

# Disciplinary Regulations

October 2018





# Preamble

These regulations, pursuant to byelaw 21.5, were approved by the Council of The Chartered Governance Institute, incorporated by Royal Charter on 19/20 September 2018

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# Definitions

- 1 In these regulations the term Divisional Committee means a Committee formed to conduct the affairs of a Division established under byelaw 61.1.
- 2 The terms Investigation Group (IG), Disciplinary Tribunal (DT) and Appeal Tribunal (AT) mean the bodies referred to in byelaws 21 to 25 inclusive.

## The Investigation Group (IG)

### 3 Membership

- a) A minimum of four Fellows will be appointed by the Council to the IG. In addition the Council may from time to time appoint Associates and, if specific expertise is required in a particular case, non-members to an IG if it thinks fit. In addition a Divisional Committee may create a pool of members willing to serve on an IG where geographical distance or other logistical factors would prevent the conduct of an investigation in a timely way. All appointments and removals of such members shall be made or confirmed by Council.
- b) Appointments to the IG are made subject to such terms and conditions as the Council may by resolution prescribe, and subject to the byelaws and these regulations.
- c) Three members of the IG, of whom two must be Fellows, will form the quorum for a meeting.
- d) The IG will elect a chairman, who must be a Fellow.

### 4 Method of operation

- a) An official authorised by the Divisional Committee in the territory concerned will, upon receipt of a complaint against a member, acknowledge it to the complainant and request any further details or clarification that appear to be necessary. The official will, once the nature of the complaint is clear, notify the member concerned of the complaint and invite the member concerned to comment within a reasonable period of time.
- b) Upon the receipt of a response the authorised official may seek any further clarification or additional information on behalf of the IG as directed by its chairman.
  - The member's response and the file of correspondence will be referred to the IG without further exchange.
  - If the member fails to respond within a reasonable period of time the authorised official will refer the file of correspondence to the IG without further exchange.

In general, cases arising in a territory will be considered by the IG in that territory, except where the Council is required to establish alternative arrangements under byelaw 21.11.

- c) The IG will act in accordance with the provisions of byelaws 23.1 to 23.4.
- d) The IG will diligently investigate all reasonable lines of inquiry, and shall request the authorised official to make such enquiries as it deems necessary to clarify any matters that remain unclear.
- e) There shall be a two-stage test for referring charges to the DT, namely:
  - (i) the IG must be satisfied that there is at least a real prospect that the DT would find a charge to be proven on the balance of probabilities (because there is a reasonable suspicion of a breach of and evidence that might reasonably persuade the DT); and
  - (ii) the IG must be satisfied that it is in the public interest for that charge to be laid and the member brought before the DT.
- f) After receiving the evidence the IG will decide by a simple majority of those present, with the Chairman voting on all occasions, and without a casting vote, whether the matter should be referred to the DT.

g) If the IG decides that the matter should be so referred it will submit a written report to the DT which will include:

- supporting evidence it considers appropriate; and
- whether in its opinion there are sufficient grounds to bring one or more charges, and if so, what charge or charges the member should answer.

h) The chairman of the IG will present the charge or charges by written report to a meeting of the DT and may, if appropriate, be invited to attend the DT meeting or may if s/he thinks fit delegate one or both of these functions to another member of the IG.

i) A copy of the IG's report must be given to the member. If a charge is made before the DT, the IG shall disclose to the member any material of which it is aware that is reasonably capable of undermining the case against the member or supporting the member's case.

## 5 Frequency of meetings

a) An IG will meet when it is necessary to do so to discharge its duties under the byelaws and these regulations.

# The Disciplinary Tribunal (DT)

## 6 Membership

a) A minimum of four Fellows will be appointed by the Council to the DT. In addition the Council may from time to time appoint Associates and, if specific expertise is required in a particular case, non-members to a DT if it thinks fit.

b) Appointments to the DT are made subject to such terms and conditions as the Council may by resolution prescribe, and subject to the byelaws and these regulations.

c) Three members of a DT, of whom two must be Fellows, will form the quorum for a meeting.

d) A DT will elect a chairman, who must be a Fellow.

## 7 Method of operation

a) The DT will receive from the relevant IG a written report, including supporting material, of any investigation in respect of a member where, in the opinion of the IG, there are sufficient grounds for bringing a charge or charges.

