



Bye-Law No. 1

IRISH TAXATION INSTITUTE

BYE-LAW NO. 1

INVESTIGATION AND DISCIPLINARY PROCEDURES

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1. Liability to Disciplinary Action

In this Bye-Law:

The term **“Appeal Committee”** means the committee appointed under Clause 10.1;

The term **“Appeal Hearing”** means a hearing of an appeal against a finding and/or Order of the Disciplinary Committee before the Appeal Committee;

The term **“Appellant”** means a Member who has appealed a finding and / or Order of the Disciplinary Committee in accordance with Clause 10.3;

The term **“Board”** means the Taxation Disciplinary Board established by the UK Taxation Disciplinary Scheme;

The term **“Bye-Law”** refers to the contents of this Bye-Law unless otherwise notified;

The term **“Council”** means the Council of the Institute;

The term **“Complaint”** means any facts or circumstances which indicate that any Member may have become liable to disciplinary action in accordance with this Bye-Law which come to the attention of the Secretary of the Investigations Committee, whether they were brought to his attention by a Complainant or they otherwise come to his attention;

The term **“Complainant”** means any person who brings a Complaint to the attention of the Secretary of the Investigations Committee;

The term **“Disciplinary Bodies”** means the Investigations Committee, the Taxation Disciplinary Board, the Independent Adjudicator, the Disciplinary Committee, and the Appeal Committee as appointed under this Bye-Law;

The term "**Investigations Committee**" means the committee appointed under Clause 2.1;

The term "**Formal Complaint**" means a Complaint that has been referred to the Disciplinary Committee by the Investigations Committee in accordance with this Bye-Law;

The term "**Hearing**" means a hearing of a Formal Complaint against a Member before the appointed panel of Disciplinary Committee;

The term "**Independent Adjudicator**" means any person appointed as an Independent Adjudicator under Clause 4.1;

The term "**Institute**" means the Irish Taxation Institute;

The term "**Member**" shall have the meaning provided for in the Institute's Code of Professional Conduct and Recommended Best Practice Guidelines (Code of Conduct) and, therefore, shall include current Students;

The term "**Presenter**" means a person appointed by the Investigations Committee to present a Formal Complaint on its behalf to the Disciplinary Committee or Appeal Committee;

The term "**Relevant Member**" means a Member against whom the disciplinary process set out in this Bye-Law has been commenced; and

The term "**Secretary**" means the Secretary to the Investigations Committee (unless otherwise referred to as Secretary to the Disciplinary Committee, Secretary to the Appeal Committee or Secretary to the Institute).

- 1.1 A Member shall be liable to disciplinary action in accordance with this Bye-Law in any of the following cases:

- (a) If, in the course of discharging his professional duties or otherwise, he has been guilty of Misconduct. For this purpose, Misconduct includes, but is not confined to, any act, default or behaviour likely to bring discredit to the Institute, or its Members or any part of its Membership, or the taxation profession generally. Such acts and behaviour include (but are not limited to) incompetence, inefficiency, breach of any applicable code of ethics or conduct, lack of care, conscientiousness, integrity, independence, or honesty; or
- (b) If he is in breach of the Institute's Code of Conduct, or his conduct has otherwise fallen short of the standards appropriate to Membership of the Institute; or
- (c) If he has provided false or misleading information to the Institute, without reasonable excuse; or
- (d) If he has failed to co-operate with the Investigations Committee, the Board, the Independent Adjudicator, the Disciplinary Committee, or the Appeal Committee; or
- (e) If he has committed any breach of any of the Institute's Articles of Association or Bye-Laws, including a failure to comply with an Order of the Disciplinary Committee or the Appeal Committee under this Bye-Law including a failure to pay a fine (but for the avoidance of doubt not a failure to pay any sum that has become payable by him to the Institute by way of registration fee, annual subscription or otherwise).

1.2 Where a Member, before a Court of competent jurisdiction in Ireland or elsewhere, has pleaded guilty to, or has been found guilty of, any offence involving dishonesty, violence, indecency, subversion, drug trafficking, money laundering, tax evasion, breach of companies legislation, or

complicity in any such offences, or has in any civil proceedings been found to have acted fraudulently or dishonestly, it shall be presumed, unless the contrary is established, that such conviction or finding constitutes proof of Misconduct as specified in Clause 1.1 (a).

1.3 Where a Member allows his membership of the Institute to lapse, and subsequently applies to be re-admitted to membership, the Institute shall have the power to reactivate any previous investigation of that Member which was ongoing at the time the Member's membership lapsed, before allowing the Member to be re-admitted to membership.

2. The Investigation Procedure

2.1 The Council shall from time to time appoint a committee, to be known as the Investigations Committee. The Investigations Committee shall consist of a Secretary (who shall be elected by the Committee), and not less than two and not more than ten Members or former Members of the Council, and at least two non-Members of the Institute who are qualified as lawyers in Ireland of not less than 10 years' standing.

2.2 A Chairperson of the Investigations Committee shall be appointed by the Committee who shall be one of the two non-Member lawyers on the Committee.

2.3 The quorum for any meeting of the Investigations Committee shall be two, at least one of whom shall be one of the lawyers referred to at Clause 2.1 above. Any meeting of the Investigations Committee at which a quorum is present shall be competent to exercise all the functions and powers conferred upon the Investigations Committee by this Bye-Law.

2.4 A meeting of the Investigations Committee may consist of a conference between members of the Investigations Committee who are not all in one place, but each of which is able (directly or by telephonic communication) to

speak to each of the others, and to be heard by each of the others simultaneously. A member of the Investigations Committee taking part in such conference shall be deemed to be present in person at the meeting and shall be entitled to vote or be counted in a quorum accordingly. Such a meeting shall be deemed to take place where the largest group of those participating in the conference is assembled, or if there is no such group, where the chairman of the meeting is located.

Any person may bring a Complaint to the attention of the Secretary and each such Complaint shall be dealt with by the Secretary in accordance with Clause 2.8.

2.5 Complainants are required to complete the Complaints Form (annexed to this Bye-law and also available on the Institute website and submit this to the Secretary.

2.6 The date of the Complaint shall be deemed to be the date of receipt of the Complaint by the Secretary.

2.7 No Complaint, inquiry or information shall be considered by the Secretary when it is provided to him in excess of 12 months after the last incident relied on, or in excess of 12 months from when that last incident became known to the Complainant, unless in the opinion of the Secretary:

(a) there are issues of such public interest that pursuing the Complaint is appropriate; or

(b) the Complaint raised is of sufficient gravity or importance that pursuing the Complaint is appropriate; or

(c) there is a valid reason for the delay in the Complaint being brought to the attention of the Secretary.

Before determining if the circumstances set out in (a), (b) or (c) above have arisen, the Secretary shall provide the Member concerned with a reasonable opportunity to make representations as to any prejudice he may suffer if the investigation were to go ahead. Any such representations shall be considered by the Secretary before he makes his decision on whether to proceed with an investigation or not. The decision of the Secretary whether to pursue a Complaint for investigation after the specified 12 month period shall be final.

