

# Conduct Committee procedure

## Preamble

These procedure notes should be followed so far as possible, however non-compliance with any requirement will not invalidate the overall outcome, unless manifestly unfair.

## Jurisdiction

### Establishment and terms of reference

The Conduct Committee is established under General Regulation 30(1) and constituted under Regulation 33. It has a chair and eight other members, all of whom are Council members elected by Council. One of the members may be designated by the Conduct Committee as vice-Chair. (If anyone is so designated as vice-Chair, there will be no automatic assumption that they will succeed as Chair.) In dealing with complaints, panels of the Conduct Committee will also include at least one member of a pool of additional external members, who are not Council members and may or may not be solicitors.

### Terms of reference

The Conduct Committee's role regarding complaints is set out as follows:

**“To investigate and, by authority delegated from the Council under Regulation 30(2), deal with all complaints made by any elected and appointed member regarding the conduct as such of elected and appointed members”. (GR 34(2))**

For the avoidance of doubt, “elected and appointed members” (EAMs) is defined in the General Regulations as “Council members and any non-Council members, whether solicitors or not, of boards, committees, sub-committees, working groups and other bodies and groups at the Law Society (with the exception of members of the SRA Board and committees or sub-units of the SRA Board)”. All such persons are subject to the Code of Conduct and all are expected to comply with other relevant Law Society policies, for example in relation to dignity at work.

Anyone who falls within this definition may make a complaint that another EAM has breached the Code of Conduct or another relevant policy concerning the conduct of EAMs in that capacity, i.e., they may be ‘the complainant(s)’ under this policy. (An EAM who is the subject of the complaint will be referred to as ‘the member(s)’ in this policy.)

In addition, any such complaint made in relation to an EAM by a member of staff (including part-time, temporary or contract staff) will be handled according to this procedure, if it is submitted to the Conduct Committee by the chief executive (who is an EAM by virtue of being an appointed, albeit non-voting, member of the Board). For the purposes of this procedure the staff member(s) concerned will be regarded as ‘the

complainant(s)' even though it is the chief executive who submits the complaint for consideration.

For the avoidance of doubt, complaints brought against members of staff, whether by EAMs or by other members of staff, will continue to be dealt with under the Law Society's human resources grievance and disciplinary policies.

## Conduct Committee Chair

Where any functions due to be performed by the Conduct Committee Chair ("the Chair") under these procedures are unable to be performed by the Chair due to unavailability or conflict, those duties fall to the vice-Chair. If the vice-Chair is also conflicted, then the Chair may delegate the responsibility to another member of the Conduct Committee.

## Initial stages in dealing with a complaint

Complaints made to the Conduct Committee must be in writing and be submitted to [[conduct.committee@lawsociety.org.uk](mailto:conduct.committee@lawsociety.org.uk)] by email. Anonymous complaints will not be accepted.

Complaints must set out clearly the breach of the Code of Conduct or other relevant policy which is alleged and details of the surrounding circumstances.

The complaint will be referred to the Chair, who will determine whether the member falls within the remit of the Conduct Committee and whether the matter complained of falls within that remit. In making these determinations the Chair will consider the terms of reference of the Conduct Committee as set out in the Society's General Regulations from time to time, and if the Regulations are not conclusive on any point, the Chair will have discretion to determine the matter as the Chair considers reasonable.

If the Chair determines that the member is not a person within the Conduct Committee's jurisdiction, or that the complaint does not fall within the Conduct Committee's remit, the complaint will be dismissed, and the complainant will be informed accordingly.

If the Chair considers that more details of the complaint are necessary for the complaint to be dealt with, the complainant will be asked to give further details.

## Summary dismissal of the complaint

The Chair may dismiss summarily any complaint considered trivial or vexatious, for example if no grounds are offered to support the complaint, or if the complaint, even if upheld, is of a kind in respect of which no sanction is likely to be imposed. Any such summary dismissal will be final. A written minute to this effect will be signed by the Chair. The complainant will be informed accordingly.

## Summary procedure

In addition to his or her role in the initial handling of all complaints and on occasion chairing a panel to investigate a complaint, the Chair has power to investigate and resolve certain complaints by way of a summary procedure, if the member agrees.

In deciding whether the summary procedure should be used, the Chair will consider, among other things, the nature and seriousness of the complaint, for example by reference to the sanction likely to be imposed if the complaint is found to be upheld.

If the Chair elects to use the summary procedure, the complaint will proceed in accordance with the procedure set out in Annex A.

## Copy of complaint to the member

Where the chair is considering using his or her powers under paragraph 14 (summary dismissal of complaint) or paragraphs 15 to 16 (summary procedure) he or she shall first notify the other members of the committee of this, including a brief background to the complaint with an explanation as to why he or she believes that summary dismissal, or the summary procedure, is appropriate for the complaint, and invite the committee members' views, which shall be provided within a reasonable timescale, as specified by the chair. If the majority of those who respond within the timescale specified notify the chair that they believe that summary dismissal, or the summary procedure, is not appropriate for that complaint, then the complaint shall be dealt with in accordance with the full procedure as outlined in paragraphs 19 to 49 below, otherwise the chair shall proceed to dispose of the complaint using summary dismissal or the summary procedure as the case may be.