The DT will then act in accordance with the provisions of byelaws 23.5 to 23.9. Subject to the requirements of the byelaws, of these regulations and of natural justice, the DT shall regulate its own procedure. It may in particular amend or reformulate a charge where that may be done without unfair prejudice to the member concerned, and determine the order in which parties are to present evidence or issues are to be determined. The procedure to be followed must be made clear to participants.

b) A vote by a simple majority of those present, with the chairman voting but without a casting vote, will determine the matter(s) under consideration.

c) The notice of a hearing given to the member concerned in byelaw 23.5 will normally be at least six weeks.

d) A DT may, if it thinks fit, instruct a solicitor to act and/or to brief counsel to act, as legal assessor/s in its proceedings.

e) The member, any representative whose name they have given to the Disciplinary Tribunal in writing and, where appropriate, any other party to the complaint can:

- attend and be heard at the hearing;
- call and cross-examine witnesses; and
- make written representations about any charges.

f) A DT will determine whether or not each charge against the member has been proved on the balance of probabilities, and prepare a reasoned report containing:

- the details of any charges;
- the finding on each charge;
- the penalty or penalties it recommends for each charge found proved; and
- a ruling on whether its report, or any related matter, should be published, and if so how it should be published.

g) The DT shall invite submissions on the publication of its report and on whether any redactions should be made or matters summarised to protect the privacy of any individual. The test for publishing the DT report shall be whether it is lawful and in the public interest to do so. The DT shall, when considering the public interest in publication, accord substantial weight to the general interest in transparency, public scrutiny of how its members are regulated, maintenance of confidence in the Institute's standards and procedures, educative benefits to showing how its standards are applied, and the deterrent effect of publication on future wrongdoing.

h) A copy of the DT's report and details of the appeal procedures set out in byelaws 25.1 to 25.12 must be given to the member as soon as practicable.

i) The authorised official will enact the finding of the DT in accordance with byelaw 23.10 if a notice of intention to appeal application is not forthcoming within the stipulated time period laid down in byelaw 25.2.

## **8 Frequency of meetings**

a) A DT will meet when it is necessary to do so to discharge its duties under the byelaws and these regulations.

# **The Appeal Tribunal (AT)**

## **9 Membership**

a) A minimum of four Fellows will be appointed by the Council to the AT. In addition the Council may from time to time appoint Associates and, if specific expertise is required in a particular case, non-members to an AT if it thinks fit.

b) Appointments to the AT are made subject to such terms and conditions as the Council may by resolution prescribe, and subject to the byelaws and these regulations.

c) Three members of the AT will form the quorum for meetings of the AT, of whom two must be Fellows.

d) The AT will elect a chairman who must be a Fellow.

## **10 Method of operation**

a) An appeal may be brought against a finding by the DT that a particular charge was proven, or against a finding as to what penalty was appropriate to be imposed in respect of a proven charge. It shall not be permissible to appeal against individual findings of fact in and of themselves if the overall finding on a charge or penalty is not disputed. The appeal notice must set out any submissions that the appellant wishes to make as to whether any issues should be re-heard by the AT or whether the AT should proceed by way of review of the DT decision.

b) The AT will be provided with the application for an appeal together with the complete file on all correspondence and deliberations which have taken place and the reports and decisions made by the DT and the IG.

c) The AT will meet to consider these documents and decide whether:

- the notice of intention to appeal and written application for an appeal were each received within the stipulated period laid down in byelaws 25.2 and 25.3;
- the agreed procedures were correctly observed and proper notice was given in accordance with the byelaws and these regulations;

- the member has produced any information which was not available to the DT; and
- the member's request for an appeal is frivolous or otherwise without merit.

d) In the event that the AT decides, by simple majority of those present, with the chairman voting but without a casting vote, that there are circumstances which if substantiated might in the opinion of the AT justify the modification or overturning of the DT's decision, it will direct that the appeal may proceed and the AT will decide whether to hear an appeal by way of a re-hearing or by way of review of the original decision.

e) An appeal shall normally be conducted by way of review only. This means that the AT may overturn a finding of the DT only on grounds of an error of law (including an illogical, aberrant or perverse determination that no reasonable DT would make, or adoption of an unfair or improper procedure) that affected or realistically might have affected the outcome. The AT is not intended to be a forum for complete re-hearing. However, the AT may determine to conduct a complete or partial re-hearing itself where it appears that there was, or may have been, an error of law invalidating a finding as to guilt or penalty by the DT, and it would be more efficient to determine the substance of a particular matter itself and substitute its own decision, rather than remit the matter back to the DT for redetermination. It may also be persuaded, exceptionally, that circumstances justify a full rehearing in the interests of justice even though the DT did not make any error of law at the time it reached its decision. Possible examples might include substantial exculpatory evidence not reasonably available to the member at the time of the DT proceedings, or good reason for not attending the DT hearing, such as serious illness.