- 2.8 Once a Complaint comes to the attention of the Secretary, the Secretary shall (unless he considers that the Complaint is vexatious or of such a minor nature that it would not, if proved, merit a sufficiently serious sanction to justify prosecution of the Complaint, or he considers in his absolute discretion that the Complaint can be resolved by conciliation, mediation, or in some other way not involving disciplinary action) refer the Complaint to the Board and request that an investigation be carried out in respect of the Complaint.
- 2.9 In dismissing a Complaint as vexatious or of such a minor nature that it would not, if proved, merit a sufficiently serious sanction to justify prosecution of the Complaint, the Secretary shall provide the Complainant with a written decision and inform the Complainant that the Complainant has the right to refer such dismissal to the Independent Adjudicator pursuant to Clause 4.3. If the Independent Adjudicator agrees that the Complaint is vexatious or of such a minor nature that it would not, if proved, merit a sufficiently serious sanction to justify prosecution of the Complaint, no further action shall be taken on it. If the Independent Adjudicator disagrees, the Complaint shall be referred by the Secretary to the Board in accordance with Clause 2.8.
- 2.10 The Secretary of the Institute may independently refer a matter to the Secretary if he is of the opinion that such facts and matters that have come

to his attention indicate that a Relevant Member may be liable to disciplinary action under this Bye-Law. The Secretary shall deal with such a Complaint in the same way that he would deal with a Complaint from a Complainant.

3. Investigation of Complaint

- 3.1 Where any Complaint has been referred to the Board for investigation pursuant to Clause 2.8 or 2.10, an investigation of the Complaint shall be conducted by a Reviewer appointed by the Board. The Reviewer shall require the Relevant Member and/or the Complainant to provide such further information and such documents relating to the Complaint as the Reviewer thinks necessary for the effective, expeditious, fair and economic disposal of the case and to supply such further copies of any document as it considers requisite. The time for compliance with such a request shall be specified by the Reviewer and it shall be the duty of the Relevant Member to provide such information as requested.
- 3.2 Every Member of the Institute must co-operate with and facilitate the investigation of a Complaint.
- 3.3 Where any Complaint has been referred to the Board for investigation, any Reviewer appointed by it shall have the same powers of investigation as an Investigations Committee and the Relevant Member shall have the same duty to co-operate with the Board and any Reviewer appointed by it as if the investigation was being conducted by the Investigations Committee. Failure by a Relevant Member to co-operate with the Board and any Reviewer appointed by it shall be deemed to be a failure to co-operate with an Investigations Committee for the purposes of Clause 1.1(d).
- 3.4 In particular, the Board and any Reviewer appointed by it shall be entitled to request information from the Relevant Member (and any other Members where appropriate) and the Relevant Member (and other Members) shall be

obliged to provide the information requested in the same way as if the request for information had been made directly by the Investigations Committee. The Board and any Reviewer appointed by it shall also be entitled to call the Relevant Member (or other Member) to a meeting as part of its investigation and the Relevant Member (or other Member) shall be obliged to attend the meeting and provide the information requested by the Board and any Reviewer appointed by it. Failure to co-operate with the Board and any Reviewer appointed by it shall be considered as a failure to co-operate with the Investigations Committee for the purposes of Clause 1.1(d).

- 3.5 If the Relevant Member fails to co-operate or to reply to correspondence within the time specified by the Reviewer in the course of the Reviewer's investigation, the Reviewer may recommend that such failure is referred to the Disciplinary Committee as a separate Complaint.
- 3.6 In cases where pursuant to Clause 3.7(c) the Reviewer recommends that prima facie grounds on which the Relevant Member is liable to disciplinary action under this Bye-Law have been established and that a Complaint be referred to the Disciplinary Committee, he shall first have provided the Member who is the subject of the Complaint an opportunity to respond to the Complaint and have considered any response received before making his recommendation. If the Member fails to respond within the time specified by the Reviewer, the Reviewer may recommend the referral of the case to the Disciplinary Committee notwithstanding the absence of any response.
- 3.7 At the conclusion of his investigation, the Reviewer shall prepare a case summary together with an appendix of all relevant documentation and correspondence, and shall submit this to the Secretary with one of the following recommendations:

(a) That the Complaint does not fall within the jurisdiction of Bye Law No 1 or the Code of Conduct where no prima facie grounds on which the Relevant Member is liable to disciplinary action under this Bye-Law have been established and no further action should be taken; or

(b) That the Complaint is vexatious or of such a minor nature that in his view it would not, if proved, merit a sufficiently serious sanction to justify prosecution of the Complaint and no further action should be taken; or

(c) That prima facie grounds on which the Relevant Member is liable to disciplinary action under this Bye-Law have been established and the matter should be referred to the Disciplinary Committee.

The Reviewer must provide reasons for his recommendation to the Secretary.

3.8 In the case of a recommendation by the Reviewer in accordance with Clause 3.7(a) or Clause 3.7(b) above that no further action shall be taken, the Secretary shall either:

(i) affirm the Reviewer's recommendation and notify the Complainant and the Relevant Member as soon as practicable that (a) no prima facie case has been established, or (b) the Complaint is vexatious or of such a minor nature that it would not, if proved, merit a sufficiently serious sanction to justify prosecution of the Complaint; or

(ii) refer the recommendation of the Reviewer to the Investigations Committee for further consideration together with a reason or reasons for the decision to refer.

3.9 On receipt of a referral from the Secretary of the Reviewer's decision that no prima facie grounds on which the Relevant Member is liable to disciplinary

action under this Bye-Law have been established pursuant to Clause 3.8(ii), the Investigations Committee shall consider the Reviewer's recommendation and the reason(s) provided by the Secretary for the referral and either affirm the recommendation of the Reviewer or decide to conduct further investigations itself and reach its own conclusions in relation to the matter.

- 3.10 The Investigations Committee shall have the power to request such further information as it deems necessary and appropriate from the Relevant Member, the Complainant, the Reviewer and the Secretary for the purpose of the conclusion of its investigation.
- 3.11 If following its review of the recommendation of the Reviewer the Investigations Committee affirms the Reviewer's recommendation that (a) no prima facie grounds on which the Relevant Member is liable to disciplinary action under this Bye-Law have been established, or (b) that the Complaint is vexatious or of such a minor nature that it would not, if proved, merit a sufficiently serious sanction to justify the prosecution of the Complaint, the Secretary shall notify the Relevant Member and the Complainant of the decision. The decision of the Investigations Committee in this regard is final and there is no right of appeal against the decision of the Investigations Committee to the Independent Adjudicator.
- 3.12 In the event that the Investigations Committee at the end of its investigations concludes that prima facie grounds on which the Relevant Member is liable to disciplinary action under this Bye-Law have been established, contrary to the recommendation of the Reviewer, then it shall refer the matter to the Disciplinary Committee in accordance with Clause 5.1.
- 3.13 Prior to reaching a conclusion that there is a prima facie case to answer contrary to the recommendation of the Reviewer, the Investigations Committee shall seek representations from the Relevant Member and shall

request the Relevant Member's response to any considerations of the Investigation Committee that the recommendation of the Reviewer should not be accepted. Any such representations or responses shall be considered by the Investigation Committee in reaching a conclusion on whether to refer the matter to the Disciplinary Committee.

