



Society of Actuaries in Ireland

**DISCIPLINARY SCHEME
OF THE SOCIETY OF ACTUARIES IN IRELAND
AS PROVIDED FOR IN REGULATION 42
OF THE ARTICLES OF ASSOCIATION**

Version 01/2020, effective from 8th September 2020

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1. INTRODUCTION AND SCOPE

Interpretation

1.1 In this Scheme, unless the context otherwise requires:

‘Allegation’	means a formal statement in writing addressed to the Society and containing an allegation or allegations to the effect that a named Member has or may have been guilty of Misconduct;
‘Appeal Tribunal’	means an Appeal Tribunal appointed under rule 2.9;
‘Bye-laws’	means the Bye-laws of the Society in force from time to time;
‘Case Report’	means a report prepared under rules 4.22 to 4.25;
‘Charge’	means a formal allegation that a Member has been guilty of Misconduct defined in the document prepared by the Investigating Committee under rule 4.37;
‘Committee on Professional Conduct’	means the committee appointed under rule 2.1;
‘Council’	means Council of the Society of Actuaries in Ireland;
Designated Staff Member	means an employee of the Society nominated by Council for the purpose of administering the Disciplinary Scheme and shall include any deputy for that person, likewise appointed by Council to act in place of the Designated Staff Member in their absence. In the event of no person being so appointed, the Chief Executive of the Society shall be the Designated Staff Member;
‘Disciplinary Panel’	means the panel appointed under rules 2.4 to 2.7;
‘Disciplinary Tribunal’	means a tribunal appointed under rule 2.8;
‘Fellow member’	means a Fellow or an Honorary Fellow of the Society;
‘Honorary Secretary’	means the Honorary Secretary or, if there is no Honorary Secretary, the Secretary of the Society;
‘Investigating Committee’	means an Investigating Committee appointed under rule 4.15;
‘Lay member’	means a person who is not and has never been a member of the Society;
‘Member’	means a member of the Society of any class;
‘Misconduct’	means misconduct under rule 1.3;

‘Party’	means a Respondent or an Investigating Committee, as the case may be;
‘Practising certificate’	means any practising certificate issued by the Society;
‘Respondent’	means the Member whose conduct is the subject of an Allegation or investigation by or proceedings before an Investigating Committee, Disciplinary Tribunal or Appeal Tribunal;
‘Rule’	means a rule of this Scheme;
‘Scheme’	means this Disciplinary Scheme adopted under Regulation 42 of the Society’s Articles of Association;
‘Society’	means Society of Actuaries in Ireland.

Standard and Burden of Proof

- 1.2 In all proceedings before a Disciplinary Tribunal or an Appeal Tribunal under this Scheme, the standard of proof to find that the Respondent is guilty of Misconduct shall be on the balance of probabilities and the burden of proof of such Misconduct shall rest upon the Investigating Committee.

Misconduct

- 1.3 A Member – including any Member whose membership is suspended under this Scheme and any former Member who has resigned or has ceased to be a Member for any reason since the time of the conduct in respect of which an Allegation is made – shall be liable to disciplinary action under this Scheme on grounds of Misconduct.

For the purposes of this Scheme, Misconduct means any conduct, by a Member, whether committed in Ireland or elsewhere, in the course of carrying out professional duties or otherwise, constituting failure by that Member to comply with the standards of behaviour, integrity, competence or professional judgement which other Members or the public might reasonably expect of a Member having regard to any code, standard, advice, guidance, memorandum or statement on professional conduct, practice or duties which may be given and published by the Society, including but not limited to the Society’s Articles of Association or Bye Laws or Code of Professional Conduct or Actuarial Standards of Practice, and to all other relevant circumstances.

- 1.4 Misconduct may include any conduct which occurred either before or after the Respondent became a Member save that conduct which was disclosed in writing to the Society by the Respondent prior to being admitted as a Member shall not be Misconduct for the purposes of this Scheme.
- 1.5 A Member may also be liable to disciplinary action on grounds of Misconduct:
- (a) where a person with whom the Member is connected is guilty of conduct which if committed by the Member would have amounted to Misconduct and either:

- (i) any act, omission or behaviour by the Member has caused or contributed to such conduct; or
 - (ii) following the Member becoming aware of any such conduct, the Member does not take such action as other Members might reasonably expect the Member to take in the circumstances;
 - (b) notwithstanding that other proceedings may be taken against the Member or any firm of which the Member is a partner, any body corporate of which the member is a director or employee, or any person employed by the Member or by any such firm or body corporate.
- 1.6 For the purposes of rule 1.5 and without limitation, a Member shall be deemed to be connected with:
- (a) the Member's employer or employee;
 - (b) any director or employee of a body corporate of which the Member is a director or employee; and
 - (c) any partner or employee of a partnership of which the Member is a partner or employee.

Proof of certain matters

- 1.7 The failure of a Member to comply with rule 1.13, 1.14, 1.15, 1.16, 4.21 or 7.2 or with an undertaking given under rule 8.11 shall amount to *prima facie* evidence of Misconduct.
- 1.8 It shall amount to *prima facie* evidence of Misconduct that a Member has before a court of competent jurisdiction in Ireland or elsewhere pleaded guilty to, or been found guilty of, an indictable offence or has in any civil proceedings been found to have acted fraudulently or dishonestly.
- 1.9 The fact that a Member:
- (a) has by a court of competent jurisdiction in Ireland or elsewhere been convicted of a criminal offence; and/or
 - (b) has been the subject of an adverse final determination by a regulatory body in exercise of functions conferred by statute; and/or
 - (c) has been the subject of an adverse final determination under the disciplinary structures of an actuarial organisation that is a full member of the International Actuarial Association; and/or
 - (d) has been disqualified from acting as a director of a company or trustee of a pension scheme by a body that has statutory authority to issue such disqualification; and/or
 - (e) has been the subject of a judgement or determination arising from civil proceedings before a court of competent jurisdiction in Ireland or elsewhere;

shall for the purposes of this Scheme be treated as conclusive evidence of the findings of fact upon which the conviction, determination, judgement or disqualification order is based.

- 1.10 The fact that a Member has been the subject of an adverse final determination by a regulatory body of competent jurisdiction in Ireland or elsewhere, other than a determination to which rule 1.9 applies, shall for the purposes of this Scheme be treated as *prima facie* evidence of the findings of fact upon which the determination is based.
- 1.11 In any investigation or hearing under this Scheme that involves the decision of a court or tribunal that relates to the Respondent:
- (a) the fact that the Respondent has been convicted of a criminal offence may be proved by producing a certified copy of the certificate of conviction relating to the offence;
 - (b) the finding and sentence of any tribunal exercising a professional disciplinary jurisdiction may be proved by producing a certified record of the finding and sentence; and
 - (c) the judgement of any civil court may be proved by producing a certified copy of the judgement.

Members' obligations to cooperate

- 1.12 A Member may be liable to disciplinary action on grounds of Misconduct if the Member fails to co-operate with the operation of this Scheme, in accordance with the Rules.
- 1.13 It shall be the duty of every Member to disclose promptly to the Society any conviction, adverse finding, judgement or determination or disqualification order of a type referred to in rule 1.9, 1.10 or 1.11 to which the Member is subject.
- 1.14 It shall be the duty of every Member to co-operate fully with any investigation, process or procedure under this Scheme, which may include providing such written and/or oral information and/or evidence as may be required by an Investigating Committee under rule 4.21.
- 1.15 Where the Respondent is a former Member or a Member whose membership is suspended under this Scheme, the Respondent shall remain bound to supply such information and explanations as may be required by an Investigating Committee, a Disciplinary Tribunal or an Appeal Tribunal regarding the Respondent's conduct and shall remain bound by any determinations of an Investigating Committee in relation to which the Respondent accepts a recommendation in accordance with rule 4.33 or any determination of a Disciplinary Tribunal or an Appeal Tribunal in respect of any Misconduct committed, notwithstanding that the Respondent's membership has ceased or been suspended.
- 1.16 Members working for the same employer as a Respondent under this Scheme shall be obliged to co-operate in the implementation of any sanction which is binding upon the Respondent under the Scheme.

