

INVESTIGATION, DISCIPLINARY AND APPEALS RULES

PART I GENERAL

Application of Rules, establishment of Panels and Tribunal

1. (1) Any complaint about the conduct of:

(a) a member;

(b) an entity authorised by IPS;

(each of whom is referred to in these Rules as a “relevant person”) shall be dealt with in accordance with these Rules.

(2) The Professional Conduct Panel is hereby established for the purposes set out in Part II of these Rules.

(3) There shall continue to be a body known as the Disciplinary Tribunal established for the purposes set out in Part III of these Rules.

(4) The Appeals Panel is hereby established for the purposes set out in Part IV of these Rules.

Appointment of panellists

2. (1) IPS shall appoint and maintain in accordance with paragraphs (2) – (4):

(a) a list of lay and professional members to act as panellists on the Professional Conduct Panel; and

(b) a list of lay and professional members to act as panellists on the Disciplinary Tribunal and Appeals Panel.

(2) IPS shall remove from the lists of panellists the name of any person:

(a) whose term of appointment has come to an end, unless his or her appointment to the relevant list has been renewed;

(b) who resigns from the relevant list by giving 3 months notice in writing to that effect to IPS (save that IPS may where it deems it appropriate to do so accept shorter notice); or

(c) who in the opinion of IPS has ceased to be an appropriate person.

(3) The term of appointment of a panellist shall be 5 years and no panellist shall serve for more than two terms.

(4) A person shall not at any one time be included in both the lists maintained by IPS under paragraph (1) above.

Glossary

3. In these Rules, unless otherwise provided:

“**Appeals Panel**” means the Panel established under Rule 1(4) of these Rules and as constituted from time to time;

“**applicant**” means a person applying to register with the Institute or an entity applying for authorisation from IPS;

“**appropriate person**” means a person of good character who is fit to act as a panellist in accordance with Rule 2;

“**approved regulator**” has the same meaning as in s.20 of the Legal Services Act 2007;

“**authorised person**” has the same meaning as in s.18 of the Legal Services Act 2007;

“**Council**” means the Council of the Institute of Legal Executives;

“**Council member**” means a duly elected member of the Council;

“**day**” means a business day which is not a Saturday, a Sunday or a public holiday or bank holiday in England and Wales;

“**Disciplinary Tribunal**” means the Disciplinary Tribunal established by Rule 1(3) of these Rules and as constituted from time to time;

“**Entity**” means any person or body providing or offering to provide legal services which include any reserved legal activity performed by an ILEX Practitioner;

“**the Institute**” means the Institute of Legal Executives (ILEX);

“**IPS**” means ILEX Professional Standards Ltd, a wholly owned subsidiary company of the Institute established to regulate the professional conduct of members;

“**lay member**” means a person who is not and who has never been an authorised person, a relevant person or a person registered with the Institute in any grade;

“**legal services body**” has the same meaning as in s.9A of the Administration of Justice Act 1985;

“**member**” means a person registered with the Institute in any grade;

“**notice**” means a notice given in accordance with Rules 17, 22(1)(c), 25(1), 31(2), 38(1), 38(3) (save that it shall not be necessary for the applicant to comply with Rule 5 in respect of any notice lodged with the Officer), 46(4) and 51(8);

“**Professional Conduct Panel**” means the Panel established under Rule 1(2) of these Rules and as constituted from time to time;

“**professional member**” means a Fellow of ILEX who is not a Council member or Board member of IPS and who is otherwise eligible to be appointed by IPS to either of the lists of panellists under clause 2 of these Rules.

“**relevant person**” has the meaning given in Rule 1(1).

Delegation and extension of time

4. (1) Where these Rules permit the Professional Conduct Panel to delegate a function, power or duty to a person, that power to delegate shall be interpreted in accordance with this clause.
- (2) Where a delegate has performed or exercised a duly delegated function, power or duty, that performance or exercise shall, for the purposes of these Rules, be deemed to have been performed or exercised by the Professional Conduct Panel that delegated the function, power or duty.
- (3) Where the Professional Conduct Panel has delegated a function, power or duty, it may still continue to perform or exercise that function, power or duty.
- (4) The Professional Conduct Panel may at any time revoke or amend a delegation.
- (5) Where these Rules prescribe that a person may or must do anything within a certain time or provide that a person may not do something after a certain time, the Professional Conduct Panel, the Disciplinary Tribunal or the Appeals Panel (as the case may be) may, upon application setting out good grounds for the extension of time, extend time as necessary.

Service of documents

5. (1) Any notice required to be given under these Rules may be given ~~personally to member the relevant person~~ or his or her representative in person or by sending it by guaranteed post to their last known address or by such other method as the Professional Conduct Panel, the Disciplinary Tribunal or the Appeals Panel (as the case may be) may direct.
- (2) A notice which is served in accordance with paragraph (1) shall be deemed to be served at the time of personal service or delivery or on the second working day after it was posted.
- (3) The service of any notice or document under these Rules may be proved by:
 - (a) a confirmation of posting issued by or on behalf of the Post Office or other postal operator or delivery service; or
 - (b) a signed statement from any person serving the notice or document by hand.
- (4) Where it is satisfied on reasonable grounds that it is in the public interest to do so, the Professional Conduct Panel, the Disciplinary Tribunal or the Appeals Panel (as the case may be) may:
 - (a) deem service to be effective even though the requirements of paragraph (1) have not been complied with; or
 - (b) dispense with the requirement of service altogether.

Forms

6. Where within these Rules a person is required to complete a form, in order to comply with that rule that person must duly complete a form substantially in the same format as the relevant template form appended to these Rules or prescribed from time to time by IPS.

