

**INSTITUTE OF ACTUARIES**

**DISCIPLINARY SCHEME**

**SCHEDULE**

**DISCIPLINARY SCHEME REFERRED TO IN BYE-LAW 69**

Changes to Disciplinary Scheme approved by Privy Council 12 June 2009

and effective 1 July 2009

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## **1 INTRODUCTION AND SCOPE**

### ***Interpretation***

- 1.1 In the interpretation and operation of this Scheme regard shall be had to the principles of natural justice and procedural fairness and applicable articles of the European Convention on Human Rights.
- 1.2 In this Scheme:
- (a) the words defined in the Appendix to this Scheme shall have the meanings ascribed to them therein;
  - (b) words defined in the Bye-laws shall have the same meaning in this Scheme.
- 1.3 The Interpretation Act 1978 shall apply to this Scheme.

### ***Burden and Standard of Proof***

- 1.4 In all proceedings before a Disciplinary Tribunal Panel or an Appeal Tribunal Panel under this Scheme, the Institute shall bear the burden of proving to the civil standard as applied by the Courts of England and Wales in relation to disciplinary proceedings cases that the Respondent is guilty of Misconduct.

### ***Misconduct***

- 1.5 A Member shall be liable to disciplinary action under this Scheme if he has been guilty of Misconduct.
- 1.6 For the purposes of this Scheme, Misconduct means any conduct by a Member, whether committed in the United Kingdom 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 the Bye-laws of the Institute and/or to any code, standards, advice, guidance, memorandum or statement on professional conduct, practice or duties which may be given and published by the Institute and/or, for so long as there is a relevant Memorandum of Understanding in force, by the Board for Actuarial Standards and to all other relevant circumstances:
- 1.7 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 Institute by the Respondent prior to being admitted as a Member shall not be Misconduct for the purposes of this Scheme
- 1.8 References to the Respondent shall include a 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. Any such former Member shall remain bound to supply such information and explanations as may be required by an Investigation Actuary, a Disciplinary Tribunal Panel or an Appeal Tribunal Panel regarding his conduct and shall remain bound by any determinations of a

Disciplinary Tribunal Panel or an Appeal Tribunal Panel or any determination of an Adjudication Panel which is the subject of an agreement under rule 4.10 in respect of any Misconduct committed notwithstanding that his membership has ceased.

- 1.9 A Member may be liable for Misconduct:
- (a) where a person with whom he is connected is guilty of conduct which is 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 his becoming aware of any such conduct, the Member does not take such action as other Members might reasonably expect him to take in the circumstances; or
  - (b) notwithstanding that other proceedings may be taken against the Member or any firm of which he is a partner, any body corporate of which he is a director, employee or controller (within the meaning of section 422 of the Financial Services and Markets Act 2000 or any amendment or re-enactment thereof), or any person employed by him or by any such firm or body corporate.
- 1.10 For the purposes of rule 1.9 and without limitation, a Member shall be deemed to be connected with:
- (a) his employer or employee;
  - (b) any director or employee of a body corporate of which he is a director or employee; and
  - (c) any member or employee of a partnership of which he is a member or employee.

***Proof of certain matters***

- 1.11 For the purposes of this Scheme it shall amount to conclusive evidence of Misconduct that a Member has been subject to an adverse disciplinary determination by his nominated Primary Professional Regulator. For the purposes of this provision, a disciplinary determination means a disciplinary determination which is final within the terms of the disciplinary scheme of that Primary Professional Regulator.
- 1.12 For the purposes of this Scheme it shall amount to *prima facie* evidence of Misconduct that:
- (a) a Respondent has in any civil proceedings before a Court of competent jurisdiction in the United Kingdom or elsewhere been found to have acted fraudulently or dishonestly; and/or
  - (b) has failed to comply with an undertaking given pursuant to Bye-law 55; and/or
  - (c) a Respondent has, before a Court of competent jurisdiction in the United Kingdom, been convicted of an indictable offence, or has, before a Court elsewhere, been convicted of an offence which would have been indictable

had the offence been prosecuted before a Court in the United Kingdom.

1.13 The fact that a Member:

- (a) has by a court of competent jurisdiction in the United Kingdom 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 any of the following Acts, as from time to time amended, and/or any successor legislation to these Acts: the Financial Services Act 1986, the Financial Services and Markets Act 2000, the Insolvency Act 1986, the Companies Act 1989, the Companies Act 2006, the Pensions Act 1995, the Pensions Act 2004; and/or
- (c) has been the subject of an adverse final determination by an actuarial regulatory body which is a full member of the International Actuarial Association; and/or
- (d) has had a disqualification order made against him under any of the following Acts, as from time to time amended, and/or any successor legislation to these Acts: the Company Directors Disqualification Act 1986 and/or the Pension Schemes Act 1993; and/or
- (e) has been the subject of a judgement or determination arising from civil proceedings before a court of competent jurisdiction in the United Kingdom 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.

1.14 The fact that a Member has been the subject of an adverse final determination by a regulatory body of competent jurisdiction in the UK or elsewhere, other than a determination to which rule 1.13 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.

1.15 In a hearing before a Disciplinary Tribunal Panel 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.

### ***Liability for disciplinary proceedings under the AADB Scheme***

- 1.16 All Members shall be liable to disciplinary proceedings under the AADB Scheme on the grounds set out in that Scheme, irrespective of whether the act of misconduct upon which such proceedings are based took place before or after the date of adoption of the AADB Scheme by the AADB and the date of acceptance or approval of that Scheme in writing by the Council of the Institute.
- 1.17 Part 12 of this Scheme makes further provision in relation to the AADB Scheme.

### ***Members' Duty to co-operate***

- 1.18 Every Member has, at all times, a duty to co-operate fully with any investigation, process or procedure under this Scheme or under the Faculty Scheme. This duty includes providing such written or oral information and/or evidence as may be required by the Case Manager or Investigation Actuary under rule 3.11.
- 1.19 Every Member has a duty to disclose promptly to the Institute any conviction, adverse finding, judgement or determination or disqualification order of a type referred to in rules 1.11, 1.12 or 1.13, to which he is subject.
- 1.20 Members working for the same employer as a Respondent under this Scheme or under the Faculty Scheme, shall be obliged to co-operate in the implementation of any sanction which is binding upon the Respondent under this Scheme or the Faculty Scheme.
- 1.21 Nothing in this Scheme, including rule 1.18, 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 incriminate him or expose him to criminal penalties.
- 1.22 The failure of a Member to comply with rule 1.18 and/or rule 1.19 shall amount to *prima facie* evidence of Misconduct.

### ***Disclosure of information under this Scheme***

- 1.23 The Institute may disclose to any of the following bodies such information as it sees fit in relation to any Allegation, referral, investigation, hearing or procedure under this Scheme, for the purpose of assisting that body in properly undertaking its regulatory functions:
- (a) any regulatory body to whom functions are conferred by any of the following Acts, as they may be amended from time to time, and/or any successor legislation to these Acts: the Financial Services Act 1986, the Financial Services and Markets Act 2000, the Insolvency Act 1986, the Companies Act 1989, the Companies Act 2006, the Pensions Act 1995, the Pensions Act 2004;
  - (b) any overseas actuarial professional regulatory body which is a full member of the International Actuarial Association;

- (c) the Financial Reporting Council and/or any of its operating bodies.

## **2 APPOINTMENTS**

### ***Disciplinary Appointments Committee***

- 2.1 The Disciplinary Appointments Committee shall consist of:
  - (a) two Fellows appointed by the Council;
  - (b) two Fellows of the Faculty appointed by the Council of the Faculty;
  - (c) a Lay member being a Queen's Counsel appointed alternately by the Dean for the time being of the Faculty of Advocates and by the Chairman for the time being of the General Council of the Bar;
  - (d) a Lay member nominated by the President for the time being of the Chartered Institute of Personnel and Development,all holding office for a term of three years, such term being renewable.
- 2.2 The Chairman of the Disciplinary Appointments Committee shall be the Lay member appointed under rule 2.1(c).
- 2.3 Any meeting of the Disciplinary Appointments Committee shall be quorate only if there shall be three or more members present, of whom one is a Lay member. In the absence of a quorum at the date set for any meeting or hearing of the Disciplinary Appointments Committee, such meeting or hearing shall stand adjourned to a place and time to be determined by the Chairman of the Disciplinary Appointments Committee.
- 2.4 The Disciplinary Appointments Committee may convene in person or through appropriate telephone conferencing or other similar facilities, or both, and the quorum provisions of rule 2.3 shall apply taking into account those present through the telephone.
- 2.5 Decisions of the Disciplinary Appointments Committee shall be made by simple majority.
- 2.6 The Disciplinary Appointments Committee shall comprise Appropriate persons and shall, when making and/or renewing appointments under Part 2 of this Scheme, appoint Members and Lay members who are Appropriate persons.
- 2.7 Any Member or Lay member who is deemed by the Disciplinary Appointments Committee no longer to be an Appropriate person, shall be required to stand down from any appointment under Part 2 of this Scheme.

### ***Disciplinary Pool***

- 2.8 The Disciplinary Appointments Committee shall appoint members of a Disciplinary Pool from which members of:
- (a) Disciplinary Tribunal Panels;
  - (b) Interim Orders Panels; and
  - (c) Adjudication Panels,
- may be selected under the provisions of this Scheme.
- 2.9 Members of the Disciplinary Pool shall consist of Fellows, Fellows of the Faculty and Lay members, and may include Overseas Fellow Equivalents.
- 2.10 In appointing members to the Disciplinary Pool, the Disciplinary Appointments Committee shall have regard to the numbers of members of the panels likely to be required from time to time for the purpose of the proper functioning of this Scheme.
- 2.11 The Disciplinary Appointments Committee shall nominate from the Disciplinary Pool:
- (a) a Convener and Deputy Convener of the Disciplinary Tribunal Panels;
  - (b) a Convener and Deputy Convener of the Interim Orders Panels; and
  - (c) a Convener and Deputy Convener of the Adjudication Panels,
- save that no person can occupy more than one position under this rule.
- 2.12 The appointments under rule 2.8 and nominations under rule 2.11 shall be for a term of three years, such term being renewable.

### ***Pool of Investigation Actuaries***

- 2.13 The Disciplinary Appointments Committee shall appoint a Pool of Investigation Actuaries who shall consist of Fellows and Fellows of the Faculty, and may include Overseas Fellow Equivalents, each holding office for a term of three years, such term being renewable.
- 2.14 The Disciplinary Appointments Committee shall nominate two of the Pool of Investigation Actuaries to be the Chairman and Deputy Chairman of the Pool of Investigation Actuaries respectively, each holding office for a term of three years, such term being renewable.
- 2.15 In appointing members to the Pool of Investigation Actuaries, the Disciplinary Appointments Committee shall have regard to the numbers of Investigation Actuaries likely to be required for the purposes of the proper functioning of this Scheme.
- 2.16 At the request of the Chairman of the Pool of Investigation Actuaries the member of the Disciplinary Appointments Committee so designated by the Disciplinary

Appointments Committee for this purpose for the time being may appoint to the Pool of Investigation Actuaries a Fellow, Fellow of the Faculty or an Overseas Fellow Equivalent as an Investigation Actuary for the purpose of assisting the Case Manager in the investigation of a specified Allegation.

### ***Independent Examiner***

- 2.17 The Disciplinary Appointments Committee shall appoint an Independent Examiner and a Deputy Independent Examiner who shall be Lay members.
- 2.18 The Independent Examiner and the Deputy Independent Examiner shall be appointed for a term of three years, such term being renewable.
- 2.19 Should the Independent Examiner appointed under rule 2.17 be unavailable or unable for any reason to fulfil his functions under Part 5 of this Scheme, the Deputy Independent Examiner shall for the time being exercise the functions of the Independent Examiner under Part 5 of this Scheme.

