



## ***Appeal Rules***

*(These Rules were adopted by Council on 3 June 2019 and came into force on 3 June 2019)*

### **1. Definitions**

In these Rules the following expressions shall have the following respective meanings:-

Answer	a written response to an appeal served by a Respondent.
Appellant	any Member, or former Member, who makes a valid appeal to the Disciplinary and Appeals Committee:  a) against a finding and/or an Order of a Disciplinary Tribunal; or  b) in respect of a decision of the Regulation and Conduct Committee.
Chair	the Appeals Chair of the Disciplinary and Appeals Committee or chair of a Panel appointed under these Rules.
Grounds	short written reasons for making an appeal provided by an Appellant.
Hearing	any hearing before an Appeal Panel.
Notice of Appeal	a) in respect of a decision by a Disciplinary Tribunal a notice described in Disciplinary Rules 50 and 52; or  b) in respect of a decision of the Regulation and Conduct Committee written notice described in Regulatory Rule 57.

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| Panel             | an Appeal Panel appointed in accordance with Rule 7.   |
| Respondent        | in the case of an appeal concerning a decision made by the Regulation and Conduct Committee (or its predecessor the Membership and Authorisations Committee), the Association and in the case of an appeal from a Disciplinary Tribunal (or its predecessor the Disciplinary Committee) made under the Disciplinary Rules, the Regulation and Conduct Committee. |
| Respondent Member | A member who has been the subject of a finding and order by a Disciplinary Tribunal or a decision and order by the Regulation and Conduct Committee who makes an application for permission to serve notice of appeal outside the specified time limit.  |
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2. Expressions which are defined in Article 1 in the Association's Articles of Association, Rule 1.1 of the Regulatory and the Conduct Rules and with the exception of 'Respondent', Rule 1 of the Disciplinary Rules, shall, when used in these Rules, have the same meanings herein as therein.
  3. References to 'the Regulation and Conduct Committee, the Disciplinary and Appeals Committee, shall be to the Committees from time to time appointed as such by Council, references to 'the Appeal Panel' shall be to each Appeal Panel from time to time appointed pursuant to Rule 7 of these Rules, and references to the Rules of any such Committee shall be to the Rules of that Committee as adopted or amended from time to time and to any regulations made there under by any such Committee.
  4. These Rules, unless express reference is made, apply to the consideration by the Appeals Chair or Vice Chair of the Disciplinary and Appeals Committee alone or with a Panel or the hearing by a Panel of any appeal, whether from a Disciplinary Tribunal or the Regulation and Conduct Committee.
  5. These Rules also apply to any appeal lodged under the former Appeal Committee Rules (repealed on 3 June 2019) and any steps or decisions taken under those rules are deemed to be taken under these Rules.

### Appeal Out of Time

6. After the expiry of 15 Business Days for the giving of notice and grounds of appeal – Disciplinary Rule 50 and Regulatory Rule 57 – or the time permitted under Rule 52 for service of grounds, a Respondent Member may apply in writing to the Appeals Chair or Vice-Chair of the Disciplinary and Appeals Committee, for permission to give notice and grounds or grounds of appeal out of time. Any such application must give reasons for the failure to give notice and grounds within the required time.
- 6A The Appeals Chair or Vice-Chair shall not give permission for a Respondent Member to give notice of appeal and grounds or grounds unless they are satisfied that they could not reasonably have been expected to give notice or grounds within the required time and having regard to all the circumstances it is in the interests of justice that permission should be given.

### Appeal Panels

7. Subject to Rule 14, the Appeals Chair of the Disciplinary and Appeals Committee shall as soon as practicable after receipt of a valid notice of appeal, appoint an Appeal Panel Chair-which may be the Appeals Chair or the Appeals Vice Chair or, if neither of them is available another person who is a senior barrister or solicitor, and the Panel shall consist of four additional persons to be selected by the Chair comprising:-  
  
two Lay Members; and  
  
two Individual Members or Honorary Members of the Association but shall not comprise a Member who sat on the original Tribunal that made the decision under appeal.
8. A Member who previously sat in any Committee hearing or Tribunal hearing which has made any decision on the case which is the subject of the appeal, shall be ineligible for appointment as a member of such Appeal Panel.
9. If for any reason, prior to the time fixed for the Hearing of the appeal the Chair or any member of the appointed Appeal Panel becomes unable to act, the Chair or Vice Chair of the Disciplinary and Appeals Committee shall appoint another Chair to act in their place, and, in the case of a Member of the Panel, the Chair shall appoint another person to sit on the Panel.