PART II INVESTIGATION OF COMPLAINTS AND THE PROFESSIONAL CONDUCT PANEL

SECTION A: GENERAL

Interpretation of Part II

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

“**complainant**” means a person making a complaint to IPS against a memberrelevant person;

“**complaint**” means any document, communication or record of conversation setting out matters of complaint against a relevant person;

“**determination by consent**” means an agreement authorised by one lay and one professional member of the Professional Conduct Panel between IPS and a relevant person that any complaint or investigation under Rules 21 or 22 below about that relevant person ~~member~~ be disposed of by the relevant person ~~member~~ accepting that he or she has committed professional misconduct and an appropriate sanction;

“**independent practitioner**” means a self-employed member;

“**investigating practitioner**” means an authorised person appointed by IPS to investigate a complaint against a relevant person;

“**Officer**” means an officer of IPS serving the Professional Conduct Panel;

“**professional misconduct**” means professional misconduct, a breach of the Institute’s Articles of Association, Bye-laws, Regulations or Code of Conduct, or any personal conduct likely to call into question a member’s registration with the Institute or to bring the Institute or its members into disrepute.

Purpose of the Professional Conduct Panel

8. The Professional Conduct Panel is charged with considering:

- (a) complaints against relevant persons~~members~~;
- (b) declarations of prior conduct made by relevant persons ~~members~~ or persons applying to be members;
- (c) whether a relevant person ~~member~~ has committed professional misconduct whether or not a complaint has been made against the relevant persons ~~member~~ by a third party; and
- (d) what, if any, action should be taken or penalty should be imposed as a result

of (a), (b) or (c) above.

SECTION B: COMPOSITION OF THE PROFESSIONAL CONDUCT PANEL

Composition of the Panel

9. (1) At the start of any meeting, panellists shall elect one person from among their number to chair the meeting.
- (2) The quorum for meetings shall be 3, provided that there shall always be a majority of lay members.
- (3) Save as provided for in section F, decisions of the Professional Conduct Panel will be made at a meeting by those members attending that meeting.
- (4) Decisions of the Professional Conduct Panel shall be made by a majority, and no panellist may abstain from voting.

SECTION C: PRIOR CONDUCT

Duty to declare prior conduct

10. (1) Every applicant and every member-relevant person who is an individual must declare in writing to IPS or the Institute:
 - (a) any prior caution or conviction recorded against him or her in the UK or elsewhere (subject to the provisions of the *Rehabilitation of Offenders Act 1974*);
 - (b) any declaration of bankruptcy made against him or her and any arrangement made by him or her with creditors;
 - (c) any County Court Judgments against him or her;
 - (d) any proceedings taken against him or her under the *Solicitors Act 1974*;
 - (e) any order made against him or her by the Office of Legal Complaints; and
 - (f) any decision (whether under appeal or not) excluding or expelling him or her from any professional or regulatory body.

(1A) In respect of every applicant and relevant person that is a body corporate a declaration must be made in writing to IPS or the Institute if, in relation to that body:

- (a) a resolution for a voluntary winding-up of the body has ever been passed without a declaration of insolvency under section 89 of the

Insolvency Act 1986;

- (b) the body has ever entered administration within the meaning of paragraph 1(2)(b) of Schedule B1 to that Act;
- (c) an administrative receiver within the meaning of section 251 of that Act has been appointed;
- (d) a meeting of creditors has been held in relation to the body under section 95 of that Act;
- (e) an order for the winding up of the body has been made.

(2) Each of the matters referred to in paragraph (1) and (1A) is referred to in these Rules as “**prior conduct**”.

Time of declaration

11. (1) Every applicant must disclose full details of prior conduct at the earliest opportunity and, unless the conduct occurs later, on application for:

- (a) enrolment as a member of ILEX;
- (b) reinstatement as a member of ILEX;
- (c) authorisation as an entity.

(2) Every ~~member~~ relevant person must disclose full details of prior conduct at the earliest opportunity and in any event (if not previously disclosed to IPS or the Institute):

- (a) in the case of a member:
 - (i) on any application to upgrade membership;
 - (ii) on any application for higher rights of audience; and
 - (ii) on the annual subscription form.
- (b) in the case of any other relevant person, in the annual return made to IPS.

Effect of failure to disclose

12. Non-compliance with any part of this Section may be considered as professional misconduct for the purposes of these Rules.

Further details

13. Where requested by IPS, an applicant or relevant person must provide further details of

any declared prior conduct.

Procedure

14. (1) Save for where there has been a delegation under Rule 18 where a declaration of prior conduct has been made the Officer shall put before the Professional Conduct Panel the declaration, application or subscription form and all known details of the prior conduct.
- (2) The Professional Conduct Panel shall decide in accordance with Rule 16 what action is appropriate as a result of the prior conduct.

Preliminary view in relation to potential applicants

15. (1) A person who ~~is not a member but~~ is considering becoming a memberrelevant person and who has prior conduct may request a preliminary decision from the Professional Conduct Panel before completing an application.
- (2) Where a request is made under paragraph (1), the Professional Conduct Panel shall consider the request, including all relevant facts and matters, and shall:
 - (a) declare that the conduct is likely to be a bar to registration as a memberrelevant person; or
 - (b) declare that the conduct is not likely to be a bar to registration as a memberrelevant person.
- (3) Where a request is made under paragraph (1), the Professional Conduct Panel may:
 - (a) impose requirements consistent with these Rules and any other Rules of the Institute in order for the application to be successful; and
 - (b) make suggestions in relation to the application.
- (4) The Professional Conduct Panel shall give reasons for any declaration under paragraph (2)(a) and any requirement under paragraph (3)(a).

