

Complaint Handling

Guidance

1 July 2024

Complaint Handling

1. Introduction

- 1.1 The public places trust in Members of The Institute of Actuaries of Australia (the Institute) to hold high standards. In acknowledging that trust the Institute strives to ensure that its Members uphold the highest technical, professional and ethical standards. The Institute is committed to holding its Members accountable to those standards.
- 1.2 The Institute has a Disciplinary Scheme to address conduct which falls short of the standards expected. This helps to protect the public as well as to maintain and protect the standards, professionalism and reputation of our Members.
- 1.3 Complaints about the conduct of our Members are dealt with under the Disciplinary Scheme (effective April 2018) (the Scheme).
- 1.4 This guidance has been issued by the Council of the Institute in accordance with [clause 13.2](#) of the Scheme.
- 1.5 This guidance is intended to help everyone who engages with our Complaints processes and the Scheme to understand the steps for making a Complaint and the disciplinary process that will be followed.
- 1.6 It is important to understand that the Scheme is limited to investigation of Misconduct, as defined in [clause 3 of the Scheme document](#). The Institute cannot for example, resolve commercial disputes. Similarly, in other situations some Complaints may best be made to the Member's employer. Personal grievances might be the subject of civil action and perhaps issues relating to the Member's workplace or even under whistleblower legislation are not within our remit and may be a matter where an individual may choose to obtain their own legal advice. Sometimes there are matters where another relevant regulatory body or relevant authority will need to conduct their investigation first or possibly in place of the Institute.
- 1.7 The Institute will consider Complaints about the conduct of Members, and former Members in relation to conduct that occurred while they were a Member. Independent Convenors, Committees, Tribunals and Appeal Boards will consider whether that conduct amounts to Misconduct, as defined at clause 3 of the Scheme:

“...Misconduct is defined as any acts or omissions by a Member that do not meet the standards as reasonably determined and expected by the Institute. The standards and expectations of the Institute are explained within the Institute’s [Code of Conduct](#)”

- 1.8 This guidance applies to all Complaints being considered under the Scheme as amended from time to time. For Complaints that are being considered under a former version of the Institute's Disciplinary Scheme, the version of the guidance applicable to the former version of the Disciplinary Scheme should be applied to the extent that it is possible to do so, otherwise this guidance will apply.
- 1.9 This guidance does not override any provision of the Scheme.
- 1.10 It is for use by:
 - (a) The Convenors, and any Conduct Committee, Investigating Sub-Committee, Tribunal, Appeal Board, or Panel appointed under [clause 5 of the Scheme](#), referred to in this and other guidance as the ‘Scheme decision maker’, to provide further detail on their powers and procedures to be followed; and
 - (b) any other party, so they are aware of the powers of a Scheme decision maker, and the procedures to be followed; and
 - (c) Institute staff.
- 1.11 This guidance should be read in conjunction with:
 - (a) the Scheme; and
 - (b) any rules or regulations issued by the Council; and
 - (c) any other relevant guidance published by the Council.
- 1.12 Where there is any conflict or inconsistency between the Scheme and this guidance, the Scheme shall be followed. Where there is any conflict or inconsistency between regulations and this guidance, the regulations shall be followed.
- 1.13 Definitions of defined terms used in this guidance are set out in the Scheme and regulations.
- 1.14 This guidance should not be treated as legal advice. When appropriate, the Scheme decision maker may seek legal advice from the Institute’s legal advisor(s) on questions of law and/or procedure, which may include advice on the use of this guidance.
- 1.15 The Council will review this guidance every five years or earlier if needed. It may be updated in the interim when circumstances require a change.

2. Aim

- 2.1 This guidance:
- (a) sets out the assessment criteria to be applied when considering whether to accept a Complaint; and
 - (b) notes the stages when the assessment criteria should be applied.
- 2.2 This guidance aims to promote transparency and consistency in the approach of the relevant Scheme decision maker and the Institute staff.