- 1.17 Nothing in this Scheme, including rules 1.14 and rule 1.15, shall mean that a Member, including a Respondent, shall be required to produce any document or information which is the subject of legal professional privilege or which might tend to expose them to criminal penalties.

2. APPOINTMENTS

Committee on Professional Conduct

- 2.1 Council shall appoint the members of a Committee on Professional Conduct to consist of six persons, including at least three Lay members and at least two Fellow members, each appointed for a term of three years, such term being renewable.
- 2.2 Council shall nominate one of the Lay members appointed under rule 2.1 to be the Chair of the Committee on Professional Conduct.

Investigating Committees

- 2.3 The Committee on Professional Conduct shall appoint Investigating Committees as required to investigate Allegations in accordance with rule 4.15.

Disciplinary Panel

- 2.4 The Disciplinary Panel shall consist of eight Fellow members and eight Lay members. The Lay members shall be appointed in accordance with the following provisions except that, if a party listed below fails to make an appointment, the Committee on Professional Conduct shall appoint a person having such qualifications and/or work experience as that Committee considers to be appropriate:
- (a) two Senior Counsel appointed by the Chairman for the time being of the General Council of the Bar in Ireland;
 - (b) two solicitors appointed by the President for the time being of the Incorporated Law Society of Ireland;
 - (c) two accountants appointed by the President for the time being of the Institute of Chartered Accountants in Ireland;
 - (d) two Lay members who are not members of the accountancy or legal professions, appointed by the Committee on Professional Conduct;

all holding office for a term of three years, such term being renewable.

- 2.5 Prior to 1st September 2006, the date on which the provisions of this Scheme come into force, eight Fellow members shall be elected to the Disciplinary Panel. Thereafter, at each annual general meeting of the Society, two Fellow members shall retire. The Fellow members to retire in each year shall be those who have been longest in office since their last election, but as between persons who were elected on the same day those to retire shall be determined by lot, unless they otherwise agree among themselves. A sufficient number of Fellow members shall be elected at each annual general meeting to fill the vacancies on the Disciplinary

Panel arising from such retirement of elected Fellow members and any casual vacancies among the elected Fellow members.

- 2.6 Elections to the Disciplinary Panel shall be conducted in similar manner to elections for Fellows to serve on the Council as provided in the Articles of Association. The Council shall arrange inter alia for the issue of notices to members, the receipt of nominations, the issue of ballot papers and the appointment of Scrutineers, and in all other respects the provisions of Regulation 35 and all other Regulations of the Articles of Association relative to the election of Fellows to serve on the Council shall apply to the election of Fellow members to serve on the Disciplinary Panel in so far as they are not inconsistent with this Rule.
- 2.7 The Chair and the Deputy Chair of the Disciplinary Panel shall be the Senior Counsel appointed in accordance with the provisions of rule 2.4, each position being held for a term of three years, such term being renewable. In the event that no Senior Counsel or only one Senior Counsel is appointed, or for any reason neither of the Senior Counsel can act as Chair/Deputy Chair, the Committee on Professional Conduct shall decide which members of the Panel shall act as Chair and if required, Deputy Chair.

Disciplinary and Appeal Tribunals

- 2.8 Each Disciplinary Tribunal shall be appointed by the Chair of the Disciplinary Panel and shall consist of three or more members of the Disciplinary Panel, at least one of whom shall be a Fellow member and at least one of whom shall be a Lay member. The Chair of the Disciplinary Panel shall further appoint one of the members of the Disciplinary Tribunal to act as Chair of the Tribunal. The Chair of the Disciplinary Panel shall not be eligible for appointment to a Disciplinary Tribunal.
- 2.9 When an appeal against a determination of a Disciplinary Tribunal is validly made under Part 6 of this Scheme, the Chair of the Disciplinary Panel shall appoint an Appeal Tribunal (the members of which shall be different from the members of the Disciplinary Tribunal that heard the Allegation) for the purposes of addressing the appeal, comprising:
- (a) the Chair or the Deputy Chair of the Disciplinary Panel who shall be the Chair of the Appeal Tribunal; and
 - (b) two or four other members of the Disciplinary Panel at the Chair of the Disciplinary Panel's discretion, to include at least one Fellow member and one Lay member.
- 2.10 Members of the Disciplinary Panel must decline to be appointed to a Disciplinary Tribunal or Appeal Tribunal relating to any matter in which they consider themselves to be in a position of conflict of interests. In the event that a serious objection is raised by the Respondent as to a potential conflict of interests, this matter may be raised in writing to the Chair of the Disciplinary Tribunal within 5 working days of the notification being made of the appointment of the members of the Disciplinary Tribunal or Appeal Tribunal.

Legal Advisers Pool

- 2.11 The Committee on Professional Conduct may from time to time nominate one or more barristers and solicitors who may advise an Investigating Committee, a Disciplinary Tribunal or an Appeal Tribunal as provided for under this Scheme.

General

- 2.12 No appointment shall be made under Part 2 of this Scheme of:
- (a) a member of the Council, or
 - (b) a person currently or previously appointed under Part 2 of this Scheme in respect of the same Allegation, Case Report or Charge or the subject matter thereof.
- 2.13 Any person who has been appointed under Part 2 of this Scheme who becomes a member of the Council shall be deemed to have resigned from their appointment under Part 2 of this Scheme with immediate effect.
- 2.14 In the event of the resignation, incapacity or death of any person appointed under Part 2 of this Scheme, a replacement may be appointed in the same manner as the person who is being replaced.
- 2.15 If, by reason of illness or absence or for any other reason, any person appointed to any body referred to in Part 2 of this Scheme is unable to serve at any time, another person may be nominated to act in that person's place by Council (if the absence is from the Committee on Professional Conduct) or by the Committee on Professional Conduct or the Chair of the Disciplinary Panel as appropriate.
- 2.16 No Member who has been found guilty of Misconduct shall be appointed to any body referred to in Part 2 of this Scheme. Furthermore:
- (a) a Member shall stand down from any such appointment if he is the subject of an Allegation under this Scheme until either:
 - (i) a determination is made by an Investigating Committee under rule 4.26 that no disciplinary action shall be taken against the Member; or
 - (ii) a determination that the Member is not guilty of Misconduct is made by either a Disciplinary Tribunal under rule 5.20 or an Appeal Tribunal under rule 6.11;
- and
- (b) a Member who is so appointed and who is subsequently found guilty of Misconduct shall be deemed to have resigned from the appointment immediately after such finding is made.

For the avoidance of doubt, a Member who has agreed to an imposition of a sanction by an Investigating Committee has been found guilty of Misconduct.

- 2.17 Any person who is a member of another professional body and is found guilty of misconduct by that body shall be deemed to have resigned immediately from any appointment which that person holds under Part 2 of this Scheme.
- 2.18 Any person shall stand down from any appointment to any body referred to in Part 2 of this Scheme if that person has before a court of competent jurisdiction in Ireland or elsewhere pleaded guilty to, or been found guilty of, an indictable offence or has in any civil proceedings been found to have acted fraudulently or dishonestly.
- 2.19 Any meeting or hearing of a Disciplinary Tribunal or Appeal Tribunal shall be quorate only if there shall be three or more members present, of whom at least one is a Fellow member and at least one is a Lay member. In the absence of a quorum at the date set for any meeting or hearing of the relevant Tribunal, such hearing shall stand adjourned to a place and time to be determined by the chair of the relevant Tribunal.
- 2.20 Any meeting of an Investigating Committee shall be quorate only if all members are present. An Investigating Committee may convene in person or through appropriate telephone conferencing or other similar facilities, or both, and the quorum provisions shall apply taking into account those present through the telephone or other similar facilities.
- 2.21 Any Investigating Committee, Disciplinary Tribunal or Appeal Tribunal shall have the power to elect a temporary chair on the day if a designated chair is unable to perform that function.
- 2.22 The proceedings of any investigation under Part 4 of this Scheme, or before any Investigating Committee, Disciplinary Tribunal or Appeal Tribunal, shall be valid notwithstanding any invalidity in the appointment of any member thereof.
- 2.23 Any person appointed under this Part may continue to act in that capacity in relation to any relevant Allegation, Case Report or Charge as the case may be notwithstanding that their term of office has otherwise expired.