Powers of the Professional Conduct Panel

16. (1) In making its decision, the Professional Conduct Panel has the power:
 - (a) to request a memberrelevant person or applicant to provide references as to his or her conduct and suitability to be a memberrelevant person of the Institute or authorised by IPS;
 - (b) to accept an applicant for enrolment or authorisation;
 - (c) to accept an application for upgrading of membership;
 - (d) to refuse an applicant for enrolment or authorisation;

- (e) to refuse an application for upgrading of membership;
- (f) to seek advice from or refer the matter to any officer or other committee of the Institute as IPS may prescribe in guidance from time to time;
- (g) to impose any conditions on a memberrelevant person or an applicant in respect of his or her conduct or, in the case of an individual, in regard to his or her employment that it may think appropriate;
- (h) to request a memberrelevant person or applicant to give an undertaking as to his or her future conduct;
- (i) to warn or reprimand a memberrelevant person;
- (j) to decide to take no further action; and
- (k) to refer a case to the Disciplinary Tribunal.

(2) Before it reaches a decision, the Professional Conduct Panel has the power to request a memberrelevant person or an applicant who has declared an issue of prior conduct to appear before the Panel.

(3) Failure by a memberrelevant person to comply with a request under paragraph (2) may constitute professional misconduct.

(4) The Professional Conduct Panel shall give reasons for any decision under this Rule.

Notification of decision

17. (1) The Officer shall notify the memberrelevant person or applicant of the decision within 5 days of the meeting of the Professional Conduct Panel.

Delegation of decisions about prior conduct

18. (1) The Officer may determine that no action will be taken in relation to a declaration of prior conduct where:

- (a) the applicant or memberrelevant person has declared an outstanding judgment, unless there is evidence of
 - (i) persistent or deliberate failure to meet financial obligations, or
 - (ii) a related criminal offence, or
 - (iii) no arrangements being made to pay off the debts;
- (b) the applicant or memberrelevant person has declared a spent conviction or caution, (provided he or she is not a Fellow or is not applying for Fellowship);
- (c) the applicant or memberrelevant person has declared a driving offence unless
 - (i) there is a persistent pattern of offending,

- (ii) a custodial sentence is applied, or
- (iii) a period of disqualification has been imposed of 18 months or more;
- (d) the applicant or memberrelevant person is or has been subject to a bankruptcy Order or has entered into an arrangement with his or her creditors; or
- (e) the applicant or memberrelevant person is applying for Fellowship and has declared prior conduct to the Institute or IPS that the Professional Conduct Panel has previously determined should not result in further action in a previous decision.

(2) The Professional Conduct Panel may also delegate to the Officer its power to determine that no action should be taken in relation to other matters of declared prior conduct.

Duties of the Officer in the exercise of delegated powers

19. (1) Notwithstanding the powers delegated to him or her under Rule 18, the Officer may refer a declaration of prior conduct to the Professional Conduct Panel for decision.

(2) The Officer shall notify the applicant or memberrelevant person within 5 days of his or her decision including a decision to refer the declaration of prior conduct to the Professional Conduct Panel.

(3) The Officer shall provide details to the Professional Conduct Panel at its next meeting of all applications where he or she has determined that no action should be taken since its previous meeting.

SECTION D: INVESTIGATING COMPLAINTS AND POTENTIAL MISCONDUCT

Complaints and potential misconduct

20. (1) Subject to Rule 23 below, IPS shall receive and investigate every complaint that a memberrelevant person has committed professional misconduct in accordance with Rule 21 and the other rules of this section.

(2) Where IPS receives information that a memberrelevant person may have committed professional misconduct, IPS may investigate in accordance with Rule 22 and the other rules of this section, whether or not there has been a complaint by a third party.

Initial procedure on a complaint

21. The following initial procedure for dealing with a complaint under this Section shall be followed:

- (a) The Officer shall receive from the complainant all information about the complaint that the complainant wishes to give.
- (b) The Officer shall obtain the consent of the complainant to copy the complaint and any information provided under paragraph (a) to the memberrelevant person against whom the complaint is made. If the complainant does not consent to a copy of the complaint being placed before the memberrelevant person, the complaint will not be investigated any further.
- (c) The Officer shall notify the memberrelevant person that a complaint or allegation has been made against him or her which will be investigated by an investigating practitioner or the Officer in accordance with these Rules. A copy of the Rules shall be supplied to the memberrelevant person.
- (d) Where the Officer is of the opinion that the potential seriousness or potential complexity of the complaint merits it, he or she may refer the complaint or allegation to an investigating practitioner.
- (e) The investigating practitioner or Officer (as the case may be) may request such further information as he or she may require from the complainant.
- (f) Save to the extent previously provided, the investigating practitioner or Officer (as the case may be) shall provide to the memberrelevant person against whom the complaint or allegation has been made, a copy of the complaint and any information received, and the memberrelevant person shall be given an opportunity to respond to the issues so raised.
- (g) A memberrelevant person is obliged to comply with and respond to reasonable enquiries made by the investigating practitioner or Officer (as the case may be). Failure to do so may constitute professional misconduct for the purposes of instigating disciplinary proceedings against the memberrelevant person.
- (h) The memberrelevant person shall have the opportunity to provide details of any matters he or she wishes the Professional Conduct Panel to take into account when considering the complaint.
- (i) The investigating practitioner or the Officer (as the case may be) shall supply to the complainant a copy of any response of the memberrelevant person to the complaint or allegation made against him or her and shall allow not less than 10 days for the complainant to comment in writing on the memberrelevant person's response.
- (j) The investigating practitioner or the Officer (as the case may be) may seek information or advice from a third party about any issue raised.
- (k) The investigating practitioner or the Officer (as the case may be) shall prepare a written summary of the evidence or information and an analysis of the issues for consideration by the Professional Conduct Panel.
- (l) The investigating practitioner or the Officer (as the case may be) shall forward the summary to the complainant and the memberrelevant person,

and shall invite both of them to comment in writing on the summary of the evidence or information and the analysis within not less than 10 days.