3. Respecting privacy

- 3.1 Complaints must be received in writing from a named person. The name of the person, body or company submitting the Complaint (known as the Complainant) is part of that required information. The Institute will need to collect and retain some of a Complainant's personal information, such as their name, address, and the nature of their allegation. Please note that the Institute usually sends a copy of the Complaint and any correspondence from the Complainant in relation to the investigation to the Member/former Member being complained about – which will include the Complainant's name. and may include their email address.
- 3.2 If the person, body or company does not wish to be named, any concerns they raise will be considered by the Convenor of the Conduct Committee. In these circumstances, the person, body or company who raised the concern will not be treated as the Complainant in the Scheme and will not be provided with any further information about the Institute's consideration of their Complaint. It is important to be aware however that the person, body or company who raised the concern may still be called as witness in any disciplinary proceedings. .
- 3.3 The investigation process is not public. Any information that is provided to a Complainant, Member, Respondent, expert or witness during an investigation, including copies of determinations, are provided on the understanding that you will maintain the confidentiality of the information/ documentation.

4. Assessment criteria

- 4.1 Not all Complaints the Institute receives will be investigated under the Scheme. Each Complaint must be considered against the assessment criteria set out in this guidance and any regulations.
- 4.2 The default position is that a Complaint will be investigated unless it meets one or more of the criteria set out below.

The Complaint could not amount to Misconduct, even if the facts are proven

- 4.3 The Complaint will be considered alongside the definition of Misconduct. The alleged behaviour must be more than just a mistake or unprofessional behaviour and the conduct must fall significantly short of the standards expected of a Member. If the Complaint is unclear, the Complainant should be asked to clarify the terms of the Complaint.
- 4.4 The Institute can only investigate the conduct of its Members. Conduct by non-Members, companies, bodies, committees and other persons cannot amount to Misconduct except for persons who were Members at the time of the alleged conduct. Where a Complaint is about the outcome of an Institute function or process, this will not usually be capable of amounting to Misconduct unless there is evidence of bad faith or malicious intent on the part of the Member. The Scheme is intended to address the conduct of individual Members, rather than to review decisions made by non Scheme committees, panels or boards. Where there are concerns about an Institute incident, event, service or decision, they should be addressed through other non Scheme Complaints handling process.
- 4.5 Misconduct can include conduct in a Member's professional and non-professional life; however, non-professional conduct can only be considered to be Misconduct if it could reasonably be considered to reflect upon the profession. For example, a conviction which has occurred in respect of events in a Member's non-professional life may be considered to reflect negatively upon the Institute given the public nature of a conviction.
- 4.6 Misconduct can only include conduct which took place while the individual was a Member of the Institute, subject to the exception explained below. Any conduct committed by an individual after they resign their Institute Membership cannot amount to Misconduct. Once a Member resigns their Membership of the Institute they are no longer held to the standards of behaviour, integrity, competence and professional judgement referred to in the definition of Misconduct. The exception to this is where a Respondent, who is a former Member, fails to cooperate with an Institute investigation into conduct which occurred while they were a Member. In these circumstances, an additional allegation of Misconduct arising from that conduct may be made under the Scheme.

4.7 The types of behaviour which may amount to Misconduct include (but are not limited to):

- conduct which is dishonest;
- a lack of integrity;
- communications which are seriously offensive;
- poor quality service;
- poor quality of work;
- breach of confidentiality;
- breaches of the Institute's Code of Conduct, Professional Standards, Professional Guidance, Technical Papers and Information Notes and other jurisdictions' commensurate professional standards;
- criminal convictions; and
- Disciplinary Action taken by another body or process.

There is no reasonable prospect of proving the matter giving rise to the Complaint

4.8 At this stage, a decision is not made on whether there is sufficient evidence to establish that the alleged facts in the Complaint occurred. However, there must be a reasonable prospect of obtaining satisfactory evidence to support the Complaint.