3. COMMITTEE ON PROFESSIONAL CONDUCT

- 3.1 The functions of the Committee on Professional Conduct shall comprise the following:
- (a) arranging for the investigation of Allegations by an Investigating Committee and for the mediation of disputes that do not involve Misconduct, and dealing with general enquiries as to the application of the Society's professional guidance or accepted actuarial practice, as provided for in Part 4;
 - (b) overseeing the management and operation of this Scheme and appointing members to Investigating Committees and the Disciplinary Panel;
 - (c) deciding on the materiality, in the context of rule 1.3, of issues referred for consideration under this Scheme, where it is necessary to do so in accordance with rule 3.4;

- (d) dismissing any Allegations that it deems to be frivolous or vexatious, where it considers it appropriate to do so in accordance with rule 4.6;
- (e) terminating investigations, where it considers it appropriate to do so in accordance with rule 4.28;
- (f) acting in place of an Investigating Committee under rule 4.27 and, if applicable, rule 4.32, where it is necessary to do so in accordance with rule 4.29;
- (g) acting in accordance with rule 8.2 in the event that an Allegation is withdrawn;
- (h) deciding the maximum fine which an Investigating Committee may invite a Respondent to pay under rule 4.32(b);
- (i) providing annual reports to the Council and such other interim reports on specific issues as it deems necessary;
- (j) producing an annual report to the Members of the Society;
- (k) setting and monitoring time frames for investigations and proceedings under this Scheme;
- (l) organising training of those involved in this Scheme;
- (m) receiving and considering reports from any Committee or Tribunal appointed under this Scheme;
- (n) making and varying such regulations (not being inconsistent with the provisions of the Society's Memorandum and Articles of Association or this Scheme) as it may consider necessary for the implementation of this Scheme and for the performance by Investigating Committees, Disciplinary Tribunals and Appeal Tribunals of their respective functions under this Scheme;
- (o) providing guidance on procedure it considers appropriate (not being inconsistent with this Scheme) for the performance of functions under this Scheme; and
- (p) such other functions as shall be agreed from time to time by the Council.

3.2 The Committee on Professional Conduct may at any time, subject to the agreement of the Council or such other body delegated by the Council for the purpose, arrange for a review of the provisions and operation of this Scheme or any aspect of it to be undertaken.

3.3 The Committee on Professional Conduct may from time to time provide guidelines for the manner in which sanctions involving education, retraining and/or supervised practice under this Scheme may be imposed. Any such guidelines shall be published by the Society.

3.4 If a Member refers, for consideration under this Scheme, an act or omission by another Member which the first Member believes to be a breach of:

- (a) the Professional Conduct Standards or Code of Professional Conduct or any successor code or standard issued by the Society, or
- (b) any Actuarial Standard of Practice issued by the Society, or
- (c) legislation, regulations or guidance provided by any statutory or regulatory body and relevant to professional advice or services provided by the Member,

and the first Member indicates in such referral that they are unsure as to whether the breach is a material breach, the Committee on Professional Conduct shall consider the matter in the context of rule 1.3 and in accordance with the provisions of rule 3.5.

3.5 Where the Committee on Professional Conduct considers a matter under rule 3.4:

- (a) the Committee may decide that the matter is or may be material in the context of rule 1.3, in which event the Committee shall so inform the Member who made the referral and the referral shall be treated as an Allegation for the purposes of this Scheme; or
- (b) the Committee may decide that the matter is not material in the context of rule 1.3, in which event the Committee shall so notify the Member who made the referral and no publicity shall be given to the referral, nor shall any action be taken under this Scheme in respect of it, except that the Committee may comment on it on an anonymised basis in any report to the Council or to the Members of the Society.

3.6 Any meeting of the Committee on Professional Conduct shall be quorate only if there are three or more members present, of whom at least one is a Fellow member and at least one is a Lay member. In the absence of a quorum at the date set for any meeting or hearing of the Committee on Professional Conduct, such meeting or hearing shall stand adjourned to a place and time to be determined by the Chair of the Committee.

3.7 The Committee on Professional Conduct may convene in person or through appropriate telephone conferencing or other similar facilities, or both, and the quorum provisions of rule 3.6 shall apply taking into account those present through the telephone or other similar facilities.

3.8 Decisions of the Committee on Professional Conduct shall be made by simple majority.

3.9 The Chair of the Committee on Professional Conduct shall appoint one of the members of the Committee as the Secretary of the Committee. The Secretary shall ensure that the records of the Committee are kept.

3.10 Members of the Committee on Professional Conduct must refuse to participate in any matter in which they consider themselves to be in a position of conflict of interests. If the Chair or the Secretary of the Committee is in such a conflict, a Chair or Secretary shall be appointed by the other participating members of the Committee or by the Chair of the Committee, as the case may be, regarding that matter.

4. INVESTIGATION STAGE

General Enquiries

- 4.1 Any person or organisation may make an enquiry to the Committee on Professional Conduct or to the Society's Designated Staff Member as to the application of the Society's Professional Conduct Standards or Code of Professional Conduct (or any successor code or standard) or Actuarial Standards of Practice, or accepted actuarial practice. Where an enquiry does not refer to the identity of a Member or to the work performed by a named Member, it shall be dealt with as a general enquiry. Where an enquiry is made in writing and contains statements to the effect that a named Member has or may have been guilty of Misconduct, it shall be dealt with as an Allegation.
- 4.2 The Committee on Professional Conduct may, at its discretion, refer a general enquiry to the Society's Designated Staff Member, an appropriate practice committee of the Society, the Society's Professional Affairs Committee or an Investigating Committee.
- 4.3 The Society's Designated Staff Member may, at their discretion, refer a general enquiry to the Committee on Professional Conduct, an appropriate practice committee of the Society or the Society's Professional Affairs Committee.
- 4.4 Any Committee and/or person to which or to whom a general enquiry is referred shall provide its or their response regarding the enquiry to the enquirer and to the Committee on Professional Conduct or Designated Staff Member, as applicable, within a reasonable period of time.

Consideration of Allegations

- 4.5 Every Allegation received by the Society shall be considered by the Committee on Professional Conduct.

Frivolous or vexatious Allegations

- 4.6 The Committee on Professional Conduct may dismiss any Allegation that it deems to be frivolous or vexatious.
- 4.7 The Committee on Professional Conduct may seek information and/or advice from one or more Members and/or other persons with relevant technical or other expertise before making a decision on whether an Allegation is frivolous or vexatious.
- 4.8 In making a decision on whether an Allegation is frivolous or vexatious, the Committee on Professional Conduct may take into account its view on whether the act(s), omission(s) or behaviour(s) that are the subject of the Allegation, if found proven, would constitute *prima facie* evidence of Misconduct.
- 4.9 The Committee on Professional Conduct shall at its discretion decide whether to provide the Respondent with a copy of an Allegation that it considers to be frivolous or vexatious.