## Copy of response to complainant

A copy of the response by the member will be sent to the complainant, who will be given the opportunity to comment on it.

## Conciliation

At any point and where both parties to the complaint agree, the parties involved are free to agree and to attempt to resolve their complaint by conciliation. A conciliator external to the Law Society and nominated by an appropriate nominating body will be appointed. The Law Society will facilitate the appointment and the costs of a conciliator appointed under this process will be met by the Law Society.

Conciliation is a confidential process and therefore should it fail any statements or admissions made during the conciliation process will not be admissible before the panel investigating the complaint.

If the Chair does not consider that the complaint can be satisfactorily resolved through conciliation, or either of the parties does not agree to take part in the process, or the process fails to produce a satisfactory resolution, the complaint will be determined by a panel under the procedure outlined below.

## Procedures in a non-summary case

### Conduct Committee panels

The role of a Conduct Committee panel is investigative and advisory, and it operates as a tribunal of inquiry rather than in an adversarial way. The function of a panel is to investigate and report to the Conduct Committee its conclusions applying the balance of probabilities test, and its view on whether, based on the facts, the member has breached the Code or any other relevant policy.

A Conduct Committee panel has no power to apply any disciplinary sanctions directly, but it can recommend proposed actions to the Conduct Committee under General Regulation 34(4). If the panel concludes that the member has breached the Code or any other relevant policy, it may propose to the Conduct Committee an appropriate sanction to impose. It is for the Conduct Committee, taking full account of the outcome of the panel's investigation and of the recommendations made by the panel, to decide on the action, if any, to be taken.

### Establishment of the panel

Once the Chair has directed that the complaint will proceed to a meeting of a panel to investigate the complaint (an 'inquiry meeting'), a panel will be convened. The panel may seek external legal advice if necessary and will be provided with secretarial support. Unless the Chair otherwise directs, all panel meetings will normally be audio recorded so that a transcript can be produced.

The panel, which will be constituted by the Chair, will normally be composed of two members of the Conduct Committee, including the Chair or vice-Chair, and one member chosen from the pool of additional panellists appointed under General Regulation 33(5). In exceptional cases as determined by the Chair, the panel may be composed of three members of the Conduct Committee and two members chosen from the pool of additional panellists. In particularly serious cases, there is also the possibility that the Chair may decide that a panel should be chaired by an external person not a member of the Conduct Committee, and/or that the investigation be remitted to a wholly external party or parties.

It is for potential panel members, including where relevant the Chair and vice-Chair, to indicate whether they have a conflict of interest such that they should not serve on a particular panel. (Simply serving on the same Council, Board or committee would not normally amount to such a conflict of interest.)

### Preliminary meeting

A preliminary meeting(s) of the panel will normally take place as soon as possible after the panel has been constituted. The preliminary meeting will decide such matters of procedure, including whether witnesses should be invited to give evidence in writing or invited to give oral evidence before the Panel, and any other matters of procedure or investigation necessary to enable the Panel to fulfil its function.

## Arrangements for the inquiry meeting

Once the panel has been constituted, a date for the inquiry meeting will be fixed. This date will be notified to the member and the complainant, together with information on the overall process to be followed and copies of the information which the panel will consider. The member will also be told the proposed composition of the panel and will be able to indicate any objections to proposed panellists, giving reasons, which the chair of the Conduct Committee will consider.

The papers sent to the member will comprise all the papers to be considered by the panel (excluding any legal advice to the panel). For the avoidance of doubt, papers seen by the panel but deemed not relevant, or any papers in respect of which a duty of confidentiality applies, are excluded from disclosure in this way.

The member will be invited to provide a written response to the complaint for the panel to consider at the meeting.

The member will also be invited to attend the inquiry meeting. The member may attend the inquiry meeting, accompanied by a legal or other representative, and either he or she, or the representative, may address the panel. The representative's role is to support the member and, potentially, make representations on the member's behalf but not to answer questions put to the member.

The panel will grant a postponement of the inquiry meeting only in exceptional circumstances.

If the member fails to attend the inquiry meeting on the notified date, the inquiry meeting will proceed in his or her absence if it is fair and reasonable to do so.

The complainant may be offered the opportunity to attend the inquiry meeting if the panel considers it appropriate in the circumstances.

## Timetable

Subject to any special directions by the panel, the timetable leading up to the inquiry meeting will normally be -

Not less than 28 days before the meeting date, the member must be given notice of the date of the meeting.

Not later than 21 days before the meeting date, the member must submit any written response to the complaint. The panel may decline to accept any written response received after this date.

Not later than 14 days before the meeting date, the panel members and the member must be sent the papers for the meeting.

## Publicity

The inquiry meeting will be conducted in private unless the public interest requires that it be held in public.