### ***Interim Orders Panels***

- 2.20 Each Interim Orders Panel shall be appointed and a Chairman nominated from the members of the Disciplinary Pool, with the approval of the Convener of the Interim Orders Panels, in accordance with regulations to be made by the Disciplinary Board, for the purpose of hearing a particular referral made under the provisions of rule 3.28.
- 2.21 Each Interim Orders Panel shall consist of:
- (a) two persons being Fellows or Fellows of the Faculty, at least one of whom shall be a Fellow; and
  - (b) one Lay member, being a solicitor, advocate or barrister, who shall chair the Interim Orders Panel.

### ***Adjudication Panels***

- 2.22 Each Adjudication Panel shall consist of three or more persons, at least one of whom shall be a Lay member, appointed from the members of the Disciplinary Pool, with the approval of the Convener of the Adjudication Panels, in accordance with regulations to be made by the Disciplinary Board.
- 2.23 One of the members appointed to each panel under rule 2.22 shall be nominated, with the approval of the Convener of the Adjudication Panels, in accordance with regulations to be made by the Disciplinary Board, as Chairman of the panel.
- 2.24 An Adjudication Panel may consider one or more Case Reports submitted under the provisions of rule 3.19.
- 2.25 Members of an Adjudication Panel who have commenced the consideration of a Case Report shall remain constituted as the Adjudication Panel for the purpose of that Case Report until the conclusion of its determinations under Part 4 of this Scheme, subject to the provisions of rule 5.10.

### ***Disciplinary Tribunal Panels***

- 2.26 Each Disciplinary Tribunal Panel shall be appointed and a Chairman nominated from the members of the Disciplinary Pool, with the approval of the Convener of the Disciplinary Tribunal Panels, in accordance with regulations to be made by the Disciplinary Board.
- 2.27 Each Disciplinary Tribunal Panel shall consist of three or more persons, at least one of whom shall be a Fellow; and at least one shall be a Lay member.

### ***Appeals Tribunal***

- 2.28 Subject to rule 2.30 the Disciplinary Appointments Committee shall appoint members of an Appeals Tribunal from whom members of Appeals Tribunal Panels shall be selected under the provisions of this Scheme.
- 2.29 Members of the Appeals Tribunal shall comprise:
- (a) a Queen's Counsel appointed by the Dean for the time being of the Faculty of Advocates;
  - (b) a Queen's Counsel appointed by the Chairman for the time being of the General Council of the Bar;
  - (c) Fellows, Fellows of the Faculty and Lay members appointed by the Disciplinary Appointments Committee; and
  - (d) may include Overseas Fellow Equivalent;
- all holding office for a term of three years, such term being renewable.
- 2.30 The Chairman and the Deputy Chairman of the Appeals Tribunal shall be the Queen's Counsel appointed in accordance with the provisions of rule 2.29 each position being held for a term of three years, such term being renewable. The position of Chairman and Deputy Chairman shall be nominated alternately by the Dean for the time being of the Faculty of Advocates and by the Chairman for the time being of the General Council of the Bar.
- 2.31 When an appeal is referred to the Appeals Tribunal, the Chairman of the Appeals Tribunal shall appoint an Appeal Tribunal Panel for the purposes of hearing an appeal, comprising:
- (a) himself or the Deputy Chairman of the Appeals Tribunal who shall be the Chairman of the Appeal Tribunal Panel; and
  - (b) two or four other members of the Appeals Tribunal at his discretion to include at least one Fellow and one Lay member.

### ***Disciplinary Board***

- 2.32 The Disciplinary Appointments Committee shall appoint the members of a Disciplinary Board to consist of:
- (a) three Fellows;
  - (b) three Fellows of the Faculty; and
  - (c) three Lay members,
- each appointed for a term of three years, such term being renewable.
- 2.33 The Disciplinary Appointments Committee shall nominate one of the Lay members appointed under rule 2.32(c) to be the Chairman of the Disciplinary Board.
- 2.34 Any meeting of the Disciplinary Board shall be quorate only if there shall be three or more members present, of whom one is a Lay member. In the absence of a quorum at the date set for any meeting or hearing of the Disciplinary Board, such meeting or hearing shall stand adjourned to a place and time to be determined by the Chairman of the Disciplinary Board.
- 2.35 The Disciplinary Board may convene in person or through appropriate telephone conferencing or other similar facilities, or both, and the quorum provisions of rule 2.34 shall apply taking into account those present through the telephone.
- 2.36 Decisions of the Disciplinary Board shall be made by simple majority.

### ***Legal Advisers Pool***

- 2.37 The Disciplinary Appointments Committee shall from time to time nominate a pool of barristers, advocates and solicitors (each being called or admitted in England and Wales or in Scotland as the case may be for a period of ten years or more) who may advise an Adjudication Panel, an Interim Orders Panel, a Disciplinary Tribunal Panel or an Appeal Tribunal Panel as provided for under this Scheme.

### ***General***

- 2.38 No appointment shall be made under Part 2 of this Scheme of:
- (a) a member of the Council or of the Council of the Faculty;
  - (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; or
  - (c) a person previously appointed to any role under Part 2 of this Scheme in respect of the same Allegation, Case Report or Charge or the subject matter thereof; or
  - (d) a member and/or director of the Financial Reporting Council or any of its operating bodies or any person carrying out functions under the AADB Scheme.

- 2.39 Any person who has been appointed under Part 2 of this Scheme who becomes a member of the Council or of the Council of the Faculty shall be deemed to have resigned from his appointment under Part 2 of this Scheme with immediate effect.
- 2.40 No person who is a member of the Disciplinary Appointments Committee may be appointed to any other body or position held under Part 2 of this Scheme. Any person being appointed to the Disciplinary Appointments Committee shall be deemed to have resigned with immediate effect from any other body or position held under the provisions of this Scheme.
- 2.41 No person who is a member of the Disciplinary Board may be appointed to any other body or position held under Part 2 of this Scheme. Any person being appointed to the Disciplinary Board shall be deemed to have resigned with immediate effect from any other position or body held under the provisions of this Scheme.
- 2.42 (a) If for any reason a person appointed to any role under Part 2 of this Scheme is permanently unable to act, a new appointment may be made on the same basis as the person being replaced.
- (b) In the event of the temporary absence for any reason of a person appointed to a position under Part 2 of this Scheme, the Chairman of the Disciplinary Appointments Committee, or any person appointed by the Chairman, may make an interim nomination to fill the vacancy.
- 2.43 (a) No Member who has been found guilty of Misconduct shall be appointed to any position or body referred to in Part 2 of this Scheme or to any such body referred to in Part 2 of the Faculty Scheme. Any person so appointed who is found guilty of Misconduct shall be deemed to have resigned immediately from his appointment to the relevant position referred to in Part 2 of this Scheme.
- (b) For the avoidance of doubt, a Member has been found guilty of Misconduct who has accepted an invitation issued under rule 4.4(a) by an Adjudication Panel.
- 2.44 Any Member, Lay member and any legal adviser 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 he holds under Part 2 of this Scheme or under Part 2 of the Faculty Scheme.
- 2.45 Any Member, Lay member or legal adviser shall stand down from any appointment to any position or body referred to in Part 2 of this Scheme or referred to in Part 2 of the Faculty Scheme if he has before a Court of competent jurisdiction in the United Kingdom been convicted of an indictable offence or has, before a Court elsewhere, been convicted of an offence which would have been indictable had the offence been prosecuted before a Court in the United Kingdom, or has in any civil proceedings before a Court of competent jurisdiction in the United Kingdom or elsewhere, been found to have acted fraudulently or dishonestly.
- 2.46 Any Member shall, unless otherwise agreed by the Disciplinary Appointments Committee, stand down from any appointment to any position or body referred to in Part 2 of this Scheme or in Part 2 of the Faculty Scheme if he is the subject of

an Allegation under this Scheme, unless and until he is the subject of a determination in relation to that Allegation:

- (a) by an Adjudication Panel under rule 4.4(b) that no disciplinary action shall be taken against him; or
- (b) by a Disciplinary Tribunal Panel that he is not guilty of Misconduct under rule 6.21; or
- (c) by an Appeal Tribunal Panel that he is not guilty of Misconduct, under rule 8.16.

- 2.47 Any meeting of an Adjudication Panel (subject to rule 2.48) or any meeting or hearing of an Interim Orders Panel or Disciplinary Tribunal Panel shall be quorate only if there shall be three or more members present, of whom one is a Lay member. In the absence of a quorum at the date set for any meeting or hearing of the relevant panel, such hearing shall stand adjourned to a place and time to be determined by the chairman of the relevant panel.
- 2.48 An Adjudication Panel may convene in person or through appropriate telephone conferencing or other similar facilities, or both, and the quorum provisions of rule 2.47 shall apply taking into account those present through the telephone.
- 2.49 Any Interim Orders Panel, Adjudication Panel, Disciplinary Tribunal Panel or Appeal Tribunal Panel shall have the power to elect a temporary chairman on the day if a designated chairman is unable to perform that function.
- 2.50 The proceedings of any investigation under Part 3 of this Scheme, or before any Adjudication Panel, Interim Orders Panel, Disciplinary Tribunal Panel or Appeal Tribunal Panel or of the Independent Examiner shall be valid notwithstanding any invalidity in the appointment of any member thereof.
- 2.51 Any person appointed under this Part may continue to act in that capacity in relation to any relevant ongoing Allegation, Case Report or Charge as the case may be notwithstanding that his term of office has otherwise expired.

### **3 INVESTIGATION STAGE**

#### ***Allegations and assignment for investigation***

- 3.1 For the avoidance of doubt, the applicability of this Part 3 is subject to Part 12 of this Scheme (the AADB), which provides for certain circumstances in which action under this Scheme may require to be suspended or to cease.
- 3.2 Every Allegation received by the Institute shall be referred by the Case Manager to the Chairman of the Pool of Investigation Actuaries.
- 3.3 The Chairman of the Pool of Investigation Actuaries shall assign one or more Investigation Actuaries to assist the Case Manager in investigating the Allegation and to provide such advice as is required. The Chairman of the Pool of Investigation Actuaries shall not however proceed under this rule unless he has first considered whether it is appropriate in the circumstances to make a referral

for consideration by the AADB and to proceed under rule 12.6 of this Scheme.

- 3.4 As soon as reasonably practicable upon an assignment under rule 3.3, the Case Manager shall send to the Respondent:
- (a) a copy of the Allegation;
  - (b) a copy of this Scheme;
  - (c) the name of the Investigation Actuary; and
  - (d) the name and contact details of the Case Manager.
- 3.5 In making an assignment under rule 3.3, or at any time thereafter, the Chairman of the Pool of Investigation Actuaries may assign the Allegation to more than one member of the Pool of Investigation Actuaries to assist the Case Manager in investigating the Allegation and, if so, shall nominate one of the Investigation Actuaries as Lead Investigation Actuary.
- 3.6 The Chairman of the Pool of Investigation Actuaries may at any time replace any member serving as an Investigation Actuary with another member of the Pool of Investigation Actuaries or change the nomination of who shall be Lead Investigation Actuary.

### ***Investigations***

- 3.7
- (a) The Allegation shall form the basis of the investigation by the Institute into the alleged Misconduct.
  - (b) In addition the investigation:
    - (i) may take into account any additional conduct of the Respondent which might constitute Misconduct which comes to the notice of the Case Manager and/or the Investigation Actuary during the investigation; and/or
    - (ii) may be conducted in conjunction with the investigation of any other Allegation being undertaken under this Scheme relating to the Respondent.
- 3.8 The Case Manager may:
- (a) appoint a Member, a Member of the Faculty, a solicitor or other person or persons to carry out enquiries on the Institute's behalf; and/or
  - (b) instruct a barrister, advocate or solicitor to assist in the preparation of the Case Report and/or application for an Interim Order and/or Charge, to present the application to an Interim Orders Panel under rule 3.33 and/or to present the Charge to the Disciplinary Tribunal Panel and/or to the Appeal Tribunal Panel.
- 3.9 The Case Manager may seek and receive from the person making the Allegation and/or any other person such information as he thinks proper.

