



RULES OF CONDUCT

**GUIDANCE NOTES
IN CONNECTION WITH PART VI OF THE BYE-LAWS
PROFESSIONAL CONDUCT**

These Guidance Notes have been approved by the General Council on 25 September 2017, and in accordance with Bye-Law 6.1, ratified by resolution at a General Meeting held on 21 November 2017. The General Council has decided that the same disciplinary procedures shall apply to all members in the professional, technical and training grades.

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CONTENTS

	Page
1. Standards of Conduct	1
1.1 Responsibility to the Profession/Institute	1
1.2 Responsibility to other Members	2
1.3 Responsibility to Clients	2
1.4 Vicarious Liability	3
2. Disciplinary Powers	3
3. Disciplinary Bodies	5
3.1 The Preliminary Review Committee	5
3.2 The Committee of Investigation	5
3.3 The Disciplinary Board	6
4. Disciplinary Procedure	6
4.1 The Preliminary Review Committee	6
4.2 The Committee of Investigation	6
4.3 The Disciplinary Board	7
5. The Legal Adviser	10

RULES OF CONDUCT

1. STANDARDS OF CONDUCT

General principles:

- (a) No Member of the Institute shall conduct himself in a manner amounting to professional misconduct.
- (b) Every Member shall uphold at all times the standards of conduct provided at Rule 1.1, Rule 1.2 and Rule 1.3 below (the "Standards of Conduct").
- (c) A serious failure to comply with the Standards of Conduct shall be a professional misconduct, although the Standards of Conduct are non-exhaustive and can include any conduct which might appropriately be considered as conduct falling short of the standards expected of Members of the Institute.
- (d) The foregoing provisions in relation to the application of the Standards of Conduct are without prejudice to the generality of the disciplinary powers exercised under Rule 2.

1.1 Responsibility to the Profession/Institute

A Member of the Institute shall order his conduct so as to uphold the dignity and reputation of the Institute and the surveying profession.

A Member shall, amongst other things:-

- 1.1.1 not advertise his service in a manner derogatory to the dignity or reputation of the Institute or the surveying profession;
- 1.1.2 not solicit instructions for work in a manner that may bring the Institute or the surveying profession into disrepute;
- 1.1.3 not accept any instruction which he is not qualified or competent to discharge;
- 1.1.4 not give opinions in his professional capacity that are not, to the best of his ability, objective, reliable and honest;
- 1.1.5 not be connected with any occupation or business in any way which would, in the opinion of the General Council or any of the disciplinary bodies named in Rule 3, prejudice the reputation of the Institute or the surveying profession;
- 1.1.6 not carry on practice as a surveyor under any such name, style or title as to prejudice the reputation of the Institute or the surveying profession.

1.2 **Responsibility to other Members**

A Member of the Institute shall compete fairly with other Members for instruction or work.

A Member shall, amongst other things:-

- 1.2.1 not offer nor give a prospective client or anyone any gift or favour, of value or otherwise, designed to secure instructions for work;
- 1.2.2 not exert, directly or indirectly, undue pressure or influence on any person for the purpose of securing instructions for work;
- 1.2.3 not accept instructions from any person if, he has reason to believe that, a third party in expectation of receiving a reward, of value or otherwise, has exerted pressure or influence on that person to give the Member instructions;
- 1.2.4 not act nor offer to act in any capacity in relationship to any matter which is the subject of judicial or quasi-judicial proceedings either on the basis that no charge will be made unless the proceedings will be successful or on the basis that the amount of the charge will be related to the degree of success in the proceedings;
- 1.2.5 [*Revoked on 19th September 2016*]
- 1.2.6 [*Revoked on 19th September 2016*]
- 1.2.7 not maliciously or falsely injure nor attempt to injure the professional reputation or practice of other Members.

1.3 **Responsibility to Clients**

A Member of the Institute shall discharge his duties to his client with integrity and in accordance with the highest standard of business ethics.

