

- (2) An Applicant or Relevant Person may appeal against any decision or order of the Panel other than a decision to refer a matter to the Disciplinary Tribunal.
- (3) A complainant may make an application to the Panel seeking the review of a decision of an Investigator under Rule 16 to reject an allegation.
- (4) An application under paragraph (3) must be made in writing within 21 days of notification of the decision of the Investigator and, in conducting any review, the Panel may confirm the Investigator's decision, require the Investigator to investigate the matter further or consider the matter as if it was a referral made under Rule 17, but subject to such modifications as the Panel consider appropriate.
- (5) An appeal under paragraph (2) must be made in accordance with Part IV.

## PART III: THE DISCIPLINARY TRIBUNAL

## Interpretation of Part III

21. (1) In this Part, unless the context otherwise requires:

<b>Chair:</b>	means the Chair of a Disciplinary Tribunal Panel;
<b>Clerk:</b>	means the clerk to the Disciplinary Tribunal;
<b>finalised hearing date:</b>	means either the first hearing date or, where the first hearing date is varied by the Panel, that varied hearing date;
<b>first hearing date:</b>	means the hearing date set under Rule 24(1);
<b>Panel:</b>	means the members of the Disciplinary Tribunal appointed to hear a particular matter;
<b>party:</b>	means IPS and the respondent(s); and
<b>respondent:</b>	means a Relevant Person against whom an allegation is made.

(2) In this Part any reference to the Professional Conduct Panel or Investigator having referred a matter to the Disciplinary Tribunal includes a decision by an Appeals Panel under Part IV to refer a matter to the Disciplinary Tribunal.

## Disciplinary Tribunal

22. (1) The Tribunal has jurisdiction to hear matters referred to it under Part II by the Professional Conduct Panel or Investigator or by an Appeals Panel under Part IV.
- (2) The Tribunal shall determine its own procedure in accordance with these Rules, the guidance published from time to time by IPS and the overriding requirement of fairness.

## Disciplinary Tribunal Panel

23. (1) A matter that has been referred to the Tribunal shall be heard by a Panel of 3 members from the list of panellists maintained under Rule 2(1)(b), of whom 2 shall be lay members and 1 shall be a professional member.

- (2) The members of the Panel shall choose one of their number to act as Chair for the purposes of the hearing.
- (3) If, during the course of any hearing, a member of the Panel is unable to continue to attend the hearing, the remaining members may, with the consent of the parties, continue with the hearing.
- (4) Where, under paragraph (3), a matter is heard by the remaining two members and they are unable to arrive at a determination, the matter shall be re-heard by a new Panel comprising panellists who were not members of the original Panel.

### Proceedings

24. (1) Where a matter has been referred to the Tribunal, the Clerk shall, as soon as reasonably practicable:
  - (a) notify the parties that the matter has been referred to the Tribunal; and
  - (b) fix a date, time and venue for the hearing of the matter by the Tribunal.
- (2) Unless the Tribunal directs otherwise, hearings shall be held at the offices of IPS but nothing in these Rules shall require any hearing to be held outside the United Kingdom.
- (3) IPS shall, not less than 42 days before the first hearing date, lodge with the Clerk a notice setting out:
  - (a) particulars of the allegations against the Respondent that are to be heard by the Tribunal; and
  - (b) the nature of the evidence that IPS will present to the Tribunal.
- (4) IPS shall, at the same time that any notice is lodged under paragraph (2), serve a copy of that notice on the Respondent.
- (5) Not less than 28 days before the first hearing date, each party will serve on the other copies of any documentary evidence in their possession or control relating to the allegations and any witness statements upon which they intend to rely.
- (6) Any fact which needs to be proved at a hearing by the evidence of witnesses may be proved by evidence given in a witness statement and a party who requires a witness to attend a hearing for the purpose of cross-examination upon the content of a witness statement served in accordance with paragraph (5) must serve notice to that effect upon the opposing party within 7 days of disclosure of the statement.

- (7) A party shall be deemed to admit the authenticity of any document disclosed under paragraph (5) above unless, within 7 days of disclosure of the document, that party serves notice requiring the document to be proved at a hearing.

#### Directions and preliminary matters

25. (1) The Panel may at any time give directions for the management and conduct of proceedings and determine any preliminary issues raised by any party.
- (2) The Panel may give directions or determine issues under paragraph (1) without a meeting of the Panel but by two or more of the Panel advising the Clerk of their decision and, in that event, the Clerk shall notify the parties of the decision within three days of the date on which the decision was made.
- (3) Where the parties consent, a single Panel member may give directions or determine an issue under paragraph (1).

#### Additional allegations

26. Where the Panel is satisfied that it would not cause unfairness to the respondent, the Panel may permit IPS to add allegations to the matter referred to the Tribunal, and those additional allegations shall be treated as if they were included in the original matter referred to the Tribunal.