- 3.10 The Case Manager may interview any Member, the person making the Allegation, the Respondent and/or any other individual. Neither the Respondent nor his representatives shall be present during any interview or meeting arranged with any other person unless in his discretion the Case Manager consents thereto. The Investigation Actuary may, however, elect to be present.
- 3.11 The Case Manager and the Investigation Actuary shall have the power:
- (a) to require copies or originals of any documents relevant to the investigation from any Member or Member of the Faculty (whether or not such Member is the subject of the investigation);
  - (b) to require any further information from any Member or Member of the Faculty relating to the subject matter of the investigation;
  - (c) to require any Member or Member of the Faculty (whether or not such Member is the subject of the investigation) to attend before them (and/or such other persons as they may designate) at a specified time and place to answer questions or otherwise furnish information with respect to any matter relevant to the investigation;
  - (d) to accept written undertakings from the Respondent as they deem necessary in accordance with guidelines issued by the Disciplinary Board under rule 10.1(i); and
  - (e) to take any legal or other expert advice as to any matter relevant to the subject matter of the investigation.
- 3.12 The failure by the Respondent to comply with any undertaking accepted under rule 3.11(d) shall amount to *prima facie* evidence of Misconduct.

***Expedited procedure for certain matters***

- 3.13
- (a) Where at any stage prior to the consideration of an Allegation by the Adjudication Panel, the Case Manager and Investigation Actuary consider that the issues raised by the Allegation are such that it is in the interests of the public and/or of the profession to refer the Allegation directly for consideration by a Disciplinary Tribunal Panel, they shall proceed in accordance with this rule. The Case Manager and Investigation Actuary shall not however proceed under this rule unless they have first considered whether it is appropriate in the circumstances to make a referral for consideration by the AADB and to proceed under rule 12.10 of this Scheme.
  - (b) In a case to which paragraph (a) of this rule 3.13 applies, the Case Manager shall notify the Respondent that the Case Manager and Investigation Actuary are inclined to refer the Allegation directly for consideration by a Disciplinary Tribunal Panel, in accordance with the provisions of this rule. The Respondent shall be asked to confirm in writing within 21 days whether he agrees to the Allegation being so referred. If the Respondent does so agree, the Case Manager shall notify the secretary to the Disciplinary Tribunal and the matter shall proceed directly to be heard by a Disciplinary Tribunal Panel in

accordance with Part 6 of this Scheme. In that case, a Case Report shall not be prepared and the Case Manager shall proceed directly to prepare a Charge in accordance with rules 4.16 to 4.18 and Parts 4 and 5 of this Scheme shall otherwise not apply.

- (c) If the Respondent does not agree to the matter being referred directly to a Disciplinary Tribunal Panel, the matter may only be so referred at the discretion of the Convener of Adjudication Panels, to whom written application may be made for this purpose by the Case Manager. The Respondent shall be provided by the Case Manager with a copy of any such application and accorded reasonable opportunity to make written submission in response to the Convener of Adjudication Panels.
- (d) The Convener of Adjudication Panels shall, having considered the application and any submission from the Respondent under paragraph (c), and having taken account of the factors set out in paragraph (g) of this rule 3.13, direct the Case Manager whether or not to refer the matter directly to a hearing of the Disciplinary Tribunal Panel.
- (e) In the event that the Convener of Adjudication Panels directs the Case Manager to refer the matter directly to the Disciplinary Tribunal Panel, the secretary to the Adjudication Panel shall notify the following in writing of this decision, which shall be final:
  - (i) the person who made the Allegation;
  - (ii) the Respondent;
  - (iii) the Case Manager;
  - (iv) the Disciplinary Board;
  - (v) the Institute;

and the matter shall proceed directly to be heard by a Disciplinary Tribunal Panel in accordance with Part 6 of this Scheme. In that case, a Case Report shall not be prepared and the Case Manager shall proceed directly to prepare a Charge in accordance with rules 4.16 to 4.18 and Parts 4 and 5 of this Scheme shall otherwise not apply.

- (f) In the event that the Convener of Adjudication Panels does not direct the Case Manager to refer the matter directly to the Disciplinary Tribunal Panel, the Case Manager shall proceed to prepare a Case Report in accordance with Part 3 of this Scheme and, subject to the Respondent's right of election under rule 3.18, the matter shall be considered by the Adjudication Panel in accordance with this Scheme.
- (g) The factors to be taken into account, as applicable, by the Convener of Adjudication Panels under paragraph (c) of this rule 3.13 are as follows:
  - (i) whether the Allegation discloses a *prima facie* case of Misconduct;
  - (ii) the gravity of the issues raised, including whether the Allegation, if proved,

would be likely to give rise to the imposition of sanction at a level exceeding that available to the Adjudication Panel in making an invitation under rule 4.6;

(iii) the extent to which there is a reasonable prospect of establishing the matters giving rise to the Allegation before a Disciplinary Tribunal Panel;

(iv) the interests of the public and/or of the profession; and

(v) all other relevant circumstances.

### ***Content of a Case Report***

3.14 The Case Report shall contain a statement of all the relevant facts that the Case Manager and Investigation Actuary regard as material to whether or not there has been Misconduct.

3.15 The Case Report shall contain, but is not limited to, a report on the Allegation received under rule 3.2. The 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 Case Manager and/or the Investigation Actuary in the course of the investigation; and

(b) is not or has not been the subject of an Allegation being investigated separately and/or a separate Charge.

3.16 The Case Report shall be signed by both the Case Manager and the Investigation Actuary or the Lead Investigation Actuary as the case may be.

### ***Completion of an investigation***

3.17 The signed Case Report shall be sent to the Respondent by the Case Manager.

3.18 The Respondent may, within 14 days of receipt of the Case Report sent under rule 3.17, by written notice to the Case Manager, elect to proceed directly to a Disciplinary Tribunal Panel. If so, Part 4 of this Scheme, save for rules 4.16, 4.17 and 4.18, shall not apply.

3.19 Subject to the right of the Respondent to elect to proceed directly to a Disciplinary Tribunal Panel under rule 3.18, the Case Manager shall submit the Case Report to an Adjudication Panel as soon as reasonably practicable after the Case Report has been sent to the Respondent under rule 3.17, and shall invite the Respondent to send, within 14 days of receipt of the Case Report, any comments on the Case Report to the secretary to the Adjudication Panel, for consideration by the Adjudication Panel.

### ***Withdrawal of an Allegation***

- 3.20 The withdrawal, by the person who made it, of an Allegation at any stage prior to the completion of an investigation shall cause the Case Manager and the Investigation Actuary to consider whether to discontinue the investigation forthwith.
- 3.21 Where the Case Manager and the Investigation Actuary consider that the investigation should be so discontinued, they shall prepare an Advisory Report for the Adjudication Panel, setting out, with brief reasons, their recommendation that the investigation should be discontinued. The Case Manager shall submit the Advisory Report to an Adjudication Panel as soon as reasonably practicable.
- 3.22 Where, however, the Case Manager and the Investigation Actuary consider that it is in the interests of the public and/or of the profession that the investigation should continue, notwithstanding the withdrawal of the Allegation on which it is based, they shall complete the investigation in accordance with this Part 3 of this Scheme.
- 3.23 An Advisory Report may also be submitted to an Adjudication Panel, at the discretion of the Case Manager and the Investigation Actuary, where it appears during the course of an investigation that an Allegation, if found proven, would not disclose a *prima facie* case of Misconduct.
- 3.24 Rules 3.17 to 3.19 of this Scheme shall not apply in relation to the submission to the Adjudication Panel of an Advisory Report.
- 3.25 If, following consideration of an Advisory Report in accordance with rule 4.3, the Adjudication Panel refers the Allegation back to the Case Manager and Investigation Actuary, the investigation shall be resumed, as appropriate, and a Case Report prepared and submitted in accordance with this Part 3 of this Scheme.

### ***Interim Orders***

- 3.26 An Interim Order is an order made by an Interim Orders Panel for:
- (a) a period of supervised practice in the terms provided for under rule 10.3; and/or
  - (b) suspension of any Certificate of the Respondent; or
  - (c) suspension of the Respondent from membership of the Institute.
- 3.27 An Interim Order shall cease to have effect:
- (a) after six months, or such shorter period as may be specified in the order;
  - (b) on a determination of the Adjudication Panel under rule 4.4(b);
  - (c) on the acceptance by the Respondent of an invitation issued by the Adjudication Panel under rule 4.6;

- (d) on a determination of the Disciplinary Tribunal Panel; or
- (e) on a determination of the Interim Orders Panel or the Chairman thereof under rule 3.38,

whichever shall be the sooner, unless the order is renewed by a further hearing of an Interim Orders Panel.

- 3.28 Where there is alleged Misconduct the Case Manager and Investigation Actuary may at any time up to a hearing by the Disciplinary Tribunal Panel submit to an Interim Orders Panel an application for an Interim Order together with the Allegation and/or a Case Report and/or any relevant material in support of the application.
- 3.29 The Respondent shall forthwith be served with written notice of:
  - (a) any application to the Interim Orders Panel under rule 3.28, including a copy of the Allegation and any relevant material; and
  - (b) the hearing of the Interim Orders Panel under rule 3.30.
- 3.30 On an application under rule 3.28 or at a further hearing under rule 3.36, the Interim Orders Panel shall convene a hearing and shall, subject to rules 3.34 and 3.35, determine (by simple majority) whether to make an Interim Order.
- 3.31 The Interim Orders Panel, before deciding whether to make an Interim Order under rule 3.30, shall give the Respondent a reasonable opportunity to make representations to the Interim Orders Panel in writing or, at the election of the Respondent, orally, as to:
  - (a) whether the Interim Orders Panel shall make an Interim Order; and/or
  - (b) the duration of any Interim Order.
- 3.32 Any election by the Respondent for an oral hearing under rule 3.31 shall be made by the Respondent in writing to reach the secretary to the Interim Orders Panel at least seven days prior to the hearing.
- 3.33 In the event of an oral hearing under rule 3.31:
  - (a) the Case Manager and/or the Investigation Actuary may also attend to present the application; and
  - (b) the Respondent may attend and make such representations as are provided for in rule 3.31.
- 3.34 The Interim Orders Panel shall not make an Interim Order under rule 3.30 unless it is satisfied that:
  - (a) there is sufficient *prima facie* evidence before it to support such allegations; and
  - (b) such measure is warranted by the seriousness of the alleged Misconduct.

- 3.35 If the Interim Orders Panel is satisfied that the conditions in rule 3.34 are fulfilled, it shall then have regard to the following considerations in deciding whether to make an Interim Order under rule 3.30 and, if so, the appropriate period to specify under rule 3.27(a):
- (a) the effect on the Respondent; and
  - (b) the protection of the public, including the likelihood of further alleged Misconduct occurring.
- 3.36 The Interim Orders Panel may hold a further hearing in accordance with the provisions of this Part 3 to consider:
- (a) the renewal of an Interim Order when the term of an Interim Order would otherwise expire;
  - (b) whether to make a further Order.
- 3.37 The Respondent may by notice under rule 8.2 appeal to the Appeals Tribunal within 14 days of the making of an Interim Order. Such an appeal shall not affect the continued operation of the Interim Order.
- 3.38 The Case Manager or the Respondent may at any time make an application to the Chairman of the Interim Orders Panel for the rescission or variation of an Interim Order on the basis that the circumstances upon which the order was made have changed to a material degree.
- 3.39 Written notice of the making, rescission or variation of an Interim Order shall be served forthwith upon the Respondent and upon the Institute.
- 3.40 The Interim Orders Panel may be advised by a barrister, advocate or solicitor chosen from the Legal Advisers Pool.
- 3.41 Subject to rule 3.42 hearings of the Interim Orders Panel shall be in private.
- 3.42 Hearings of the Interim Orders Panel shall be held in public whenever the Respondent so requests. In the event of a public hearing the Interim Orders Panel may, acting of its own motion or upon the application of any Party, hold all or part of the hearing in private if there is good reason to do so.

