



THE ORDINANCE AND CONSTITUTION DISCIPLINARY REGULATIONS

Published by authority of the Council of the Institution

April 2013

香港工程師學會
THE HONG KONG INSTITUTION OF ENGINEERS

DISCIPLINARY REGULATIONS

1. Introduction

1.1 Authority

Article 13(4) of the Constitution of the Institution provides for the investigation and adjudication of any case of improper conduct of a member. The Council has formulated regulations in accordance with Articles 13(4), (6) and (7) for such purpose. These regulations are set out below and available to the public.

1.2 Definitions

In these Regulations, except where the context otherwise requires, the following words shall have the meanings respectively attributed to them below:

WORDS	MEANINGS
"Alleged Offender"	any person (a) in respect of whom the Secretary has received information of his criminal conviction under Regulation 2.1 or (b) against whom a Complaint has been made under Regulation 2.2, including any possible future member insofar as any of the aforesaid may affect his future membership
"Board"	a Board of Inquiry referred to in Article 13(4)
"Case"	a case of alleged improper conduct against any member as referred by the Secretary to the Executive under Regulation 2.1 or 2.2
"Clerk"	in relation to the Commission, the Board and the Appeal Committee, the clerk(s) appointed pursuant to Regulation 9.3 for the Commission, the Board and the Appeal Committee respectively
"Commission"	an Investigating Commission appointed pursuant to Regulation 3.1
"Complainant"	any person or persons making a Complaint
"Complaint"	a complaint or allegation of improper conduct against a member under Article 13(5)
"Hearing"	the Board's hearing at which the Alleged Offender is given the opportunity to attend and make representation and present

his evidence (whether by himself or his representative under these Regulations) in response to or defence of the Case and which will be deemed to commence from the time of the hearing of the Case so fixed in accordance with Regulations 4.4 and 5 for such purpose and conclude upon the transmission of the decision of the Board to the Council under Regulation 7.5 or the making of the order or orders by Council under Regulation 7.7 (as the case may be)

“Panel” an official list of Past Presidents and senior Fellows selected in accordance with Article 13(4)(b)

1.3 Interpretation

References to Regulations and Articles are to be construed respectively as references to these Regulations and to Articles of the Constitution. Words importing the plural shall include the singular and vice versa. Unless the context otherwise requires, words and expressions used herein shall bear the meanings respectively attributed to them in the Constitution. When the masculine gender is used in the text, it is intended that this should embrace both the masculine and feminine genders.

2. Initial investigation

2.1 Convicted Case initiated by Secretary

If it comes to the knowledge of the Secretary from any source that a member has been convicted by a competent tribunal of a criminal offence and upon receipt of any written judgment or ruling of the competent tribunal which may be provided to or obtained by the Secretary, the Secretary shall initiate the investigation of the Case and, if satisfied with the criminal conviction as borne out by such judgment or ruling upon his review, refer a case of improper conduct under Article 13(5) to the Executive. For the purposes of clarification, any case involving a member as a tainted witness or his own admission of guilt in any legal proceedings, or resulting in his acquittal or lack of prosecution shall not be regarded as falling within the scope of referral by the Secretary to the Executive under this Regulation 2.1 without prejudice to any investigation that may be initiated under Regulation 2.2.

2.2 Case initiated by Complainant

Upon receipt of a Complaint which shall be made in writing and addressed to the Institution and containing the following particulars:

- (a) identity and contact particulars of the Complainant; and
- (b) supporting evidence of the Alleged Offender's improper conduct under Article 13(5),

the Secretary shall initiate the investigation of the Case, may require further information or documents from the Complainant and upon his review (consulting senior members of the Institution as he considers appropriate), may refer a

case of improper conduct under Article 13(5) to the Executive. By submitting the Complaint and from time to time the relevant information and documents to the Institution, the Complainant is deemed to have provided his consent to the Institution's use of such information and documents and disclosure of the same to the Alleged Offender and such relevant parties as are appropriate for the purposes of these Regulations. Any withdrawal of Complaint by the Complainant at any time may not necessarily result in the suspension or termination of the investigation or the proceedings under these Regulations, which may be continued by the Secretary, the Commission, the Board or the Council (as the case may be) at its discretion.