#### Hearing documentation

27. Not less than 7 days before the finalised hearing date, IPS shall produce and provide the Clerk and the respondent with copies of an indexed and paginated hearing bundle comprising:
- (a) the allegations;
  - (b) any documents relied upon by the parties;
  - (c) any witness statements; and
  - (d) any relevant notices.

#### Conduct of hearings

28. (1) Hearings shall be held in public unless the Panel is satisfied that, in the interests of justice or for the protection of the private life of the respondent, the complainant, a person giving evidence or any other person, the public should be excluded from all or part of a hearing.

- (2) The Panel shall give IPS and the respondent and, in its discretion any other person, the opportunity of being heard.
- (3) A party may be represented at a hearing by any person, whether or not legally qualified, but the Panel may refuse to permit a particular person to assist or represent a party if the Panel is satisfied that there are good and sufficient reasons for doing so.

## Evidence

29. (1) The Panel may control the evidence by giving directions as to:
  - (a) the issues on which it requires evidence;
  - (b) the nature of the evidence which it requires to decide those issues; and
  - (c) the way in which the evidence is to be placed before the Panel.
- (2) The burden of proof shall rest upon IPS and the standard of proof shall be the balance of probabilities.
- (3) Subject to the requirements of a fair hearing, the Panel may:
  - (a) admit evidence whether or not it would be admissible in civil proceedings; and
  - (b) exclude evidence that would otherwise be admissible.
- (4) The Panel may limit cross-examination.
- (5) Subject to any other provisions of these Rules, the Civil Evidence Act 1968 and the Civil Evidence Act 1995 shall apply in relation to the hearing of a matter as they apply in relation to civil proceedings.
- (6) Production before the Panel of:
  - (a) a certificate purporting to be under the hand of a competent officer of a Court in the United Kingdom or overseas that a respondent has been convicted of a criminal offence shall be conclusive evidence of the offence committed;
  - (b) a copy of the determination of any Tribunal in or outside England and Wales exercising a professional disciplinary jurisdiction shall be conclusive evidence of the facts found proved in relation to that determination;
  - (c) a copy of the judgment of any Civil Court shall be conclusive evidence of the facts found proved in relation to that judgment.

## Decisions

30. (1) Decisions of the Panel shall be made by a majority vote of the panellists present.
- (2) The Panel may:
- (a) announce its decision and reasons at the conclusion of the parties' cases;
  - (b) announce its decision at the conclusion of the parties' cases and give its reasons on a later date; or
  - (c) reserve its decision and reasons to a later date,
- (3) Where the Panel reserves its decision or reasons, the Panel shall notify the parties of its decision, reasons and any order made within 21 days of the conclusion of the parties' cases and, where necessary, the notice shall specify a date, not more than 21 days after the date of the notice, for any further hearing.
- (4) Where the Panel's decision is that one or more of the allegations against the respondent has been proved:
- (a) IPS shall inform the Panel of any previous disciplinary proceedings in which any allegation has been proved against the respondent; and
  - (b) the respondent may then make submissions in mitigation and, where appropriate, in respect of costs.
- (5) Where the Panel finds that one or more of the allegations against the respondent has been proved the Panel:
- (a) may:
    - (i) take no further action;
    - (ii) reprimand the respondent, warn the respondent as to their future conduct or both;
    - (iii) impose conditions on the respondent as it may think appropriate in respect of the respondent's conduct or, where the respondent is an individual, their employment (and such conditions may be imposed in addition to any reprimand or warning); or
    - (iv) order that the respondent be excluded from Membership or Authorisation for such period (which may be a minimum fixed or indefinite period) as it shall decide; and
  - (b) may order the respondent:
    - (i) except where the Panel has ordered that the respondent be excluded from Membership or Authorisation, to pay a fine not exceeding an amount determined by IPS from time to time; and
    - (ii) to pay costs to IPS in respect of the proceedings; and