## **4 ADJUDICATION PANELS**

### ***General***

- 4.1 The Adjudication Panel shall meet in private.
- 4.2 The Adjudication Panel may consider one or more Case Reports submitted under rule 3.19 and one or more Advisory Reports submitted under rules 3.21 or 3.23.

### **Advisory Reports**

- 4.3 In the case of an Advisory Report submitted to the Adjudication Panel under rule 3.21 or 3.23, the Adjudication Panel must either:
- (a) determine that no disciplinary action is appropriate, in which case it shall dismiss the Allegation; or
  - (b) refer the matter back to the Case Manager and Investigation Actuary for further investigation and/or the submission of a Case Report in accordance with the provisions of this Scheme.

### **Case Reports**

- 4.4 The Adjudication Panel (by simple majority) shall determine whether:
- (a) a Case Report, or one or more matters within it, discloses a *prima facie* case of Misconduct and, if so, that:
    - (i) the Respondent shall be invited to accept that there has been Misconduct and, where the Adjudication Panel considers it appropriate, invited to accept a sanction in accordance with the procedure in rules 4.6 to 4.10; or
    - (ii) the matters referred to in the Case Report should be referred to a Disciplinary Tribunal Panel;
- or
- (b) a Case Report discloses no *prima facie* case of Misconduct and that no disciplinary action shall be taken against the Respondent.
- 4.5 Before making a determination under rule 4.4, the Adjudication Panel shall consider:
- (a) the Allegation;
  - (b) the Case Report; and
  - (c) any representations submitted to the Adjudication Panel by the Respondent in accordance with rule 3.19.
- 4.6 In accordance with rule 4.4(a)(i), the Adjudication Panel may in writing invite the Respondent to accept that there has been Misconduct and, where the Adjudication Panel considers it appropriate:
- (a) invite the Respondent to accept a reprimand in terms provided for by the Adjudication Panel; and/or
  - (b) invite the Respondent to pay within a specified time scale a fine up to the amount provided for under rule 10.1(b); and/or
  - (c) invite the Respondent to complete a period of education, retraining and/or supervised practice, on terms provided for under rule 10.3.

- 4.7 When exercising its discretion whether to issue an invitation under rule 4.6, the Adjudication Panel shall have regard to the gravity of the alleged Misconduct as set out in the Allegation and/or the Case Report.
- 4.8 A determination under rule 4.4 shall be served upon the Respondent and the Institute forthwith.
- 4.9 When making a determination under rule 4.4 or issuing an invitation under rule 4.6, the Adjudication Panel shall provide to the Respondent and the Institute a statement of its reasons.
- 4.10 A Respondent accepting an invitation pursuant to rule 4.6 shall do so in writing within 21 days of such invitation and in so doing:
- (a) shall be deemed to have accepted that the conduct in the Case Report as specified by the Adjudication Panel as amounting to Misconduct is Misconduct for the purposes of this Scheme;
  - (b) agrees to be bound by any sanction specified as if it was a sanction imposed by a Disciplinary Tribunal Panel save that the appeal procedure in Part 8 of this Scheme shall not apply.
- 4.11 If the Respondent does not accept, within 21 days, an invitation pursuant to rule 4.6 the conduct in the Case Report shall be referred to a Disciplinary Tribunal Panel under rule 4.4(a)(ii).
- 4.12 The Adjudication Panel may at any time adjourn its consideration of a matter and, in particular, seek further information from the Case Manager and/or the Investigation Actuary or, through the Case Manager, from the Respondent and/or the person making the Allegation to which the Case Report refers. The Adjudication Panel may consider this further information before issuing an invitation under rule 4.6 and/or a determination under rule 4.4.
- 4.13 Forthwith upon the determination of the Adjudication Panel under rule 4.4(a)(ii) or rule 4.4(b), or the Respondent's acceptance under rule 4.10 of an invitation under rule 4.6, the Adjudication Panel shall communicate the determination and the reasons to the person who made the Allegation to which the Case Report refers.
- 4.14 If the Respondent has accepted an invitation issued under rule 4.6(c), but has failed to comply with the requirement to complete a period of education, retraining and/or supervised practice, the Adjudication Panel (which may be newly constituted) shall consider any evidence submitted to it that the Respondent has not so complied with such a requirement. Such evidence may be submitted to the Adjudication Panel by the Case Manager and/or such other person as may have been appointed by the Adjudication Panel to supervise or monitor compliance by the Respondent with the agreed requirement. If satisfied that the Respondent has not complied with such a requirement, the Adjudication Panel shall, having regard to the evidence produced, reconsider the Case Report afresh in accordance with the provisions of this Part 4 of this Scheme.
- 4.15 The Adjudication Panel may be advised by a barrister, advocate or solicitor chosen from the Legal Advisers Pool.

## **Charges**

- 4.16 A determination under rule 4.4(a)(ii) to refer the matter to a Disciplinary Tribunal Panel or an election by a Respondent under rule 3.18, or a direct referral under rule 3.13, shall cause the Case Manager to prepare a Charge in accordance with the provisions of rules 4.17 and 4.18, for submission to a Disciplinary Tribunal Panel.
- 4.17 A Charge shall include where necessary concise particulars of the Charge and a statement of all the facts and matters that the Case Manager regards as material. The Charge shall be supported where necessary by documentary and other evidence.
- 4.18 The Charge shall not be limited to the matters within the scope of the Allegation or the Case Report. The Charge may contain alleged Misconduct outside the scope of the Allegation or the Case Report, provided that:
- (a) such alleged Misconduct is not or has not been the subject of an Allegation being investigated separately and/or a separate Charge; and
  - (b) the Respondent is given a proper opportunity to answer the additional matters in the Charge.

## **5 REVIEW BY THE INDEPENDENT EXAMINER**

### **Grounds for review**

- 5.1 Where:
- (a) the Adjudication Panel has determined under rule 4.4(b) that a Case Report does not disclose a *prima facie* case of Misconduct and no disciplinary action shall be taken against the Respondent; and
  - (b) the person who under rule 3.2, made the Allegation on which the Case Report is based, is dissatisfied with the determination in so far as it relates to the Allegation he made,
- then, subject to rules 5.2 to 5.3, he may refer the determination insofar as relating to his Allegation for review by the Independent Examiner.
- 5.2 No referral for review shall be made:
- (a) in the event of a determination under rule 4.4(a); or
  - (b) of a decision pursuant to rules 12.13 and 12.14.
- 5.3 A referral under rule 5.1 shall be made only on the following grounds:
- (a) that the determination of the Adjudication Panel was manifestly unreasonable, inconsistent with the evidence or wrong in law; and/or
  - (b) that there was injustice because of a serious procedural or other irregularity in

the proceedings before the Adjudication Panel; and/or

- (c) that significant and relevant new evidence has come to light which was not previously available and could not reasonably have been made available during the investigation.

5.4 A referral shall:

- (a) be made in writing to reach the Independent Examiner within 28 days after communication of the determination of the Adjudication Panel under rule 4.4(b) to the person making the referral;
- (b) state on which of the grounds in rule 5.3 the referral is based. The grounds so stated shall not thereafter be altered except with the leave, reasonable cause having been shown, of the Independent Examiner.

5.5 If the referral was not made within the period set out in rule 5.4(a), the Independent Examiner shall refuse to accept the referral, except that, in exceptional circumstances, and upon the basis of reasonable cause shown, he shall be entitled to accept a referral outwith this time period.

- 5.6
- (a) Subject to rule 5.5, the Independent Examiner may accept a referral if he is satisfied that the person making the referral has stated an arguable and relevant basis for that referral in accordance with rule 5.3. If accepted, the Independent Examiner shall send a copy of the referral to the Institute.
  - (b) If he is not so satisfied, in his sole discretion, the Independent Examiner shall inform the person making the referral that the referral is not accepted, and shall send a copy of his decision to the Institute.

### ***Conduct of the review***

- 5.7 The review conducted by the Independent Examiner shall include consideration, as appropriate, of:
- (a) the determination reached by the Adjudication Panel under rule 4.4(b);
  - (b) the investigation procedures followed under Part 3;
  - (c) the procedures followed by the Adjudication Panel in making its determination;
  - (d) the Allegation made under rule 3.2;
  - (e) the Case Report and any other material considered by the Adjudication Panel;
  - (f) any representations made to the Independent Examiner by the person making the referral;
  - (g) any representations made to the Independent Examiner by the Respondent; and
  - (h) any representations made to the Independent Examiner by the Case Manager, having regard to the grounds set out in rule 5.3.
- 5.8 The Disciplinary Board shall have power to make regulations for the procedure of the Independent Examiner. Subject to this Scheme and such regulations made under this rule, the Independent Examiner has discretion to determine his own procedure.

### ***Determination of the Independent Examiner***

- 5.9 After concluding his review, the Independent Examiner shall either:
- (a) affirm the determination of the Adjudication Panel; or
  - (b) remit papers to an Adjudication Panel for reconsideration having taken into account the matters contained in the review of the Independent Examiner, giving reasons for his determination in either case.
- 5.10 When remitting papers to an Adjudication Panel under rule 5.9(b) the Independent Examiner shall specify whether the Adjudication Panel should, so far as reasonably possible, comprise the same members who dealt with the matter which was the subject of his review or should be a newly constituted Adjudication Panel.
- 5.11 The determination of the Independent Examiner under rule 5.9 and his reasons shall be notified in writing to:
- (a) the person who made the referral;
  - (b) the Respondent;
  - (c) the Adjudication Panel;

- (d) the Case Manager;
- (e) the Disciplinary Board; and
- (f) the Institute.

- 5.12 Any decision of the Independent Examiner under rule 5.5 or rule 5.6 and any determination of his under rule 5.9 shall be final and there shall be no appeal against any such decision or determination.
- 5.13 The determination of an Adjudication Panel to whom a matter has been remitted under rule 5.9(b) shall not be subject to further referral to the Independent Examiner.

### **General**

- 5.14 A referral to the Independent Examiner may be withdrawn at any time by the person who made it, whereupon the review under this Part 5 of this Scheme shall cease.
- 5.15 The Independent Examiner may seek and receive advice from any individual on legal or actuarial matters.
- 5.16 The Independent Examiner may provide to the Disciplinary Board from time to time a report covering such matters as he thinks fit in relation to the operation of this Scheme and the procedures adopted by the Case Manager, the Investigation Actuary and the Adjudication Panel.

## **6 DISCIPLINARY TRIBUNAL PANELS**

### **Charges**

- 6.1 The Institute, assisted by the Investigation Actuary, shall be responsible for presenting the Charge and relevant evidence to the Disciplinary Tribunal Panel.
- 6.2 The Case Manager shall serve the Charge on the Respondent and submit the Charge to the secretary to the Disciplinary Tribunal Panel following:
  - (a) a referral to the Adjudication Panel under rule 4.4(a)(ii); or
  - (b) an election by the Respondent to proceed directly to a Disciplinary Tribunal Panel under rule 3.18; or
  - (c) a direct referral under rule 3.13.
- 6.3 As soon as reasonably practicable following receipt of the Charge submitted under rule 6.2, the secretary of the Disciplinary Tribunal Panel shall provide notice in writing of the date, time, venue and duration of the hearing to each of the following:
  - (a) the Respondent
  - (b) the Case Manager

- (c) the Investigation Actuary; and
- (d) the Institute.