A Member shall, amongst other things:-

- 1.3.1 when acting for a client or when in contemplation of acting for a prospective client whose interests conflict or may conflict with his own or those of any of his associates, disclose the relevant facts forthwith to the client or prospective client and to the associate and where such disclosure is oral, confirm in writing such disclosure at the earliest opportunity and inform the client or prospective client that he will be unable to act or continue to act unless the client or prospective client requests him in writing to do so;
- 1.3.2 ensure that neither he personally nor any firm or company carrying on practice as surveyors of which he is a partner or director acts for two or more parties with conflicting interests without disclosing the relevant facts to each of those parties forthwith and confirming such disclosure in writing at the earliest

opportunity and inform each of those parties that he personally, his firm or company will be unable to act or continue to act unless each of the parties requests him and his firm/company in writing to do so;

- 1.3.3 not disclose any confidential information in relation to a client to anyone without the written consent of the client concerned;
- 1.3.4 not receive any remuneration other than for his professional services. He shall not accept any payment, entertainment, gift or favour of more than nominal value, from any third party such as a supplier or a contractor who is connected with his professional services provided to clients;
- 1.3.5 keep in one or more bank accounts separate from his own, his firm's or his company's bank account (as the case may be) any client's money held by or entrusted to him, his firm or his company in any capacity other than that of a beneficial owner;
- 1.3.6 account at the due time for all moneys held, paid or received on behalf of or from any person (whether a client or not) entitled to such account and whether or not after the taking of such account any payment is due to such person.

1.4 **Vicarious Liability**

A Member who:-

- 1.4.1 is or holds himself out or allows himself to be held out to be a partner in a firm or a director of a company or a sole proprietor; or
- 1.4.2 allows his name and/or designatory letters or designation to appear on the note paper or in the advertisements of any firm or company in which no other partner or director is a Member; or
- 1.4.3 is a partner in a firm or a director of a company which is so connected with another firm or company in which no partner or director is a Member and that in the opinion of the General Council or any of the disciplinary bodies named in Part 3 of these Rules, people dealing with that other firm or company believe or may be induced to believe that the two firms or companies are connected

shall be held responsible for any contravention of the Bye-Laws or these Rules of Conduct committed by any partner or any member of the staff of such firm/company or other firm/company provided that if such Member shall show that without any default on his part he had no reason to be aware of and was not aware of any such contravention and that he had prior to such contravention taken all such steps as may be reasonable to ensure that such contravention would not be committed, he will not be held responsible for such contravention.

2. **DISCIPLINARY POWERS**

- 2.1 In accordance with the provisions of Part VI of the Bye-Laws, if a Member has been found by the Disciplinary Board under Rule 4 to have contravened the Standards of

Conduct (as specified in Rules 1.1 to 1.3 above) or any provisions of the Constitution, Bye-Laws or any other Rules under these Rules of Conduct, the General Council shall, in implementing the decision of the Disciplinary Board as to liability and penalty, take any one or more of the following courses of action:-

2.1.1 to reprimand or severely reprimand the Member;

2.1.2 to require the Member to give a written undertaking to refrain from continuing or repeating the conduct which is found to have constituted the contravention;

2.1.3 to suspend the Member from Membership of the Institute for such periods as the General Council may determine;

2.1.4 to expel the Member from the Institute.

2.2 If, in respect of a Member, there is produced to the General Council:-

2.2.1 evidence of conviction by a Court of competent jurisdiction (in Hong Kong or elsewhere) for

(i) any criminal offence involving embezzlement, theft, corruption, fraud or dishonesty of any kind (no matter how the offence is named or described); or

(ii) any offence for which a Member has been sentenced to a term of imprisonment, whether the sentence is suspended or not; and that the General Council has no jurisdiction to challenge or question in any way the validity or correctness of the conviction or sentence imposed.

2.2.2 a legal notice that he has been adjudicated bankrupt or a certified copy of a deed of arrangement he has entered into with or for the benefit of his creditors; and

2.2.3 a copy of a letter sent by the Institute to the Member

2.2.3.1 informing him of the powers of the General Council under the Bye-Laws or these Rules of Conduct;

2.2.3.2 giving him not less than 21 days notice of the date of the meeting of the General Council at which the matter is to be considered; and

2.2.3.3 inviting him to make such submissions in writing as he may think fit;

the General Council after considering any submission as aforesaid may refer the matter to a Disciplinary Board hereinafter mentioned for enquiry and action. In such event, the General Council may, if they think fit, temporarily suspend the Member from membership of the Institute pending such enquiry.