4.9 The assessment of what evidence is likely to be available will vary on a case-by-case basis. The Convenor of the Conduct Committee can ask the Complainant for further information. The Complainant may not have all the evidence available to send with the Complaint. If the Complaint is accepted for investigation, the Institute may investigate to find further evidence. However, if it is clear from the outset that there is no documentary evidence supporting the Complaint in existence or that the witnesses will not cooperate with the Institute's investigation, then it is unlikely that there will be a reasonable prospect of proving the matter(s) giving rise to the Complaint.

4.10 Although Members are required to cooperate with an Institute investigation, the Institute does not have statutory powers which require non-Members to cooperate with investigations and provide evidence. The Institute is therefore reliant on the voluntary cooperation of non-Members.

The matter giving rise to the Complaint should be considered by another body and/or court before being reassessed

- 4.11 Where jurisdiction over the subject matter of the Complaint primarily lies elsewhere, the Institute will not usually consider it until the other body has completed its consideration of the matter.
- 4.12 For example, if a Member is also regulated by another body, it may be appropriate for that body to investigate the Complaint first before the Institute considers the matter. The question about which is the appropriate body to consider the matter first will depend on the facts of each case. The complainant and/or the Institute may obtain their own external legal advice in respect of this question.
- 4.13 If the Complaint relates to allegations of criminal conduct, this should be referred to the police (or other appropriate criminal enforcement body) in the first instance. If the Member is subject to civil or criminal court proceedings, the Institute will not usually proceed with any investigation until the court proceedings have concluded. If a Member is convicted of an offence, the Institute can take the Complaint forward based on the fact of the conviction. In the event a criminal investigation does not result in a conviction, the Institute may still investigate the conduct in question if it appears that the alleged behaviour may amount to Misconduct.

5. Initial consideration of Complaint by Convenor of the Conduct Committee

- 5.1 When a Complaint is received by the Institute, it will be assessed by the Convenor of the Conduct Committee to consider whether the Complaint should be investigated or rejected.
- 5.2 During the assessment, the Convenor of the Conduct Committee will record the following :
- the name of the Member/former Member;
 - the date the Complaint was received;
 - the name of the Complainant;
 - a summary of the Complaint;
 - a short summary of the Convenor of the Conduct Committee's consideration of each of the assessment criteria (as set out in section 3);
 - a short summary of any preliminary enquiries undertaken (e.g. asking the Complainant for further documentation or clarification) or confirmation that no preliminary enquiries were taken; and
 - whether the Complaint is accepted or not.

- 5.3 The assessment of the Complaint may require the Convenor of the Conduct Committee to complete some limited preliminary enquiries such as asking the Complainant whether they have any further evidence in support of the Complaint, asking the Complainant to clarify the Complaint or seeking information from the subject(s) of the Complaint.
- 5.4 The Convenor of the Conduct Committee should complete the assessment as soon as is reasonably practicable having regard to the material provided by the Complainant and the availability of other information or responsiveness from other relevant person(s) or needed to properly assess the Complaint.
- 5.5 Irrespective of whether the Complaint is to be investigated, the records will be retained by the Convenor and if the matter is to be investigated the records will be retained on the case in a case file.

6. What happens if the Complaint is accepted for investigation?

- 6.1 If the Complaint is accepted for investigation the relevant Member/former Member is known as the Respondent.
- 6.2 It is the Convenor of the Conduct Committee who decides the best way to investigate the allegation and what relevant information they need to gather. The Professional Standards Manager may ask you to provide more details about the Complaint and relevant documentation in order to assist the investigation.
- 6.3 The Institute's Professional Standards Manager will manage the administration of the investigation process and if requested by the Convenor, gather relevant information for consideration by the Convenor of the Conduct Committee. The Professional Standards Manager is a member of our staff. At all stages during the Complaint and disciplinary processes, they are neutral and impartial. The Complainant and the Respondent Member will be given the Professional Standards Manager's name and contact details and they will be the Institute contact throughout the investigation. Although they cannot give you legal advice they can inform the Complainant and the Respondent Member as to the Complaint process and progress.
- 6.4 Further information is set out in the Institute's guidance on [Making a Complaint](#) and [Facing a Complaint](#).