Mediation

- 4.10 If the matter under consideration in an Allegation appears to the Committee on Professional Conduct to be a dispute between the person who made the Allegation and the Respondent that does not involve Misconduct on the part of the Respondent, the Chair shall so advise both parties and shall recommend that the parties enter into a mediation process.
- 4.11 If mediation is recommended pursuant to rule 4.10, the Committee on Professional Conduct shall either:
- (a) offer to mediate the matter; or
 - (b) select a proposed mediator to be recommended to the parties. An individual selected to serve as a mediator shall have substantial familiarity with the subject matter at issue and with applicable professional guidance. The Committee on Professional Conduct shall take appropriate steps to ensure that the individual selected is not in a position of conflict of interests in relation to the matter.
- 4.12 If the parties agree to the proposed mediator, the appointment shall become effective and the mediator shall work with the parties to resolve the matter. If the mediator is unable to resolve the matter within a reasonable period of time, the mediator shall so notify the parties and the Committee on Professional Conduct. In this event, the Committee on Professional Conduct shall then decide whether to propose another mediator or refer the matter to an Investigating Committee or to dismiss the Allegation.
- 4.13 If the parties do not both agree to the proposed mediator, the appointment shall not become effective and the Committee on Professional Conduct shall then decide whether to propose another mediator or refer the matter to an Investigating Committee or to dismiss the allegation.

Appointment of an Investigating Committee

- 4.14 If an Allegation is not dismissed under rule 4.6 or resolved at mediation under rules 4.10 to 4.12, the Committee on Professional Conduct shall refer it to an Investigating Committee.
- 4.15 The Investigating Committee shall be appointed by the Committee on Professional Conduct and shall consist of up to three persons, at least one of whom shall be a Fellow member and at least one of whom shall be a Lay member. The Committee on Professional Conduct shall further appoint one of the members of the Investigating Committee to act as Chair of the Investigating Committee. No member of Council or of the Disciplinary Panel shall act as a member of an Investigating Committee. Any individual invited to act as a member of an Investigating Committee must decline if the matter is one in which they consider themselves to be in a position of conflict of interests.
- 4.16 As soon as reasonably practicable after its appointment, the Investigating Committee shall send to the Respondent:
- (a) a copy of the Allegation;

- (b) a copy of this Scheme; and
- (c) the names of the members of the Investigating Committee.

Investigations

- 4.17 The Allegation shall form the basis of the investigation by the Investigating Committee into the alleged Misconduct. In addition, the Investigating Committee may take into account any additional conduct of the Respondent which might constitute Misconduct which shall come to its notice while the Allegation is being investigated. Such additional conduct may include but is not limited to any breach by the Respondent of the Respondent's duties under rule 1.14 and/or rule 1.15 to co-operate with the investigation and to provide any information requested by the Investigating Committee during the course of its investigation.
- 4.18 The Investigating Committee may:
- (a) appoint a person or persons, who may include one or more Members, to carry out enquiries on its behalf and may delegate to any such appointee the task of identifying, researching and thereby or otherwise establishing facts pertinent to the investigation; and/or
 - (b) be advised by a barrister or solicitor chosen from the Legal Advisers Pool; and/or
 - (c) instruct a barrister or solicitor chosen from the Legal Advisers Pool to assist in the preparation of the Case Report and/or Charge and/or to present the Charge to the Disciplinary Tribunal and/or to the Appeal Tribunal;
 - (d) conduct its investigation in conjunction with the investigation of another Allegation being undertaken by it or another Investigating Committee and relating to the Respondent.
- 4.19 The Investigating Committee may:
- (a) seek and receive from the person who made the Allegation and/or any other person such information, explanations, documents and other records, whether held electronically or otherwise as it thinks proper; and
 - (b) seek and receive from the Respondent such information, explanations, documents and other records, whether held electronically or otherwise as the Investigating Committee considers necessary for its investigation of the Allegation.
- 4.20 The Investigating Committee may interview any Member, the person who made the Allegation, the Respondent and/or any other individual. Neither the Respondent nor the Respondent's representatives shall be present during any interview or meeting arranged by the Investigating Committee with any other person unless in its discretion the Investigating Committee consents thereto.
- 4.21 The Investigating Committee shall have the power:

- (a) to require copies or originals of any documents relevant to the investigation from any Member (whether or not such Member is the subject of the investigation);
- (b) to require any further information from any Member relating to the subject matter of the investigation;
- (c) to investigate whether the Respondent has been subject to a prior final determination of Misconduct by any actuarial organisation that is a full member of the International Actuarial Association, whether that determination was published or not;
- (d) to require any Member (whether or not such Member is the subject of the investigation) to attend before it (and/or such other persons as the Investigating Committee may designate) at a specified time and place to answer questions or otherwise furnish information with respect to any matter relevant to the investigation;
- (e) to take any legal or other expert advice as to any matter relevant to the subject matter of the investigation; and
- (f) to require that any documents or information sought from a Member or the person who made the Allegation or any other person in accordance with this Scheme be furnished within three weeks, or such longer period as the Investigating Committee may decide, of the Investigating Committee's request for same, in which event the Investigating Committee may but shall not be obliged to accept documents or information provided outside the time limit and may continue with an investigation notwithstanding that documents or information requested are not furnished within the specified time limit or at all.

4.21A If any document or information required under rule 4.21 is confidential to a third party, Members shall take all reasonable steps to obtain the consent of the third party to permit disclosure to the Investigating Committee. The Investigating Committee shall have the power to make such commitments regarding confidentiality as it believes are necessary to facilitate disclosure.

4.21B The Investigating Committee may decide, at any time during the investigation, to recommend to the Committee on Professional Conduct that the investigation be discontinued, if, in the unanimous opinion of the Investigating Committee, it is very unlikely that a conclusion can be reached or it is not possible or practicable to complete the investigation without the co-operation of the person who made the Allegation or otherwise.

The Committee on Professional Conduct shall then decide whether to accept the recommendation or to request the Investigating Committee to continue with the investigation. The Committee on Professional Conduct shall be entitled to receive from the Investigating Committee such information as it requires to enable it to make its decision.

Case Report

- 4.22 Unless the investigation is discontinued pursuant to rule 4.21B, the Investigating Committee shall prepare a draft Case Report in accordance with the provisions of rules 4.23 to 4.25.
- 4.23 The draft Case Report shall contain, but is not limited to, a report on the Allegation, including a statement of all the relevant matters that the Investigating Committee regards as material to its investigation and the draft determinations which may be made by the Investigating Committee under rules 4.26 and 4.27. If the Investigating Committee considers, in accordance with rule 8.16, that there are compelling reasons not to disclose the Respondent's name, this shall be included in the draft Case Report.
- 4.24 The draft Case Report may contain references to matters which may amount to Misconduct outside the scope of the Allegation, if that alleged Misconduct:
- (a) has come to the attention of the Investigating Committee in the course of its investigation; and
 - (b) is not or has not been the subject of a separate Charge.
- 4.24A Before making a determination under rule 4.26 or rule 4.27:
- (a) The Investigating Committee shall send the draft Case Report, including a statement of the determination(s) which may be made under rule 4.26 and if applicable rule 4.27, to the Respondent. The Respondent shall be afforded an opportunity to submit to the Investigating Committee any representations they may wish to make on the draft Case Report. Such representations must be made in writing to the Investigating Committee within 21 days following service of the draft Case Report in accordance with rule 8.15 or such later date as the Chair of the Investigating Committee shall at their absolute discretion decide.
 - (b) The Investigating Committee shall consider any representations submitted to the Investigating Committee by the Respondent in respect of the draft Case Report, and may seek further information as a result of the representations, before proceeding to its determination(s) under rule 4.26 and if applicable rule 4.27.
- 4.25 Once the Investigating Committee has concluded its investigation and made its determination(s) under rule 4.26 and if applicable rule 4.27, the Investigating Committee shall finalise the Case Report, which shall then be signed by all members of the Investigating Committee.