- 2.3 All decisions of the General Council under Rule 2.1 shall take immediate effect and shall be duly recorded; and the General Council may cause to be published in the Journal and in such newspapers or other publications as the General Council may think fit notice of reprimand or severe reprimand; suspension or expulsion of a Member together with such particulars, as the General Council shall think desirable, of the misconduct, breach of Bye-Laws, conviction or other matter for which the penalty in question was imposed.
- 2.4 If a Member is expelled, his name shall be removed from the Register and he shall thereupon cease for all purposes to be a Member of the Institute. That Member shall immediately return his diplomas of Membership to the Institute and he shall not be entitled to use any designation or description which implies membership or former membership of the Institute.
- 2.5 If a Member is suspended, he shall not be entitled during the period of his suspension to exercise any of the rights or privileges of membership of the Institute. He shall however remain in all other respects subject to the provisions of these Bye-Laws and to the exercise of the Institute's disciplinary powers in respect of any contravention of those provisions committed by him including that committed during the period of his suspension.
- 2.6 If a Member has been notified that a complaint or allegation has been made against him or that a conviction, bankruptcy or other matter mentioned in these Rules has been notified to the Institute he shall not be entitled to resign from membership of the Institute, and any such proceedings may be continued notwithstanding his attempted resignation.

3. **DISCIPLINARY BODIES**

The disciplinary bodies of the Institute shall consist of a Preliminary Review Committee, a Committee of Investigation and a Disciplinary Board to be drawn from a Disciplinary Panel.

3.1 **The Preliminary Review Committee**

3.1.1 The Preliminary Review Committee shall comprise any one of the Senior-Vice President and Vice-Presidents, the Chairman of the Board of Membership, and the Chairman of the Division to which the Member being complained against belongs, provided that the President may substitute the Divisional Chairman with another member of the same Division.

3.2 **The Committee of Investigation**

3.2.1 The Committee of Investigation shall be selected by the President and shall consist of three Members who shall be Fellows. The President shall appoint one of the Members of the Committee to be its Chairman. One of the Members of the Committee shall be of the same discipline as the Member against whom an investigation is to be made. The Chairman shall appoint a Member of the Institute to be its Secretary.

3.2.2 If, in the opinion of the Committee of Investigation, the investigation of a particular complaint or allegation may require specialist knowledge or expertise not available to the Committee, it may at any stage of the investigation, appoint a Member who in its opinion has such knowledge or expertise to serve ad hoc as a full additional Member of the Committee for the purpose of considering the particular complaint or allegation.

3.3 **The Disciplinary Board**

3.3.1 The Disciplinary Board shall be drawn from a Disciplinary Panel.

3.3.2 Members of the Disciplinary Panel shall be appointed by the General Council for a two year period. The Disciplinary Panel shall consist of Members who shall be Fellows and include not less than six Members of each of the Divisions of the Institute.

3.3.3 The Disciplinary Board shall be selected by the President and shall consist of either three or five Members of the Disciplinary Panel, as the President may decide. One of the Members of the Disciplinary Board shall be of the same discipline as the Member against whom the hearing is to be heard. Any Member appointed on to the Committee of Investigation shall not be appointed on to the Disciplinary Board hearing the same matter. The President shall appoint one of the Members of the Board to be the Chairman of the Board. The Chairman shall appoint a Member of the Institute to be the Secretary of the Board. In every hearing of the Disciplinary Board, the Legal Adviser (as specified at Rule 5 below) shall be present throughout.

4. **DISCIPLINARY PROCEDURE**

4.1 **The Preliminary Review Committee**

4.1.1 When a complaint or allegation is made against a Member of a breach of the Constitution, Bye-Laws, or these Rules of Conduct, or if it has come to the attention of the Institute that a Member may be in breach of the Constitution, Bye-Laws or these Rules of Conduct, the President shall refer to the Preliminary Review Committee such complaint/allegation or incident (the "Case") for the exercise by the Committee of its powers under Rule 4.1.2.

