE’s formal hearings are held in private. The Disciplinary Committee has discretion to allow the attendance at the hearing of any person. The person who made the original complaint or allegation about the Subject of the complaint does not have a right to attend the formal hearing. (However, he/she will often be a witness to the alleged misconduct). The reason for this is that the Disciplinary Procedure is the process through which IChemE regulates its membership and is

Effective date : 1 January 2021

not a means through which an individual may seek redress or judgement against an IChemE Member.

- 9.7 The Subject of the complaint, the PIC Representative and any other representatives should make every effort to attend the formal hearing. If the Subject of the complaint or a key witness fails to attend the first hearing arranged, it will usually be good practice for IChemE to re-arrange the hearing to an alternative date in order to give the Subject of the complaint or the individual a further opportunity to attend. If for some reason the PIC's Representative is unable to attend the formal hearing, it is anticipated that the PIC (through the Clerk) will be able to provide alternative representation other than at short notice.
- 9.8 Where the Subject of the complaint or a key witness fails to attend without good cause, the Disciplinary Committee may decide to proceed with the formal hearing in that person's absence. Before doing so, the Disciplinary Committee should satisfy itself (usually by making enquiries of those at the formal hearing) that the individual who has failed to attend was properly notified of the date, time and place of the formal hearing.
- 9.9 As well as any person appointed to keep a note, the Disciplinary Committee may request that the Clerk provides someone to assist with the running of the formal hearing (referred to as the "Hearing Clerk" in this guidance). The Hearing Clerk and the note taker could be the same person.
- 9.10 The Disciplinary Committee has the power to refuse to admit any evidence. However, it should use that power sparingly as it is not a court of law and the rules of evidence do not apply to the hearing. The Disciplinary Committee may admit an item of evidence (for example "hearsay", in the form of an overheard conversation) but will need to consider carefully the weight that they attach to that evidence during its deliberation. A key factor that the Disciplinary Committee will wish to have in mind when considering whether to refuse to admit an item of evidence is the fairness of the procedure. Fairness is to apply to both the Subject of the complaint and the PIC's Representative. In the majority of situations it is unlikely that previous findings that the Subject of the complaint (or other witness) has breached the Code or committed a criminal offence will be relevant to the question of whether the Code has been breached on this occasion and the Disciplinary Committee should refuse to admit the evidence<sup>2</sup>.
- 9.11 The Disciplinary Committee may suspend the formal hearing at any point (Regulation 3A 45.8). When making a decision about whether to suspend or not, the Disciplinary Committee must take into account the impact that any delay in the hearing the matter will have on the fairness to all involved. When suspending, the Disciplinary Committee should state the date and time at which it will reconvene or the method by which the date and time to reconvene will be communicated to the parties (which will usually be through the Clerk).
- 9.12 As set out in the Disciplinary Regulations, the Disciplinary Committee has discretion over how the formal hearing will run but it must include the matters set out at Regulation 3A 45. A key factor for the Disciplinary Committee in exercising its discretion is the fairness of the process. The following would be a suitable procedure for a simple allegation (but note that no Disciplinary Committee is bound by this suggestion):
- 9.12.1 The Chair ensures that all parties (in particular the Disciplinary Committee members, the Subject of the complaint and the PIC's Representative) are present and ready to proceed.

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<sup>2</sup> But it may be relevant to the question of what sanction to be imposed.