Completion of an investigation

- 4.26 The Investigating Committee shall, at the conclusion of its investigation, unanimously determine either:
- (a) that there is no *prima facie* evidence of Misconduct and no disciplinary action shall be taken against the Respondent; or
 - (b) that there is *prima facie* evidence of Misconduct.

- 4.27 If, pursuant to rule 4.26, the Investigating Committee unanimously determines that there is *prima facie* evidence of Misconduct, the Investigating Committee, having regard to the gravity of the alleged Misconduct, shall further unanimously determine either:
- (a) to recommend that the Respondent accept that there has been Misconduct and, where the Investigating Committee considers it appropriate, that the Respondent agree to a sanction in accordance with the procedure in rules 4.32 and 4.33; or
 - (b) to refer the matters referred to in the Case Report to a Disciplinary Tribunal.
- 4.28 If the Investigating Committee cannot reach a unanimous determination under rule 4.26, it shall so advise the Committee on Professional Conduct, which shall either terminate the investigation or appoint a new Investigating Committee. For the purposes of making an informed decision under this rule, the Committee on Professional Conduct shall be entitled to receive from the Investigating Committee such information relating to the Allegation as the Committee on Professional Conduct requires, including the opinion of the Investigating Committee on whether the investigation should be terminated.
- 4.29 If the Investigating Committee makes a unanimous determination under rule 4.26(b) that there is *prima facie* evidence of Misconduct but cannot reach a unanimous determination under rule 4.27, it shall so advise the Committee on Professional Conduct. In this event, the Committee on Professional Conduct shall act in place of the Investigating Committee for the purposes of rule 4.27 and, if applicable, rule 4.32, whereupon the determination(s) of the Committee on Professional Conduct shall be treated as the determination(s) of the Investigating Committee under rule 4.27 and, if applicable, rule 4.32 for the purposes of this Scheme. For the purposes of making informed determinations under this rule, the Committee on Professional Conduct shall be entitled to receive from the Investigating Committee such information relating to the Allegation as the Committee on Professional Conduct requires.
- 4.30 [Previous Rule 4.30 deleted]
- 4.31 The Investigating Committee shall notify any determination under rule 4.26 or rule 4.27 to the Respondent, the Committee on Professional Conduct and the Designated Staff Member forthwith. The Investigating Committee shall include in this notification a statement of the reasons for its determination. The Designated Staff Member shall notify the Council of any determination under rule 4.26(b) or 4.27.
- 4.32 In accordance with rule 4.27, the Investigating Committee may in writing recommend that the Respondent accept that there has been Misconduct and, where the Investigating Committee considers it appropriate, further recommend that the Respondent agree to one or more of the following sanctions:
- (a) a reprimand in terms provided for by the Investigating Committee;
 - (b) a fine up to the amount provided for under rule 3.1(h) to be paid in accordance with rule 7.2;

- (c) a period of education, retraining and/or supervised practice, having regard to any guidelines published under rule 3.3.
- 4.33 A Respondent accepting a recommendation made pursuant to rule 4.32 shall do so in writing within 21 days of such recommendation and in so doing:
 - (a) shall be deemed to have accepted that the conduct in the Case Report as specified by the Investigating Committee as amounting to Misconduct is Misconduct for the purposes of this Scheme; and
 - (b) agrees to be bound by any sanction specified as if it was a sanction imposed by a Disciplinary Tribunal save that the appeal procedure in Part 6 of this Scheme shall not apply.
- 4.34 If the Respondent does not accept, within 21 days, a recommendation made pursuant to rule 4.32, the conduct in the Case Report shall be referred to a Disciplinary Tribunal.
- 4.35 Forthwith upon the determination of the Investigating Committee under rule 4.26(a) or rule 4.27(b) or the termination of an investigation under rule 4.28 or the Respondent's acceptance under rule 4.33 of a recommendation made under rule 4.32 or the referral of the Case Report to a Disciplinary Tribunal under rule 4.34, the Investigating Committee shall communicate the determination or termination or referral and the reasons therefor to the person who made the Allegation.
- 4.36 If a Respondent accepts a recommendation issued under rule 4.32(c) but fails to comply, or, if so requested by the Investigating Committee or Committee on Professional Conduct, fails to provide evidence of compliance, with the requirement to complete a period of education, retraining and/or supervised practice:
 - (a) The Investigating Committee (which may be newly constituted by the Committee on Professional Conduct) shall consider any evidence submitted to it that the Respondent has not complied with the requirement. Such evidence may be submitted to the Investigating Committee by such person or persons as may have been appointed by Council, on foot of a request from the Investigating Committee to make an appointment, to supervise or monitor compliance by the Respondent with the requirement;
 - (b) If satisfied that the Respondent has not complied with the requirement, the Investigating Committee shall not re-investigate the facts of the Allegation that gave rise to the sanction but shall reconsider the facts and any opinions and conclusions set out in the Case Report and, having regard to the Case Report and to the Respondent's failure to comply with the agreed sanction, may determine an alternative or additional sanction in accordance with rule 4.32.

Charges

- 4.37 A determination under rule 4.27(b) or rule 4.34 to refer the matter to a Disciplinary Tribunal shall cause the Investigating Committee to:

- (a) request the Chair of the Disciplinary Panel to appoint a Disciplinary Tribunal in accordance with rule 2.8; and
 - (b) prepare a Charge, in accordance with the provisions of rules 4.38 and 4.39, containing material and evidence in support of the Charge, for submission to the said Disciplinary Tribunal; and
 - (c) send a copy of the Charge to the Disciplinary Tribunal and, at the same time, to the Respondent.
- 4.38 A Charge shall be supported where necessary by concise particulars of the Charge and a statement of all the facts and matters that the Investigating Committee regards as material.
- 4.39 The Charge shall not be limited to the matters within the scope of the Allegation. The Charge may contain alleged Misconduct outside the scope of the Allegation, if:
- (a) that alleged Misconduct has come to the attention of the Investigating Committee in the course of its investigation;
 - (b) that alleged Misconduct is not or has not been the subject of a separate Charge; and
 - (c) the Respondent was given a proper opportunity to answer the additional matters in the Charge during the course of the investigation conducted by the Investigating Committee and prior to its concluding its investigation in accordance with Rule 4.25.

5. DISCIPLINARY TRIBUNALS

Charges

- 5.1 The Investigating Committee shall be responsible for presenting the Charge and relevant evidence to the Disciplinary Tribunal. The Investigating Committee may appoint the Chair or any other member of the Committee to present the Charge before the Disciplinary Tribunal or may instruct a solicitor and/or barrister to present the Charge on its behalf.
- 5.2 The Investigating Committee shall be responsible for serving a copy of the Charge on the Respondent.

Mediation

- 5.3 The Investigating Committee and the Respondent may retain the services of a mediator before the hearing and on mutually agreed terms and conditions. The mediator shall be an impartial person whose role is to assist the Parties to communicate in good faith with each other and, where appropriate, to assist and encourage the Parties to agree on a statement of facts, a recommended penalty and any other submissions and materials that may subsequently be presented to the Disciplinary Tribunal for its consideration.

Rights of the Respondent

- 5.4 The Respondent shall be given a proper opportunity of answering the Charge and, subject to rule 8.10, shall be entitled to be accompanied or represented at the hearing by a person of their choosing.
- 5.5 The Respondent shall be entitled to make representations in accordance with rule 5.6, to be heard and shall be permitted to be legally represented in accordance with rule 8.10(a), to call witnesses and to cross-examine witnesses called against the Respondent in relation to:
- (a) whether there has been Misconduct; and/or
 - (b) if they accept that there has been Misconduct or have been found guilty of Misconduct by the Disciplinary Tribunal, mitigation as to the sanction.
- 5.6 If the Respondent elects under rule 5.5 to make representations, the Respondent shall submit such representations in writing to the Disciplinary Tribunal and the Investigating Committee not later than 21 days following service of the Charge in accordance with rule 8.15 or such later date as the Chair of the Disciplinary Tribunal shall at their absolute discretion decide. The Respondent may amend such written representations, provided that the amended representations are submitted to the Disciplinary Tribunal and the Investigating Committee not later than 14 days prior to the Disciplinary Tribunal hearing.
- 5.7 Where written representations have been submitted in accordance with rule 5.6, the Investigating Committee and the Respondent shall, subject to any decision of the Chair of the Disciplinary Tribunal under this rule to the contrary, provide to the Disciplinary Tribunal submissions on any point of law identified by the Parties which may be required to be considered by the Disciplinary Tribunal no less than 7 days before the hearing. Any legal submission shall be in the form of a skeleton argument and shall be accompanied by copies of supporting authorities.