4.1.2 On referral by the President, the Preliminary Review Committee shall decide whether a Committee of Investigation shall be appointed to deal with the Case. The Preliminary Review Committee shall make its decision by a majority vote of the Committee.

4.2 **The Committee of Investigation**

4.2.1 If the Preliminary Review Committee has decided that the Case shall be dealt with by the Committee of Investigation, the Honorary Secretary of the Institute shall provide the Committee of Investigation that has been appointed by the President with all relevant documents in connection with the Case.

- 4.2.2 The Honorary Secretary of the Institute shall inform the Member of the Case made against him and shall also inform him that a Committee of Investigation has been appointed.
- 4.2.3 The Committee shall consider the documents provided by the Honorary Secretary of the Institute and may either reach a conclusion based on the documents only or call for further information or evidence from the complainant, the Member under investigation or from any other person.
- 4.2.4 The Committee shall keep minutes of its investigations and decisions. The circulation of those minutes shall be confined to members of the Committee throughout the period of investigation.
- 4.2.5 The Committee of Investigation shall make its decision by a majority vote of the Committee.
- 4.2.6 If the Committee recommends that the subject matter of the complaint or allegation should not become a formal charge, it shall so inform the General Council. The Honorary Secretary shall inform the Member in writing of the Committee's decision.
- 4.2.7 If the Committee recommends that the subject matter of the complaint or allegation should become a formal charge, it shall cause the formal charge to be drawn up by the Institute's solicitor. The President shall appoint a Disciplinary Board and the Institute's solicitor who has drawn up the formal charge shall act as the prosecutor and generally prepare the case for presentation to the Disciplinary Board.

4.3 **The Disciplinary Board**

- 4.3.1 When the formal charge has been drawn up, the Honorary Secretary of the Institute shall, after consultation with the Chairman of the Disciplinary Board, fix a date, time and place for the hearing and shall, not less than 28 days before the hearing:-
- 4.3.1.1 by registered post addressed to the Member's last known address:
- (i) send him a copy of the formal charge;
 - (ii) ask him to submit, within 14 days after the formal charge has been posted, a written answer by way of defence to the formal charge;
 - (iii) inform him of the date, time and place of the hearing and of his rights under Part VI of the Bye-Laws;
 - (iv) call upon him to state within the next 14 days whether he intends to appear at the hearing and if so whether only in person or by his solicitor and/or Counsel;

- (v) warn him that if he does not elect to appear at the hearing the Board may proceed in his absence;
- (vi) require him to serve on the Honorary Secretary of the Institute not less than 14 days before the date of the hearing a list of such documents upon which he intends to rely at the hearing;
- (vii) inform him that the Institute is also required to serve upon the Member not less than 14 days before the hearing a list of the documents upon which the Institute intends to rely at the hearing;
- (viii) inform him that either he or the Institute (as the case may be) may require copies of any documents included in a list served by either of them upon payment of any proper charge therefor; and
- (ix) send him a copy of the procedure note for the conduct of the hearing approved by the General Council;

4.3.1.2 send to the Institute's solicitor a copy of the letter and accompanying documentation sent in pursuance of the foregoing requirements; and

4.3.1.3 make arrangements for the hearing before the Disciplinary Board.

4.3.2 If the Member charged fails to attend any hearing either in person or by his solicitor or Counsel before the Disciplinary Board, the Board shall satisfy itself that the Member was duly given notice of the hearing and that the Member has not shown good cause for his failure to attend and, if so satisfied, may proceed in his absence.

4.4 The Chairman of the Disciplinary Board shall, prior to the hearing before the Disciplinary Board, give directions (by way of a directions hearing attended by the parties, or in writing) on the practice and procedure of the Disciplinary Board in hearing and determining the disciplinary charges. The Directions can be made in relation to matters including but not limited to:-

- (i) timing for filing of skeleton arguments/submissions and any other documents to be relied on in the course of the hearing;
- (ii) evidence led by the parties, including directions as to the order of witnesses, the use of expert evidence, and any consequential directions as to the evidence to be led in the hearing;
- (iii) any modifications to the order of the procedure set out under Rule 4.5, upon the parties' application or on the Disciplinary Board's own initiative as it may deem necessary; and
- (iv) any other directions which the Disciplinary Board might consider necessary for the conduct of the hearing.