No publicity will be given by the Society to a complaint at any stage before, during or after its consideration, and an investigation by a panel will be dealt with in private and in confidence, with disclosure only to the extent necessary -

- To carry out the investigation, for example, by making inquiries of witnesses.
- To ensure that potential spokespeople for the Society are sufficiently briefed to respond in case any details of the complaint become known from outside the Society.

## Witnesses

The giving of either written or oral evidence is voluntary. The panel will consider at the preliminary meeting from whom evidence is to be sought.

Oral evidence may be taken at the panel's discretion from the complainant and any other relevant witnesses if the panel considers this necessary for the proper investigation of the complaint. Witnesses will not enter the inquiry meeting room until they are called. Witnesses may be accompanied by supporters, colleagues, or legal advisers.

## Role of the panel secretary

Each panel will have a secretary assigned to it, who will attend all meetings of the Panel and be responsible for producing minutes and all administrative matters necessary for the Panel to conduct its business effectively and efficiently. The secretary may be a Law Society staff member or an external consultant or adviser.

## The inquiry meeting

Subject to the Chair's discretion to vary the order of proceedings if this appears desirable in the circumstances, the order of events at an inquiry meeting will normally be as follows (if the member is present):

- The member's response to the complaint is presented and the panel are taken through any relevant documents
- Members of the panel ask questions of the member
- Oral evidence may be given by one or more witnesses
- Members of the panel ask questions of the witnesses in turn
- The member addresses the panel
- The Chair informs the member that the outcome of the inquiry meeting will be made known to him or her as soon as possible, with the full written report of the panel delivered to both the member and the complainant in due course, normally within 21 days of the inquiry meeting date.

## Panel deliberation

During its deliberations, the panel will establish and agree the facts of the complaint and reach a view as to whether, on the balance of probabilities, the complaint is upheld, namely that there has been a breach of the Code or other relevant policy. It may be that the complaint is upheld in whole or only in part.

In reaching its view, the panel will take decisions by simple majority. The panel will produce a written report, including the reasons for its decision, which will be sent to the parties.

If the panel finds that there has been misconduct such that it is minded recommending to the Conduct Committee that a sanction should be imposed on the member, the member will have seven days from the sending of the panel's written report to offer any arguments in mitigation before the panel makes its final recommendation. Any such mitigation will be included with the panel's findings and recommendations when they are considered by the Conduct Committee.

## Conduct Committee consideration

The Conduct Committee will consider the panel's findings and any recommendations in relation to sanctions. The Conduct Committee may either endorse the panel's recommended sanction or substitute another sanction of its own.

The level of sanction to be imposed will vary depending on the gravity of the misconduct. Available sanctions will include written admonishment of the member, a requirement that the member undertake prescribed training or mentoring, temporary suspension of the member from some or all of his or her Law Society roles, or removal of the member from some or all of his or her Law Society roles. In particularly serious cases, the panel may recommend that the Conduct Committee consider referring the member to the Solicitors Regulation Authority.

Under General Regulation 34(9), a member on whom it is proposed to impose a sanction has the right of appeal to the Board within 14 days of the notice of the sanction being sent. The Board sets its own procedure for considering any such appeal, and its decision is final.

## Costs

The member will be responsible for meeting the costs of his or her representation and that of their legal representation and attendance, and the attendance of his or her witnesses, at the inquiry meeting. Any expenses incurred will not be met by the Society.

## Annex A to the procedure

### Summary procedure

If the Chair has decided that the summary procedure should apply to the complaint, and the member has agreed, the Chair will take such steps, or arrange for steps to be taken, to investigate and report on the complaint as he or she considers appropriate, including (without limitation):

- Investigating the complaint personally, with a simplified investigation procedure and under such timetable as he or she determines, providing that the member is given adequate opportunity to answer the complaint.
- Referring the complaint to a third party, such as a past president or another Conduct Committee member, for investigation according to such simplified procedure as that person shall determine, which must give the member adequate opportunity to answer the complaint.

The member may not withdraw his or her consent to the summary procedure once the procedure has been activated.

If the Chair or other person who has carried out the investigation into the complaint holds that it has been substantiated, the Chair may require the member to apologise to the complainant and/or offer words of advice to the member about his or her future conduct. Any such apology or words of advice may be given orally (confirmed in writing) or in writing only, as the Chair sees fit.

Where the summary procedure has been followed with the member's consent and the complaint has been found to be substantiated and the member fails to comply with the ruling of the Chair that he or she apologises to the complainant or fails to accept words of advice from the Chair, then the matter is reported to the Conduct Committee as if the complaint had been upheld by a panel.

If during the operation of the summary procedure, the Chair is of the opinion that evidence has emerged which renders the complaint more serious than at first thought, he or she may halt the summary procedure and direct that the complaint be dealt with under the full panel procedure. If this happens, neither the Chair nor any other person who has been involved in the summary procedure (on behalf of the Conduct Committee) takes part in the panel procedure. No statements made during the summary procedure are admissible before the panel.