General Provisions for the Disciplinary Tribunal

- 5.8 Where in the opinion of the Disciplinary Tribunal the Charge does not show a *prima facie* case of Misconduct, the Disciplinary Tribunal may dismiss the Charge without hearing the Parties.
- 5.9 The Chair of the Disciplinary Tribunal may require the Respondent and the Investigating Committee and/or their representatives to appear before the Chair of the Disciplinary Tribunal from time to time for the purpose of making such orders as the Chair of the Disciplinary Tribunal shall think fit as to procedural matters for the proper determination of the matter by the Disciplinary Tribunal. Any procedural hearings under this rule shall be held in private.
- 5.10 The Chair of the Disciplinary Tribunal shall appoint a date for a hearing. Such date shall be appointed as soon as reasonably practicable following submission of the Charge pursuant to rule 4.37(c), unless the Chair of the Disciplinary Tribunal shall decide first to hold a procedural hearing pursuant to rule 5.9, in which circumstances the Chair of the Disciplinary Tribunal shall appoint a date for the hearing as soon as reasonably practicable thereafter. All Parties must serve upon

the Disciplinary Tribunal and any other Party no later than 14 days before the hearing the copies of the documents upon which they intend to rely.

- 5.11 Subject to rule 5.12, on the application of any Party, the Chair of the Disciplinary Tribunal may order the disclosure of documents in another Party's possession if they are relevant and if the chair of the Disciplinary Tribunal considers that it is fair in all the circumstances that the documents should be so disclosed.
- 5.12 The Chair of the Disciplinary Tribunal shall not require under rule 5.11 the production of any document which is the subject of legal professional privilege or which might tend to expose the Respondent to criminal penalties.

Hearings

- 5.13 The Chair of the Disciplinary Tribunal shall give to the Parties reasonable notice (no less than 28 days) in writing of the hearing appointed under rule 5.10. Subject to rule 5.14, the Disciplinary Tribunal shall hear the Charge in public.
- 5.14 The Disciplinary Tribunal may, acting of its own motion or upon the application of any Party, hear the Charge, in full or in part, in private if in the Disciplinary Tribunal's opinion there is good reason to do so. The person who made the Allegation shall be entitled to attend any private hearing and may be accompanied by a person of their choosing except that the accompanying person may remain during any private session of the relevant Disciplinary Tribunal only with the agreement of the Chair of the Disciplinary Tribunal. The Chair of the Disciplinary Tribunal may require that any person attending a private hearing sign a confidentiality agreement in advance.
- 5.15 At any stage the Disciplinary Tribunal may appoint a barrister or solicitor from the Legal Advisers Pool to assist it in any matters of law or procedure. Such adviser may be present at any hearing and may give such advice to the members of the Disciplinary Tribunal during any private deliberations as may be requested by them. Any advice given in private must be made available to the Parties and included in the record of the hearing.
- 5.16 The hearing shall be conducted in such manner as is consistent with the principles of natural justice and, subject to this Scheme, the Disciplinary Tribunal shall have complete discretion over the procedure to be adopted before it and may, save where fairness requires otherwise, consolidate or hear together any related Charge or Charges under this Scheme. If the Respondent does not attend the hearing, then, provided that the Disciplinary Tribunal is satisfied that the notice of hearing was served on the Respondent, the Tribunal may proceed to hear the Charge in the absence of Respondent. A transcript shall be maintained of all hearings before the Disciplinary Tribunal.
- 5.17 The Disciplinary Tribunal may at any time before or during the hearing direct that a Charge or any particulars of a Charge shall be amended, provided that:
- (a) the Disciplinary Tribunal (or the Chair of the Disciplinary Tribunal if prior to the substantive hearing) is satisfied that the Respondent will not be substantially prejudiced in the conduct of their defence by the making of such an amendment; and

- (b) the Disciplinary Tribunal shall, if so requested by the Respondent, adjourn for such time as is reasonably necessary to enable the Respondent to deal with the Charge as so amended.
- 5.18 A witness called for one Party may be questioned by or on behalf of the other Party and by the Disciplinary Tribunal.
- 5.19 The Disciplinary Tribunal may admit any evidence, whether oral or written, whether direct or hearsay, and whether or not that evidence would be admissible in a court of law.

Determinations

- 5.20 At the conclusion of the hearing, the Disciplinary Tribunal shall determine, by simple majority, whether the Charge of Misconduct against the Respondent has been proven. In the absence of such a majority, the Charge shall be dismissed.
- 5.21 If the Disciplinary Tribunal determines that the Respondent has been proven guilty of Misconduct, the Disciplinary Tribunal shall determine by simple majority:
- (a) that no sanction is appropriate; or
 - (b) that one or more of the following sanctions shall be imposed:
 - (i) a reprimand in terms provided for by the Disciplinary Tribunal;
 - (ii) a fine of such amount as may be deemed appropriate by the Disciplinary Tribunal, to be paid in accordance with rule 7.2;
 - (iii) a period of education, retraining and/or supervised practice, having regard to any guidelines published under rule 3.3;
 - (iv) suspension or withdrawal of any Practising Certificate held by the Respondent;
 - (v) exclusion from holding any Practising Certificate for any period that the Disciplinary Tribunal thinks appropriate up to a maximum of five years, which must elapse before the Respondent may submit any application to hold a Practising Certificate to the Society;
 - (vi) suspension from membership of the Society for any period that the Disciplinary Tribunal thinks appropriate up to a maximum of two years;
 - (vii) expulsion from membership of the Society for any period that the Disciplinary Tribunal thinks appropriate up to a maximum of five years, which must elapse before the Respondent may submit an application for readmission as a Member to the Society;
 - (viii) where the Respondent is a former Member, exclusion from membership of the Society for any period that the Disciplinary Tribunal thinks appropriate up to a maximum of five years, which must elapse before the Respondent may submit an application for readmission as a Member to the Society.

- 5.22 If a sanction has been imposed under rule 5.21(b)(iii), the Disciplinary Tribunal (or a newly constituted Disciplinary Tribunal) may be recalled on the application of the Investigating Committee or the Committee on Professional Conduct and impose such further sanction as may be deemed appropriate by the Disciplinary Tribunal should the Respondent not comply with the terms of the sanction of education, retraining and/or supervised practice first imposed.

Costs

- 5.23 The Disciplinary Tribunal may determine the amount of and make an award of costs against the Respondent or the Society as it considers appropriate. If an award of costs is made against the Respondent it shall be made in favour of the Society.

Communication of Determination

- 5.24 A determination of the Disciplinary Tribunal shall be served upon the Respondent forthwith, which determination shall, subject to rule 7.2(a), be effective from the date of expiry of any period under Rule 6.2 for making an appeal under Rule 6.1. The Disciplinary Tribunal's reasons shall be served upon the Respondent in writing when the determination is served or as soon as reasonably practicable thereafter.
- 5.25 The Disciplinary Tribunal shall also communicate its determination and reasons to:
- (a) the Investigating Committee;
 - (b) the person who made the Allegation;
 - (c) the Committee on Professional Conduct; and
 - (d) the Designated Staff Member, who shall notify the Council and shall organise the publication of the determination in accordance with rule 8.16.