- 3.14 In the case of a recommendation by the Reviewer in accordance with Clause 3.7(c) that prima facie grounds on which the Relevant Member is liable to disciplinary action under this Bye-Law have been established, the Secretary shall lay the Complaint and recommendation of the Reviewer before the Investigations Committee for review and consideration.
- 3.15 The Investigations Committee shall have the power to request such further information as it deems necessary and appropriate from the Relevant Member, the Complainant and the Reviewer for the purpose of the conclusion of its investigation.
- 3.16 The Investigations Committee shall either accept the Reviewer's recommendation that prima facie grounds on which the Relevant Member is liable to disciplinary action under this Bye-Law have been established and refer the matter to the Disciplinary Committee for hearing in accordance with Clause 5.1 or, if it is of the view that the report prepared by the Reviewer is incomplete or that there are issues in relation to the Complaint which require further investigation, the Investigations Committee may request that the Reviewer conduct further investigations. Alternatively, the Investigations Committee may decide to continue the investigation itself and reach its own conclusions in relation to the matter.
- 3.17 If, following its review of the recommendation of the Reviewer in accordance with Clause 3.7(c) that prima facie grounds on which the Relevant Member is liable to disciplinary action under this Bye-Law have been established, and, where applicable, its review of information resulting from any additional

investigation conducted by the Reviewer or the Investigation Committee itself under Clause 3.16, the Investigations Committee concludes that no prima facie grounds on which the Relevant Member is liable to disciplinary action under this Bye-Law have been established the Secretary shall notify the Relevant Member and the Complainant of the decision. The decision of the Investigations Committee in this regard is final and there is no right of appeal against the decision of the Investigations Committee to the Independent Adjudicator.

- 3.18 Prior to reaching a conclusion that there is no prima facie case to answer despite the contrary recommendation of the Reviewer, the Investigations Committee may seek representations from the Relevant Member and the Complainant and may request the Complainant's response to any considerations of the Investigation Committee that the recommendation of the Reviewer should not be accepted.

4. Appeal to Independent Adjudicator

- 4.1 The Council shall from time to time appoint a non-member to the position of Independent Adjudicator who will be a qualified lawyer in Ireland of at least 10 years' standing. The Independent Adjudicator will be appointed for a 2 year term. At the end of each 2 year term the Council may decide to reappoint the outgoing Independent Adjudicator or appoint a new Independent Adjudicator. No person who is a member of the Investigations Committee, the Disciplinary Committee, or the Appeal Committee may be appointed as an Independent Adjudicator.
- 4.2 If the Complainant is dissatisfied with the recommendation of the Reviewer and the notification by the Secretary pursuant to Clause 3.8(i) that (a) no prima facie grounds on which the Relevant Member is liable to disciplinary action under this Bye-Law have been established, or (b) the Complaint is vexatious or of such a minor nature that it would not, if proved, merit a

sufficiently serious sanction to justify prosecution of the Complaint, and that no further action be taken, he may appeal against the decision to the Independent Adjudicator, unless he has already appealed pursuant to Clause 4.3 in respect of the Complaint. Where the Clause 4.3 procedure has been effected and the Complaint sent for review following the ruling of the Independent Adjudicator, the recommendation of the Reviewer and the notification by the Secretary pursuant to Clause 3.8(i) shall be final.

- 4.3 If the Complainant is dissatisfied with the decision of the Secretary pursuant to Clause 2.9 that the Complaint be dismissed on the grounds that it is vexatious or of such a minor nature that it would not, if proved, merit a sufficiently serious sanction to justify prosecution of the Complaint, he may appeal against that decision to the Independent Adjudicator.
- 4.4 If a Complainant wishes to appeal in accordance with Clauses 4.2 or 4.3, he is required to complete the Notice of Appeal on the Institute website and submit to the Secretary this through the website. The Notice of Appeal should be submitted within 14 days of notification of the decision to the Complainant. In cases where the Complainant cannot complete the online Notice of Appeal he should submit the Notice of Appeal in writing to the Secretary and should ensure that the Notice of Appeal contains all of the information set out in the online Notice of Appeal. A written Notice of Appeal must be received by the Secretary within 14 days of the date of notification of the decision to the Complainant.
- 4.5 Where a Notice of Appeal is received by the Secretary in accordance with Clause 4.4, the Secretary shall send the Notice of Appeal, in conjunction with the recommendation of the Reviewer or decision of the Secretary and any supporting documentation, to the Independent Adjudicator for consideration.

- 4.6 The Independent Adjudicator shall send a copy of the Notice of Appeal, and any other material received from the Secretary pursuant to Clause 4.5, to the Relevant Member as soon as practicable and the Independent Adjudicator shall request a response from the Relevant Member to the Notice of Appeal within a time period specified by the Independent Adjudicator. The Independent Adjudicator may also seek further information from the Complainant if such is deemed necessary for the purposes of the appeal.
- 4.7 The Independent Adjudicator shall determine the appeal by reference to the Notice of Appeal submitted, any other material received from the Secretary pursuant to Clause 4.5, any reply or response received from the Relevant Member and any other correspondence or submissions received during the course of his adjudication.
- 4.8 In the case of an appeal from the recommendation of the Reviewer pursuant to Clause 4.2, the Independent Adjudicator may uphold the recommendation of the Reviewer not to take any further action or order that the Complaint be referred to the Investigations Committee for investigation. The decision of the Independent Adjudicator in this regard shall be final.
- 4.9 In the case of an appeal from the decision of the Secretary pursuant to Clause 4.3, the Independent Adjudicator may uphold the decision of the Secretary that the Complaint should be dismissed, or order that the Complaint be referred by the Secretary to the Board for investigation pursuant to Clause 2.8. The decision of the Independent Adjudicator in this regard shall be final.
- 4.10 The Independent Adjudicator shall give detailed written reasons for his determination to the Secretary, the Complainant and the Relevant Member within 28 days of the conclusion of the Independent Adjudicator's investigation.

- 4.11 In circumstances where the Independent Adjudicator concludes that the Complaint be referred to the Investigations Committee pursuant to Clause 4.8 the Secretary shall lay the Complaint, the recommendation of the Reviewer, and the decision and written reasons of the Independent Adjudicator, together with a copy of all relevant documentation and correspondence, before the Investigations Committee. The Investigations Committee shall determine if it agrees with the recommendation of the Reviewer that no prima facie grounds on which the Relevant Member is liable to disciplinary action under this Bye-Law have been established and that no further action shall be taken or if the matter should be referred to the Disciplinary Committee pursuant to Clause 5.1.
- 4.12 The Investigations Committee may request such further information from the Complainant, the Relevant Member, the Reviewer or the Board, or the Independent Adjudicator as it deems necessary to reach its decision.
- 4.13 Prior to reaching a conclusion to refer the matter to the Disciplinary Committee pursuant to Clause 5.1 despite the contrary recommendation of the Reviewer, the Investigations Committee shall seek representations from the Relevant Member in respect of the Reviewer's recommendation and the decision of the Independent Adjudicator.
- 4.14 If, having reviewed the report of the Reviewer and the Independent Adjudicator, the Investigation Committee is of the opinion that (a) no prima facie grounds on which the Relevant Member is liable to disciplinary action under this Bye-Law have been established, or (b) the Complaint is vexatious or of such a minor nature that it would not, if proved, merit a sufficiently serious sanction to justify prosecution of the Complaint, the Investigation Committee shall notify its decision to the Relevant Member and to the Complainant, giving reasons for its decision. The decision of the Investigations Committee shall be final.