10. If for any reason, any member of the Appeal Panel is immediately prior to or during the course of the Hearing unable to continue to sit:
  - a) if they are not less than three in number and that one of them is the Chair, the remaining Members of the Appeal Panel may continue with the Hearing, but if the Appellant is present or represented, they shall do so only if the Appellant consents; or
  - b) the appeal shall be re-heard by a new Appeal Panel.
11. If at any time during the course of the Hearing of an appeal, the Appeal Panel is of the opinion that it is for any reason impracticable for it to complete the Hearing, it shall inform the Secretary and the appeal shall be re-heard by a new Appeal Panel appointed in accordance with Rule 7.
12. When an appeal is re-heard pursuant to Rules 10 or 11, all or any one or more of the members of the original Appeal Panel may be appointed to the new Appeal Panel.
13. An Appeal Panel may appoint a barrister or solicitor to act as legal assessor at a Hearing.

### **Appeal on Papers only and considered by Chair acting alone or a Panel**

14. An appeal may be considered on the papers without a hearing by a Chair alone or with a full Panel where the only grounds of appeal are based on procedural error and both parties agree.
15. An appeal considered under Rule 14 will require both parties to agree the content of one bundle of documents for the Chair and may include a statement or written submissions by each party. The appeal bundle and statements will be provided to both parties.
16. The Chair acting alone may make such directions as he finds necessary for the just and expeditious disposal of the appeal under Rule 14.
17. The Chair, whether alone or with the full Panel, may make any order available to an Appeal Panel under Rules 38 or 39.

### Procedure Before a Hearing

18. A Respondent may, not less than 14 business days after receipt of a valid Notice of Appeal, but no later than 21 business days before the date of the Hearing, serve on the Appellant an Answer to the Appeal.
19. When a Panel has been appointed the Secretary will provide to the Appellant and Respondent written notice of the date, time and place arranged for the Hearing of the appeal which, unless both Parties agree otherwise, will be not less than 28 business days ahead.
20. Notice of the Hearing will be accompanied by:
  - a) in the case of an appeal from a Disciplinary Tribunal a transcript of the hearing before the Tribunal, the Answer to the appeal, if any, and all the documents produced to the Tribunal; or
  - b) in the case of an appeal from the Regulation and Conduct Committee the minute extract of the meeting when the decision and Order were made, the documents considered by the Committee and any correspondence after the meeting.
21. The parties may prepare an agreed set of all the documents for the Appeal Panel for the Hearing.
22. Subject to Rule 23 an Appeal Panel may on written application permit the parties to adduce such further and or new evidence, information and documents relating to the appeal as the Panel thinks necessary or desirable for the just, expeditious and economic disposal of the case and if such further evidence is permitted corresponding witness statements and all and any other such information or documents shall be supplied not less than 10 business days before the date set for the Hearing or within such timetable as the Panel may specify.
23. An application to admit new or further evidence must be made in writing not less than 21 business days before the date set aside for the Hearing and explain the reason for the application and the relevance of the material to the appeal.

### Pre-hearing Review

24. An Appeal Panel may convene, either on its own motion or at the request of one or both of the parties, to consider any preliminary issues or to give directions for securing the just, expeditious and economical disposal of the appeal (the “Pre-Hearing Review”). A Pre-Hearing Review may be dealt with in writing by the Chairman alone.

### Postponement and Service

25. The Chair shall decide in their absolute discretion whether an application for postponement of a Hearing that has not commenced should be granted.
26. Any notice or document may be served by the Appellant by sending such notice or document to the Association by first class post. Any notice or document required to be served on the Appellant may be served personally or by first class post to his last known address appearing on the Register of Members in accordance with Article 15.2 where documents are served by post, service is deemed to have been effected 48 hours after posting.

### Conduct of the Hearing

27. An Appeal Panel may in its discretion hear two or more appeals by an Appellant at the same Hearing and hear appeals by two or more Appellants at the same Hearing.
28. No objection by or on behalf of an Appellant to any technical fault in the appeal or in the procedure adopted by the Appeal Panel shall be upheld by the Appeal Panel provided that the proceedings are fair and have been conducted in accordance with the requirements of natural justice.
29. A shorthand record or tape or digital recording of the proceedings may be taken on behalf of the Panel.
30. If the Appellant does not attend the Hearing then, providing the Appeal Panel is satisfied that notice of the Hearing was properly served on the Appellant, the Panel may proceed to deal with the appeal in his absence.
31. The Respondent may be represented by the Secretary or any Individual Member of the Association or a solicitor or barrister