- (m) Upon receipt of comments from both the complainant and the memberrelevant person or the expiry of the time allowed for comments (whichever is the sooner), the investigating practitioner or the Officer (as the case may be) shall pass the matter (including all the papers and his or her summary) to the Professional Conduct Panel.

Initial procedure on potential misconduct

22. (1) Where IPS receives information which suggests a memberrelevant person has committed professional misconduct, the Officer shall investigate the matter as follows:

- (a) The Officer shall gather information about and investigate the issues involved.
- (b) Where the Officer is of the opinion that the potential seriousness or potential complexity of the matter merits it, he or she may refer the matter to an investigating practitioner.
- (c) The Officer shall notify the memberrelevant person if he or she believes that there is an issue of professional misconduct against the memberrelevant person to be investigated in accordance with these Rules and shall supply him or her with a copy of these Rules.
- (d) The Officer may seek information or advice from third parties.

(2) Upon completing his or her investigation, the Officer shall prepare a written summary of the evidence or information and an analysis of the issues for consideration by the Professional Conduct Panel and shall forward the same to the memberrelevant person, and shall invite him or her to comment in writing on the summary within not less than 10 days.

(3) Upon receipt of comments from the memberrelevant person or the expiry of the time allowed for comments (whichever is the sooner), the Officer shall pass the matter including all the papers and his or her summary) to the Professional Conduct Panel.

Delegation of decisions about certain cases

23. (1) Where, following receipt of a complaint or information under Rule 20(1) or (2) and before passing the matter to the Professional Conduct Panel under Rule 21(m) or 22(3), the Officer is of the opinion that:

- (a) there is no evidence available to substantiate the complaint, allegation or issue of professional misconduct;

- (b) the complaint, allegation or issue of professional misconduct does not disclose any misconduct on the part of the memberrelevant person;
- (c) IPS has no jurisdiction to consider the complaint, allegation or issue of professional misconduct; or
- (d) the events giving rise to the complaint or information (or the date the complainant became aware of the grounds for his or her complaint, if later) occurred more than 1 year prior to the date the complaint was made to or information was received by IPS;

the Officer may, with the agreement of a lay and a professional member, reject the complaint or information without further reference to the Professional Conduct Panel.

- (2) Where, following receipt of a complaint or information under Rule 20(1) or (2) and before passing the matter to the Professional Conduct Panel under Rule 21(m) or 22(3), the Officer is of the opinion that:
 - (a) the evidence available demonstrates a prima facie case that the memberrelevant person has committed professional misconduct; and either
 - (b) the conduct involved is of a serious nature; or
 - (c) the memberrelevant person has previously been subject to an adverse finding by the Professional Conduct Panel or Disciplinary Tribunal and the conduct involved in the current case is of a similar nature to that in the previous case;

he or she may, with the agreement of a lay and a professional member, refer the complaint or information directly to the Disciplinary Tribunal without further reference to the Professional Conduct Panel.

- (3) The Officer and panellists shall provide reasons for rejecting or referring to the Disciplinary Tribunal any complaint or information under this Rule.
- (4) The Officer shall report to the Professional Conduct Panel all decisions made under this Rule.

Time-scales

- 24. (1) IPS, the Officer, the Professional Conduct Panel and the investigating practitioner shall aim to abide by the schedule of time scales set out in Appendix 1 of these rules when considering a complaint against or investigating information received about a memberrelevant person.
- (2) Failure to abide by the schedule of time scales set out in Appendix 1 of these rules will not invalidate the complaint, investigation or proceedings (as the case may be).

Notification

25. (1) IPS shall notify the memberrelevant person or applicant and the complainant of the date scheduled for the Professional Conduct Panel meeting when a complaint or an issue of potential misconduct will be considered.
- (2) Notification will be sent at least 10 days before the date of the meeting unless it is impractical to do so, in which case notification shall be sent as soon as possible, and in any event at least 5 days before the date of the meeting.

Powers of the Professional Conduct Panel

26. The Professional Conduct Panel shall have the power to:

- (a) accept the memberrelevant person's response to a complaint, allegation or issue of professional misconduct and decide to take no further action in relation to it;
- (b) decide that the complaint, allegation or issue of professional misconduct concerns matters beyond the jurisdiction of IPS;
- (c) call for further information or evidence;
- (d) request the memberrelevant person to provide references from employers or others as to his or her character and professional conduct;
- (e) defer a decision so that legal advice may be taken;
- (f) request a memberrelevant person to give undertakings as to his or her future conduct;
- (g) impose conditions on a memberrelevant person in respect of his or her conduct or, in the case of an individual, in regard to his or her employment that it may think appropriate;
- (h) reject a complaint, allegation or issue of potential misconduct;
- (i) reprimand a memberrelevant person or warn him or her about his or her future conduct;
- (j) refer the matter to the Disciplinary Tribunal.

Reprimands and warnings

27. The Panel may decide to reprimand a memberrelevant person or warn him or her about his or her future conduct only if it finds that the conduct complained of has been proved on the balance of probabilities, on the basis of the evidence and information before it.

Powers pending proceedings

28. A memberrelevant person shall not be able to resign from membership of the

Institute or withdraw from being licensed or authorised by IPS (as the case may be) whilst an investigation is taking place or disciplinary proceedings are being taken against him or her that relevant person.

Further powers of the Professional Conduct Panel

29. (1) Before it reaches a decision, the Professional Conduct Panel has the power to request a memberrelevant person against whom a complaint has been made under Rule 21 or who is being investigated pursuant to Rule 22 to appear before it.
- (2) Failure to comply with a request to attend may constitute professional misconduct.