5. Referral to the Disciplinary Committee

- 5.1 If, having reviewed the recommendation of the Reviewer, and, where applicable, having reviewed the decision of the Independent Adjudicator and/or the results of its own investigation, the Investigations Committee is of the opinion that prima facie grounds on which the Relevant Member is liable to disciplinary action under this Bye-Law have been established, and that the Complaint is sufficiently serious to justify prosecution of the Complaint, it shall refer a Formal Complaint to the Disciplinary Committee detailing each alleged disciplinary breach pursuant to Clause 1.1, and shall include a summary of the facts and matters that were before the Investigations Committee, together with a summary or copy of any representations made by the Relevant Member and the Complainant, a copy of the recommendation of the Reviewer and, where applicable, the Independent Adjudicator, and any supporting documentation.
- 5.2 In deciding whether a case ought to be referred to the Disciplinary Committee, the Investigations Committee shall be entitled to take into account any facts or matters that have been considered by the Investigations Committee on previous occasions in relation to the Relevant Member, in respect of which, although a prima facie case had been made out, no Complaint was referred to the Disciplinary Committee, and, if it is decided to refer a Formal Complaint to the Disciplinary Committee, then the Complaint may include all or any of the facts and matters that were on each occasion so considered by the Investigations Committee or the Secretary as the case may be (save for the Relevant Member's previous disciplinary record, as provided for in Clause 11.6, or the details of any previous Complaints that were dealt with by way of conciliation or mediation under Clause 2.5).
- 5.3 Prior to the referral of a Complaint to the Disciplinary Committee, the Investigations Committee may direct that the Secretary attempt to resolve

any Complaint laid before it by conciliation or admonishment or in some other way not involving disciplinary action, and, if successful, shall take no further action unless subsequently the Investigations Committee considers that new facts or matters have arisen that alter the circumstances or render the earlier resolution by the Secretary inappropriate.

5.4 The Investigations Committee has absolute discretion to determine whether or not to defer further consideration of a case against the Relevant Member, for such time as it considers necessary, if it believes there are reasonable grounds for doing so. Such grounds would include, but are not limited to, proceedings of a civil or criminal nature in a competent Court relating to the subject matter of the Complaint.

5.5 In circumstances where either prior to or following the referral of a Formal Complaint under Clause 5.1 (but prior to the Disciplinary Hearing) the Relevant Member contacts the Investigations Committee with a view to reaching a resolution of the matter, the Investigations Committee may enter into an appropriate agreement with the Relevant Member and, where necessary, withdraw the Formal Complaint . It shall be at the discretion of the Investigations Committee as to whether the Complainant shall be notified of the terms of any agreement reached.

6. The Disciplinary Committee

6.1 The Council may from time to time appoint a Disciplinary Committee, which shall consider Formal Complaints against Relevant Members. The Disciplinary Committee shall consist of not less than five and not more than eight persons, all but one of whom shall be members or former members of Council who have served thereon for at least three years. The final Committee member, who cannot be a Member of the Institute, shall be a lawyer of not less than 10 years' standing and shall act as Chairperson.

- 6.2 The Disciplinary Committee shall appoint a Secretary to the Committee who shall be responsible for the duties outlined in this Bye Law.
- 6.3 The Council may from time to time appoint a person either to fill a vacancy in or as an additional member of the Disciplinary Committee, and may remove any member of that Committee. Unless previously removed, each Committee member shall at the end of three years from his appointment retire from office and shall be eligible for re-appointment.
- 6.4 If a Formal Complaint is referred to the Disciplinary Committee pursuant to Clause 5.1, the Chairperson of the Disciplinary Committee shall appoint three of its members, including the Chairperson, to be a panel to hear the Formal Complaint. No former member of the Investigations Committee who has been concerned with the Complaint which is the subject of the Formal Complaint shall be eligible for appointment to the panel.
- 6.5 If for any reason prior to the time fixed for the hearing of the Formal Complaint any member of the panel so appointed is unable to attend the Hearing, the Chairperson shall co-opt another eligible member of the Disciplinary Committee to act in his place. If during the course of the Hearing a member of such panel (other than the Chairperson) is unable to continue to attend the Hearing, the remaining members of the panel, provided that they are not less than two in number, may, at their discretion, proceed or continue with the Hearing; but if the Relevant Member against whom the Complaint has been preferred is present, they shall do so only having considered any representations that may be made by or on behalf of the Relevant Member. In any case where the Hearing is not proceeded with by the remaining members of the panel, the Complaint shall be re-heard by a new panel of the Disciplinary Committee.
- 6.6 If at any time the Chairperson of the Disciplinary Committee is of the opinion that it is for any reason impracticable or inappropriate for the Hearing of any

Complaint to be completed by the panel appointed in that behalf, he shall direct that the Complaint be re-heard by a new panel.

- 6.7 Whenever a Formal Complaint is re-heard pursuant to this Bye-Law, any of the members of the original panel may be appointed to the new panel provided that the Chairperson is satisfied, in his absolute discretion, that the Relevant Member would not be unfairly prejudiced thereby.
- 6.8 A panel appointed in accordance with any of the provisions of this Bye-Law to hear a Complaint shall, in relation to that Complaint, be competent to exercise all the functions and powers conferred on the Disciplinary Committee, and accordingly references in this Bye-Law to the Disciplinary Committee shall in relation to that Complaint be construed as references to the panel so appointed.
- 6.9 Every Member of the Institute must co-operate with and facilitate the investigation of the Disciplinary Committee if called upon to do so.

7. Initial Procedure for cases referred from the Investigations Committee

- 7.1 On receipt of the Formal Complaint from the Investigations Committee the Secretary to the Disciplinary Committee shall issue a copy to the Relevant Member and shall as soon as practicable notify the Relevant Member and the Investigations Committee of the date, time and place fixed for the Hearing (which shall not be sooner than 28 days from the date of such notification), and the Relevant Member is entitled to attend the Hearing.
- 7.2 At the same time, if applicable, the Secretary to the Disciplinary Committee shall also notify the Independent Adjudicator in writing of the nature of the Complaint and of the date, time and place fixed for the Hearing, and shall confirm if the Independent Adjudicator is required to attend the Hearing.

7.3 The following documents shall be sent to the Relevant Member by the Secretary to the Disciplinary Committee together with notification of the Hearing:

(a) a copy of the Formal Complaint as set out at Clause 5.1;

(b) a copy of the relevant version of the Code Conduct and Bye Law No 1 of the Institute; and

(c) a letter to the Relevant Member requiring him to indicate in writing:

(i) whether he accepts all or any of the charges made against him, and if not on what grounds he denies them;

(ii) if he accepts any of the charges made against him, whether he has any explanation or mitigation;

(iii) whether or not he intends to attend and/or be represented at the Hearing and, if so, by whom and whether that representative is authorised to accept service of documents on his behalf.

7.4 At least 14 days before the day fixed for the hearing (or such other period as may be determined by the Chairperson of the Disciplinary Committee), the Investigations Committee and the Relevant Member shall serve on the Disciplinary Committee a list of all witnesses they intend to call at the Hearing and provide four copies of an indexed set of all documents on which they intend to rely on at the Hearing. The Investigations Committee and the Relevant Member shall also serve a copy of such documents on the other party. In addition, the Relevant Member shall serve a summary of the arguments to be presented in his defence on the Disciplinary Committee and the other party.

8. Powers of the Disciplinary Committee

8.1 On receipt of the Formal Complaint, or at any time thereafter, the Chairperson of the Disciplinary Committee may request that the Secretary to the Disciplinary Committee serve a notice on any party to the disciplinary process directing that party within the time period specified in the notice:

(a) to deliver to the Disciplinary Committee such particulars as the Disciplinary Committee may consider are required for the purposes of determining any of the issues in the proceedings; or

(b) to make available for inspection by the Disciplinary Committee all such documents in the party's possession or power as may be specified or described in the notice, being documents which, in the opinion of the Disciplinary Committee contain or may contain information relating to the subject complaint of the proceedings.