6. APPEALS

Making an appeal

- 6.1 The Respondent may by notice appeal against the determination of the Disciplinary Tribunal.
- 6.2 A Notice of Appeal under rule 6.1 shall be given in writing and served upon the person who made the Allegation, the Investigating Committee and the Chair of the Disciplinary Panel no later than 28 days after the Disciplinary Tribunal's written determination is sent to the Respondent in accordance with rule 8.15 (or such longer period as the Chair of the Disciplinary Panel may at their discretion decide on the application of the Respondent).
- 6.3 A Notice of Appeal under rule 6.1 shall state the grounds of the appeal. The grounds of appeal so stated shall not thereafter be amended except, reasonable cause having been shown, with the leave of the Appeal Tribunal appointed under rule 2.9 to hear the appeal.

- 6.4 If an appeal is validly made in accordance with rules 6.2 and 6.3:
- (a) the Chair of the Disciplinary Panel shall, in accordance with rule 2.9, appoint an Appeal Tribunal; and
 - (b) the Appeal Tribunal shall, as soon as practicable, address the appeal in accordance with the provisions of this Scheme.
- 6.5 If an appeal is validly made in accordance with rules 6.2 and 6.3 in circumstances, where, under rule 5.21(b), the Respondent has had sanctions imposed upon them, then the sanctions shall not come into effect until the appeal has been determined.
- 6.6 At any time before the determination of the appeal by the Appeal Tribunal the Respondent may withdraw their Notice of Appeal by writing to the Appeal Tribunal, whereupon the appeal shall be deemed dismissed and the Appeal Tribunal shall, if requested to do so by any Party, consider the making of a cost determination pursuant to rule 6.11(c).

Hearings

- 6.7 The Appeal Tribunal may at its discretion:
- (a) make a determination on the appeal without rehearing the case, based on its review in private of the record of the Disciplinary Tribunal's proceedings and any documentary evidence and any other evidence and written submissions placed before the Disciplinary Tribunal; and/or
 - (b) give the Respondent a reasonable opportunity to be heard and to be legally represented before it and to call any witnesses before it; and/or
 - (c) give the Investigating Committee a reasonable opportunity to be heard and to be legally represented before it and to call any witnesses before it; and/or
 - (d) hear or re-hear any witnesses who gave evidence before the Disciplinary Tribunal as it thinks fit; and/or
 - (e) admit fresh evidence if it thinks it is reasonable and in the interests of justice to do so; and/or
 - (f) obtain such legal or other advice or opinions as it thinks fit, from a barrister and/or solicitor from the Legal Advisors Pool provided such barrister and/or solicitor was not appointed by the Disciplinary Tribunal whose determination is the subject of appeal.
- 6.8 Should the Appeal Tribunal decide to conduct an oral appeal hearing, the Chair of the Appeal Tribunal shall appoint a date for the hearing and shall give reasonable notice in writing of the hearing to the Parties, but such oral hearing shall be vacated in the event of the Respondent withdrawing their Notice of Appeal. The Respondent shall be entitled to attend any oral hearing. If the Respondent does not attend, then, provided that the Appeal Tribunal is satisfied that notice of the oral hearing was served on the Respondent, the Appeal Tribunal may proceed to hear the appeal in the absence of the Respondent.

6.9 [Previous Rule 6.9 deleted]

6.10 Any oral hearing of the Appeal Tribunal shall be in public, unless the Appeal Tribunal, acting of its own motion or upon the application of any Party, decides to hear any oral appeal, in full or in part, in private if, in the Tribunal's opinion, there is good reason to do so. The person who made the Allegation shall be entitled to attend any private hearing and may at the discretion of the Chair of the Appeal Tribunal be accompanied by a person of his choosing except that the accompanying person may remain during any private session of the Appeal Tribunal only with the agreement of the Chair of the Appeal Tribunal. The Chair of the Appeal Tribunal may require that any person attending a private hearing sign a confidentiality agreement in advance.

Determinations

6.11 The Appeal Tribunal shall make one or more of the following determinations on the appeal:

- (a) affirm, vary or rescind any determination of the Disciplinary Tribunal;
- (b) substitute for the determination made by the Disciplinary Tribunal any other determination or determinations which the Disciplinary Tribunal might have made and under these Rules had the power to make, which might include substituting a lesser or more severe sanction;
- (c) make an award of costs in such amount as it shall determine, against the Respondent or Society as it considers appropriate.

6.12 The Appeal Tribunal shall make its determination by simple majority.

6.13 The determination of the Appeal Tribunal shall be final.

Communication of Determination

6.14 A determination of the Appeal Tribunal shall be served upon the Respondent forthwith, which determination shall, subject to rule 7.2(a), be effective from the date of its making. The Appeal Tribunal's reasons shall be served upon the Respondent in writing when the determination is served or as soon as reasonably practicable thereafter.

6.15 The Appeal Tribunal shall also communicate its determination and reasons to:

- (a) the Disciplinary Tribunal;
- (b) the Investigating Committee;
- (c) the person who made the Allegation;
- (d) the Committee on Professional Conduct; and
- (e) the Designated Staff Member, who shall notify the Council and shall organise the publication of the determination in accordance with rule 8.16.

7. COSTS ORDERS AND FINES

- 7.1 A fine or an award of costs made by the Disciplinary Tribunal or by the Appeal Tribunal shall be recoverable by the party in whose favour the order is made as a debt due from the party against whom the order is made.
- 7.2 Any fine payable or costs ordered to be paid shall be paid by the Respondent within 28 days of:
- (a) the serving of notice of such fine or order of costs to the Respondent in accordance with rule 8.15, unless an appeal is validly made in accordance with rules 6.2 and 6.3, in which case the period of 28 days begins from the notification of the dismissal of the appeal under rule 6.6 or the Appeal Tribunal's determination under rule 6.11; or
 - (b) the Respondent's acceptance of the recommendation of the Investigating Committee under rules 4.27 and 4.33.

8. GENERAL PROVISIONS

Investigation of conduct in the absence of an Allegation

- 8.1 Where, having regard to the interests of the public and the profession, the Honorary Secretary considers it appropriate that a matter relating to the conduct of a Member should be investigated, such matter shall be referred for consideration as an Allegation under this Scheme. Thereafter the matter shall proceed for the purposes of this Scheme as if an Allegation had been made to the Society. If the Honorary Secretary is unable to perform the duties required under this rule, whether because of a conflict of interests or otherwise, the Honorary Secretary shall so advise the Council and the Council shall nominate another person to carry out these duties.

Withdrawal of an Allegation

- 8.2 If a person who made an Allegation pursuant to Rule 4.5 withdraws an Allegation that has not been dismissed under rule 4.6 or resolved by mediation under rules 4.10 to 4.12, the Committee on Professional Conduct shall decide whether, in the interests of the public and/or the actuarial profession, the Allegation shall be pursued under this Scheme as though it had not been withdrawn.
- 8.3 If, under rule 8.2, the Committee on Professional Conduct decides that the Allegation shall be pursued under this Scheme as though it had not been withdrawn, the person who made the Allegation, if they are a Member, shall be obliged to cooperate with the investigation of the Allegation as though they had not sought to withdraw it.
- 8.4 If the Committee on Professional Conduct accepts the withdrawal of an Allegation, the Committee shall so inform the parties to the Allegation and rule 8.17 shall apply.
- 8.5 If the person who made the Allegation is not a Member, the Committee on Professional Conduct, in making a decision under rule 8.2, may take into account

its views on the probable impact of that person's withdrawal from the investigation process.

- 8.6 For the purposes of making an informed decision under rule 8.2, the Committee on Professional Conduct shall be entitled to receive from any Investigating Committee appointed to investigate the Allegation such information relating to the Allegation as the Committee on Professional Conduct requires, including the opinion of the Investigating Committee on whether the Allegation should be pursued under this Scheme.