32. The Appellant may make written representations to the Appeal Panel and/or appear in person or be represented by a solicitor or barrister or with the leave of the Panel any person. The Hearing shall be conducted in accordance with the principles of natural justice but subject to that in such manner as the Chair of the Appeal Panel may determine. The Appeal Panel shall not be bound by the strict rules of evidence.
33. Without prejudice to the generality of this provision, the order of the proceedings will be:
- a) in the case of appeals from the Regulation and Conduct Committee the parties may first address the Panel on whether or not there is an arguable ground of appeal. If the Panel is satisfied there is such a ground the Hearing will follow the same order as that in relation to Disciplinary Tribunal appeals;
  - b) in the case of appeals from a Disciplinary Tribunal:
    - 1) the Appellant or his representative may address the Panel, introduce new or further evidence in accordance with the permission granted under Rule 22;
    - 2) the Respondent may address the panel and introduce new or further evidence in accordance with the permission granted under Rule 22;
    - 3) the Appellant may introduce evidence in rebuttal provided copies have been given to the Respondent at least 7 business day before the hearing;
    - 4) any witness called by either party may be questioned by the other. The Panel may ask questions of any witness at any stage;
    - 5) the Respondent may make a closing address followed by the Appellant.

### Public Hearings

34. Either of the Parties or any witness may make an application in writing to the Chair of the Panel before the Hearing or an oral application to the Panel at a pre-hearing review or at the start of the Hearing, for the whole or any part of the Hearing to be held in private.
35. A written application must be made within 10 Business Days of the date when notice of the Hearing is given in accordance with Rule 19 but an oral application can be made at any time. An oral application for a Hearing or part of a Hearing to be held in private will be held in private.
36. The Panel Chair or the Panel may decide that the public should be excluded from the whole or any part of a Hearing where it appears, having consulted the Parties, that the particular circumstances of the case outweigh the public interest in holding a public Hearing.

37. The Panel may at its own discretion direct that the public be excluded from the whole or any part of a Hearing, if it appears to the Panel, having consulted the Parties, that to do so would be in the interests of justice or desirable having regard to the nature of the case or of the evidence to be given.

### **Powers of a Panel on Appeal**

38. On an appeal from a decision and order of the Regulation and Conduct Committee, the Panel may by order:-
- a) affirm, vary or rescind any decision and order made by that Committee;
  - b) substitute for any such decision and order which are the subject of the appeal, such decision and order as it thinks appropriate;
  - c) include in any substituted decision and order such terms and conditions, if any;
  - d) direct that the Committee reconsider the case.
39. On an appeal from a Disciplinary Tribunal on a Formal Complaint, the Panel may by order:-
- a) affirm, vary or rescind any decision and order made by the Tribunal;
  - b) substitute for any such order any other order it thinks appropriate which the Tribunal could have made on the Formal Complaint;
  - c) include in any such substituted order such terms and conditions, if any, as the Panel thinks appropriate;
  - d) direct that the Tribunal's Record of Decision to be published under Disciplinary Rule 45 will not include the Member's name;
  - e) direct that the Formal Complaint be re-heard by a new Tribunal appointed under Disciplinary Rule 5.
40. Subject to Rule 41 below, an order made by an Appeal Panel under Rules 38 or 39 will take effect on the date the order is made unless the Panel directs that it will take effect from a later date specified in the order.
41. Where the Order under appeal is one made by the Tribunal under Rule 36 (a) of the Disciplinary Rules and the Appeal Panel dismisses such appeal, the Panel will determine the date on which the Appellant's name will be struck from the Register of Members taking account of any necessity to transfer insolvency appointments to another Insolvency Practitioner.



### Costs

42. The Appeal Panel may order that the Appellant should pay all or a proportion of the costs of the Respondent in connection with any Appeal.
43. The Appeal Panel may on allowing an appeal in whole or in part:
  - a) where the appeal is from a decision made by the Regulation and Conduct Committee on an Appellant's application make an Order directing the Association to pay all or part of the Appellants costs reasonably incurred in bringing the appeal; or
  - b) where the appeal is from a decision and order made by a Disciplinary Tribunal on an Appellants application, make an order directing the Association to pay a specified sum in respect of the Appellant's costs of bringing the appeal. In deciding whether such an order should be made, the Panel shall have regard to all the facts it considers relevant including the conduct of the Appellant and the conduct of the Respondent.
44. If the Panel finds it cannot deal fairly with the question of costs against the Respondent at the Hearing it may make directions for the provision of such further information it requires and, having considered such further information the final order may be made by the Chair of the Panel.
45. All and any fines and costs payable pursuant to an order under this Rule shall be paid to the Association within twenty-eight days of the date of such order or within such longer period as the Appeal Tribunal may in its absolute discretion determine.

### Publicity

46. The Appeal Panel will (subject to Rule 47) cause a record of its decision and any order made to be published as soon as practicable, and in such manner as it thinks fit.
47. Where a Panel allows an appeal in full a record of the decision will only be published if the Appellant so requests.