

IGEM

Disciplinary Regulations

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1 Introduction and Definitions

The following Disciplinary Regulations are made and published by the *Council of the Institution of Gas Engineers and Managers*, (IGEM), under the authority of the By-Laws of the Institution.

These Regulations are in compliance with the Engineering Council Guidelines, which were published in 2011 in order to embrace the *Human Rights Act 1998, as amended*, other relevant legislation and to deliver natural justice to the parties concerned.

The Engineering Council requires, through its Charter and Bye-laws (Article 5(5) and Bye-law 35), that licensed Engineering Institutions have a *Code of Professional Conduct* and supporting Disciplinary and Appeal procedures. IGEM's *Code of Conduct* has been revised in 2013 to comply with Engineering Council guidance.

In the IGEM Disciplinary Regulations, "member" means a member of any class referred to in the Institution's By-Laws and "Council" means the Council of the Institution of Gas Engineers and Managers.

A subject member who resigns, or whose membership lapses through non-payment of fees or subscriptions, after a complaint against him/her has been lodged with the Institution, shall be deemed to remain in membership until completion of the appropriate Investigation, Disciplinary and Appeal processes.

A legitimate complaint against a subject member shall be framed as an alleged breach of a provision of the IGEM Code of Conduct. The complaint shall be communicated to the IGEM Chief Executive Officer for Council action in compliance with these Disciplinary Regulations.

The Disciplinary Process is the responsibility of Council and it shall delegate the necessary powers under IGEM's Charter and By-Laws to Committee Chairmen and members in order to operate the Disciplinary and Appeals processes. While the Council shall be notified of the progress and outcome of a disciplinary case, it shall not be invited to ratify the finding or sanction, since it has not heard the evidence. If Council chooses to discuss a case, any person who is involved or has been involved in the case shall absent him or herself.

2 Legal Principles and Processes

2.1 Primary Purpose

2.1.1 The IGEM Disciplinary Regulations are based upon the Engineering Council Guidance of 2011. The overarching purpose of these Disciplinary Procedures was stated by Lord Collins, now a retired Justice of the Supreme Court:-

The primary purpose of disciplinary proceedings is not to punish, but to protect the public, to maintain public confidence in the integrity of the profession, and to uphold proper standards of behaviour.

Lord Collins, R (on the application of Coke-Wallis) v ICAEW, Supreme Court, 2011

2.2 Natural Justice and Human Rights Legislation

2.2.1 The Engineering Council's opinion on their own procedure is that:-

"The procedure outlined accords with the currently accepted principles of natural justice. It is also considered to be consistent with many of the principles of the "right to a fair trial" contained in Article 6 of the European Convention on Human Rights and given further effect in English law by the Human Rights Act 1998 (HRA). The Engineering Council's view, supported by specialist legal advice, is that HRA generally does not apply to this procedure because institution membership and Engineering Council registration are voluntary and the Institution is not a "public authority" or carrying out the functions of a public nature as defined in HRA."

2.2.2 There shall be a presumption of innocence until a breach of the *Code of Conduct* is admitted or proven.

2.3 Gathering of evidence

2.3.1 The evidence provided to IGEM shall not be bound by the judicial rules of evidence. IGEM may receive such oral, documentary or other evidence as it appears to it to be relevant to the complaint. Considering the possibility of future appeals, Appeals Panels shall not receive evidence that would not be admissible in a Court of Law, if it would be unjust to the appellant to do so.

2.3.2 The gathering of evidence and hearings shall be conducted with transparent fairness. They shall comprise a statement by the investigator or his/her representative of the complaint and the evidence to support it. The Subject Member, or his/her representative, may cross-examine witnesses on the evidence and may make a rebuttal with further evidence, which is also open to cross-examination.

2.3.3 Neither party shall be 'ambushed' with new evidence which has not been disclosed in advance.

2.4 Conduct of Hearings and Natural Justice

2.4.1 Although these Disciplinary Regulations and related processes are conducted in private, they shall be clear, open, fair, unbiased and proportionate.

2.4.2 The Investigation, Disciplinary and Appeals Panels shall act as impartial assessors of the complaint and the evidence provided.

2.4.3 All persons involved shall respect the confidentiality of the proceedings.

2.4.4 Training shall be given to those involved in assessing and adjudicating complaints and Committees shall be supported by appropriate legal expertise.

2.5 Judgement by Peers

2.5.1 Staff may provide secretarial support and procedural advice, but must not influence or participate in the decision-making process, even if they are members of the Institution.