8.2 The Chairperson of the Disciplinary Committee may decide to hold a preliminary hearing and/or give directions to ensure the just, fair and expeditious progress of the Formal Complaint. The Chairperson may decide if the Complainant is to attend at any preliminary hearing and if they are to be provided with a copy of the Formal Complaint and other relevant documents. The Investigations Committee or the Relevant Member can also make a request to the Chairperson of the Disciplinary Committee to hold a preliminary hearing and it shall be at the discretion of the Chairperson as to whether to proceed with such a preliminary hearing.

9. The Hearing

9.1 It shall be the duty of the Relevant Member to co-operate with the Disciplinary Committee, and to provide such information and explanations as the Disciplinary Committee may require at the Hearing. If, in the opinion of the Disciplinary Committee hearing the Formal Complaint, the Relevant Member fails to co-operate, or unreasonably delays in doing so, it shall be

presumed, unless the contrary is established, that such conduct constitutes proof of Misconduct as specified in Clause 1.1(a).

- 9.2 The Relevant Member may appear before the Disciplinary Committee in person or be represented by such person as he may wish. The Relevant Member shall be deemed to be present when he appears by his representative. The Disciplinary Committee shall give the Relevant Member or his representative a fair and reasonable opportunity of being heard before it.
- 9.3 The Relevant Member shall be entitled to be heard before the Disciplinary Committee and shall be permitted to be legally represented, to call witnesses and to cross-examine witnesses called against him.
- 9.4 If the Relevant Member does not attend the Hearing, then, provided that the Disciplinary Committee is satisfied that notice of that Hearing was served on the Relevant Member, the Committee may proceed to hear the Complaint in the absence of the Relevant Member.
- 9.5 If the Disciplinary Committee proceeds with the Hearing in the absence of the Relevant Member, then the Relevant Member may, by notice in writing served on the Secretary to the Disciplinary Committee within 21 days after service of the Order of the Disciplinary Committee under Clause 9.24 upon the Relevant Member, apply to the Disciplinary Committee for the Formal Complaint to be re-heard. The application shall be considered by the panel that conducted the Hearing, which may in its absolute discretion grant or refuse the application. In considering any such application, the panel shall take into account the reasons advanced by the Relevant Member in his application for re-hearing or otherwise for his being absent from the Hearing, and may in its absolute discretion give the Relevant Member an opportunity of being heard before it. If the Disciplinary Committee grants the application, the Formal Complaint shall be re-heard by the same panel,

and the provisions of this Bye-Law shall apply to such re-hearing as if it were the original hearing. The decision of the Disciplinary Committee in this regard is final.

- 9.6 The Investigations Committee may appoint its Secretary or any other person, including a solicitor or counsel, to present the Formal Complaint.
- 9.7 The Disciplinary Committee may instruct a solicitor to act, or to brief counsel to act, as legal adviser on the Hearing, or as an assessor to sit with the Committee and assist in its deliberations.
- 9.8 The Hearing shall be conducted in such manner, consistent with the principles of natural justice, as the Chairperson of the panel conducting the Hearing may determine.
- 9.9 The Hearing shall be held in private. However, the Chairperson may, in his absolute discretion but after giving notice to, and hearing any submissions from, any affected persons, determine that the Hearing should be open to the public in whole or in part in the event that (a) there are matters of significant public interest that require that the Hearing should be in public, and (b) if neither the Relevant Member nor any other person would be significantly prejudiced as a result of the decision to open the Hearing to the public.
- 9.10 In determining whether or not a Complaint has been proved, the Disciplinary Committee shall have regard to the Code of Conduct and to any other technical statements laid down or approved by the Council.
- 9.11 At any time prior to or in the course of the Hearing, if the Complainant requests that the Formal Complaint against the Relevant Member be withdrawn, then if the Disciplinary Committee in its absolute discretion agrees to the Formal Complaint being withdrawn, there should be no finding

against the Relevant Member and the Formal Complaint should be dismissed.

- 9.12 The standard of proof required by the Disciplinary Committee, in order to find that a Formal Complaint has been proven, shall be proof on the balance of probabilities.
- 9.13 At the beginning of the Hearing, the Chairperson of the Disciplinary Committee, or any person to whom he shall delegate such task, shall read out the Formal Complaint and invite the Relevant Member to state whether he admits or denies the Formal Complaint and any part of it.
- 9.14 The Chairperson shall then, except where he considers it unnecessary to do so, explain the order of proceedings that the Disciplinary Committee proposes to adopt.
- 9.15 The Presenter shall then outline the Formal Complaint against the Relevant Member, and may call any witness, including but not limited to the Complainant, and produce any document.
- 9.16 At the conclusion of the Presenter's case, the Relevant Member (or his representative) shall be afforded a reasonable opportunity to address the Disciplinary Committee and to call any witness and produce any document, and the Relevant Member may give evidence on his own behalf.
- 9.17 A witness called for one party, including the Relevant Member himself, may be questioned by or on behalf of the other party and by the Disciplinary Committee. A witness so questioned may be re-examined by or on behalf of the party calling him.

- 9.18 The Disciplinary Committee shall afford the Relevant Member (or his representative) a reasonable opportunity to make a closing address to the Disciplinary Committee.
- 9.19 The Disciplinary Committee will give the Presenter a reasonable opportunity to address the Committee before the close of the proceedings.
- 9.20 The Disciplinary Committee may, in its absolute discretion, 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.
- 9.21 The Disciplinary Committee may on the application of the Presenter, agree to the amendment of the terms of a Formal Complaint, provided it is satisfied that the Relevant Member would not be unfairly prejudiced thereby and after considering any representations made by on or behalf of the Relevant Member.
- 9.22 At the conclusion of the Hearing (or as soon as practicable thereafter), if the Disciplinary Committee appointed to hear a Formal Complaint (or, in respect of any appeal, the Appeal Committee) finds that the Formal Complaint has been proven in whole or in part in accordance with the standard of proof applicable in accordance with Clause 9.12, it shall make a finding to that effect; but if it finds that the Formal Complaint has not been proven in accordance with such applicable standard of proof, it shall dismiss the Formal Complaint. In either case the Disciplinary Committee (or, in respect of any appeal, the Appeal Committee) shall give reasons for its finding. Written notice of any finding or Order of the Disciplinary Committee (together with the reasons therefor) shall as soon as practicable be given to the Relevant Member and to the Investigations Committee.
- 9.23 Where the Disciplinary Committee (or, in respect of any appeal, the Appeal Committee) makes a finding that the Formal Complaint has been proven in

whole or in part against a Member (other than a Student), the Committee may make any one or more of the following Orders against the Relevant Member as it considers appropriate, having regard to the status of the Relevant Member and the Committee's views as to the nature and seriousness of the Formal Complaint, and any other circumstances that the Committee considers relevant:

(a) a recommendation to the Council that the Relevant Member be excluded from Institute Membership and that his name be removed from the Register of Members;

(b) a recommendation to the Council that the membership of the Relevant Member be suspended for a period not exceeding five years;

(c) reprimanding the Relevant Member; and/or

(d) fining the Relevant Member a sum not exceeding €15,000 for any one incident.