SECTION E: MEETINGS OF THE PROFESSIONAL CONDUCT PANEL

Conduct of meetings

30. (1) Meetings of the Professional Conduct Panel shall be held in private.
- (2) Save in the case of a hearing under Rule 31 below, where a memberrelevant person is entitled as of right to appear, where a memberrelevant person or applicant so requests within 3 days of receiving the notice of the date scheduled for the meeting, he or she has the right to appear before and be heard by the Professional Conduct Panel regardless of whether the Panel requested his or her attendance.
- (3) A memberrelevant person or applicant who appears before the Professional Conduct Panel shall have the opportunity of being heard before it and to be represented or assisted by a Fellow, an authorised person or, with the leave of the Professional Conduct Panel, some other person.
- (4) Where the Professional Conduct Panel decides it is appropriate, or where the memberrelevant person or applicant requests it within 3 days of receiving the notice of the date scheduled for the meeting, the Officer will arrange for an interpreter, reader or signer to be appointed to attend the meeting.
- (5) All meetings shall be held at The Institute of Legal Executives offices at Kempston Manor unless the Panel decides otherwise. Nothing in these Rules shall be read as requiring any meeting to be held outside the United Kingdom.
- (6) Minutes shall be taken of the meetings and a record made of the decisions of the Professional Conduct Panel against the entry for the memberrelevant person concerned for such periods as IPS shall indicate in guidance from time to time.
- (7) The Professional Conduct Panel shall make an annual report to IPS Board and to Council of its work during the previous year.
- (8) In considering a matter, the Professional Conduct Panel:

- (a) is not bound by the findings, views or analysis of an investigating practitioner or the Officer;
 - (b) may require or invite and receive further representations from the memberrelevant person;
 - (c) shall take into account any further representations and material adduced by the memberrelevant person.
- (9) A memberrelevant person is obliged to comply with and respond to reasonable enquiries made by the Professional Conduct Panel and failure to do so may be considered professional misconduct for the purposes of disciplinary proceedings against the memberrelevant person.

Interim orders for suspension

31. (1) The Professional Conduct Panel may at any time either on the application of the Officer or of its own motion, consider whether it is necessary for the protection of the public or in the public interest or in the interests of the memberrelevant person concerned, to suspend that person's membership of ILEX or authorisation pending a hearing before the Disciplinary Tribunal.
- (2) The Officer or the Professional Conduct Panel as the case may be shall give the memberrelevant person no less than 7 days notice of a hearing to consider the imposition or review of an interim order for suspension, unless the Professional Conduct Panel 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 memberrelevant 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 his or her right to appear before and be heard by the Professional Conduct Panel.
- (4) IPS may, but need not, be represented at the hearing by a Fellow (who may not be a member of the Council, the Professional Conduct Panel, Appeals Panel or Disciplinary Tribunal), or by an authorised person.
- (5) In considering whether to make an interim order for suspension, the Professional Conduct Panel 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.
- (6) The Professional Conduct Panel may order that the memberrelevant person be suspended from membership of the Institute or authorisation for a maximum period of 18 months which order must be reviewed by the Professional Conduct Panel every 3 months.

- (7) Where the Professional Conduct Panel makes an interim suspension order against an independent practitioner entity it may also direct IPS to make such arrangements for the orderly transfer of the independent practitioner's entity's client files and monies as are appropriate in the circumstances.

Procedure

32. (1) All decisions of the Panel made at a meeting shall be made by a majority of the panellists present, with no panellist being permitted to abstain from voting.
- (2) The Panel shall give reasons for its decisions and shall advise of the right of an appeal.
- (3) IPS shall within 5 days notify the member relevant person and the complainant of the decision of the Professional Conduct Panel.
- (4) All decisions of the Professional Conduct Panel shall take effect after the period for lodging an appeal against its decision has expired, save for a decision to make an interim suspension order under Rule 31 which shall take effect immediately.
- (5) Where the Panel has ordered the Officer to do so, he or she shall cause the findings and orders of a Panel to be published in The Legal Executive Journal and the IPS website as soon as practicable, provided that no appeal has been brought during that time.

SECTION F: PAPER APPLICATIONS

Power to decide certain matters without a meeting

33. (1) Where:
- (a) the Officer, a lay member and a professional member agree that it is appropriate to do so, or
 - (b) a request has been made for a preliminary view under Section C, or
 - (c) a declaration of prior conduct has been made, or
 - (d) in relation to complaints and allegations of professional misconduct, the investigating practitioner or the Officer (as the case may be) has indicated to the Professional Conduct Panel that it is appropriate to decide the matter without a meeting, or
 - (e) the Professional Conduct Panel is required to review an interim suspension order under Rule 31(6) and the member relevant person agrees:

the Professional Conduct Panel may decide a matter without a meeting.

- (2) Where in relation to complaints and allegations of professional misconduct, the

Professional Conduct Panel has decided that it is appropriate to decide the matter without a meeting, the only powers the Panel may exercise under Rule 26 are those in paragraphs (a) to (h) inclusive.

(3) Where in relation to a declaration of prior conduct, the Professional Conduct Panel has decided that it is appropriate to decide the matter without a meeting, the only powers the Panel may exercise under Rule 16(1) are those in subparagraphs (a), (b), (c), (f), (j) or (i).

(4) Where in relation to a review of an interim suspension order under Rule 31(6), the Professional Conduct Panel has decided that it is appropriate to decide the matter without a meeting, the Panel may determine either that the order continue or revoke it as appropriate.

(5) Where:

(a) the Officer is of the opinion that the evidence available demonstrates a prima facie case that the memberrelevant person has committed professional misconduct; and

(b) the memberrelevant person agrees that he or she has committed professional misconduct;

they may agree a determination by consent.

(6) The Officer and the memberrelevant person may agree any sanction or combination of sanctions available to the Professional Conduct Panel under Rule 26 or the Disciplinary Tribunal under Rule 46(6), save that the Officer shall not seek costs as part of any determination by consent.

(7) Failure to comply with the terms of a determination by consent shall constitute professional misconduct.