Effective date : 1 January 2021

- 9.12.2 The Chair and Clerk ensure that all parties are agreed over the documents that each should have in connection with the hearing.
- 9.12.3 The PIC's Representative opens the case by briefly outlining the allegation(s) against the Subject of the complaint.
- 9.12.4 The PIC's Representative calls witnesses and takes the Disciplinary Committee through any documents. In respect of witnesses:
- (i) The PIC's Representative asks questions;
  - (ii) The Subject of the complaint asks questions;
  - (iii) The Disciplinary Committee asks any questions;
  - (iv) The PIC's Representative has the opportunity to ask questions that arise from anything raised during the Subject of the complaint's or the Disciplinary Committee's questions.
  - (v) The Chair has discretion as to whether any witness may be present during the hearing, other than when giving evidence.
- 9.12.5 The Subject of the complaint calls witnesses and takes the Disciplinary Committee through any documents. In respect of witnesses:
- (i) The Subject of the complaint asks questions;
  - (ii) The PIC's Representative asks questions;
  - (iii) The Disciplinary Committee asks any questions;
  - (iv) The Subject of the complaint has the opportunity to ask questions that arise from anything raised during the PIC's Representative's or the Disciplinary Committee's questions.
  - (v) The Chair has discretion as to whether any witness may be present during the hearing, other than when giving evidence.
- 9.12.6 The PIC's Representative addresses the Disciplinary Committee on the evidence that they have heard.
- 9.12.7 The Subject of the complaint addresses the Disciplinary Committee on the evidence that they have heard.
- 9.12.1 The Disciplinary Committee retires to consider whether or not Code has been breached (see 10 below). The Disciplinary Committee returns and announces whether or not it has decided that the Code has been breached.
- 9.12.2 Where the Code has been breached (see 11 below):
- (i) The PIC's Representative may address the Disciplinary Committee. In particular he/she may inform the Disciplinary Committee of any aggravating or mitigating factors of which IChemE is aware. For example, previous disciplinary or criminal findings involving the Subject of the complaint or particular support or roles he/she has undertaken for IChemE;

Effective date : 1 January 2021

- (ii) The Subject of the complaint may address the Disciplinary Committee, in particular to inform it of any issues or factors he/she wishes it to have in mind when considering what sanction if any to apply to the Subject of the complaint.
- 9.12.3 The Disciplinary Committee retires to consider what sanction, if any, to impose as a result of the breach of the Code.
- 9.12.4 The Disciplinary Committee returns and announces the sanction, if any, to be imposed as a result of the breach of the Code.

## **10 The DC's decision**

- 10.1 At the end of the formal hearing, the Disciplinary Committee should retire (or ask all others to leave the room) to consider the evidence it has heard.
- 10.2 The Disciplinary Committee is entitled to ask the note taker and the legal adviser (if any) it appointed to join them. Neither the note taker nor the legal adviser may participate in the decision making – they are there to assist by reminding the Disciplinary Committee of what was said during the formal hearing, with legal advice (in the case of the legal adviser only), and in drafting the decision and reasons. It is good practice for the legal adviser to provide to the Subject of the complaint and the PIC's Representative at least an outline of the legal advice given to the Disciplinary Committee.
- 10.3 Save in the most exceptional of circumstances, the Disciplinary Committee should not speak with or communicate with either the Subject of the complaint or the PIC's Representative without the other knowing about (i.e. seeing (if written) or having the opportunity of hearing (if oral)) the communication and having the opportunity to comment upon the communication.
- 10.4 If the Disciplinary Committee thinks that it will take some time to reach its decision, it should consider telling the Subject of the complaint and the PIC's Representative that they may leave and provide a time and date upon which the decision will be announced (Regulation 3A 50).
- 10.5 The Disciplinary Committee should first consider the factual and opinion evidence it has heard and decide what the facts are in respect of any relevant areas of dispute. The Disciplinary Committee is to decide what the facts are on the basis of whether they are more likely than not – i.e. on the balance of probabilities (Regulation 3A 48).
- 10.6 Having determined what the facts are, the Disciplinary Committee should then consider whether those facts mean that the Subject of the complaint has breached the Code. In doing this, the Disciplinary should identify specifically the part of the Code that has been breached and how the facts (the conduct or behaviour) lead to that breach.
- 10.7 In the majority of cases, it will be appropriate for the Disciplinary Committee to inform the Subject of the complaint and the PIC's Representative of its decision on whether the Code has been breached or not, orally and on the day of the hearing (Regulation 3A 50), and to hear from the parties before deciding what sanction (if any) is to be applied to the Subject of the complaint. An example of an exception to this is where the Subject of the complaint has not attended the formal hearing.
- 10.8 The Disciplinary Committee must then make a written record of its decision and the reasons for the decision which will be sent to the Subject of the complaint and the PIC's Representative in accordance with Regulation 3A 53.