- (c) may, in the case of a respondent that is an Authorised Body which has been excluded from Authorisation, also require the respondent to enter into a Practice Management Agreement.
- (6) For the purpose of these Rules a **Practice Management Agreement** means an agreement between IPS and an Authorised Body imposing such requirements as IPS considers appropriate in the circumstances for the orderly conduct or transfer of the Authorised Body's business, funds and client files and the terms of such an agreement may include (but are not limited to) requirements that:
- (a) the Authorised Body cease to accept new business or clients;
  - (b) the business of the Authorised Body be managed or supervised by a person appointed by IPS;
  - (c) the Authorised Body and those responsible for its management to execute powers of attorney, bank mandates or other instruments and take such other steps as are required to enable any person appointed by IPS to perform their functions under a Practice Management Agreement, including safeguarding client funds, files and other assets; and
  - (d) the Authorised Body meet the costs of any steps taken by IPS or any person appointed by it under a Practice Management Agreement.
- (7) Where the Panel finds that one or more of the allegations against the respondent has not been proved, it may order IPS to pay the reasonable costs of the respondent.
- (8) An Order of the Panel shall take effect 21 days after notification under paragraph (3) or (4) or, where a further hearing has been convened under that paragraph, 21 days after the conclusion of that hearing, unless before then a written notice of appeal has been given to the Tribunal.
- (9) Where the Panel makes an Order against a respondent under paragraph (5)(a), it may also order that the respondent's Membership or Authorisation be suspended immediately or made subject to immediate conditions until the Order takes effect in accordance with Paragraph (8) if it considers that doing so is necessary for the protection of the public, in the respondent's own interests or otherwise in the public interest.
- (10) Where the Panel makes an Order under paragraph (5) any certificate previously issued to the Relevant Person by CILEx or IPS shall cease to have effect and shall be delivered by the respondent to IPS.

#### Interim orders

31. (1) The Tribunal may at any time, on the application of the Investigator or of its own motion, consider whether it is necessary for the protection of the public, in the

interests of the Relevant Person concerned or otherwise in the public interest to suspend or restrict a Relevant Person's Membership or Authorisation pending the conclusion of proceedings before the Tribunal.

- (2) The Tribunal shall give the Relevant Person not less than 7 days' notice of a meeting to consider the imposition or review of an interim order, unless the Tribunal consider that due to the seriousness or urgency of the case a shorter period of notice is appropriate.
- (3) The notice under paragraph (2) shall inform the Relevant Person of the time, date and place of the hearing, brief details of the matters giving rise to the application for an interim order for suspension and of the right to appear before and be heard by the Tribunal.
- (4) In considering whether to make an interim order, the Tribunal shall determine its own procedure in accordance with these Rules, any guidance published by IPS and the overriding requirement of fairness.
- (5) The Tribunal may order that the Relevant Person's Membership or Authorisation be:
  - (a) suspended; or
  - (b) subject to such restrictions as the Panel considers appropriate;for a maximum period of 18 months and any such order must be reviewed by the Panel every 3 months.
- (6) Where the Panel makes an interim order against a Relevant Person that is an Authorised Body it may also require the Relevant Person to enter into a Practice Management Agreement.

## Appeals

32. (1) Decisions of the Tribunal (other than a decision to impose an interim order which shall take effect immediately) shall only take effect after the period for lodging an appeal against the decision has expired or, where an appeal is made, after the appeal has been disposed of or withdrawn.
- (2) The respondent may appeal against:
  - (a) a finding by the Tribunal that one or more allegations has been proved; or
  - (b) any sanction or costs imposed by the Tribunal.
- (3) IPS may appeal against:
  - (a) a decision of the Tribunal which, in the opinion of IPS, was made based upon a manifest error, is irrational or similarly flawed; or



- (b) the imposition by the Tribunal of a sanction which, in the opinion of IPS, is unduly lenient.
- (4) An appeal must be made in accordance with Part IV.

## PART IV: THE APPEALS PANEL

## Interpretation of Part IV

33. In this Part, unless the context otherwise requires:

<b>Appeals Clerk:</b>	means the Clerk to the Appeals Panel;
<b>appellant:</b>	means the person in whose name an appeal is made to the Appeals Panel and, in the case of an appeal under Rule 32(3), means IPS;
<b>Chair:</b>	means the Chair of an Appeals Panel; and
<b>Disciplinary Tribunal:</b>	includes a Panel of the Disciplinary Tribunal that has heard a case under Part III.

## Notice of appeal

34. (1) An appeal shall be made by giving notice in writing in accordance with this Rule.
- (2) The notice shall be addressed to the Appeals Panel at the offices of IPS and shall:
- (a) state that it is a notice of appeal and whether the appeal is made under Rule 20 or Rule 32;
  - (b) include:
    - (i) the name and address of the appellant;
    - (ii) the date, nature and other relevant details of the decision which is the subject of the appeal;
    - (iii) a concise statement of the grounds of the appeal; and
    - (iv) the name and address of the appellant's representative (if any) and state whether correspondence concerning the appeal should be sent to the representative instead of the appellant;
  - (c) be signed by or on behalf of the appellant; and
  - (d) be accompanied by a copy of any documents on which the appellant proposes to rely for the purposes of the appeal.
- (3) A notice of appeal must be lodged no later than 42 days after the date on which the decision that is the subject of the appeal was made.