Professional Conduct Undertakings

- 6.5 A Professional Conduct Undertaking can be used at an early stage in the disciplinary process where the Respondent accepts the disciplinary allegations amount to Misconduct.
- 6.6 Professional Conduct Undertakings are available for less serious cases of misconduct. Where a Respondent agrees to a Professional Conduct Undertaking this will be considered by the Convenor of the Conduct Committee and the Convenor of the Disciplinary Tribunal who will jointly approve or reject the Professional Conduct Undertaking. If the Professional Conduct Undertaking is approved, that will result in a finding of Misconduct against the Member and an outcome detailed in the Professional Conduct Undertaking. Whether the Professional Conduct Undertaking is published will be determined by the relevant Scheme decision maker. Information about publishing disciplinary matters is set out in the [Institute's guidance on Publication](#).

Consideration of Complaint by Investigating Sub-Committee

- 6.7 Usually, after an investigation into an allegation of misconduct is complete, and if the matter has not been dealt with by a Professional Conduct Undertaking the Convenor of the Conduct Committee will determine whether a Complaint should be further investigated and will establish an Investigating Sub Committee (ISC) for that purpose.
- 6.8 The members of the Investigation Sub-Committee (ISC) may make their decision and agree the reasons for this via a secure electronic platform. The Members of the ISC may meet to discuss the Complaint if needed. Any meeting of the ISC will take place in private.
- 6.9 The ISC will issue their decision as soon as is reasonably practicable. The ISC's written decision should be brief and include:
- the name of the Member/former Member;
 - the date the Complaint was received from the Convenor of the Conduct Committee or the date of the review request by the Complainant;
 - the name of the Complainant;
 - a summary of the Complaint;
 - a short summary of the Investigation sub-committee's consideration of each of the assessment criteria (as set out in section 3); and
 - whether the Complaint is accepted or not.

7. Information about a Member's conduct that is not received by way of a written Complaint

- 7.1 The Scheme allows for a Member's conduct to be investigated other than by way of receipt of a written Complaint by the Institute. For example, a Member may make a disclosure to the Institute under their obligations set out in [clause 4 of the Scheme](#).
- 7.2 Further, an Executive Officer of the Institute may refer a Complaint to the Convenor of the Conduct Committee. This may happen if for example:
- (a) concerns are raised anonymously (or by a person who wishes not to be identified); or
 - (b) a Member reports their own conduct to the Institute; or,
 - (c) if the Institute becomes aware of information about a Member through the media or other sources.

In these circumstances, an Executive Officer of the Institute will consider whether it is appropriate to refer a Complaint to the Convenor of the Conduct Committee. A Complaint made by an Executive Officer shall be considered in the same way as any other Complaint.

8. Contact details

- 8.1 The Professional Standards Manager who deals with the receipt of Complaints and is responsible for the administration of the investigation of allegations, can be contacted at:
disciplinaryscheme@actuaries.asn.au
- 8.2 Further information about the disciplinary process is available on the [Institute website](#). The [Disciplinary Scheme](#) contains the rules which govern the process and the regulations and guidance set out the process to be followed.

9. Additional assistance

- 9.1 If a person participating in the disciplinary process is in need of additional assistance the Professional Standards Manager can be contacted.

Document control

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1.0	1 July 2024	Guidance for Complaint Handling Disciplinary Scheme effective 1 July 2024

Disclaimer

This guidance has been prepared by the Institute to assist persons who wish to make a Complaint about the conduct of an Institute Member. This document is not legal advice and is not a substitute for the Scheme. Where there is any conflict or inconsistency between the Scheme and this guidance, the Scheme shall be followed. Where there is any conflict or inconsistency between regulations and this guidance, the regulations shall be followed.

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