Effective date : 1 January 2021

## 11 Sanctions

- 11.1 The issues that may be relevant to the question of what sanction the Disciplinary Committee will impose include: whether the Subject of the complaint has previously been found to have breached IChemE's Code or another professional Engineering Institution's code of conduct; the impact that the breach has had on others; and the previous good character of the Subject of the complaint.
- 11.2 When deciding what sanction or sanctions to apply to the Subject of the complaint, the Disciplinary Committee should apply the least harsh sanction that is commensurate with the breach of the Code and the background of the Subject of the complaint. The Disciplinary Committee may only apply those sanctions listed at Regulation 3A 57.
- 11.3 Where the Subject of the complaint is found to have committed more than one breach of the Code, each breach and the possible sanction to be applied should be considered separately, but having done so, the Disciplinary Committee should consider whether a separate sanction should be applied for each breach or a single overarching sanction.
- 11.4 The range of sanctions that are available are:
- 11.4.1 The Disciplinary Committee to provide guidance to the Subject of the complaint (Regulation 3A 57.1). This is not to be treated as a punishment. It is to be used to inform the Subject of the complaint about the requirements of the Code, often in combination with one of the sanctions below. Guidance would usually include identifying how to avoid breaching the Code in the future and steps that could be taken in order to practise or behave in a manner that is compliant with the Code;
- 11.4.2 Issue a written warning to the Subject of the complaint (Regulation 3A 57.2). This is the lowest form of formal sanction that constitutes a punishment. The warning should identify the breach of the Code and warn the Subject of the complaint as to his/her future conduct.
- 11.4.3 Require the Subject of the complaint to attend training (Regulation 3A 57.3). This should usually be used in combination with another sanction and should not be treated as a punishment.
- (i) If training is required, then the Disciplinary Committee should identify the training and consider requesting evidence that the training has been undertaken from the Subject of the complaint.
- (ii) The decision should make clear the consequence of not undertaking the training, for example fresh disciplinary proceedings.
- (iii) The Disciplinary Committee can state that "unless" the training is undertaken, a specific further, more severe sanction from the list may be imposed.
- 11.4.4 Reprimand the Subject of the complaint (Regulation 3A 57.4). This is a more serious sanction than a "written warning". The particular breach of the Code should be identified and the Subject of the complaint reprimanded for the breach.
- 11.4.5 Require the Subject of the complaint to apologise to another person in connection with the complaint (Regulation 3A 57.5). This should not be treated as a punishment. This should usually be used in combination with another sanction. The "person" could be an individual or a corporate body. The Disciplinary Committee should identify the

Effective date : 1 January 2021

particular conduct or action of the Subject of the complaint over which the apology should be given, by when and request evidence that the apology has been given.

- 11.4.6 Impose a period of suspension on the Subject of the complaint's membership privileges (Regulation 3A 57.6). This is a more serious sanction than reprimanding the Subject of the complaint. The period of suspension should be identified and may extend beyond the duration of the Subject of the complaint's current paid membership.
- 11.4.7 Suspend the Subject of the complaint (Regulation 3A 57.7). This can be used in combination with any other sanction.
- 11.4.8 Expel the Subject of the complaint (Regulation 3A 57.8). This is the most serious sanction and, where not suspended, cannot be used in combination with any other sanction as it involves the permanent expulsion of the Subject of the complaint from IChemE.

11.1 The Disciplinary Regulations permit the Disciplinary Committee to impose more than one sanction.

11.2 The Disciplinary Regulations (3A 53) require the Clerk to inform the Subject of the complaint of the Disciplinary Committee's decision and reasons. The Disciplinary Committee should also consider requiring the Clerk to inform the complainant of the outcome. It should be noted that the complainant does not have a right of appeal.

## 12 **Failure to comply**

- 12.1 It should be noted in the written decision that if the Subject of the complaint fails to comply with the sanction imposed by the Disciplinary Committee, that would itself be a disciplinary issue, the result of which could be a further, more severe sanction being imposed (Regulation 3A 58).