2.6 Burden of Proof

2.6.1 The burden of proof applied in the IGEM Disciplinary Processes shall be the normal civil standard, i.e. the 'balance of probabilities'. However, in cases where a 'licence to practise' may be involved, judicial guidance indicates that the burden of proof shall be 'beyond reasonable doubt.'

2.7 Timescales

2.7.1 Clear timescales are established for each stage of the process and progress shall be actively monitored by a senior staff member.

2.8 Establishing Legal Addresses for Communications to Parties

At the outset of proceedings, each party shall provide to the IGEM Secretariat an official postal address for communications.

Where it is agreed with a party that electronic communications are acceptable, the means shall be agreed with the IGEM Secretariat, together with relevant addresses. Where electronic means of communication are agreed, evidence of receipt of each communication shall be provided by each of the parties concerned. The evidence of receipt shall follow contemporary Court practice.

3 Formation of Independent Committees

3.1 Conflict of interest

3.1.1 If an individual who is asked to serve on any Committee under the IGEM Disciplinary Process has a conflict of interest in relation to any part of the allegations, or has a connection with the Subject Member or the complainant, which creates a real danger of bias, or which could cause others to think it could influence his/her decision, then that individual shall declare it and disqualify him/herself from participating at any stage of the process.

3.2 Eligibility

3.2.1 No member shall be eligible to hold office as a Chairman or member of the Investigation Committee, the Disciplinary Committee and the Appeals Committee at the same time or to hear the same or any related charges of professional misconduct.

No person shall participate in decision-making in more than one stage of the process in any particular case.

3.3 Reporting Progress and Determinations to Council

3.3.1 The *Investigation Committee*, the *Disciplinary Committee* and the *Appeal Committee* shall each have a Chairman who reports the Committee's determination directly to Council.

3.4 **Staff support**

3.4.1 Staff supporting Investigation, Disciplinary and Appeal proceedings shall comply with the same obligations as the committee members with regard to confidentiality and exclusive participation in the three processes.

3.5 **Special considerations**

3.5.1 In more serious cases, including where a 'licence to practise' may be involved, one or more lay members, i.e. persons not from the same discipline or profession as the institution members, shall be included on the Disciplinary Committee.

3.5.2 Where the allegation relates to matters of a specialised nature the Disciplinary Committee should consider engaging an independent expert witness. The Disciplinary Committee may make a decision after examining the evidence or, in more serious or complex cases, organise an extended hearing to which all parties are invited.

3.6 **Number of Eligible Committee Members**

Recognising the Eligibility Regulations above, the:-

3.7 **Investigation Committee**

3.7.1 The Council shall appoint not less than three members of the Council to investigate all the circumstances of any complaint or question as to whether a member has committed a breach of the *IGEM Code of Conduct*. Such body shall hereinafter be called the '*Investigation Committee*'.

3.8 **Disciplinary Committee**

3.8.1 The Council shall appoint not less than four members of whom two shall be members of the Council and two shall be members of the Institution who are not members of the Council. Such body shall hereinafter be called the '*Disciplinary Committee*' and it shall hear all charges of professional misconduct arising out of the proceedings of the Investigation Committee.

3.9 **Appeal Committee**

3.9.1 The Council shall appoint not less than four members, of whom two shall be members of the Council and two shall be members of the Institution who are not members of the Council, plus one lay person not a member of the Institution. Such a body shall hereinafter be called the *Appeal Committee* and shall hear the Appeal against determinations of the Disciplinary Committee. It shall be as independent of IGEM Council as is practical bearing in mind the need to understand and weigh specialist subject matter.

4 **Investigation Committee Task**

If any allegation of professional misconduct on the part of a member shall be received from any source, the same shall in the first instance be referred to the Investigation Committee, which may also if deemed appropriate, initiate an enquiry where it has reason to suppose that a subject member may have been in breach of the *IGEM Code of Conduct*.

4.1 **Civil or Criminal Proceedings in progress or in prospect**

4.1.1 The Investigation Committee shall first determine whether any criminal or civil court proceedings are likely or under way in relation to the alleged breach of the *IGEM Code of Conduct*. If so, then the disciplinary hearing shall not proceed until Court proceedings, including any appeal, are complete, since the Court proceedings might otherwise be prejudiced.

4.1.2 Where the subject member has been convicted of a criminal offence or found liable in a Civil Court, the disciplinary hearing must separately determine whether the subject's conduct (including, but not limited to, that proven in Court) amounts to a breach of the Code of Conduct. An adverse Court verdict shall not in itself form the basis of a complaint.