(8) It shall be a term of any determination by consent that IPS may at its absolute discretion notify any person or publish the terms of the determination by consent.

Procedure

34. (1) Save in the case of a determination by consent under Rule 33(5), where the Professional Conduct Panel resolves to decide a matter without a meeting, it shall instruct the Officer to send all the necessary papers, including a response form, to a quorum of Professional Conduct Panel panellists.

(2) Within 5 days of receipt of the papers, the Professional Conduct Panel panellists shall inform IPS in writing of their decisions.

(3) If a majority decision is reached about a case, based on the responses received,

the Officer shall make a record of that decision and notify it to the memberrelevant person or applicant within 5 days of receiving the decisions of the Professional Conduct Panel members.

- (4) If no majority decision is reached the matter shall be put to the Professional Conduct Panel again when it next meets.

SECTION G: APPEALS

Appeals

35. (1) A memberrelevant person or applicant may appeal against any decision or order of the Professional Conduct Panel other than a decision to refer the matter to the Disciplinary Tribunal
- (2) Where the Officer has exercised his or her power under Rule 23(1) to reject a complaint, or allegation of professional misconduct; the complainant may appeal against that decision.
- (3) An appeal must be made within 15 days of notification of the decision of the Professional Conduct Panel and in accordance with Part IV.

PART III THE DISCIPLINARY TRIBUNAL

SECTION A: GENERAL

Interpretation of Part III

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

“applicant” means the person acting on behalf of IPS in respect of a matter referred to the Disciplinary Tribunal;

“Chair” means the Chair of a Tribunal Panel, being a panellist chosen from amongst those whose names appear on the list maintained by IPS under Rule 2(1)(b);

“Chief Executive” means the Chief Executive of ILEX;

“complainant” means a person who made a complaint to IPS against a member of the Institute;

“finalised hearing date” means either the first hearing date or where the first hearing date is varied by the Panel not more than 14 days before the hearing is due to commence, that varied hearing date;

“first hearing date” means the hearing date set under Rule 38(2) or such later date

as may be fixed by the Officer;

“**the Officer**” means the officer of IPS serving the Disciplinary Tribunal;

“**the Panel**” means the members of the Disciplinary Tribunal appointed to hear a particular matter;

“**party**” means the applicant and the respondent;

“**penalty and costs hearing**” means a hearing for the purpose of deciding the matters referred to in Rule 46(5)-(7) below;

“**respondent**” means the relevant person ~~member~~ against whom a complaint or allegation of professional misconduct is made.

- (2) In this Part any reference to the Professional Conduct Panel having referred a matter to the Disciplinary Tribunal is deemed to include a decision by an Appeals Panel under Part IV to refer a matter to the Disciplinary Tribunal.

Constitution and jurisdiction of the Disciplinary Tribunal

37. (1) The Disciplinary Tribunal has jurisdiction to hear matters referred to it under Part II by the Professional Conduct Panel or by an Appeals Panel under Part IV.
- (2) The Disciplinary 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.

SECTION B: PROCEDURE

Commencement

38. (1) Where the Professional Conduct Panel has referred a matter to the Disciplinary Tribunal, the Officer shall, as soon as reasonably practicable:
- (a) notify the complainant (if any) and the respondent that the Professional Conduct Panel has referred the matter to the Disciplinary Tribunal; and
 - (b) make all necessary arrangements for a hearing by the Disciplinary Tribunal.
- (2) The Officer shall, not later than 3 months after the date upon which the referral is received by the Disciplinary Tribunal from the Professional Conduct Panel or the Appeals Panel fix a date, time and venue for the hearing of the matter by the Disciplinary Tribunal.
- (3) Where the Professional Conduct Panel has referred a matter to the Disciplinary Tribunal, the applicant shall, not less than 30 days before the first hearing date, lodge with the Officer a *Notice of Application to the Disciplinary Tribunal* setting out:
- (a) the allegations made against the ~~member~~ relevant person that are to be

- heard by the Disciplinary Tribunal,
- (b) the nature of the evidence that the applicant will present to the Disciplinary Tribunal to prove the allegations, and
 - (c) any other information relevant to the allegations that is in the possession of the applicant,

and shall, within the same time, serve a copy on the Respondent.

Selection of Disciplinary Tribunal members to hear a matter

39. (1) Where a matter has been referred to the Disciplinary Tribunal, that matter will be heard by 3 members of the Disciplinary Tribunal, of whom 2 shall be lay members and 1 shall be a professional member.
- (2) Upon a matter being referred to the Disciplinary Tribunal, the Officer shall select the members to hear the matter from the list maintained by IPS under Rule 2(1)(b).
 - (3) The members of the Disciplinary Tribunal selected to hear a matter shall constitute the Panel.
 - (4) IPS may appoint an independent authorised person or an officer to advise the Panel in the discharge of its functions.
 - (5) The members of the Panel shall choose one of their number to act as Chair for the purposes of that hearing.
 - (6) Where, 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.
 - (7) Where, pursuant to paragraph (6), a matter is heard wholly or in part by the remaining two members and they are unable to arrive at a determination, the Application shall be re-heard by a new Panel comprising members of the Disciplinary Tribunal who were not members of the original Panel.

Preliminary meetings of the Panel

40. (1) The Panel may at any time determine any preliminary issues raised by any of the parties including (without limitation):
- (a) the calling of witnesses;
 - (b) the adjournment of the hearing;
 - (c) directions as to the parties for a hearing;
 - (d) the admission of new evidence;

- (e) the variation of time limits;
 - (f) the variation or postponing of the first hearing date;
 - (g) evidential and procedural issues;
 - (h) the withdrawal of the referral to the Disciplinary Tribunal.
- (2) The Panel may determine issues under paragraph (1) without a meeting of the Panel but by two or more of the Panel advising the Officer of their decision.
- (3) Where all parties consent, a single Panel member may determine an issue under paragraph (1).