***Pre-hearing Procedure (service of grounds of defence and documentary evidence)***

- 6.4 The Respondent, if not intending to make an admission of misconduct shall, subject to any decision of the Chairman of the Disciplinary Tribunal Panel under this rule to the contrary, serve upon the secretary to the Disciplinary Tribunal Panel and the Investigation Actuary written grounds of defence to be received not later than 21 days following service of the Charge under rule 6.2.
- 6.5 The Institute may amend the Charge, provided that:
  - (a) The Respondent is given a proper opportunity to answer any new matters introduced by the amendment; and
  - (b) The Case Manager serves the amended Charge to reach the Respondent and secretary to the Disciplinary Tribunal Panel not later than 28 days prior to the Disciplinary Tribunal hearing.
- 6.6 All Parties must serve upon the secretary to the Disciplinary Tribunal Panel and each other no later than 21 days before the hearing the copies of the documents upon which they intend to rely.
- 6.7 The Respondent may amend any grounds of defence served under rule 6.4, provided that such amended grounds of defence are served such as to reach the secretary to the Disciplinary Tribunal Panel and Case Manager not later than 14 days prior to the Disciplinary Tribunal Panel hearing.
- 6.8 Where written grounds of defence have been served under rule 6.4 the Investigation Actuary and the Respondent shall, subject to any decision of the Chairman of the Disciplinary Tribunal Panel under this rule to the contrary, provide to the Disciplinary Tribunal Panel submissions on any point of law identified by the Parties which may be required to be considered by the Disciplinary Tribunal Panel 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.

***Rights of the Respondent***

- 6.9 The Respondent shall be given a proper opportunity of answering the Charge.
- 6.10 The Respondent shall be entitled to make representations and call any witnesses before the Disciplinary Tribunal Panel in relation to:
  - (a) whether or not there has been Misconduct; and/or
  - (b) if he accepts that there has been Misconduct or is found guilty of Misconduct by the Disciplinary Tribunal Panel, mitigation as to the sanction.

### **General provisions for the Disciplinary Tribunal Panel**

- 6.11 Where in the opinion of the Disciplinary Tribunal Panel the Charge does not show a *prima facie* case of Misconduct the Disciplinary Tribunal Panel may dismiss the Charge without hearing the Parties.
- 6.12 The Chairman of the Disciplinary Tribunal Panel may require the Respondent and the Institute and/or their representatives to appear before him from time to time for the purpose of making such orders as he shall think fit as to procedural matters for the proper determination of the matter by the Disciplinary Tribunal Panel. Any procedural hearings under this rule shall be held in private.
- 6.13 On the application of any Party, the Chairman of the Disciplinary Tribunal Panel may order the disclosure of documents in another Party's possession if they are relevant and if he considers that it is fair in all the circumstances that the documents should be so disclosed.
- 6.14 The Chairman of the Disciplinary Tribunal Panel shall not require under rule 6.13 the production of any document which is the subject of legal professional privilege or which might tend to incriminate or expose the Respondent to penalties imposed by law.
- 6.15 Where a Charge concerns:
- (a) acts, omissions or other conduct committed by that Respondent outside the United Kingdom; or
  - (b) facts which may best be ascertained by the Disciplinary Tribunal Panel sitting outside the United Kingdom,
- and in the opinion of the Disciplinary Tribunal Panel it is necessary, convenient or in the interests of justice for it to sit outside the United Kingdom, then the Disciplinary Tribunal Panel may in its discretion convene outside the United Kingdom for the purpose of taking some or all of the evidence in the matter or for the purpose of disposing of the matter.

### **Hearings**

- 6.16 Subject to rule 6.17, the Disciplinary Tribunal Panel shall hear the Charge in public.
- 6.17 The Disciplinary Tribunal Panel may, acting of its own motion or upon the application of any Party, hear the Charge, in full or in part, in private if there is good reason to do so.
- 6.18 At any stage the Disciplinary Tribunal Panel may appoint a barrister, advocate 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 Panel 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.

- 6.19 Subject to this Scheme, the Disciplinary Tribunal Panel 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.
- 6.20 The Disciplinary Tribunal Panel 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 Panel (or the Chairman of the Disciplinary Tribunal Panel if prior to the substantive hearing) is satisfied that the Respondent will not be substantially prejudiced in the conduct of his defence by the making of such an amendment; and
  - (b) the Disciplinary Tribunal Panel shall, if so requested by the Respondent, adjourn for such time as is reasonably necessary to enable him to deal with the Charge as so amended.
- 6.21 At the conclusion of the hearing, the Disciplinary Tribunal Panel shall determine, by simple majority, if a Charge of Misconduct has been established. In the absence of such a majority, the Charge shall be dismissed.
- 6.22 In determining its findings on the Charge and the sanction, the Disciplinary Tribunal Panel shall not have regard to any proceedings or correspondence of the Adjudication Panel under Part 4 of this Scheme or of the Independent Examiner under Part 5 of this Scheme or to any decision under rule 3.13 in relation to the matters giving rise to the Charge.
- 6.23 If the Disciplinary Tribunal Panel determines that the Respondent has been guilty of Misconduct, the Disciplinary Tribunal Panel shall:
- (a) determine that no sanction is appropriate; or
  - (b) impose one or more of the following sanctions:
    - (i) reprimand the Respondent;
    - (ii) order the payment of a monetary fine by the Respondent;
    - (iii) suspend any Certificate of the Respondent;
    - (iv) withdraw any Certificate of the Respondent;
    - (v) exclude the Respondent from holding any Certificate for any period it thinks appropriate up to a maximum of five years, which must elapse before any application to hold such a Certificate may be submitted to the Institute;
    - (vi) suspend the Respondent from membership of the Institute for any period it thinks appropriate up to a maximum of two years;
    - (vii) expel the Respondent from membership of the Institute for any period it thinks appropriate up to a maximum of five years, which must elapse before an application for readmission as a Member may be granted in

accordance with Part 7 of this Scheme;

(viii) exclude the Respondent (being a former Member who is subject to this Scheme pursuant to rule 1.8) from membership of the Institute for any period it thinks appropriate up to a maximum of five years, which must elapse before an application for readmission as a Member may be submitted to the Institute in accordance with Part 7 of this Scheme;

(ix) order the Respondent to complete a period of education, retraining and/or supervised practice, on terms provided for under rule 10.3.

6.24 If a sanction has been imposed under rule 6.23(b)(ix), the Disciplinary Tribunal Panel (or a newly constituted Disciplinary Tribunal Panel) may be recalled on the application of the Investigation Actuary and impose a further sanction should the Respondent not comply with the terms of the sanction of education, retraining and/or supervised practice first imposed.

### **Costs**

6.25 The Disciplinary Tribunal Panel may make an award of costs against the Respondent or the Institute as it considers appropriate.

### **Communication of determination**

6.26 A determination of the Disciplinary Tribunal Panel shall be served upon the Respondent forthwith, which determination shall, subject to rule 9.2(a), be effective from the date of its making. The Disciplinary Tribunal Panel's reasons shall be served upon the Respondent when the determination is served or as soon as reasonably practicable thereafter.

6.27 The Disciplinary Tribunal Panel shall also communicate its determination and reasons to:

- (a) the Investigation Actuary;
- (b) the person making the Allegation;
- (c) the Disciplinary Board; and
- (d) the Institute.

## **7 READMISSION TO MEMBERSHIP FOLLOWING DISCIPLINARY EXPULSION OR EXCLUSION**

### **Application**

7.1 A Member who, in accordance with this Scheme or the AADB Scheme, has been expelled or excluded from membership for a specified period, and who subsequently wishes to apply for readmission, may only do so by application in writing to the Institute in accordance with this Part 7 and with such regulations as may for this purpose be issued by the Disciplinary Board.

7.2 In the case of the first such application, this may be made at the earliest three months prior to the expiry of the specified period of expulsion or exclusion. No

subsequent application may be made prior to the expiry of a period of one year, or such shorter period as the Disciplinary Tribunal Panel may at its discretion determine, following the determination of the first such application.

### ***Action on receipt of an application***

- 7.3 Upon receipt of an application for readmission under this rule, the Chief Executive shall notify the Convener of Disciplinary Tribunal Panels and assign the application to a Case Manager. Where the Applicant was subject to exclusion or expulsion under the AADB Scheme, the Chief Executive shall also notify the AADB.
- 7.4 The Case Manager may make such investigations, and obtain such information, documents or reports as he considers appropriate, including inquiries as to the Applicant's conduct before and after the order for exclusion or expulsion.

### ***Hearing the application***

- 7.5 The Convener of Disciplinary Tribunal Panels shall convene a Panel to hear the application or may assign the application for hearing by a Panel already convened for hearing a different matter.
- 7.6 Not later than 28 days before the hearing before a Disciplinary Tribunal Panel to consider his application, the Applicant shall receive from the secretary to the Disciplinary Tribunal Panel notice of the hearing:
- (a) requesting the Applicant to notify, within 14 days of the date of the notice, whether he wishes to attend the hearing; and
  - (b) inviting the Applicant, if he chooses not to attend the hearing, to make written representations to be received by the secretary no later than 14 days before the hearing.
- 7.7 The notice under rule 7.6 shall be accompanied by a copy of any statement, report or other document which:
- (a) has not previously been sent to the Applicant; and
  - (b) has been made available to the Disciplinary Tribunal Panel for the purposes of its consideration of the application.
- 7.8 If any statement, report or other document is subsequently obtained by the Case Manager which is relevant to the Disciplinary Tribunal Panel's consideration of the matter, this may be made available to the Disciplinary Tribunal Panel, subject to the Applicant being given a reasonable opportunity to consider and comment upon any such additional documentation prior to the Disciplinary Tribunal Panel making its determination.
- 7.9 Subject to rule 7.10 the Disciplinary Tribunal Panel shall hear the application in public.
- 7.10 The Disciplinary Tribunal Panel may, acting of its own motion or upon the application of any Party, hear the application, in full or in part, in private if there is good reason to do so.

- 7.11 The Disciplinary Tribunal Panel and the Parties shall be provided, as soon as reasonably practicable with:
- (a) the determination of the Disciplinary Tribunal Panel or Appeal Tribunal Panel which imposed or affirmed the exclusion or expulsion;
  - (b) any record of the proceedings before the Disciplinary Tribunal Panel, and where applicable before the Appeal Tribunal Panel;
  - (c) any relevant documentary and other evidence including papers from the Applicant in support of readmission.
- 7.12 Unless the Disciplinary Tribunal Panel determines otherwise, the order of proceedings at a readmission hearing shall be as follows:
- (a) the Institute shall:
    - (i) inform the Disciplinary Tribunal Panel of the background to the case, and, the circumstances in which the Applicant was expelled or excluded from membership; and
    - (ii) direct the attention of the Disciplinary Tribunal Panel to any relevant evidence and may call witnesses in relation to the Applicant's suitability for readmission to membership;where the facts relating to any matter are in dispute the Institute shall bear the burden of proving such facts to the standard referred to in rule 1.4.
  - (b) the Applicant may provide any relevant evidence on which he intends to rely and call witnesses in relation to any relevant matter, including his suitability for readmission to membership;
  - (c) the Disciplinary Tribunal Panel may question the Parties;
  - (d) the Disciplinary Tribunal Panel shall determine, by simple majority, whether to accept or refuse the application;
  - (e) the Disciplinary Tribunal Panel shall give reasons for its determination.
- 7.13 In reaching its determination the Disciplinary Tribunal Panel shall consider all relevant factors including where appropriate the circumstances of the Applicant, the Applicant's behaviour since expulsion or exclusion, the steps which the Applicant has taken to keep up to date with professional standards and practice, the nature of any professional opportunities open to the Applicant and whether, if readmitted, the Applicant could be expected to uphold the standards expected of a Member.
- 7.14 The provisions of rule 6.18 shall apply to the hearing, and of rules 6.26 and 6.27 to the communication of the determination.

## 8 APPEALS

- 8.1 The Respondent may by notice appeal against:
- (a) a determination of a Disciplinary Tribunal Panel under Part 6 of this Scheme;
  - (b) an Interim Order; and/or
  - (c) a refusal of readmission to membership following disciplinary expulsion or exclusion.