4.2 **Preliminary Investigation**

4.2.1 Once a complaint has been received a *Preliminary Investigation* will decide whether or not there is a case to answer. The investigation shall first determine whether the alleged misconduct would, if admitted or proved, lie within the ambit, or jurisdiction, of the Disciplinary Committee. If so, evidence shall be assembled to assess the validity of the complaint.

4.3 **Natural Justice**

4.3.1 The Investigation Committee shall make such enquiries by correspondence or otherwise, as it may in its absolute discretion think fit, of the said allegation in a manner consistent with natural justice.

4.4 Informing the Subject Member

4.4.1 The member who is the subject of the complaint shall be informed and kept informed of developments; evidence submitted by the complainant shall be disclosed to the subject member and vice versa.

4.5 No Case to Answer

4.5.1 On receiving a subject member's observations, the Investigation Committee may dismiss the case if satisfied that the allegation is unfounded or does not disclose a *prima facie* case. It may also dismiss the case if it considers that the alleged professional misconduct is of such a trivial nature that it calls for no action.

4.5.2 A decision of '*clearly unfounded and no case to answer*' shall result in the disposal of the complaint. The subject member and the complainant shall be informed of the reason for the decision, e.g. lack of jurisdiction, insufficiency of evidence provided or that the alleged professional misconduct is of such a trivial nature that it calls for no action.

4.6 Special Right of Appeal on 'No Case to Answer'

4.6.1 If the Complainant accepts the Investigation Committee's determination, the matter is concluded. Where the finding is '*no case to answer*', the complainant shall have a Right of Appeal, see below *Section 6: Appeals*.

4.7 All other determinations

4.7.1 In all other findings, the Investigation Committee shall send Written notice to the subject member of the nature and particulars of the allegation and invite the subject member to put forward his/her observations in writing to the Investigation Committee. The subject member shall at the same time be informed that he/she is under no obligation to make any observations to the Investigation Committee. If he/she does not do so or if the Committee does not regard any explanations given by the subject member as satisfactory, the evidence of professional misconduct will be referred to the Disciplinary Committee, which will then give the subject member a full opportunity of presenting his/her case.

4.8 Commencing the transfer of evidence and findings to the Disciplinary Committee

4.8.1 As soon as practicable after an allegation has been referred by the Investigation Committee to the Disciplinary Committee, the Investigation Committee shall arrange that:-

Notice in writing shall be given by registered post to the subject member concerned that the allegation has been referred to the Disciplinary Committee and at the same time a copy of these Regulations shall be sent to the subject member; see clause 2.8: Agreeing the Means of Communication.

The member shall be informed of the date of the meeting of the Disciplinary Committee at which (subject to any observations of the subject member with regard to the date) the allegation will be dealt with; and Information shall be given to the subject member as to the practice of the Disciplinary Committee in relation to the hearing of allegations and the manner in which the subject member may be represented before the Committee.

4.8.2 As soon as practicable after an allegation has been referred by the Investigation Committee to the Disciplinary Committee, the Investigation Committee shall place before the Disciplinary Committee such information as is available to it in relation to the allegation and may, if it thinks fit, employ solicitors or counsel for the purpose or may nominate one of its members to conduct the case.

5 Disciplinary Committee Task

5.1 Natural Justice

5.1.1 The Disciplinary Committee shall conduct any hearing of an allegation in a manner consistent with natural justice. The subject member shall have the following rights in respect of the hearing:-

to attend in person and to be heard either in person or by his/her solicitor or counsel, or other representative;

to submit evidence in writing and to call witnesses in his/her defence;

to cross-examine witnesses other than those called by him/her;

to be given any other reasonable opportunity to defend himself against the allegation or allegations made.

5.1.2 The complainant may be invited or permitted to attend to observe the proceedings, accompanied if desired by a 'next friend', but shall not be entitled to speak unless called as a witness.

5.2 No Reply from the Subject Member

5.2.1 If no reply has been received from the subject member concerned within 21 days of the service upon him/her of any notice, the Investigation Committee or the Disciplinary Committee may proceed in default provided that if the subject member shall, either before or after the allegation has been disposed of, satisfy IGEM that any notice to him/her was not in fact delivered or was delivered later than delivery might have been expected in the ordinary course of post and that in

consequence he/she was ignorant, or ignorant until too late, of the proceedings being taken against him, the relevant body shall at his/her request re-open the proceedings notwithstanding that they may have been concluded.

5.2.2 If the subject member fails to appear on the day, a brief adjournment shall be considered to allow enquiries to be made.