Additional charges

41. (1) Where the Panel is satisfied that it would not occasion unfairness to the respondent and subject to paragraph (2), the Panel may allow an applicant to add allegations to the matter referred to the Disciplinary Tribunal, and those additional allegations shall be treated as if they were included in the original matter referred by the Professional Conduct Panel.
- (2) The Panel shall not allow an applicant to add to the complaints referred to the Disciplinary Tribunal less than 10 days before the commencement of the finalised hearing date.

Service of documents and witness statements

42. (1) Not less than 20 days before the first hearing date, each party will serve on the other copies of any documentary evidence in their possession or power relating to the allegations and any witness statements upon which they intend to rely.
- (2) A party shall be deemed to admit the authenticity of any document disclosed under paragraph (1) above unless he/she serves notice that he/she wishes the document to be proved at the hearing within 5 days of disclosure of the document.
- (3) The general rule is that any fact which needs to be proved at a hearing by the evidence of witnesses is to be proved by evidence given in a witness statement.
- (4) Any party who requires a witness to attend the hearing for the purpose of cross-examination upon the content of a witness statement served in accordance with paragraph (1) above must serve notice to that effect upon the opposing party within 5 days of disclosure of the statement.

Evidence

43. (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) Subject to the requirements of a fair hearing, the Panel may:
- (a) admit evidence whether or not it would be admissible in a Court of Law; and
 - (b) exclude evidence that would otherwise be admissible to ensure fairness between the parties.
- (3) The Panel may limit cross-examination.
- (4) 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.
- (5) 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.

SECTION C: THE HEARING

Documentation

44. (1) The parties shall use all reasonable endeavours to agree an indexed and paginated hearing bundle comprising:
- (a) the allegations;
 - (b) the documents relied upon by the parties;
 - (c) the witness statements; and
 - (d) any relevant notices.
- (2) Not less than 5 days before the finalised hearing date, each party shall prepare and provide the Officer with one copy of an indexed and paginated hearing bundle comprising:
- (a) the allegations;

- (b) the documents relied upon by the parties;
- (c) the witness statements; and
- (d) any relevant notices.

Conduct of hearings and representation

45. (1) All hearings shall be open to the public, save where the Panel considers that the particular circumstances of the case outweigh the public interest in holding the hearing in public.
- (2) The Panel shall give the applicant and the respondent and, at its discretion, any other person, the opportunity of being heard.
- (3) The Panel shall permit the respondent to be represented by a Fellow or authorised person or, with the leave of the Panel, to be represented or assisted by some other person.
- (4) IPS may, but need not, be represented by a Fellow (who may not be a member of the Council, Professional Conduct Panel, Appeals Panel or Disciplinary Tribunal), or by an authorised person.

The decision

46. (1) The burden of proof to prove the facts and misconduct alleged against the respondent shall rest upon the applicant.
- (2) The standard of proof shall be the balance of probabilities.
- (3) A decision as to an allegation may be by a majority of the Panel and no panellist may abstain from voting.
- (4) The Panel may:
- (a) announce its decision at the conclusion of the parties' cases and announce its findings then,
 - (b) announce its decision at the conclusion of the parties' cases and give its findings on a later date, or
 - (c) reserve its decision and findings to a later date,

but in any case where the decision or findings are not announced at the conclusion of the parties' cases, the Panel shall notify the parties of the decision and of the findings within 10 days of the conclusion of the parties' cases and, where necessary, the notice shall specify a date, not more than 15 days after the date of the notice, for a penalty and costs hearing.

- (5) Where the Panel's decision is that one or more of the allegations against the respondent has been proved:
- (a) the Officer 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.
- (6) Where the Panel finds that one or more of the allegations against the respondent has been proved:
- (a) the Panel may:
 - (i) order that the respondent be excluded from being a member of the Institute or authorised as an entity for such period as it shall decide (which period may be a fixed or an indefinite period) and the Panel may make recommendations or observations with regard to the future reinstatement of the respondent as a member or re-authorisation of the entity, or
 - (ii) impose conditions on a memberrelevant person in respect of his or her conduct or, where the memberrelevant person is an individual, in regard to his or her employment that it may think appropriate, or
 - (iii) reprimand a memberrelevant person or warn him or her about his or her future conduct, or
 - (iv) take no further action; and
 - (b) may order the respondent:
 - (i) (save where the Panel have ordered that the respondent be excluded from being a memberrelevant person of the Institute) 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 it has brought against him.
- (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 compensation to him or her.
- (8) Within 15 days of the conclusion of the penalty and costs hearing, the Panel shall notify the parties of its Order and reasons.
- (9) An Order of the Panel shall take effect 15 days after notification under paragraph (4) (or, where a penalty and costs hearing has been convened, after notification under paragraph (8)) unless, before then, written notice of appeal has been given to the Officer.
- (10) Where the Panel makes an Order under paragraph 6(a)(i) or (ii) against a

respondent, it may, if it considers it necessary for the protection of the public or in the public interest or in the respondent's own interests, order that his membership or authorisation as an entity be suspended immediately or made subject to immediate conditions pending the taking effect of the Order under paragraph (9).

- (11) Where the Panel makes an Order under paragraph (6)(a)(i), any membership card and every certificate of designation as a Fellow or other grade and any Practising Certificate then held by the respondent shall cease to be of effect and shall be delivered by him or her to the Chief Executive to be endorsed as having been cancelled after the appeal period has ended.