### Appeals Panel

35. (1) The Appeals Panel shall comprise 2 lay members and 1 professional member from the list maintained under Rule 2(1)(c).
- (2) The members of the Appeals Panel shall choose one of their number to act as Chair for the purposes of the appeal.
- (3) An Appeals Panel shall consider and determine any appeal made in accordance with Rules 20 or 32.
- (4) At the beginning of the hearing the Chair shall explain to the parties the order of proceedings which the Appeal Panel proposes to adopt.
- (5) The Appeal Panel may conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings and the parties shall be heard in such order as the Panel shall determine, taking into account that the burden of proof rests upon the appellant.
- (6) In determining an appeal, the Appeals Panel may admit any evidence it considers fair and relevant to the case before it, whether or not such evidence would be admissible in a civil proceedings.
- (7) Having considered an appeal, the Appeals Panel may:
- (a) dismiss the appeal;
  - (b) allow the appeal and quash the decision appealed against; or
  - (c) substitute for the decision appealed against any other decision that the Professional Conduct Panel or Disciplinary Tribunal (as the case may be) could have made
- and may make such ancillary orders, including orders for costs, as it considers just and appropriate.
- (8) Decisions of the Appeals Panel shall be made by a majority vote of the panellists present.
- (9) Notice of the decision of the Appeals Panel shall be given in writing to the appellant within 21 days and shall take effect 28 days after the date on which it was made.
- (10) Where the decision in an Appeal under Rule 20(2) has the effect of referring a matter to the Disciplinary Tribunal, that referral shall be treated for all purposes as if it was made by the Professional Conduct Panel.
- (11) Appeals under Rule 20 shall normally be heard in private unless the appellant

requests otherwise.

- (12) Appeals under Rule 32 shall be heard in public, unless the Appeals Panel is satisfied that, in the interests of justice or for the protection of the private life of the appellant, any complainant, person giving evidence or any other person, the public should be excluded from all or part of a hearing.

### **Representation**

36. (1) The Appeals Panel shall give the appellant and the respondent to the appeal and, at its discretion any other person who appeared before the Professional Conduct Panel or Disciplinary Tribunal, the opportunity of being heard.
- (2) A party may be represented at a hearing by any person, whether or not legally qualified, but the Appeals Panel may refuse to permit a particular person to assist or represent a party if the Appeals Panel is satisfied that there are good and sufficient reasons for doing so.

### **Determination without convening hearing**

37. The Appeals Panel may determine an appeal without convening a hearing, on the basis of any documents or written representations provided by the parties, where:
- (a) the Appeals Panel has notified the parties of its intention to do so; and
  - (b) the parties have consented.

## PART V: OTHER MATTERS

**Notice and publication etc. of decisions**

38. (1) IPS shall cause all adverse findings and orders of the Professional Conduct Panel, Disciplinary Tribunal and Appeals Panel (Decisions) to be recorded against the relevant entry in the relevant CILEx register.
- (2) Where a Relevant Person against whom a Decision is made is
- (a) employed; or
  - (b) is a partner, director, manager of, or holds a financial interest in, a relevant body,

IPS shall notify the employer or relevant body of the Decision.

- (3) in this Rule **relevant body** means:
- (a) an Authorised Body;
  - (b) a legal services body within the meaning of s.9A of the Administration of Justice Act 1985; or
  - (c) a body licensed under Part 5 of the Legal Services Act 2007.
- (4) IPS shall give notice of all decisions to such other regulatory and oversight bodies as it considers appropriate.
- (5) IPS shall cause all decisions and the name of the Relevant Person concerned to be published in such manner as it considers appropriate.
- (6) Paragraphs (2), (4) and (5) shall not apply to the extent that the Professional Conduct Panel, Disciplinary Tribunal or Appeals Panel directs otherwise.

**Recovery of fines and costs**

39. Any fine or costs order imposed under these Rules shall be recoverable as a debt.

**Maintenance of exhibits and transcripts**

40. Any exhibits produced or used at a hearing of the Professional Conduct Panel, Disciplinary Tribunal or Appeals Panel and any recording or transcript of those proceedings shall be kept by IPS for a period of at least one year after the proceedings to which they relate.

### Annual Report

41. An annual report shall be made to the IPS Board of the work of the Investigators, Professional Conduct Panel, Disciplinary Tribunal and Appeals Panel during the previous year.

### Transitional Provisions

42. (1) These Rules shall come into force on [DATE] (the **Commencement Date**).
- (2) Any allegation received by IPS before the Commencement Date but which on that date has not been referred to the Professional Conduct Panel, Disciplinary Tribunal or Appeals Tribunal in accordance with the Investigation, Disciplinary and Appeals Rules dated 4<sup>th</sup> January 2010 (the **Old Rules**) shall be dealt with under these Rules.
- (3) Any allegation received by IPS before the Commencement Date and which on that date has been referred to the Professional Conduct Panel, Disciplinary Tribunal or Appeals Tribunal under the Old Rules shall continue to be dealt with in accordance with the Old Rules.
- (4) Any allegation received by IPS after the Commencement Date shall be dealt with in accordance with these Rules.