5.3 **Just or Expedient Decisions**

5.3.1 The Disciplinary Committee may in any case where it appears just or expedient to do so extend the time for doing anything or may dispense with service of any notice and may adjourn any hearing from time to time.

5.4 **Deciding a Sanction**

5.4.1 If the complaint is admitted or upheld, the Disciplinary Committee determines which section of the *By-Laws, Regulation or Code of Conduct* has been breached, hears any mitigation and decides a sanction. Having made its determination, the Disciplinary Committee shall decide the sanction, if any, to be imposed on the subject member commensurate with the seriousness of the breach:-

Warn the Subject Member as to his/her future conduct.

Reprimand the Subject Member.

Direct that the Subject Member undergoes retraining.

Suspend the Subject Member for up to two years from membership of the Institution.

Expel the Subject Member from membership of the Institution.

5.5 **Cost Recovery**

5.5.1 An Order for Costs could in some circumstances be appropriate, if for example the Institution has found it necessary to engage expert or legal opinion. IGEM Council will decide on Orders for Costs and the quantum in each case.

5.6 **Notice of Determinations**

5.6.1 The IGEM CEO shall, in every case, serve notice in writing of the Disciplinary Committee's determination on the Subject Member not later than 10 days after the decision of the Disciplinary Committee.

5.6.2 The Disciplinary Committee may warn or reprimand a subject member publicly or privately if it so wishes, but in all other cases it shall, unless it sees special reason to the contrary, cause the fact and particulars of its Order to be published in the Journal. It may, and at the request of the subject member shall, similarly publish the fact that any complaint has been dismissed.

6 **Appeals against Sanctions**

6.1 **Appeals process - two parts**

6.1.1 The appeal process consists of two parts: *Leave to Appeal* and, if leave is granted, an independent review of the preliminary assessment, see 4.6 above, or a hearing by an Appeal Committee. Each part shall be considered by persons who have had no contact with the case beforehand. The Institution might decide to have a legal advisor in attendance for either or both - parts of the process.

6.2 **Notice of Appeal**

6.2.1 Any subject member, hereinafter called "the Appellant", aggrieved by any decision or sanction imposed upon him/her by the Disciplinary Committee may, within 30 days from the date on which notice of the sanction so imposed was served on him, appeal to the IGEM Council against such sanction. The subject member may seek Leave to Appeal by serving notice in writing to that effect on the CEO of the Institution at the main offices of the Institution for the time being. Such notice shall specify the grounds on which his/her appeal is based, with the burden of proof lying on the Appellant. These grounds shall be assessed to determine a Leave to Appeal. If Leave to Appeal is granted, the Appeal must be accompanied by the payment of an Appeal Fee of up to £500, which will be set by IGEM Council and refunded following a successful Appeal. If the fee is not paid by the start of the IGEM Appeal hearing, the Appeal will be dismissed.

6.3 **Appeal Committee Task**

6.3.1 At the meeting of the Council next following the service of any such notice the Council shall appoint a Committee, see 3 above, hereinafter called the *Appeal Committee*.

6.4 **Appeal on a Determination 'No Case to Answer'**

6.4.1 If the Complainant does not accept the findings and appeals, the Chairman of Council shall appoint a Reviewer independent of the Institution to examine the evidence and the determination. He/she shall review the material presented to the

Preliminary Investigation Committee, the record of its decision and any additional evidence admitted. The Independent Reviewer's determination shall be final. The Records of the case need not be maintained beyond the Appeal process.

6.5 If there are valid grounds for appeal

6.5.1 If the independent reviewer decides that there is a 'case to answer', the Institution shall refer the case to a Disciplinary Committee, see 3 above.

6.6 Leave to Appeal on other Determinations; Specific Grounds

6.6.1 Leave to appeal is not granted automatically and specific grounds shall be identified. The normal grounds for appeal are:-

- Jurisdiction (whether the alleged misconduct would be within the scope of the provisions of the IGEM Bylaws or the Code of Conduct);
- IGEM Procedures were not followed;
- Perversity (the decision was perverse in the light of the evidence);
- New evidence (which could not reasonably have been produced at the original hearing) and additionally for an appeal against a Disciplinary Committee determination:-
- Proportionality (the sanction was disproportionate to the gravity of the breach)

6.7 Granting Leave for Appeal

6.7.1 The argument under each ground for Appeal must stand on its own.

6.7.2 Leave to appeal may be granted on two or even more grounds, but shall not be granted in response to an accumulation of individually insufficient arguments under two or more grounds.