f) If the AT decides to proceed by way of re-hearing, the member lodging the appeal and, where appropriate, the other parties to the original hearing may call and cross-examine witnesses and produce evidence. If the AT decides to proceed by way of review of the original decision, no party can call witnesses or produce additional evidence unless the Tribunal is satisfied that the witness or the evidence was not reasonably available at the time of the original hearing and adequate notice of the intention to call the witness or produce the evidence has been given to the other parties. In all cases, the member appealing the decision and any other party to the original hearing can attend the hearing of the appeal, address the Tribunal, either directly or through an authorised representative, and submit written representations.

g) The AT will be empowered, subject to the byelaws, these regulations, the rules of natural justice and any specific direction from the Council, to regulate its own procedure and to use any method it thinks fit in its re-examination of the circumstances of the complaint. It may in particular determine to hold a re-hearing on particular matters after having first reviewed a finding of the DT, and at that later stage set a timetable for submission of evidence and submissions.

h) After it has heard an appeal, the AT must reach a reasoned decision, which must cover:

- details of the decision appealed against;
- a summary of any additional evidence considered;
- the finding of its re-hearing or review;
- the finding on each charge appealed against;
- whether any penalty should be confirmed, quashed, reduced, increased or otherwise varied; and
- whether, and if so how, the appeal decision, and any related matter, should be published, and if so how it should be published.

i) In the event that the AT decides after consideration of the circumstances that there are no grounds to warrant an appeal, it will so inform the member.

j) The AT shall invite submissions on the publication of its report and on whether any redactions should be made or matters summarised to protect the privacy of any individual. The test for publishing the AT report shall be whether it is lawful and in the public interest to do so. The AT shall, when considering the public interest in publication, accord substantial weight to the general interest in transparency, public scrutiny of how its members are regulated, maintenance of confidence in the Institute's standards and procedures, educative benefits to showing how its standards are applied, and the deterrent effect of publication on future wrongdoing.

k) The decision of the AT is final and binding on all parties and must be reported to the Council and recorded by the Secretary.

## **11 Frequency of meetings**

a) The AT will meet when it is necessary to do so to discharge its duties under the byelaws and these regulations.

## **12 One-off investigation groups**

A one-off investigation group, disciplinary tribunal and appeal tribunal may be established by the Council in accordance with byelaw 21.11 if it receives a complaint against:

- a member of a committee of the Council acting in that capacity;
- a member of the Council acting in that capacity; or
- the Secretary or the Chief Executive if they are a member of the Institute.

# **General**

## **13 Appointments to the disciplinary bodies**

a) Each Divisional Committee, which has been authorised by Council under byelaw 21.2 to set up and operate disciplinary bodies, shall submit names for membership of Divisional Investigation Groups, Divisional Disciplinary Tribunals and Divisional Appeal Tribunals but in accordance with byelaw 21.4 and 21.6 all appointments and removals of such members shall be made or confirmed by the Council.

## **14 Reports**

a) The decisions of the DT and AT will be reported to Council and recorded by the Secretary as laid down by byelaw 24.4 and 25.12.

## **15 Fines**

a) Fines imposed by the DT will be limited to those reasonable in the circumstances and should take account of the Institute's costs or the costs to the Division in which the disciplinary case arose.

## **16 Overlap of membership**

a) Where distance or other factors make it pragmatic for one person to be nominated to serve as a member both of the IG and the DT then this shall be permissible subject always to the strict reservation that in the consideration of any one particular disciplinary case such member shall only participate in, attend at, or have any influence whatsoever at either the IG or the DT stage, but never at both.

## **17 Declaration of interest**

a) In order to preserve the integrity of the disciplinary process members of disciplinary bodies must disclose any potential conflict of interest at the earliest opportunity. The chairman of the disciplinary body will determine whether the potential conflict is germane to the matter under consideration and will excuse the member concerned and if necessary seek the appointment of an alternate in accordance with byelaws 21.4 to 21.9.

b) In the event that the chairman has a potential conflict of interest they will excuse themselves from the matter under consideration and the disciplinary body will elect a new chairman.

## **18 Regulations**

a) These regulations may be suspended or modified by the Council by simple majority from time to time.