### ***Appeal against a determination by the Disciplinary Tribunal Panel under Part 6***

- 8.2 A Notice of Appeal under rule 8.1 shall be given in writing and served upon the Chairman of the Appeals Tribunal no later than 28 days after the receipt by the Respondent of the written determination of the Disciplinary Tribunal Panel (or such longer period as the Chairman of the Disciplinary Tribunal Panel may decide on the application of the Respondent).
- 8.3 A Notice of Appeal under rule 8.1(a) shall request leave to appeal and 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 Panel appointed under rule 2.31 to hear the appeal.
- 8.4 The Respondent may appeal on any one or more of the following grounds:
- (a) that the determination of the Disciplinary Tribunal Panel was manifestly unreasonable, inconsistent with the evidence or wrong in law; and/or
  - (b) that there was injustice because of a serious procedural or other irregularity in the proceedings before the Disciplinary Tribunal Panel; and/or
  - (c) that significant and relevant new evidence has come to light which was not previously available to the Respondent and could not have become available to him on the making of reasonable enquiry; and/or
  - (d) that the sanction imposed was manifestly unreasonable.
- 8.5 Upon receiving a Notice of Appeal the Chairman of the Appeals Tribunal shall, if satisfied that it discloses arguable grounds for appeal under rule 8.4, appoint an Appeal Tribunal Panel to hear the appeal in accordance with the provisions of this Scheme.
- 8.6 If the Notice of Appeal was not served within the timescale set out in rule 8.2 the Chairman of the Appeals Tribunal shall refuse leave to appeal, except that, in exceptional circumstances, and upon the basis of reasonable cause shown, he shall be entitled to accept a referral outwith this time period.
- 8.7 If in the Chairman's absolute discretion leave to appeal is not granted, the determination of the Disciplinary Tribunal Panel shall continue to apply.
- 8.8 Where the Respondent has been expelled, excluded or suspended under rule 6.23 or where any Certificate of the Respondent has been withdrawn or suspended

under rule 6.23, the Respondent shall remain suspended, excluded or expelled from membership and the Certificate of the Respondent shall remain withdrawn or suspended as the case may be until the appeal has been determined.

- 8.9 The secretary of the Appeals Tribunal shall provide to the Chairman of the Appeals Tribunal as soon as reasonably practicable:
- (a) the determination of the Disciplinary Tribunal Panel;
  - (b) any record of the proceedings before it; and
  - (c) any documentary evidence and any other evidence and written submissions placed before it.
- 8.10 The Chairman of the Appeal Tribunal Panel shall appoint a hearing of the appeal and shall give reasonable notice in writing of the hearing to the Parties, but such hearing shall be vacated in the event of the Respondent withdrawing his Notice of Appeal.
- 8.11 At any time before the determination of the appeal by the Appeal Tribunal Panel the Respondent may withdraw his Notice of Appeal by writing to the secretary of the Appeals Tribunal, whereupon the appeal shall be deemed dismissed and the Appeal Tribunal Panel shall, if requested to do so by any Party, consider the making of a cost determination pursuant to rule 8.16(c).
- 8.12 Subject to rule 8.13, the hearing of the appeal shall normally be by way of review of the papers provided under rule 8.9 and shall be conducted in private.
- 8.13 The Appeal Tribunal Panel may, at the absolute discretion of its Chairman, permit an oral appeal hearing and:
- (a) give the Respondent a reasonable opportunity to be heard before it and to call any witnesses before the Appeal Tribunal Panel;
  - (b) hear or re-hear any witnesses who gave oral evidence before the Disciplinary Tribunal Panel;
  - (c) admit fresh evidence if it is reasonable and in the interests of justice to do so; and
  - (d) obtain legal or other advice or opinions as appropriate.
- 8.14 Subject to rule 8.15, any oral hearing of the Appeal Tribunal Panel shall be in public.
- 8.15 The Appeal Tribunal Panel may, acting of its own motion or upon the application of any Party, hear any oral appeal, in full or in part, in private if there is good reason to do so.
- 8.16 The Appeal Tribunal Panel shall make one or more of the following determinations on the appeal:
- (a) affirm, vary or rescind any determination of the Disciplinary Tribunal Panel;

- (b) substitute any other determination or determinations which the Disciplinary Tribunal Panel may have made, which may include substituting a more severe sanction;
  - (c) make an award of costs against the Respondent or Institute as it considers appropriate.
- 8.17 The Appeal Tribunal Panel shall make its determination by simple majority.
- 8.18 The determination of the Appeal Tribunal Panel shall be final.
- 8.19 A determination of the Appeal Tribunal Panel shall be served upon the Respondent forthwith, which determination shall, subject to rule 9.2(a), be effective from the date of its making. The Appeal Tribunal Panel's reasons shall be served upon the Respondent when the determination is served or as soon as reasonably practicable thereafter.
- 8.20 The Appeal Tribunal Panel shall also communicate its determination and reasons to:
- (a) the Disciplinary Tribunal Panel;
  - (b) the Case Manager;
  - (c) the person who made the Allegation under rule 3.2;
  - (d) the Disciplinary Board; and
  - (e) the Institute.

***Appeal against Interim Orders***

- 8.21 A Notice of Appeal under rule 8.1(b) shall be given in writing and served upon the Case Manager and upon the Chairman of the Appeals Tribunal no later than 14 days after the making of an Interim Order under rule 3.29 (or such longer period as the Chairman of the Appeals Tribunal may decide on the application of the Respondent).
- 8.22 Any Notice of Appeal shall:
- (a) identify the Interim Order or determination appealed against; and
  - (b) state the ground(s) of appeal; and
- neither the scope of the appeal, nor the grounds so stated, shall be amended or changed except, reasonable cause having been shown, with the leave of the Appeal Tribunal Panel appointed to hear the appeal.
- 8.23 The Interim Order shall remain in force until the appeal is determined.
- 8.24 The secretary of the Appeals Tribunal shall notify the person who made the Allegation under rule 3.3 of any appeal under rule 8.1(b).
- 8.25 The Chairman of the Appeal Tribunal Panel shall appoint a hearing of the appeal and shall give reasonable notice in writing of the hearing to the Parties, but such

hearing shall be vacated in the event of the Respondent withdrawing his Notice of Appeal.

- 8.26 At any time before the determination of the appeal by the Appeal Tribunal Panel the Respondent may withdraw his Notice of Appeal whereupon the appeal shall be deemed dismissed and the Appeal Tribunal Panel shall, if requested to do so by any Party, consider the making of a cost determination pursuant to rule 8.16(c).
- 8.27 Subject to rule 8.28, the hearing of the appeal shall normally be by way of review of the papers and shall take place in private.
- 8.28 The Appeal Tribunal Panel may, at the absolute discretion of its Chairman, permit an oral hearing and:
- (a) give the Respondent a reasonable opportunity to be heard before it on the question of whether an Interim Order should be imposed;
  - (b) admit fresh evidence relevant to whether an Interim Order should be affirmed, if it is reasonable and in the interests of justice to do so; and
  - (c) obtain such legal or other advice or opinions as appropriate.
- 8.29 Subject to rule 8.30, any oral hearing of the Appeal Tribunal Panel arising from an appeal against an Interim Order shall be in private.
- 8.30 Oral hearings of the Appeal Tribunal Panel arising from an appeal against an Interim Order shall be held in public whenever the Respondent so requests. In the event of a public hearing the Appeal Tribunal Panel may, acting of its own motion or upon the application of any Party, hold all or part of the hearing in private if there is good reason to do so.
- 8.31 The Appeal Tribunal Panel shall make one or more of the following determinations on the appeal:
- (a) affirm, vary or rescind any determination of the Interim Orders Panel;
  - (b) substitute any other determination or determinations which the Interim Orders Panel may have made;
  - (c) make an award of costs against the Respondent or Institute as it considers appropriate.
- 8.32 The Appeal Tribunal Panel shall make its determination by simple majority.
- 8.33 The determination of the Appeal Tribunal Panel shall be final.
- 8.34 A determination of the Appeal Tribunal Panel shall be served upon the Respondent forthwith, which determination shall be effective from the date of its making. The Appeal Tribunal Panel's reasons shall be served upon the Respondent when the determination is served or as soon as reasonably practicable thereafter.

- 8.35 The Appeal Tribunal Panel shall also communicate its determination and reasons to:
- (a) the Interim Orders Panel;
  - (b) the Case Manager;
  - (c) the person who made the Allegation under rule 3.2;
  - (d) the Disciplinary Board; and
  - (e) the Institute.

***Appeal against refusal of readmission to membership following disciplinary expulsion or exclusion***

- 8.36 An Applicant whose application for readmission is refused may, within 28 days of the date on which the written reasons for such refusal are sent to him, serve in writing a notice of appeal addressed to the Chairman of the Appeals Tribunal.
- 8.37 The determination of the Disciplinary Tribunal Panel regarding readmission to membership shall remain in force until the appeal is determined.
- 8.38 (a) A notice of appeal shall state the grounds of appeal.
- (b) The grounds of appeal shall be one or more of the following:
- (i) that the determination was manifestly unreasonable, and/or inconsistent with the evidence and/or wrong in law; and/or
  - (ii) that there was injustice because of a serious procedural or other irregularity in the proceedings before the Disciplinary Tribunal Panel; and/or
  - (iii) that significant and relevant new evidence has come to light which was not previously available to the Applicant and could not reasonably have been made available to the Disciplinary Tribunal hearing.
- (c) If the Chairman of the Appeals Tribunal considers that there is an arguable basis for the appeal on any of the foregoing grounds he shall grant leave to appeal and shall appoint an Appeal Tribunal Panel to hear the appeal.
- (d) Thereafter the grounds for appeal may not be amended without the leave, on reasonable cause shown, of the Appeal Tribunal Panel or its Chairman.
- (e) If the Chairman decides not to grant leave to appeal, he shall issue to the Parties and the Disciplinary Board written reasons for his decision, and his decision shall be final.
- 8.39 At any time before the determination of the appeal by the Appeal Tribunal Panel the Respondent may withdraw his Notice of Appeal, whereupon the appeal shall be deemed dismissed and the Appeal Tribunal Panel shall, if requested to do so by any Party, consider the making of a cost determination pursuant to rule 8.44(d).

- 8.40 Subject to rule 8.41, the hearing of the appeal shall normally be by way of review of the papers and shall take place in private.
- 8.41 The Appeal Tribunal Panel may, at the absolute discretion of its Chairman, permit an oral hearing and:
- (a) hear new evidence adduced pursuant to rule 8.38(b)(iii); and/or
  - (b) permit the Applicant and/or the Case Manager to make oral representations and call any witnesses.
- 8.42 The Appeal Tribunal Panel and the Parties shall be provided, as soon as reasonably practicable, with:
- (a) the determination of the Disciplinary Tribunal Panel which refused readmission;
  - (b) any record of the proceedings before it;
  - (c) any documentary evidence and any other evidence and written submissions placed before it; and
  - (d) the Notice of Appeal and supporting papers.
- 8.43 Any oral hearing of the Appeal Tribunal Panel shall be in public except that the Appeal Tribunal Panel may, acting of its own motion or upon the application of any Party, determine to conduct the oral hearing, in full or in part, in private, if there is good reason to do so.
- 8.44 The Appeal Tribunal Panel may:
- (a) affirm the refusal of the application, and may also determine that a further application from the Applicant should not be considered within a specific period of time (having regard to rule 7.1); or
  - (b) allow the appeal, granting readmission; or
  - (c) if it is of the view that it is necessary in the interests of justice to do so, in light of new evidence adduced pursuant to rule 8.38(b)(iii);
    - (i) remit the application to a Disciplinary Tribunal Panel for rehearing; and
    - (ii) when remitting the application, specify whether it should be re-heard by the same Disciplinary Tribunal Panel whose determination had been appealed or by a newly constituted Disciplinary Tribunal Panel;and
  - (d) may make an award of costs against the Respondent and/or Faculty/Institute as it considers appropriate.
- 8.45 The provisions of rules 8.17 to 8.20 shall also apply to appeals under this rule.