6.7.3 If leave to appeal is granted IGEM shall with minimum delay convene an Appeal Committee, see 3 above.

6.7.4 The appeal hearing shall follow the same principles as the disciplinary hearing, modified to suit the accepted grounds for appeal; a full re-hearing is not essential in all circumstances.

6.7.5 As soon as practicable after its appointment the Appeal Committee shall arrange for the service on the Appellant of notice of the matters referred to in 4.8, with the substitution of the Appeal Committee for the Disciplinary Committee.

6.8 Appellant's Rights

6.8.1 The Appeal Committee shall conduct the hearing of the Appeal in a manner consistent with natural justice. The Appellant shall have the following rights in respect of the hearing:-
to attend in person and to be heard either in person or by his/her solicitor or counsel, or other representative.
to submit evidence in writing in support of the grounds of his/her appeal.

6.9 Flexibility in process

6.9.1 The Appeal Committee may, in any case where it appears just or expedient to do so, extend the time for doing anything, may dispense with service of any notice and may adjourn any hearing from time to time.

6.10 Determination and Notice

6.10.1 The determination of the appeal by the Appeal Committee shall be final and the IGEM CEO shall in every case serve notice in writing of the Appeal Committee's decision on the subject member concerned not later than 10 days after such decision.

6.10.2 In any case where the appeal was against expulsion or suspension, the IGEM CEO shall at the same time inform the Engineering Council of such decision.

6.10.3 If the appeal is upheld the Appeal Panel may reverse the determination of the Disciplinary Committee or uphold the determination but reduce the sanction.

7 Closure Process and Records

7.1 Informing Engineering Council

The Institution must inform the Engineering Council of any expulsion or suspension, whether or not the individual is registered by the Institution. Where a complaint is upheld and the IGEM Appeal process is exhausted, the Engineering Council is responsible for informing any other institutions of which the subject member is known to be a member, so that they may decide what action shall be taken.

7.1.1 Any notice to be given under these Regulations, other than notice required to be sent by registered post, shall be deemed to be properly served if sent by pre-paid first class post to the last known address of the Subject Member concerned or to the main offices of the Institution and to have been effected at the expiration of 48 hours after the same is posted. Airmail

shall be deemed to be included in the expression "first class post" for these purposes. Where by agreement, notice is sent by electronic communications, these shall be according to Clause 2.8.

7.1.2 If an Engineering Council Registered subject member's appeal with IGEM is unsuccessful, the appellant may appeal to Engineering Council jurisdiction.

7.2 Maintenance of records

7.2.1 Records of the complaint proceedings, including the evidence, shall be maintained for a period of not less than seven years after the end of proceedings, including Appeals.

8 Appeals to Engineering Council

8.1 Loss of Registration

8.1.1 Appeal to the Engineering Council is available only if a subject member is losing his/her membership of the Institution as a result of disciplinary action by the Institution and thereby also loses his/her Engineering Council Registration and that the Institution's Appeal process has been exhausted. This Engineering Council Appeal is carried out under Engineering Council Regulation 11, which covers a time limit for registering appeals and includes the payment of an Appeal Fee of up to £500, which is refundable if the Appeal is successful. If the fee is not paid by the start of the Engineering Council's Appeal hearing, the Appeal will be dismissed.

8.2 Informal appeals to the Engineering Council

Informal appeals to the Engineering Council in respect of other complaints may result in the Engineering Council discussing the case with the Institution concerned only to confirm that the IGEM *Disciplinary Regulations* and *Procedure* approved as part of the licensing process have been followed.

9 Expenses and Costs

9.1 Appeal Fee

9.1.1 The Appellant shall be required to pay to IGEM an Appeal Fee set by the IGEM Council of up to £500. If the Appeal is upheld the fee will be refunded in full. If the fee to be paid to IGEM for an Appeal is not paid by the start of the Appeal Hearing, the Appeal will be dismissed.

9.2 Expenses

IGEM may at its discretion pay an attendance fee to any Appeal Committee member who is not a Trustee of IGEM and will pay reasonable out of pocket expenses of the Appeal Committee Members. Similar arrangements shall apply to Investigation and Disciplinary Committee members.

9.3 Cost Liabilities

9.3.1 Irrespective of the outcome of the case, IGEM shall not be liable to reimburse the complainant's or the subject member's expenses or legal costs arising at any stage of the Disciplinary process. Nor shall IGEM be held liable for any of the direct or indirect consequential costs of any of the parties howsoever arising.