9.24 Where the Disciplinary Committee (or, in respect of any appeal, the Appeal Committee) makes a finding that the Formal Complaint has been proven in whole or in part against a Student, the Committee may make any one or more of the following Orders against the Relevant Member as it considers appropriate, having regard to the status of the Relevant Member, and the Committee's views as to the nature and seriousness of the Complaint, and any other circumstances that the Committee considers relevant:

(a) a recommendation to the Council that the Student be deemed unfit to be declared a Member either for life or for such period as the Disciplinary Committee recommends;

(b) a recommendation to the Council that the Student's registration as a Student be suspended for a period not exceeding two years and that he be declared ineligible to take an examination during that time;

(c) reprimanding the Student; and/or

(d) fining the Student a sum not exceeding €15,000 for any one incident.

9.25 Any Order of the Disciplinary Committee (or of the Appeal Committee) made under this Bye-Law may be made upon such terms and conditions (if any) as the Committee may consider appropriate, including, in the case of an Order recommending exclusion, a recommendation that no application for admission or re-admission shall be entertained for such period as the Committee, in its Order, shall determine. The Order may include an Order as to costs as provided for under Clause 13.1.

9.26 If, notwithstanding its finding that a Complaint has been proved, the Disciplinary Committee (or, in the case of an appeal, the Appeal Committee) is of the opinion that, in all the circumstances of the case, no Order is appropriate, it may make an Order that no further action be taken on the Formal Complaint.

9.27 An Order of the Disciplinary Committee shall take effect from the date of the Order. Notice of the said Order shall as soon as practicable be served on the Relevant Member and, unless appealed against, given to the Council. In any case where the Disciplinary Committee has either made no Order on the Complaint or has ordered that the name of the Relevant Member shall not be published, the name of the Relevant Member shall not be included in the notice given to the Council.

9.28 Relevant Members shall be entitled to appeal from any finding of or Order made by the Disciplinary Committee, and the notice of the Order delivered

on the Relevant Member shall include details of their right of appeal and of the requirements of Clause 10.5.

- 9.29 A recommendation to the Council under Clause 9.23 (a) or (b) or Clause 9.24 (a) or (b) shall be accompanied by a summary of all the reasons, facts and circumstances involved.

10. The Appeal Committee

- 10.1 The Council shall from time to time appoint an Appeal Committee. The Appeal Committee shall consist of not less than four person, all but one of whom shall be members or former members of Council who have served thereon for a least three years., The final Committee member, who cannot be a Member of the Institute, shall be a lawyer of not less than 10 years' standing and shall act as Chairperson.
- 10.2 The Appeal Committee shall appoint a Secretary to the Committee who shall be responsible for the duties outlined in this Bye Law.
- 10.3 The Council may from time to time appoint a person either to fill a vacancy in or as an additional member of the Appeal Committee, and may remove any member of that Committee. Unless previously removed, each Committee member shall at the end of three years from his appointment retire from office and shall be eligible for re-appointment.
- 10.4 The Relevant Member may, within 21 days of service upon him of the Order of the Disciplinary Committee, or such longer period as that Committee may allow, give notice of appeal of the terms of the Order of the Disciplinary Committee in accordance with this Bye-Law.
- 10.5 Any such notice shall be in writing addressed to the Secretary to the Appeal Committee and shall state the grounds of appeal. The grounds so stated

shall not thereafter be amended, except with the leave of the Appeal Committee. The Secretary to the Appeal Committee shall on receipt of such notice of appeal provide a copy to the Investigations Committee.

- 10.6 Where the notice of appeal is from an Order of the Disciplinary Committee recommending to Council that the Relevant Member be excluded from Institute membership, any costs ordered by the Disciplinary Committee shall be paid on or before the giving of the notice of appeal, and failure to do so shall invalidate the notice. If the amount of such costs has not yet been ascertained, then the Relevant Member must provide an undertaking to pay such costs promptly when ascertained. Payment of costs in advance of an appeal is without prejudice to any right to reimbursement if the appeal is upheld.
- 10.7 As soon as practicable after the receipt of any valid notice of appeal, the Chairperson of the Appeal Committee shall appoint a panel of that Committee to hear the appeal. Every such panel shall consist of the Chairperson of the Appeal Committee (or, if he is not able to sit, a lawyer of not less than 10 years' standing appointed by the Council who need not be a Member of the Institute to act as chairperson of the panel), together with two Members of the Appeal Committee. The panel so appointed shall, in relation to that appeal, be competent to exercise all the functions and powers conferred on the Appeal Committee by this Bye-Law, and accordingly references to the Appeal Committee shall, in relation to that appeal, be construed as references to the panel so appointed.
- 10.8 No Member or former Member of the Investigations Committee or of the Disciplinary Committee, who has been concerned with the Formal Complaint that is the subject of the appeal, shall be eligible for appointment to the panel appointed to hear the appeal.

- 10.9 If for any reason prior to the time fixed for the hearing of the appeal any member of the panel so appointed is unable to attend the Appeal Hearing, the Chairperson shall co-opt another eligible member of the Appeal Committee to act in his place. If during the course of the Appeal Hearing any member of such panel (other than the Chairperson) is unable to continue to attend such Appeal Hearing, the remaining members of the panel, may at their discretion, proceed or continue with the Appeal Hearing; but if the Relevant Member is present, they shall do so only having considered any representations that may be made by or on behalf of the Relevant Member. In any case where the Appeal Hearing is not proceeded with by the remaining members of the panel, the appeal shall be re-heard by a new panel.
- 10.10 If, at any time during the course of the Appeal Hearing, the Chairperson is of the opinion that it is for any reason impracticable or inappropriate for the appeal to complete the Appeal Hearing, the Chairperson of the Appeal Committee shall appoint a new panel to hear the appeal.
- 10.11 Whenever an appeal is re-heard, all or any one or more of the members of the original panel may be appointed to the new panel, provided the Chairperson of the Appeal Committee is satisfied that the Relevant Member would not be unfairly prejudiced thereby.
- 10.12 As soon as practicable after the appointment of the panel to hear the appeal, the Appeal Committee shall notify the Relevant Member and the Investigation Committee in writing of the date, time and place fixed for the Appeal Hearing (which shall not be sooner than 28 days from the date of such notification), and the Relevant Member shall be entitled to attend the Appeal Hearing.
- 10.13 At the same time, if applicable, the Appeal Committee will also notify the Independent Adjudicator in writing of the date, time and place fixed for the

Appeal Hearing, and shall confirm if the Independent Adjudicator is required to attend the Appeal Hearing.

- 10.14 Every Member of the Institute must co-operate with and facilitate the investigation of the Appeal Committee if called upon to do so.
- 10.15 At least 14 days before the date fixed for the Appeal Hearing, the Relevant Member and the Investigation Committee shall deliver to the Chairperson of the Appeal Committee a summary of the arguments to be presented in support of or against the appeal, together with copies of such supporting documents as each party proposes to rely on, and a list of such witnesses as they propose calling at the hearing. The Chairperson shall on receipt of such documents provide a copy to the Investigations Committee.
- 10.16 The Appeal Hearing shall be held in private. However, the Chairperson may, in his absolute discretion but after giving notice to and hearing any submissions received from any affected persons, determine that the Appeal Hearing should be open to the public in whole or in part in the event that there are matters of significant public interest that require that the Appeal Hearing should be in public, and if neither the Relevant Member nor any other person would be significantly prejudiced as a result of the decision to open the Appeal Hearing to the public.
- 10.17 The Appeal Committee shall give the Relevant Member a reasonable opportunity of being heard before it and shall, if the Relevant Member so desires, permit the Relevant Member to be represented before it.
- 10.18 The Appeal Hearing shall be conducted in such manner, consistent with the principles of natural justice, as the Chairperson of the Appeal Committee may determine.