## **9 COSTS ORDERS AND FINES**

- 9.1 A fine or an award of costs made by the Disciplinary Tribunal Panel or by the Appeal Tribunal Panel 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.
- 9.2 Any fine payable or costs ordered to be paid shall be paid by the Respondent within 28 days:
- (a) of the receipt of the Disciplinary Tribunal Panel's determination unless Notice of Appeal is given in which case the period of 28 days begins from the notification, as the case may be, of the Appeal Tribunal Panel's decision to refuse leave under rule 8.7, or of the dismissal of the appeal under rule 8.11, or of the determination of the appeal under rule 8.16; or
  - (b) of the Respondent's acceptance of the invitation of the Adjudication Panel under rules 4.6 and 4.10.
- 9.3 If a Respondent does not pay any fine or award of costs imposed under this Scheme or the AADB Scheme in the time required, he may be guilty of Misconduct and further disciplinary proceedings may be commenced against him under this Scheme.

## **10 DISCIPLINARY BOARD**

- 10.1 The functions of the Disciplinary Board shall comprise:
- (a) overseeing the management and operation of this Scheme;
  - (b) deciding the maximum fine which an Adjudication Panel may invite a Respondent to pay under rule 4.6(b);
  - (c) providing bi-annual reports to the Council and the Council of the Faculty and such other interim reports on specific issues as it deems necessary;
  - (d) producing an annual report to the profession;
  - (e) setting and monitoring time frames for investigations and proceedings under this Scheme;
  - (f) organising training of those involved in this Scheme;
  - (g) receiving and considering reports from the Independent Examiner, from any Chairman, committee, panel or tribunal appointed under this Scheme, from the AADB regarding Allegations considered under the AADB Scheme and from the Chief Executive of the Profession on the operation of this Scheme;
  - (h) making and varying such regulations (not being inconsistent with the provisions of the Charter, the Supplemental Charter, the Bye-laws or this Scheme) as it may consider necessary for the implementation of this Scheme and for the performance by Investigation Actuaries, Interim Orders Panels, Adjudication Panels, Disciplinary Tribunal Panels and Appeal Tribunal Panels

of their respective functions under this Scheme;

- (i) providing guidance on procedure it considers appropriate not being inconsistent with this Scheme for the performance of functions under this Scheme;
- (j) giving feedback to the Council, the Council of the Faculty and/or the Financial Reporting Council and/or any of its operating bodies on lessons learned from any proceedings conducted under this Scheme, in respect of any standards, advice, guidance, memorandum or statement on professional conduct, practice or duties issued by them;
- (k) providing such guidance on procedure as it considers necessary for the performance by the Institute of functions under rule 1.23;
- (l) providing advice and guidance to the Council and the Council of the Faculty about entering into mutual disciplinary agreements with actuarial regulatory bodies outside the UK who are members of the International Actuarial Association; and
- (m) such other functions as shall be agreed from time to time by the Council and the Council of the Faculty.

10.2 The Disciplinary Board may at any time, subject to the agreement of the Council and the Council of the Faculty or such other body delegated by them for the purpose, arrange for a review of the provisions and operation of this Scheme or any aspect of it to be undertaken.

10.3 The Disciplinary Board shall 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. Such guidelines shall be published by the Institute.

## **11 GENERAL PROVISIONS**

11.1 Subject to rule 12.15, where, having regard to the interests of the public and/or of the profession, an Honorary Secretary of the Institute considers it appropriate that a matter relating to the conduct of a Member should be investigated, such matter may be referred by him for consideration as an Allegation under this Scheme; thereafter the matter shall proceed for the purposes of this Scheme as if the Allegation had been made to the Institute under rule 3.2 save that the provisions of Part 5 of this Scheme shall not apply.

11.2 In this Scheme, any function which may be undertaken by:

- (a) the Chairman of the Disciplinary Appointments Committee;
- (b) the Chairman of the Investigation Actuaries Pool;
- (c) the Convener of the Interim Orders Panels;
- (d) the Convener of the Adjudication Panels;
- (e) the Convener of the Disciplinary Tribunal Panels;

(f) the Chairman of the Appeals Tribunal; or

(g) the Chairman of the Disciplinary Board,

may be undertaken by any Deputy Chairman or Deputy Convener of that body previously so nominated or appointed or, in the absence of such a Deputy Chairman or Deputy Convener, by such other member of the body as the Chairman or Convener of the body shall designate for that purpose, in each case in the event that the Chairman/Convener or Deputy Chairman/Deputy Convener shall be unavailable to fulfil that function.

11.3 Anyone who serves as an Investigation Actuary, on an Interim Orders Panel, an Adjudication Panel, a Disciplinary Tribunal Panel or an Appeal Tribunal Panel, or as the Independent Examiner, shall be entitled to such remuneration as the Disciplinary Appointments Committee provides for.

11.4 It is intended that this Scheme shall be operated in conjunction with the disciplinary scheme of the Faculty and accordingly:

(a) any investigation into the conduct of a Member or Members may be undertaken in conjunction with an investigation into the conduct of a Member or Members of the Faculty;

(b) save where fairness requires otherwise, any proceedings under this Scheme may be dealt with, or heard, with related proceedings under the disciplinary scheme of the Faculty;

(c) an Allegation concerning a person who is a Member and a member of the Faculty shall proceed under this Scheme and under the disciplinary scheme of the Faculty simultaneously with a single Case Manager, Investigation Actuary, Interim Orders Panel, Adjudication Panel, Disciplinary Tribunal Panel and Appeal Tribunal Panel as the case may be;

(d) a Case Manager or an Investigation Actuary appointed by the Faculty under its disciplinary scheme shall have the power to require of a Member those matters specified in rule 3.11(a), 3.11(b), and 3.11(c) of this Scheme; a Member who fails to comply with such obligations, or to cooperate in accordance with rules 1.18 to 1.21, and a Member who hinders or frustrates a Case Manager or an Investigation Actuary appointed by the Faculty may be liable for Misconduct;

(e) any person appointed to a position or body under Part 2 of this Scheme may be appointed to an equivalent position or body under the disciplinary scheme of the Faculty;

(f) the provisions of rules 2.40 and 2.41 shall apply to a person who is appointed to the Disciplinary Appointments Committee or the Disciplinary Board under the provisions of the disciplinary scheme of the Faculty; and

(g) the provisions of rules 2.43 and 2.45 shall apply as if for "Member" there is substituted the term "member of the Faculty", for "Misconduct" there is substituted the term "Misconduct under the disciplinary scheme of the Faculty", and for "this Scheme" there is substituted the term "the disciplinary

scheme of the Faculty”.

- 11.5 An Interim Orders Panel, an Adjudication Panel, a Disciplinary Tribunal Panel and an Appeal Tribunal Panel (or the Chairman of such Panel 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. Any such Panel or Chairman shall at their discretion be entitled to accept written undertakings from the Respondent.
- 11.6 The failure by a Respondent to comply with an undertaking accepted under rule 11.5 shall amount to *prima facie* evidence of Misconduct. Evidence of such non-compliance may be referred, on the application of the Case Manager, for the consideration, as the case may be, of the Adjudication Panel, Interim Orders Panel, Disciplinary Tribunal Panel or Appeals Tribunal Panel by whom the undertaking is accepted. Such Panel shall be recalled for this purpose (but may be of new composition) and, in considering such evidence, such Panel shall take such steps as it shall see fit and shall have available to it all of the powers, including powers of sanction, otherwise available to it under this Scheme.
- 11.7 An Interim Orders Panel, Adjudication Panel, Disciplinary Tribunal Panel or Appeals Tribunal Panel (or the Chairman of any such Panel) or the Convener of Adjudication Panels may at their discretion suspend an investigation and/or any disciplinary proceedings under this Scheme. Before deciding to suspend such investigation or proceedings, the said Panel or Convener must be satisfied that the Respondent has been accorded a reasonable opportunity to make submissions in relation to the application, and shall consider any such submissions made by the Respondent. Any such Panel or Chairman, or the Convener of Adjudication Panels, may, on the application of either party, direct that a suspended investigation is resumed.
- 11.8 Save where fairness requires otherwise, any hearing or meeting of an Interim Orders Panel, an Adjudication Panel, a Disciplinary Tribunal Panel or an Appeal Tribunal Panel can deal with Allegations, Case Reports or Charges involving one or more Respondents and for such purpose appropriate directions may be given under rule 11.5.
- 11.9 Provided that an Interim Orders Panel, a Disciplinary Tribunal Panel or an Appeal Tribunal Panel 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.
- 11.10 All documents put before an Interim Orders Panel, an Adjudication Panel, a Disciplinary Tribunal Panel or an Appeal Tribunal Panel 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.

- 11.11 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 him at his address notified to the Institute for communications, or, if the Institute is aware that this address is no longer current for him, to his 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.
- 11.12 The Disciplinary Board shall, as soon as reasonably practicable, be given:
- (a) by the Case Manager brief particulars of any Allegation made under this Scheme after it is assigned for investigation; and
  - (b) by the Chairman of each of an Interim Orders Panel, an Adjudication Panel, a Disciplinary Tribunal Panel or an Appeal Tribunal Panel (as the case may be) a report on the proceedings under this Scheme, containing such particulars as he shall consider appropriate.
- 11.13 The following matters shall be made public by the Institute as soon as reasonably practicable in accordance with arrangements prescribed by the Disciplinary Board under rule 11.14:
- (a) the making, rescission or variation of an Interim Order;
  - (b) the referral by an Adjudication Panel of matters in a Case Report to a Disciplinary Tribunal Panel under rule 4.4(a)(ii);
  - (c) the determination and, where applicable, any sanction imposed by an Adjudication Panel resulting from the acceptance by a Respondent under rule 4.10 of an invitation by the Adjudication Panel under rule 4.6;
  - (d) any final determination of a Disciplinary Tribunal Panel; and
  - (e) any final determination of an Appeal Tribunal Panel.
- 11.14 The Disciplinary Board shall prescribe such arrangements as it thinks fit for the manner in which the following shall be published as soon as reasonably practicable:
- (a) determinations of an Adjudication Panel to refer to a Disciplinary Tribunal Panel or, to find Misconduct, and, where relevant, to reprimand, fine or require the completion of a period of education, retraining and/or supervised practice;
  - (b) the election by the Respondent to refer a matter to a Disciplinary Tribunal Panel under rule 3.18;
  - (c) Interim Orders and the rescission or variation of those orders;
  - (d) determinations (with reasons) of a Disciplinary Tribunal Panel and Appeal Tribunal Panel;

- (e) referrals to a Disciplinary Tribunal Panel and Appeal Tribunal Panel;
  - (f) date(s) and place of any public hearings to be held under this Scheme.
- 11.15 At any hearing of an Interim Orders Panel, a Disciplinary Tribunal Panel (including any procedural hearing before the Chairman) or an Appeal Tribunal Panel, the Respondent may be:
- (a) represented by a solicitor, barrister or advocate, or another Member or member of the Faculty or such other person as the Chairman of the relevant panel may agree, provided that this does not unreasonably delay any such hearing; and
  - (b) accompanied by a friend or member of his family, or by another Member or member of the Faculty, but the accompanying person may remain during any private session of the relevant panel only with the agreement of the panel.
- 11.16 The following arrangements shall apply in respect of Members who are resident and/or practising outside the UK:
- (a) The Disciplinary Board may prescribe such arrangements as it sees fit for the implementation under this Scheme of any disciplinary determination imposed on a Member by his Primary Professional Regulator.
  - (b) The Disciplinary Board may prescribe such arrangements for investigation and determination of Allegations against all other Members who are resident and/or practising outside the UK as seem appropriate under the circumstances to accord as nearly as possible with this Scheme.
- 11.17 Provisions of this Scheme shall form part of the Bye-laws and may be rescinded, varied or added to accordingly.

## **12 THE ACCOUNTANCY AND ACTUARIAL DISCIPLINE BOARD (the AADB)**

### ***Duty to co-operate***

- 12.1 The Respondent and any Member (not being a Respondent) shall ensure his or her full and prompt co-operation with the AADB and/or its representatives in connection with any investigation under the AADB Scheme, and in particular (but without limitation) provide the AADB with all information and copies of documents relevant to the investigation which are in the Member's control.