Maintenance of documents and publication

47. (1) Any books, papers or exhibits produced or used at a hearing and any recording or transcript of the proceedings shall be kept by IPS for a period of at least one year after the making of the Order to which they relate.
- (2) The Officer shall cause all findings and orders of the Disciplinary Tribunal to be recorded against the entry in the relevant register for such periods as IPS shall indicate in guidance from time to time.
- (3) The Officer shall give notice of all findings and orders of a Panel to approved regulators and any other regulatory body that the Panel shall deem appropriate.
- (4) Where the Panel has ordered the Officer to do so, he/she shall on the expiry of the appeal period cause the findings and orders of a Panel to be published in The Legal Executive Journal and the IPS website as soon as practicable, provided that no appeal has been brought during that time.
- (5) The Panel shall consider whether any other person or organisation should be given notice of findings or an order made in respect of a ~~member~~ relevant person.
- (6) Where a ~~member~~ relevant person against whom an order is made is employed, or is a partner, director, manager or otherwise holds a financial interest in a legal services body or other licensed body, the Officer shall notify the member's employer or legal services body or licensed body as appropriate unless the Panel has ordered otherwise.
- (7) Unless the Panel directs that there exist special circumstances which justify its omission from publication, the publication of the findings and order shall include the name of the relevant person concerned.
- (8) The Disciplinary Tribunal shall make an annual report to the IPS Board and to Council of its work during the previous year.

Right of appeal

48. (1) Where the Panel has found that one or more of the allegations against the respondent has been proved, the respondent may appeal to the Appeals Panel against that finding or against the penalty imposed (or both) in accordance with this Rule.
- (2) The respondent must lodge the appeal in the form approved by IPS for that purpose:
- (a) where he attended or was represented at the hearing at which the Panel announced the penalty, within 15 days of the date of that announcement; or
- (b) otherwise, subject to Rule 48(4), within 15 days of being served with the Panel's order.
- (3) The appeal notice must be lodged with IPS at its offices at Kempston Manor, Kempston, Bedford.
- (4) The appeal shall be heard and determined in accordance with Part IV.

PART IV THE APPEALS PANEL

SECTION A: GENERAL

Interpretation of Part IV

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

"appellant" means the person in whose name an appeal is lodged with the Appeals Panel;

"the Disciplinary Tribunal" includes a Panel of the Disciplinary Tribunal that has heard a case under Part III;

"the Officer" has the meaning given to it in Part III;

"the Panel" means the Professional Conduct Panel or the Panel of the Disciplinary Tribunal that dealt with a matter previously as the context requires.

Grounds for appeal

50. (1) The only grounds for an appeal against a decision of a Panel are one or more of the following:
- (a) the decision of the Professional Conduct Panel or Disciplinary Tribunal was wrong in that the Professional Conduct Panel or Disciplinary Tribunal gave insufficient weight to or drew incorrect conclusions from any material before it, which was or should have been material to its determination;

- (b) the decision was flawed because of a serious procedural or other irregularity in the proceedings before the Professional Conduct Panel or Disciplinary Tribunal;
 - (c) the appellant has acquired new evidence that could not have been submitted to the Professional Conduct Panel or Disciplinary Tribunal and if the evidence had been available, would have been likely to influence its decision;
 - (d) the penalty imposed by the Disciplinary Tribunal under Rule 46(6) was excessive in light of the Disciplinary Tribunal's decision on the facts or the appellant's circumstances.
- (2) Unless the appellant is appealing under paragraph (1)(c), the appeal shall not be by way of a rehearing.

Appeals Panel

51. (1) The Appeals Panel shall comprise 2 lay members and 1 professional member from the list maintained by IPS under Rule 2(1)(b) who did not sit on the Panel which previously dealt with the matter.
- (2) An Appeals Panel shall consider and determine any appeal made in accordance with Rules 35 or 48.
 - (3) In determining the 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 Court of Law.
 - (4) The Appeals Panel shall determine its own procedure in accordance with these Rules and the overriding requirement of fairness.
 - (5) The members of the Appeals Panel shall choose one of their number to act as Chair for the purposes of the appeal.
 - (6) The Appeals Panel shall have power to affirm or vary the findings and order of the Panel or Tribunal and to make such ancillary orders, including orders for costs, as seem just and appropriate to it.
 - (7) Decisions of the Appeals Panel shall be made by a majority.
 - (8) Notice of the findings and decision of the Appeals Panel shall be given within 15 days in writing to the member concerned and shall take effect 20 days after the date on which the findings and order were made.
 - (9) Appeals under Rule 35 shall normally be heard in private unless the appellant requests otherwise.

- (10) Appeals under Rule 48 shall normally be heard in public, unless the Appeals Panel consider that the interest of justice require part or all of the appeal to be heard in private.

Representation

52. (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 Panel, the opportunity of being heard.
- (2) The Appeals Panel shall allow the appellant to be represented by a Fellow or authorised person or, with the leave of the Appeals Panel, to be represented or assisted by some other person.
- (3) IPS may, but need not, be represented by a Fellow (who may not be a member of Council, Professional Conduct Panel, Disciplinary Tribunal or Appeals Panel), or by an authorised person.

Maintenance of documents and publication

53. (1) Any books, papers or exhibits produced or used at a hearing and any recording or transcript of the proceedings shall be kept by IPS for a period of at least one year after the making of the order to which they relate.
- (2) The Officer shall give notice of the decision of an Appeals Panel to approved regulators and any other person or organisation that the Appeals Panel shall deem appropriate.
- (3) Where the appeal is not entirely successful and where the Appeals Panel has ordered that he/she do so, the Officer shall cause the decision of an Appeals Panel to be published in The Legal Executive Journal and the IPS website as soon as practicable.
- (4) Where the appellant is employed or is a partner, director, manager or otherwise holds a financial interest in a legal services body or licensed body and the appeal is not entirely successful, the Officer shall notify the appellant's employer or legal services body or licensed body as appropriate of the decision and of the Panel's findings and order under Part III, unless an Appeals Panel has ordered otherwise.
- (5) Unless an Appeals Panel directs otherwise, the publication of the decision shall include the name of the relevant person concerned.