2.3 Alleged Offender being Council Member or Panel member

If the criminal conviction referred to in Regulation 2.1 is in relation to or a Complaint is made against a Council Member or a member of the Panel and if it appears to the Commission appointed in relation to such Case that there is a prima facie case of improper conduct, the Commission shall promptly notify the Secretary in writing of the existence of such a prima facie case. Upon receipt of such notification by the Secretary, the functions and duties of the Alleged Offender shall be deemed suspended and the Secretary shall promptly give written notice to the Alleged Offender of such suspension. Such suspension shall continue until the investigation has been concluded, or if a hearing is to be held by the Board, until the Council delivers its order pursuant to Article 13(4)(d) or if an appeal is made to the Appeal Committee, until the Appeal Committee delivers its decision under Regulation 8.4 or the appeal is otherwise disposed of.

2.4 No duty to disclose identity of Complainant

There shall be no duty on the part of the Institution or the Commission to disclose the identity of the Complainant to the Alleged Offender during its investigation under Regulation 2.2 or Regulation 3 unless the Executive or the Commission considers otherwise (as the case may be).

3. Further investigation by Investigating Commission

3.1 Appointment of Commission

Upon referral of the Case by the Secretary, the Executive shall appoint an Investigating Commission to investigate the Case.

3.2 Composition of Commission

The Commission shall consist of not more than five Corporate Members, the majority of whom shall be Honorary Fellows or Fellows. The quorum for any meeting or decision of the Commission shall be three. The Commission shall include at least one senior member of the appropriate Discipline. The Executive shall appoint a Chairman and Deputy Chairman comprised in the Commission.

3.3 Term of office of Commission

The Commission shall continue in office unless the investigation of the Case has been suspended indefinitely or until the Case is disposed of when it shall be

disbanded. Further, the Executive may replace any member of the Commission whose premature retirement is unavoidable. The Commission may continue the investigation of the Case notwithstanding any withdrawal of the Complaint by the Complainant.

3.4 Action where there is no prima facie Case

If the Case for which the Commission was appointed does not appear to it to disclose a prima facie case of improper conduct, the Commission may dismiss the Case without informing the Alleged Offender and without hearing the Complainant and shall instruct the Clerk of the Commission to inform the Complainant the reasons in writing that the matter shall be closed, subject to the right of the Complainant to make a fresh Complaint if further evidence is forthcoming.

3.5 Action where there is prima facie Case

Where the Case for which the Commission was appointed appears to it to disclose a prima facie case of improper conduct, the Commission shall send written notice to the Alleged Offender of the particulars of the Case and invite him to put forward his observations in writing to the Commission within such period as may from time to time be prescribed by the Commission. The Alleged Offender shall at the same time be informed that he is under no obligation to make any observations to the Commission, but that, if he does not do so (or if the Commission does not regard any explanations of his as satisfactory), the Case will be referred to the Board, which will then give him a full opportunity of presenting his case.

3.6 Decision of Commission

Whether or not the Alleged Offender chooses to make any observations, the Commission may dismiss the Case if satisfied that it is unfounded. It may also dismiss the Case if it considers that the alleged improper conduct is of such a trivial nature that it calls for no action. In all other cases the Commission shall, after investigation, refer the Case to the Board in accordance with Regulation 3.5.

3.7 Procedural powers of Commission

The Commission may in any Case where it appears just or expedient to do so extend or abridge the time for doing anything under these Regulations or its own practice and procedures, or may dispense with service of any notice.

4. Board of Inquiry

4.1 Panel appointment

The Council shall appoint the Panel in accordance with Article 13(4) for the purpose of forming any Board for the adjudication of any Case.

4.2 Appointment of members of Board

When required, the Executive shall appoint a Board comprising the Chairman and Deputy Chairman and three or more other members of the Panel. Unless

the Executive otherwise decides, the President will be the Chairman. Should any of the Chairman and Deputy Chairman be unable to carry out his functions, the Executive or the remaining members of the Board may appoint a member of the Board to act in his place for such period as may be necessary.