## 13 **Publication**

- 13.1 Decisions will not usually be published under Regulation 3A 59 until any appeal by the Subject of the complaint is concluded.

## 14 **Appeal Committee ("AC")**

- 14.1 The Subject of the Complaint must write to the Clerk as described at Regulation 3A 62, and must set out which ground or grounds he or she is relying on (Regulation 3A 63).
- 14.2 The communication at Regulation 3A 62 must be sent within one calendar month of the date of the decision letter from the Clerk (Regulation 3A 61).
- 14.3 The decision of the DC will not be carried out until the appeals procedure is concluded. Every decision of the DC must therefore be put on hold for at least one calendar month after the date of the decision letter sent by the Clerk to the Subject of the complaint, to allow for an appeal to be received.

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

- 15.1 The Chair of the Professional Conduct Pool will consider whether any of the grounds in Regulation 3A 63 are made out by the Subject of the complaint on the balance of probabilities.

Effective date : 1 January 2021

- 15.2 The Chair of the Professional Conduct Pool, when considering an appeal on the ground in Regulation 3A 63.4, should consider whether any new evidence is likely to materially impact on the outcome of the Disciplinary Committee. If not, the appeal should not be allowed.
- 15.3 The Chair of the Professional Conduct Pool will then decide whether to:
  - 15.3.1 reject the appeal as the grounds have not been sufficiently made out; or
  - 15.3.2 accept the appeal and refer back to the DC; or
  - 15.3.3 confirm that an Appeal Committee should be formed.
- 15.4 Any Appeal Committee is to be formed in accordance with Regulation 3A 70 with at least one Member of the Appeal Committee not being a Member of IChemE. It exists in order to dismiss or allow (in whole or in part) appeals.
- 15.5 When contacted by the Clerk and asked to form part of an Appeal Committee, individual members of the Professional Conduct Pool will be told all of the names of the people and entities (companies, partnerships etc.) involved in the matter in order that the Professional Conduct Pool member can consider whether he/she has a conflict of interest (14.6 below). The Clerk should not usually disclose what role each person/entity has in the matter; instead a list of names should be provided. The Professional Conduct Pool member may ask the Clerk for further information in order to assist with identifying whether the person/entity is known to the member, but this will not usually involve provision of any details of the allegation against the Subject of the complaint.
- 15.6 The Professional Conduct Pool members should treat the names of the people and entities and the fact that they have been contacted by the Clerk as confidential.
- 15.7 A conflict of interest arises where circumstances exist that would lead an objective observer to think that a Professional Conduct Pool member might not be neutral. This could happen in a number of different circumstances, including:
  - 15.7.1 If the Professional Conduct Pool member was a member of the PIC which referred the matter to the Disciplinary Committee, or of the Disciplinary Committee whose decision is being appealed;
  - 15.7.2 If the Professional Conduct Pool member is related to the complainant, the Subject of the complaint or another person material to the complaint;
  - 15.7.3 If the Professional Conduct Pool member has a close personal or business relationship with the complainant, the Subject of the complaint or another person (including a corporate entity) material to the complaint; or
  - 15.7.4 If there has been a dispute between the complainant or the Subject of the complaint and the Professional Conduct Pool member.
- 15.8 If circumstances exist which objectively could be thought to be likely adversely to affect the Professional Conduct Pool member's ability impartially to review the evidence and make a decision as part of the Appeal Committee, the Professional Conduct Pool member must inform the Clerk that he/she will not form part of the Appeal Committee.
- 15.9 Once the members of the Appeal Committee have been identified, the Chair of the Professional Conduct Pool will nominate one of their number to be the Chair of that Appeal Committee.