- 10.19 If the Relevant Member does not attend the Appeal Hearing, then, provided that the Appeal Committee is satisfied that notice of that Appeal Hearing was served on the Relevant Member, the Appeal Committee may proceed to hear the appeal in the absence of the Relevant Member.
- 10.20 If the Appeal Committee proceeds with the Appeal Hearing in the absence of the Relevant Member, then the Relevant Member may, by notice in writing served on the Chairperson of the Appeal Committee within 21 days of service of the Order of the Appeal Committee upon the Relevant Member, apply to the Appeal Committee for the appeal to be re-heard. The application shall be considered by the panel that conducted the Appeal Hearing, which may in its absolute discretion grant or refuse the application. In considering any such application, the panel shall take into account the reasons advanced by the Relevant Member in his application for re-hearing or otherwise for his being absent from the Appeal Hearing, and may in its absolute discretion give the Relevant Member an opportunity of being heard before it. If the Appeal Committee grants the application, the Complaint shall be re-heard by the same panel, and the provisions of this Bye-Law shall apply to such re-hearing as if it were the original Appeal Hearing.
- 10.21 The Relevant Member (or his representative) shall be afforded a reasonable opportunity to address the Appeal Committee and to call any witness and produce any document, provided that those witnesses and/or documents were presented before the Disciplinary Committee at the Hearing of the Formal Complaint, and the Relevant Member may give evidence on his own behalf.
- 10.22 At the conclusion of the Relevant Member's case, the Presenter may outline the Investigations Committee's case to the Appeal Committee and may call any witnesses and produce any document for the purposes of the appeal, provided that those witnesses and/or documents were presented before the Disciplinary Committee at the Hearing of the Formal Complaint.

- 10.23 On any appeal, the Appeal Committee shall take into consideration the record of the evidence given before, and the documents produced to, the Disciplinary Committee on its hearing of the Formal Complaint, but may in its absolute discretion re-hear any other witness called before the Disciplinary Committee but not called by the Relevant Member or the Investigation Committee for the purposes of the Appeal Hearing.
- 10.24 The Appeal Committee may, in its absolute discretion, admit any evidence not presented at the hearing of the Formal Complaint before the Disciplinary Committee. If either the Relevant Member or the Presenter wish to introduce any new evidence not presented at the hearing of the Formal Complaint before the Disciplinary Committee, they shall give notice to the other party and to the Appeal Committee of such intention, including a summary of the new evidence, at least 14 days prior to the date set for the Appeal Hearing.
- 10.25 On any appeal, the Appeal Committee may affirm, vary or rescind any Order made by the Disciplinary Committee under this Bye-Law, and may substitute any other Order or Orders (on such terms and conditions, if any, as it thinks appropriate), which the Disciplinary Committee might have made on the original Formal Complaint (including, in the case of an Order for the Council to consider exclusion, a recommendation that no application for re-admission shall be entertained for such period as the Appeal Committee in its Order shall determine), or may, if the Appeal Committee considers it appropriate, order that the Complaint be remitted and heard afresh by a different panel of the Disciplinary Committee.
- 10.26 Any Order of the Appeal Committee shall take effect as from the date thereof unless the Appeal Committee, in its absolute discretion, directs that it shall take effect from some other date (not being earlier than the date of

the Order appealed against), as shall be specified in the Order of the Appeal Committee.

10.27 Notice of any Order of the Appeal Committee shall, as soon as practicable, be served on the Relevant Member and given to the Council, save that in any case where the Appeal Committee has either rescinded the Order of the Disciplinary Committee and not substituted any other Order, or has ordered that the name of the Relevant Member shall not be published, the name of the Relevant Member shall not be included in the notice given to the Council.

10.28 On any appeal, the Appeal Committee may affirm, vary or rescind any Order of the Disciplinary Committee for costs as may have been made, and may substitute such other Order as it shall think fit for the payment of costs by the Relevant Member.

11. General Issues Relating to the Hearing and the Appeal Hearing

11.1 It shall be the duty of the Relevant Member to co-operate with each of the Disciplinary Bodies and their appointed representatives, and to provide such information, explanations and computer and other electronic records as the Disciplinary Bodies and their appointed representatives may require to enable them to carry out their duties. If the Relevant Member fails to co-operate, or unreasonably delays in doing so, it shall be presumed, unless the contrary is established, that such conduct constitutes proof of Misconduct as specified in Clause 1.1(a).

11.2 The Disciplinary Committee and the Appeal Committee may expel from a hearing any person who is or becomes disruptive to the proceedings.

11.3 The Secretary to the Institute shall maintain a register of all orders made by the Disciplinary Committee and the Appeals Committee.

- 11.4 The Investigations Committee, the Chairperson of the Disciplinary Committee and the Chairperson of the Appeals Committee may appoint any employee or Member of the Institute or an employee or member of the Board to assist them in undertaking their duties under this Bye-Law and to act as Secretary to the relevant person/committee. The Secretary can appoint a stenographer or arrange for an alternative system to be used to record the proceedings.
- 11.5 Where a Complaint relating to a Student of the Institute has been referred to the Investigations Committee, the Disciplinary Committee or the Appeals Committee, the results of any Institute examination taken by the Student that have not been notified to the Student may be withheld until the matter has been disposed of in accordance with this Bye-Law.
- 11.6 The Disciplinary Committee and the Appeal Committee shall not be privy to the disciplinary record of the Relevant Member, unless a finding that the Formal Complaint has been proven in whole or in part has been made in which case they are permitted to review the previous disciplinary record in deciding what (if any) sanction to impose.
- 11.7 The Code of Conduct relevant to the determination of any Complaint shall be the version in force on the date or dates that the actions that led to the Complaint took place. The procedures provided for in this Bye-Law shall apply to any Complaints initiated after the coming into force of this Bye-Law, and likewise any changes to this Bye-Law will govern the procedure adopted on Complaints initiated after such changes come into force; but the changes to this Bye-Law will not retrospectively adversely affect the rights and liabilities of the Relevant Member, nor will the Relevant Member be liable for penalties that were inapplicable at the time of the events giving rise to the Complaint.

11.8 The rules of judicial evidence will not apply to the proceedings of the Disciplinary Bodies. Each of these entities may treat as evidence any written, oral or other form of testimony, and may admit any evidence, whether direct or hearsay.

11.9 No objection shall be upheld to any technical fault in the Formal Complaint, or of any Order made under this Bye-Law by the Disciplinary or Appeal Committee or in the procedures adopted in respect of any Complaint of the panel, provided that the proceedings are fair to the Complainant and the provisions of this Bye-Law have been complied with.

12. Fines

12.1 A fine ordered by the Disciplinary Committee shall, unless some other date is determined in the Order, be payable within 28 days of the service of such Order on the Relevant Member, save that, if notice of appeal is given, such fine shall not be payable until the determination of the appeal and then subject to any Order made by the Appeal Committee thereon.

12.2 A fine ordered by the Appeal Committee, or a fine which, having been ordered by the Disciplinary Committee, is affirmed or varied as to the amount thereof by the Appeal Committee, shall be payable within 28 days of the date of the Order of the Appeal Committee.