4.3 Defect in appointment

Any act done by a Chairman, Deputy Chairman or by any member of the Board appointed by the Executive under the preceding Regulation shall be valid and effectual and shall not be questioned on the ground that no occasion had arisen for the Chairman, Deputy Chairman or any member to be so appointed.

4.4 Arrangement for Hearing

Upon receipt of the referral of the Case by the Commission under Regulation 3.5, the Board shall proceed to arrange for the hearing of the Case at which the Alleged Offender will be given the opportunity to physically attend and make representation and present his evidence (whether by himself or his representative under these Regulations) in response to or defence of the Case, and a date and place shall be fixed for the Case to be so heard. The place will normally be the Headquarters of the Institution.

4.5 Pre-Hearing decision of Board

Any decision of the Board in connection with matters occurring prior to the Hearing shall be by simple majority of all the members for time being of the Board and may be given in writing duly signed by such simple majority acknowledging their respective approval.

4.6 Decision of Board during Hearing

After the commencement of the Hearing and until its conclusion, or until the Case is terminated, suspended or otherwise disposed of, no less than five members of the Board shall at all times be present or participate during such period or process. Any decision of the Board during such period or process shall be by simple majority of the members present or participating at all times during such period or process and (where appropriate) may be given in writing duly signed by such simple majority acknowledging their respective approval.

4.7 Form of written decision of Board

The written acknowledgement of the approval of each Board member with respect to any decision of the Board given in writing may consist of several documents in like form each signed by one or more of such Board members.

4.8 Legal adviser of Board

The Board may appoint a practising barrister or solicitor of at least seven years' standing to act as the Board's legal adviser (and not as a member of the Board) on the manner in which it should exercise its functions and on all aspects of the Case and the Hearing and may also take whatever independent professional advice as it deems appropriate.

5. Notification of Hearing

5.1 Notification to Alleged Offender

Not less than 28 days nor more than 42 days prior to the date of the Hearing the Clerk of the Board shall send to the Alleged Offender a written notice stating:

- (a) that the Case has been referred to the Board;
- (b) a summary of the evidence submitted in support of the Case including, without limitation, any evidence and representations submitted by the Complainant (if any);
- (c) the time and place of the Hearing for attendance by the Alleged Offender;
- (d) that at the Hearing, he is entitled to:
 - (i) attend and make representation;
 - (ii) conduct his own case or be represented by solicitor or counsel or by another member of his own choice but not by any other persons;
 - (iii) give evidence, and call, examine and re-examine his own witnesses provided that the Board shall be entitled not to permit any such witness to be called unless the Clerk of the Board has received a written notice from the Alleged Offender at least ten days prior to the date of the Hearing stating the identity of each witness whom he proposes to call and the nature of the evidence that will be given by such witness; and
 - (iv) cross-examine other witnesses appearing before the Board;
- (e) that, subject to any observations he may have with regard to the date, if he fails or chooses not to appear at the appointed time and place, the Hearing may proceed and the Board may make a decision in his absence including, without limitation, any recommendation to the Council on whether he was guilty of the alleged improper conduct and any appropriate sanction against him without being afforded the opportunity to make any plea in mitigation; and
- (f) that he may submit representations in writing, but that in his absence the Board may disregard any written representations not in the form of a statutory declaration.

5.2 Notification to Complainant

At the same time, the Clerk of the Board shall send to the Complainant (if any) a written notice stating:

- (a) the time and place of the Hearing for attendance by the Alleged Offender;
- (b) a summary of the evidence and representations submitted by the Commission in support of the Case; and
- (c) that at the Hearing, he is entitled to:
 - (i) attend and make representation;
 - (ii) conduct his own case or be represented by solicitor or counsel or by another member of his own choice, but not by any other persons; and
 - (iii) give evidence, and call, examine and re-examine his own witnesses provided that the Board shall be entitled not to permit any such witness to be called unless the Clerk of the Board has received a written notice

from the Complainant at least ten days prior to the date of the Hearing stating the identity of each witness whom he proposes to call and the nature of the evidence that will be given by such witness and provided further that the Board shall be entitled to refuse the giving of evidence by such witness if the Board considers it appropriate to do so.