### ***Call-in of cases by the AADB***

- 12.2 If, before the making of any determination under rule 4.4, or as the case may be the exercise by the Respondent of the right of election under rule 3.18, the Institute receives notice in writing from the AADB that the AADB is considering whether an Allegation currently being dealt with under this Scheme should be investigated under the AADB Scheme, then:

- (a) any action in relation to that Allegation under this Scheme shall immediately be suspended; and
  - (b) the Respondent, the person who made the Allegation under rule 3.2, the Investigation Actuary, the Disciplinary Board and, if appropriate, the Adjudication Panel shall be informed that investigation of the Allegation is suspended pending the determination of the AADB as to whether the Allegation should be investigated under the AADB Scheme.
- 12.3 Where the AADB determines that the Allegation should be investigated under the AADB Scheme:
- (a) no further investigation shall be undertaken, and no determination shall be made, under this Scheme; and
  - (b) the Respondent, the person who made the Allegation under rule 3.2, the Investigation Actuary, the Disciplinary Board and, if appropriate, the Adjudication Panel shall be informed that the Allegation will be investigated by the AADB.
- 12.4 Where the AADB determines that the Allegation should not be investigated under the AADB Scheme:
- (a) any action in relation to that Allegation under this Scheme may be recommenced; and
  - (b) the Respondent, the person who made the Allegation under rule 3.2, the Investigation Actuary, the Disciplinary Board and, if appropriate, the Adjudication Panel shall be informed that investigation of the Allegation under this Scheme has resumed.

***Referral of cases to the AADB prior to an investigation under this Scheme***

- 12.5 Where an Allegation is received under rule 3.2 by the Institute that relates to matters that are the subject of an investigation under the AADB Scheme no action shall be taken by the Institute in relation to that Allegation under this Scheme.
- 12.6 Where the Chairman of the Pool of Investigation Actuaries considers that the Allegation should be referred for consideration under the AADB Scheme he shall refer the Allegation to the AADB to determine whether or not to accept the referral.
- 12.7 Where the AADB decides to accept a referral under rule 12.6 the Chairman of the Pool of Investigation Actuaries shall:
- (a) take no further action under this Scheme in relation to the Allegation; and
  - (b) inform the Respondent, the person who made the Allegation under rule 3.2, and the Disciplinary Board that the Allegation will be investigated by the AADB.

- 12.8 Where the AADB declines to accept a referral made under rule 12.6, the Chairman of the Pool of Investigation Actuaries shall proceed under rule 3.3 of this Scheme with the investigation of the Allegation.

***Referral of cases to the AADB during an investigation under this Scheme***

- 12.9 Where, at any stage during the course of an investigation, it appears to the Case Manager and/or Investigation Actuary that it is appropriate that an Allegation is referred for consideration under the AADB Scheme, the Case Manager and/or Investigation Actuary shall immediately refer the Allegation to the Chairman of the Pool of Investigation Actuaries.
- 12.10 Upon receipt of a referral under rule 12.9, where the Chairman of the Pool of Investigation Actuaries considers that the Allegation should be referred for consideration under the AADB Scheme, he shall:
- (a) forthwith suspend any further investigation of the Allegation under this Scheme; and
  - (b) proceed in accordance with rules 12.6 and 12.7.
- 12.11 Where the AADB declines to accept a referral under rule 12.10, the Chairman of the Pool of Investigation Actuaries shall, in accordance with rule 3.3, assign the Allegation to an Investigation Actuary to recommence investigation under this Scheme. Any assignment under this rule may be to the Investigation Actuary who acted under rule 12.9, or to an Investigation Actuary newly appointed under rule 3.6.

***Referral of cases to the AADB by an Adjudication Panel***

- 12.12 Before making any determination under rule 4.4, if the Adjudication Panel considers that any matter raised by the Allegation included in a Case Report should be referred for consideration under the AADB scheme, the Chairman of the Adjudication Panel shall:
- (a) refer the Allegation to the AADB to determine whether or not to accept the referral; and
  - (b) adjourn consideration of the Case Report and notify the Respondent, the person who made the Allegation under rule 3.2 and the Investigation Actuary accordingly.
- 12.13 Where the AADB decides to accept the referral under 12.12 the Chairman of the Adjudication Panel concerned shall:
- (a) arrange for the Adjudication Panel to take no further action under this Scheme in relation to the Case Report; and
  - (b) inform the Respondent, the person who made the Allegation under rule 3.2, the Investigation Actuary and the Disciplinary Board, that the Allegation will be investigated by the AADB.

- 12.14 Where the AADB declines the referral made under rule 12.12:
- (a) an Adjudication Panel shall resume consideration of the Case Report under this Scheme; and
  - (b) the Convener of Adjudication Panels shall determine whether the Adjudication Panel should be the Panel which acted under rule 12.12 or a Panel newly appointed for the purpose.

***Referral of cases to the AADB prior to a referral under rule 11.1***

- 12.15 Before proceeding under rule 11.1 the Honorary Secretary shall first consider whether, having regard to all the circumstances, it is appropriate that the matter is referred to the AADB scheme and, if so, he shall refer the matter for decision by the AADB whether to accept the referral.
- 12.16 Where the AADB decides to accept the referral, the Honorary Secretary shall:
- (a) take no further action under this Scheme in relation to the matter; and
  - (b) inform the Respondent and the Disciplinary Board of the referral.
- 12.17 Where the AADB declines the referral the Honorary Secretary shall proceed under rule 11.1.

***Enforcement of AADB sanctions and findings***

- 12.18 Subject to rule 12.19, any finding made or sanction imposed under the AADB Scheme shall be put into effect, for the purposes of enforcement only, as if it were made or imposed under this Scheme.
- 12.19 Rule 12.18 only has effect in relation to a finding or sanction against which there is no possibility of appeal within the AADB Scheme, either because all routes of appeal have been exhausted or because no notice of appeal against the finding made or sanction imposed has been received by the AADB within the time limit set out under the AADB Scheme.

***Enforcement of costs awarded by the AADB***

- 12.20 Where costs are awarded against a Member in accordance with the AADB Scheme, that Member shall pay the costs so ordered in accordance with the AADB Scheme.

**13 COMMENCEMENT AND TRANSITIONAL PROVISIONS**

***Commencement***

- 13.1 The provisions of this version of this Scheme shall come into force on such day(s) as the Council may by resolution determine and shall be applicable to all matters arising from Allegations received under rules 3.2 or 11.1, on or after that date.

### ***Transitional provisions***

- 13.2 Subject to rule 13.3, all matters arising from Allegations received under rules 3.2 or 11.1 prior to the date on which this version of this Scheme comes into force shall be dealt with in accordance with the version of this Scheme in force at the date on which the Allegation was received; and the provisions of that version of this Scheme shall continue in force for the purpose of the consideration and determination of any such matter.
- 13.3 All persons appointed to the Disciplinary Appointments Committee, Disciplinary Pool, Appeals Tribunal, Pool of Investigation Actuaries, Disciplinary Board or Legal Advisers Pool, and the person appointed to the role of Independent Examiner, immediately prior to this version of this Scheme coming into force, shall be deemed to continue to be so appointed under this version of this Scheme on its coming into force.

## APPENDIX

In this Scheme, unless the context otherwise requires:

'AADB'	means the board established by the Articles of Association of The Accountancy and Actuarial Discipline Board Limited (and any other person or body exercising functions on behalf of or in succession to such board);
'AADB Scheme'	means the disciplinary scheme for the Actuarial Profession made and adopted by the AADB as amended and in force from time to time;
'Adjudication Panel'	means a panel appointed under rule 2.22;
'Advisory Report'	means a report referred to in rules 3.22 and 3.23;
'Allegation'	means a statement in writing addressed to the Institute containing an allegation or allegations to the effect that a named Member has or may have been guilty of Misconduct or a referral by the Honorary Secretary under rule 11.1, and includes such an Allegation relating to a person whose membership is suspended under this Scheme;
'Appeals Tribunal'	means the Appeals Tribunal referred to in rule 2.29;
'Appeal Tribunal Panel'	means a panel of the Appeals Tribunal appointed under rule 2.31;
'Applicant'	means a former Member, who has been expelled or excluded from membership and is applying for readmission to membership;
'Appropriate person'	means a person of good character who is fit to carry out a role under this Scheme;
'Board for Actuarial Standards'	means the operating body of that name appointed by the Financial Reporting Council Limited;
'Bye-laws'	means the Bye-laws of the Institute in force from time to time;
'Case Manager'	means a person appointed by the managements of the Institute and Faculty to manage the investigation of an Allegation, and any subsequent referrals to an Interim Orders Panel, or Disciplinary Tribunal Panel or Appeals Tribunal Panel, with advice and assistance from an Investigation Actuary;
'Case Report'	means a report referred to in rule 3.14;
'Certificate'	means any certificate issued pursuant to the Bye-laws;

'Charge'	means a formal allegation that a Member has been guilty of Misconduct defined in the document prepared by the Investigation Actuary under rule 4.16;
'Chief Executive of the Profession'	means the person appointed by the Council for the purpose of submitting reports to the Disciplinary Board pursuant to rule 10.1(g) on behalf of the Institute;
'Council'	means the Council of the Institute of Actuaries;
'Council of the Faculty'	means the Council of the Faculty of Actuaries;
'Disciplinary Appointments Committee'	means the committee appointed in rule 2.1;
'Disciplinary Board'	means the board referred to in rule 2.32;
'Disciplinary Pool'	means the pool referred to in rule 2.8;
'Disciplinary Tribunal Panel'	means a panel referred to in rule 2.26;
'Faculty'	means the Faculty of Actuaries;
'Faculty Scheme'	means the Disciplinary Scheme of the Faculty of Actuaries adopted under Rule 35 of the Rules and Bye-laws of the Faculty;
'Fellow'	means a Fellow of the Institute of Actuaries;
'Fellow of the Faculty'	means a Fellow of the Faculty of Actuaries;
'Independent Examiner'	means the person appointed under rule 2.17;
'Interim Order'	means an order provided for in rule 3.26;
'Interim Orders Panel'	means a panel referred to in rule 2.20;
'Investigation Actuary'	means an investigation actuary referred to in rule 3.3;
'Lay member'	means a person who is not and has never been a Member, Fellow, Associate, Affiliate or student of the Institute or of the Faculty or an Overseas Fellow Equivalent;
'Lead Investigation Actuary'	means a member of the Investigation Actuaries Pool nominated under rule 3.5(b);
'Legal Advisers Pool'	means the pool of barristers, advocates and solicitors nominated under rule 2.37;
'Memorandum of Understanding'	means an agreement entered into between, on the one hand, the Institute and, on the other hand, the Board for Actuarial Standards and/or the Financial Reporting Council Limited which provides, amongst other things, for the Board for Actuarial Standards to issue standards and the Institute to recognise those standards in its Disciplinary Scheme;

'Member'	means a member of the Institute of any class other than an Honorary Fellow;
'Misconduct'	means misconduct under rule 1.6;
'Overseas Fellow Equivalent'	means a person possessing a qualification which the Disciplinary Appointments Committee considers to be the local equivalent of the Institute's Fellowship obtained from an overseas actuarial regulatory body which is a full member of the International Actuarial Association;
'Party'	means a Respondent or the Case Manager, as the case may be;
'Pool of Investigation Actuaries'	means the pool referred to in rule 2.13;
'Primary Professional Regulator'	means another actuarial regulatory body outside the United Kingdom which is a full member of the International Actuarial Association and has been properly nominated by a Member in accordance with regulations prescribed by the Institute for this purpose;
'Respondent'	means the Member whose conduct is the subject of the matter of an Allegation or an investigation by or proceedings before an Interim Orders Panel, Adjudication Panel, Disciplinary Tribunal Panel or Appeal Tribunal Panel;
'rule'	means a rule of this Scheme;
'Scheme'	means this Disciplinary Scheme adopted under Bye-law 69.

*1 July 2009*