Effective date : 1 January 2021

- 15.10 In the event that the Subject of the complaint objects to the inclusion of a named individual as part of the Appeal Committee, the Clerk shall refer the matter to the Chair (as set out at Regulation 3A 72). The Chair will consider the reasons provided by the Subject of the complaint and make such enquiries as are appropriate before making a decision. The enquiries might include contacting the objected to Appeal Committee member to check any factual matters asserted by the Subject of the complaint. The Chair must provide written reasons for his/her decision.
- 15.11 The Clerk must write to the Subject of the complaint as set out at Regulation 3A 71. Save in exceptional circumstances:
- 15.11.1 the communication at Regulation 3A 71 should be sent at least one month before the date upon which the Appeal Committee will consider the matter;
- 15.11.2 the date by which the material described at Regulation 3A 71.2 is to be sent should be at least two weeks before the date upon which the Appeal Committee will consider the matter.
- 15.12 The Clerk should also make it clear that if the Subject of the complaint does not provide the material described at Regulation 3A 71.2 in advance of the formal hearing, the Appeal Committee may not allow him or her to rely on that material.
- 15.13 While written documentation may be provided as additional material, additional witnesses will not usually be permitted to attend the Appeal Hearing in person.

## **16 Formal Appeal Committee (“AC”) Hearing**

- 16.1 The Chair of the Appeal Committee may deal with any procedural issues that may arise. These may include, for example: requests for an extension of time within which to carry out an element of the procedure; requests that the Appeal Committee invite a particular Member to attend the hearing; or any other matter. Upon receiving a request, the Chair should usually invite comment from the other party (i.e. the PIC’s Representative if the request comes from the Subject of the complaint or the Subject of the complaint if the request comes from the PIC’s Representative). The Chair should not usually seek the view of the person who made the complaint. The Chair may seek the views of other members of the Appeal Committee (but does not have to do so).
- 16.2 The Subject of the complaint, the PIC’s Representative and any representatives should make every effort to attend the formal hearing. However, a party may seek to postpone the formal hearing by applying to the Chair of the Appeal Committee (usually via the Clerk). The application should give an explanation for their wish to postpone. Illness or other reasonable non-availability of the Subject of the complaint is likely to be a reasonable basis for postponing the hearing; the illness or non-availability of a particular legal representative is unlikely to be a reasonable basis since another lawyer is likely to be able to provide adequate representation.
- 16.3 IChemE’s formal hearings are held in private. The Appeal Committee has discretion to allow the attendance at the hearing of any person. The person who made the original complaint or allegation about the Subject of the complaint does not have a right to attend the formal hearing.
- 16.4 The Subject of the complaint, the PIC’s Representative and any other representatives should make every effort to attend the formal hearing. If the Subject of the complaint fails to attend the first hearing arranged, it will usually be good practice for IChemE to re-arrange the hearing to an alternative date in order to give the Subject of the complaint or the individual a further opportunity to attend. If for some reason the PIC’s Representative is unable to attend the formal hearing, it is

Effective date : 1 January 2021

anticipated that the PIC (through the Clerk) will be able to provide alternative representation other than at short notice or in particularly complex cases.

- 16.5 Where the Subject of the complaint fails to attend without good cause, the Appeal Committee may decide to proceed with the formal hearing in that person's absence. Before doing so, the Appeal Committee should satisfy itself (usually by making enquiries of those at the formal hearing) that the individual who has failed to attend was properly notified of the date, time and place of the formal hearing.
- 16.6 As well as any person appointed to keep a note, the Appeal Committee may request that the Clerk provides someone to assist with the running of the formal hearing (referred to as the "Appeal Hearing Clerk" in this guidance). The Appeal Hearing Clerk and the note taker could be the same person.
- 16.7 The Appeal Committee has the power to refuse to admit any evidence if it does not relate to the ground or grounds on which the appeal is being considered. A key factor that the Disciplinary Committee will wish to have in mind when considering whether to refuse to admit an item of evidence is the fairness of the procedure. Fairness is to apply to both the Subject of the complaint and the PIC's Representative.
- 16.8 The Disciplinary Committee may adjourn the formal hearing at any point (Regulation 3A 85). When making a decision about whether to adjourn or not, the Appeal Committee must take into account the impact that any delay in the hearing the matter will have on the fairness to all involved. When adjourning, the Appeal Committee should state the date and time at which it will reconvene or the method by which the date and time to reconvene will be communicated to the parties (which will usually be through the Clerk).
- 16.9 As set out in the Disciplinary Regulations, the Appeal Committee has discretion over how the formal hearing will run but it must include the matters set out at Regulation 3A 74. A key factor for the Appeal Committee in exercising its discretion is the fairness of the process. The following would be a suitable procedure (but note that no Appeal Committee is bound by this suggestion):
- 16.10 The Chair ensures that all parties (in particular the Appeal Committee members, the Subject of the complaint and the PIC's Representative) are present and ready to proceed.
- 16.11 The Chair and Clerk ensure that all parties are agreed over the documents that each should have in connection with the hearing.
- 16.12 The Subject of the complaint opens the hearing by outlining to the Appeal Committee the ground or grounds which form the basis of their appeal
- 16.13 The Subject of the complaint outlines any additional material relevant to the grounds of appeal and takes the Appeal Committee through any documents.
- 16.14 The PIC's Representative has the opportunity to ask questions that arise from anything raised during the Subject of the complaint's opening.
- 16.15 The Appeal Committee asks any questions of the Subject of the complaint.
- 16.16 The PIC's Representative responds to the grounds of appeal to the Appeal Committee.
- 16.17 The PIC's Representative outlines any additional material relevant to the grounds of appeal and takes the Appeal Committee through any documents.