12.3 Any fine and/or costs imposed under this Bye-Law shall be deemed to be a contract debt due from the Relevant Member to the Institute and shall be recoverable by the Institute under the normal debt-collection procedures provided for in the Rules of the Superior Courts.

13. Costs

13.1 Any Order made by either the Disciplinary Committee or the Appeal Committee under this Bye-Law on a Complaint being proven may direct that

the Relevant Member pay to the Institute all or part of the costs incurred by the Institute in dealing with the Complaint made in respect of the Relevant Member and/or within any appeal, including, in particular, any legal fees, shorthand writer's fees, accommodation costs or other disbursements incurred by the Institute in connection therewith.

- 13.2 Any such costs awarded against the Relevant Member shall be paid within 28 days of the service of the Order upon the Relevant Member save that, subject to Clause 13.3 below, if notice of appeal from any Order of the Disciplinary Committee is given, such costs shall not be payable until the determination of the appeal and then subject to any Order made by the Appeal Committee thereon.
- 13.3 Where the appeal is from an Order of the Disciplinary Committee that the Relevant Member be excluded from Membership, any costs ordered by the Disciplinary Committee shall be paid to the Institute before the giving of the notice of appeal, and failure to do so shall invalidate such notice.
- 13.4 No appeal shall lie solely on the question of costs.
- 13.5 The Appeal Committee may in its Order affirm, vary or rescind any Order of the Disciplinary Committee for costs as may have been made pursuant to Clause 13.1 above and may substitute such other Order as it shall think fit for the payment of costs. It may also, in addition to any other Order made by it, direct that the Relevant Member pay to the Institute the costs of the appeal. If the Relevant Member withdraws his appeal at any stage, then the Appeal Committee may make an Order for the costs of the appeal.
- 13.6 Any costs ordered by the Appeal Committee under Clause 13.5 above, together with any costs due under Clause 13.1 above, varied, if such be the case, by the Appeal Committee, shall be paid to the Institute within 28 days

of the service of the Order of the Appeal Committee upon the Relevant Member.

14. Publication of Findings and Orders

- 14.1 Whenever the Disciplinary Committee makes an Order under this Bye-Law, it may, subject to Clause 14.4 below, cause its Order to be published in such manner as it thinks fit, provided that, if the Disciplinary Committee has ordered that no further action be taken on the Formal Complaint in accordance with Clause 9.26, the Order shall not be published unless the Relevant Member so requests.
- 14.2 The Appeal Committee may likewise cause any Order made by it to be published in such manner as it thinks fit, provided that, if the Appeal Committee has ordered that no further action be taken on the Complaint, the order shall not be published unless the Relevant Member so requests.
- 14.3 Orders of the Disciplinary Committee or Appeal Committee may be published in the *Irish Tax Review* and may be otherwise circulated to the media in such manner as the Disciplinary Committee or Appeal Committee shall determine.
- 14.4 Unless the Disciplinary Committee or, as the case may be, the Appeal Committee, in its absolute discretion otherwise directs, any such publications shall state the name of the Relevant Member and the Order or Order made against the Relevant Member, but need not include the name of any other person concerned in the Formal Complaint or appeal.
- 14.5 No publication under Clause 14.1 above shall be made until after the expiry of the appeal period referred to in Clause 10.3. If notice of appeal is received by the Chairperson of the Appeal Committee, then, unless the

appeal is abandoned, no publication under Clause 14.1 above shall take place but publication may be made under Clause 14.2 above.

15. General Procedural Issues

- 15.1 The Disciplinary Committee may announce its decision at the Hearing or alternatively, it may reserve its decision in order to allow it consider the matter further. Written notice of any finding or Order of the Disciplinary Committee shall be given by the Disciplinary Committee to the Relevant Member within 21 days of the hearing and shall inform him of his right to appeal to the Appeal Committee in respect thereof. Formal written notice of the terms of the Order of the Disciplinary Committee shall include a statement of the reasons for the decision of the Disciplinary Committee. A copy of the written notice of the Disciplinary Committee shall also be provided to the Secretary of the Investigation Committee at the same time as it is provided to the Relevant Member.
- 15.2 Service of any notice, Order of the Disciplinary or Appeal Committee or document may be effected under this Bye-Law by registered or recorded delivery letter addressed to the Relevant Member at his last known place of business or abode, and such service shall be deemed to have been effected on the second business day after such letter was posted.
- 15.3 Any requirement under this Bye-Law that any notice is required to be given or document is required to be sent to a Relevant Member shall be deemed to be met if the said notice or document is sent or delivered by post or by hand to the Relevant Member at his last known address.
- 15.4 The Investigations Committee, the Disciplinary Committee and the Appeal Committee shall each:

- (a) act at any meeting by majority vote, and where there is an equality of votes the Chairperson shall have a second or casting vote; and
 - (b) have the power to make such regulations (not being inconsistent with the express provisions of this Bye-Law) as may be considered by them necessary for the performance of their respective functions hereunder.

- 15.5 No person shall at the same time be a Member of more than one of the Investigations Committee, the Disciplinary Committee and the Appeal Committee.

- 15.6 The procedures outlined in this Bye-Law shall be conducted on a confidential basis and the Institute and its representatives and committees are precluded from disclosing the details of individual cases other than to the Board for the purpose of the conduct of its investigation and except as required by law (or as agreed between the parties) save that where a Formal Complaint is upheld, then the findings may be published in accordance with Clause 14. Nothing in this clause shall prevent the Disciplinary Bodies from communicating between themselves to investigate or determine any Complaint, provided that a copy of any such correspondence is provided to the Relevant Member where necessary and appropriate for the protection of his interests.

- 15.7 An Annual Summary Report containing the statistics of cases dealt with by each of the Investigations Committee, the Disciplinary Committee and the Appeals Committee shall be prepared by the Chairperson of the Investigations Committee each year. The Report shall be laid before Council on an annual basis for the purposes of monitoring and reviewing the work of each of the Investigations Committee, the Disciplinary Committee and the Appeals Committee. The Annual Summary Report may also contain recommendations to Council if the Chairperson of the Investigations

Committee feels that the processes under Bye-Law No.1 can be improved in any way.

- 15.8 The acts of any member of a Disciplinary Body shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification.

16. Adjournments

- 16.1 The Chairperson of the Disciplinary Committee, or the Chairperson of the Appeals Committee, shall at their absolute discretion decide whether or not to grant any application for a postponement of a hearing that has not yet begun. After the hearing has begun, any application for an adjournment shall be decided by the members of the relevant panel hearing the Formal Complaint, and subject to any conditions they fix. Written notice shall be given to the parties of the date, time and place of the postponed hearing.
- 16.2 A panel may from time to time adjourn the hearing of any proceedings as it thinks fit of its own volition or upon application by either party, and the Chairperson shall send notice to the parties of the date, time and place that the hearing is adjourned to.
- 16.3 Where any hearing is adjourned to facilitate the acquisition of further information or evidence, the panel may give directions regarding the disclosure of such information or evidence to the parties prior to the resumption of the hearing.
- 16.4 An application for further adjournment made before a hearing is resumed may be determined by the Chairperson of the panel hearing the Formal Complaint.

16.5 The Disciplinary Bodies shall each have a general discretion to grant extensions of time, adjournments and postponements where they consider it fair and proper to do so.