Conduct of and procedure at meetings

- 8.7 Subject to rule 3.1(n), an Investigating Committee, a Disciplinary Tribunal and an Appeal Tribunal (or the Chair of such Tribunal as the case may be) may give all such directions with regard to the conduct of and procedure at meetings or hearings as it considers most suitable for the clarification of the issues and generally for the just handling of the proceedings before it. This includes the power to vary the time limits set out in this Scheme and to adjourn any meeting or hearing. In the case of an Investigating Committee, such directions shall not be inconsistent with rule 4.20. In the case of a Disciplinary Tribunal, such directions shall not be inconsistent with rules 5.13 to 5.19. In the case of an Appeal Tribunal, such directions shall not be inconsistent with rules 6.7 to 6.10.
- 8.8 Save where fairness requires otherwise, any hearing or meeting of an Investigating Committee, a Disciplinary Tribunal or an Appeal Tribunal can deal with Allegations, Case Reports or Charges involving one or more Respondents and for such purpose appropriate directions may be given under rule 8.7.
- 8.9 Provided that a Disciplinary Tribunal or an Appeal Tribunal is satisfied that the Respondent has been given reasonable notice of a hearing, the proceedings of that body shall be valid and of full effect even if the Respondent does not attend, is not represented or does not state his case.
- 8.10 At any hearing of a Disciplinary Tribunal (including any procedural hearing before the Chairman), or an Appeal Tribunal, the Respondent may be:
- (a) represented by a solicitor and/or barrister or another Member or such other person as the Chair of the relevant Tribunal may agree provided that this does not unreasonably delay any such hearing; and
 - (b) accompanied by a person of his choosing except that the accompanying person may remain during any private session of the relevant Tribunal only with the agreement of the Chair of the Tribunal.
- 8.11 Any Investigating Committee, Disciplinary Tribunal, Appeal Tribunal (or the Chair of such Tribunal) shall have discretion to accept written undertakings from the Respondent.

Remuneration

- 8.12 Anyone who serves on an Investigating Committee, a Disciplinary Tribunal or an Appeal Tribunal shall be entitled to such remuneration as the Council may decide.

Authenticity of documents

- 8.13 All documents put before an Investigating Committee, a Disciplinary Tribunal or an Appeal Tribunal shall be deemed to be authentic. If a Party challenges the authenticity of any document the relevant body shall consider the objections raised by such Party (and any evidence raised in rebuttal), and shall, on the basis of such representations, give the evidence contained in such document such weight as it thinks fit.

Reports to Committee on Professional Conduct

- 8.14 The Committee on Professional Conduct shall, as soon as reasonably practicable, be given by the Chair of each of an Investigating Committee, a Disciplinary Tribunal or an Appeal Tribunal (as the case may be) a report on the proceedings under this Scheme, containing such particulars as they consider appropriate.

Serving of notice or documents

- 8.15 Any notice or other document required by any provision of this Scheme to be given or sent to a Party may be sent by pre-paid post addressed to them at their address notified to the Society for communications, or, if the Society is aware that this address is no longer current, to their usual or last known place of business or residence. Service of any notice or document shall be deemed to have been effected at the end of 48 hours from the time of posting, and in proving that a document was so sent it shall be sufficient to prove that the cover containing it was properly addressed, stamped and posted.

Disclosure of information under this Scheme

- 8.16 The following matters shall be made public by the Society as soon as reasonably practicable:
- (a) any determination of an Investigating Committee under rule 4.26(b) and, where applicable, any sanction imposed by an Investigating Committee, in circumstances where all recommendations made by the Investigating Committee under rule 4.32 are accepted by the Respondent in accordance with rule 4.33;
 - (b) on expiry of any period under Rule 6.2 for making an appeal under Rule 6.1, any final determination of a Disciplinary Tribunal under rule 5.20 or rule 5.21 save in circumstances where the Charge of Misconduct is dismissed under rule 5.20 and the Respondent requests that publication be withheld;
 - (c) any final determination of an Appeal Tribunal save in circumstances where the Appeal Tribunal rescinds the determination of the Disciplinary Tribunal and the Respondent requests that publication be withheld; and
 - (d) when a Disciplinary Tribunal or Appeal Tribunal hearing is due to be held in public in accordance with rule 5.13 or rule 6.10, the date, time and place of such hearing.

In cases (a), (b) and (c), the details made public shall include the name of the Respondent unless there are compelling reasons not to include the name of the

Respondent when the consequences of publication on the Respondent would outweigh the duty to keep the public informed. In case (a) the decision of whether there are compelling reasons will be made by the Investigating Committee; in case (b) by the Disciplinary Tribunal and in case (c) by the Appeal Tribunal.

8.17 Subject to rule 8.18, where

- (a) the Committee on Professional Conduct dismisses an Allegation under rules 4.6, 4.12 or 4.13, or
- (b) an Investigating Committee determines, under rule 4.26(a), that there is no *prima facie* evidence of Misconduct, or
- (c) following withdrawal of an Allegation, investigation of the Allegation ceases in accordance with rule 8.2,

the Society, the Investigating Committee, the Committee on Professional Conduct and any Member other than the Respondent shall be prohibited from making public or causing to be made public any details of the Allegation or the investigation except as part of an anonymised report, unless the Respondent asks the Society to publish the determination or other outcome, in which case the Society may but shall not be obliged to do so and if it does so, it shall inform the person who made the Allegation in advance.

8.18 If the Respondent is a member of another actuarial organisation with which the Society has a memorandum of understanding relating to the sharing of information in respect of disciplinary cases, the Committee on Professional Conduct or the relevant Investigating Committee, as appropriate, shall:

- (a) provide to the organisation concerned as soon as possible such information relating to the investigation and adjudication of the Allegation as is provided for in the memorandum of understanding; and/or
- (b) request from the organisation concerned such information relating to the investigation and adjudication by it of any matter concerning the Respondent relevant to the Allegation as is provided for in the memorandum of understanding.

8.19 The Society may disclose any determination made under rules 4.26(b), 4.27, 5.20, 5.21 or 6.11, any sanction recommended under rule 4.32, and any reasons stated under rules 4.31, 5.25 or 6.15, to any of the following bodies for the purpose of assisting that body in properly undertaking its functions:

- (a) any statutory regulatory or supervisory body; and/or
- (b) any actuarial organisation that is a full member of the International Actuarial Association.

Allegations against Members outside Ireland

8.20 The Committee on Professional Conduct may prescribe such arrangements for investigation and determination of Allegations against Members who are resident and practising outside Ireland as seem appropriate under the circumstances to accord as nearly as possible with this Scheme.

Amendments to this Scheme

- 8.21 Provisions of this Scheme may be revoked, varied or added to subject always to relevant provisions of the Society's Memorandum and Articles of Association..

9. COMMENCEMENT AND TRANSITIONAL PROVISIONS

Commencement

- 9.1 The provisions of this Scheme first came into force on 1st September 2006. The provisions of this version 01/2020 shall come into force on 8th September 2020 and shall be applicable to all matters relating to or arising from Allegations received under the Scheme on or after that date.

Transitional Provisions

- 9.2 Allegations received by the Society, including matters referred by the Honorary Secretary under rule 8.1, prior to 8th September 2020, being the date on which this version 01/2020 of this Scheme shall come into force, shall be dealt with as follows: the Allegation shall be determined, and any Disciplinary Tribunal hearing and/or appeal relating thereto shall be conducted, under the provisions of the Scheme in force from 16th September 2011, which provisions shall continue in force for that purpose, unless the Respondent agrees that it should be determined in accordance with this version 01/2020 of this Scheme, in which case the disciplinary process shall not recommence but shall continue pursuant to this version 01/2020.