Effective date : 1 January 2021

- 16.18 The Subject of the complaint has the opportunity to ask questions that arise from anything raised during the PIC's Representative's response.
- 16.19 The Appeal Committee asks any questions of the PIC's Representative.
- 16.20 The Appeal Committee retires to consider whether or not the grounds of Appeal have been made out in full or in part. The Appeal Committee returns and announces whether or not it has decided that the appeal is dismissed, or is upheld in whole or in part.
- 16.21 If allowing any part of the appeal, the Appeal Committee will announce an appropriate action or actions under Regulations 3A 83.2 and 83.3.

## **17 The AC's decision**

- 17.1 At the end of the formal hearing, the Appeal Committee should retire (or ask all others to leave the room) to consider the matters it has heard.
- 17.2 The Appeal Committee is entitled to ask the note taker and the legal adviser (if any) it appointed to join them. Neither the note taker nor the legal adviser may participate in the decision making – they are there to assist by reminding the Appeal Committee of what was said during the formal hearing, with legal advice (in the case of the legal adviser only), and in drafting the decision and reasons. It is good practice for the legal adviser to provide to the Subject of the complaint and the PIC's Representative at least an outline of the legal advice given to the Appeal Committee.
- 17.3 Save in the most exceptional of circumstances, the Appeal Committee should not speak with or communicate with either the Subject of the complaint or the PIC's Representative without the other knowing about (i.e. seeing (if written) or having the opportunity of hearing (if oral)) the communication and having the opportunity to comment upon the communication.
- 17.4 If the Appeal Committee thinks that it will take some time to reach its decision, it should consider telling the Subject of the complaint and the PIC's Representative that they may leave and provide a time and date upon which the decision will be announced (Regulation 3A 85).
- 17.5 The Appeal Committee should decide by majority whether the grounds of appeal are made out on the basis of whether they are more likely than not – i.e. on the balance of probabilities.

The Appeal Committee may announce its decision orally to the Subject of the complaint and the PIC's Representative. It must then make a written record of its decision and the reasons for the decision which will be sent to the Subject of the complaint and the PIC's Representative in accordance with Regulation 3A 81.

## **18 Miscellaneous**

- 18.1 Meetings or hearings of the PIC, DC or AC may take place by phone or video conferencing (Regulation 3A 86). This may be, amongst other reasons, to make a reasonable adjustment for any participant, or to facilitate meetings or hearings when participants are overseas. The PIC, or the Chairs of the DC or AC in question will consider any such requests.
- 18.2 IChemE will communicate with the Subject of the complaint by any appropriate means (including but not limited to email and post), and using the contact details it holds for the Subject. All Members of IChemE are obliged to advise IChemE of their up to date contact details.
- 18.3 In this guidance the term 'in writing' includes by electronic or other means.