4.5 The following order of procedure is to be followed at a hearing before the Disciplinary Board:

- (i) The Institute's solicitor shall present the case against the Member charged and adduce evidence in support thereof and shall close the case against the Member charged.
- (ii) After the Institute's solicitor has closed the case against the Member charged, the Member (either in person or by his legal representative) may make either or both of the following submissions in relation to any or all of the charges in respect of which evidence has been adduced:
 - (a) that insufficient evidence has not been adduced upon which the Disciplinary Board can find that the facts alleged in the charge have been proved,
 - (b) that the facts alleged in the charge are not such as to constitute the offence charged,

and where such submission is made, the Institute shall make a reply to these submissions, and the Member charged may answer such reply.

- (iii) If a submission is made by the Member charged under (ii), the Disciplinary Board shall consider and determine whether the submission shall be upheld. If the submission is upheld, the Member charged must be found not guilty on the charge(s) upon which the submission is made. If the submission is not upheld, the Member charged will be called upon to state his case in answer to the charge(s). In either case, the Chairman shall announce the determination of the Disciplinary Board in relation to the submission.
- (iv) The Member charged (whether in person or by his legal representative) may then adduce evidence in support of his case and shall close his case in answer to the charges.
- (v) At the conclusion of the case of the Member charged, both parties may address the Disciplinary Board by way of closing submissions, with the Member (or by his legal representative) having the final right of address or reply.
- (vi) The Disciplinary Board will then retire to commence deliberations on whether the disciplinary charges have been proved against the Member charged, and if it finds that the charges have been proved, also decide the penalty to be imposed by the General Council against the Member.
- (vii) The Disciplinary Board may also make directions as to further submissions by way of an oral hearing or written submissions, in relation to costs, mitigation, or any further issues which might arise following the Disciplinary Board's handing down of its decision in relation to the disciplinary charges.

- 4.6 The Disciplinary Board may at its discretion adjourn a hearing at any time, either upon application by the parties, or on its own initiatives when it deems appropriate.
- 4.7 The Disciplinary Board shall make its decision by a majority vote of the Board and shall determine the complaint or allegation contained in the formal charge on a preponderance of probability, namely, whether the charged conduct was proved to be more likely than not to have occurred.
- 4.8 If the Disciplinary Board has concluded that a complaint or allegation contained in the formal charge has been proved or established, it may, after hearing both parties' submissions on the issue (whether by way of an oral hearing or by written submissions), order the Member to pay the Institute all or part of the costs and expenses of the Institute and the Disciplinary Board arising from the case. The Disciplinary Board may at its discretion assess and decide the amount of the reasonable costs and expenses payable by the Member.
- 4.9 The Disciplinary Board shall inform the General Council and the Member in writing of its decision as to whether any complaint or allegation contained in the formal charge is proved, and in the event the charge is proved, the penalty imposed, by letter to the General Council and the Member.
- 4.10 The Disciplinary Board's decision shall be final in nature and there can be no appeal lodged against the decision. The decision shall be noted in the Member's Personal Record file and published if the General Council so directs.
- 4.11 The General Council shall upon its receipt of the Disciplinary Board's decision that the complaint or allegation contained in the formal charge is proved, and the penalty imposed, exercise any of its powers under Rule 2.1 based on the decision of the Disciplinary Board, and the penalty imposed.

5. **THE LEGAL ADVISER**

- 5.1 A Legal Adviser shall be present at every hearing of the Disciplinary Board conducted under Rule 4.
- 5.2 When the Legal Adviser advises the Disciplinary Board on any legal issues in relation to evidence, procedure or any other matter in any inquiry, he shall do so in the presence of every party to the proceedings or the person representing each party. If the advice is tendered after the Disciplinary Board has commenced to deliberate as to its findings, every such party or person shall be informed of the advice that the Legal Adviser has tendered. If the Disciplinary Board does not accept the Legal Adviser's advice on any legal issues, every such party or person shall be informed of that fact.