5.3 Legal representative of Alleged Offender or Complainant

If either the Alleged Offender or the Complainant will be represented by solicitor or counsel or by another member of his own choice at the Hearing, he shall notify the Board in writing at least two business days before the date of the Hearing.

5.4 Availability of evidence and information to Complainant

Unless the Board otherwise considers it inappropriate, the Complainant may request for and be provided with the evidence and representations submitted by the Alleged Offender in response to or defence of the Case subject to payment of reasonable administrative and photocopying charges as may be imposed by the Clerk of the Board.

6. Hearing by Board of Inquiry

6.1 Board's powers to make changes to conduct of Hearing

Subject to any changes (including, without limitation, the order of representations or giving of evidence by the relevant parties and witnesses) that the Board may from time to time make, the provisions as set out in Regulations 6 and 7 for the conduct of the Hearing should be observed.

6.2 Presentation by Commission

The Commission may either nominate one of its members, or if it thinks fit, employ solicitor or counsel, to conduct the Case on its behalf. At the Hearing, the Commission may:

- (a) make representation and present its evidence; and
- (b) call, examine and (after any appropriate cross-examination has been completed) re-examine its witnesses (if any).

Unless otherwise permitted by the Board, no questions should be raised by the Alleged Offender or the Complainant (if any) during the representation by the Commission under Regulation 6.2(a). After the Commission has completed its examination-in-chief of any of its witnesses, the Alleged Offender (but not the Complainant) may cross-examine any such witness.

6.3 Presentation by Complainant

After the Commission has completed its representation and evidence, the Complainant (if any) may:

- (a) make representation and give evidence himself; and
- (b) call, examine and (after any appropriate cross-examination has been completed) re-examine his witnesses (if any).

Generally questions on the representation of the Complainant or cross-examination of the Complainant or any such witness may be raised or conducted by the Alleged Offender or the Commission after the conclusion of the Complainant's representation or examination-in-chief of any such witness (as the case may be).

6.4 Presentation by Alleged Offender

After the Complainant (if any) has completed his representation and evidence, the Alleged Offender may:

- (a) make representation and comment on the respective representations and evidence of the Commission and the Complainant (if any);
- (b) give evidence himself; and
- (c) call, examine and (after any appropriate cross-examination has been completed) re-examine his witnesses (if any).

Generally questions on the representation of the Alleged Offender or cross-examination of the Alleged Offender or any such witness may be raised or conducted by the Commission after the conclusion of the Alleged Offender's representation or examination-in-chief of any such witness (as the case may be). Unless otherwise permitted by the Board, the Complainant should not raise any questions on the representation of the Alleged Offender nor cross-examine the Alleged Offender or any such witness, but should however be at liberty to comment on the representation and evidence of the Alleged Offender in the Complainant's own representation.

6.5 Re-examination of witness by caller

After the cross-examination of any witness, the party who called the witness may re-examine the witness on the witness' answers given in cross-examination.

6.6 Board's right on attendance of witness or other persons

Notwithstanding any provision in these Regulations to the contrary, the Board reserves the right to permit or disallow the attendance of any witness or other persons at the Hearing.

6.7 Board and Board's legal adviser may ask questions any time

Any member of the Board or the Board's legal adviser (if any) may raise questions with the parties concerned or witnesses at any time during the Hearing.

6.8 Admissibility of evidence

The Board may take into consideration and act on any information available to it whether such information would or would not be admissible as evidence in a Court of Law.

6.9 Summing-up

After the conclusion of all representations and evidence presented by the parties concerned, the Board may receive final summing-up representations (if any) from the Complainant, the Commission and the Alleged Offender.

6.10 Payment of expenses

The Institution shall not be liable for the travel and legal or other professional expenses or any other expenses whatsoever incurred by any person in connection with the Case, but the Council may at its discretion, and without being deemed to make any admission of liability by so doing, reimburse any person or persons any expenses incurred in connection with the Case.

7. Decision process of Board of Inquiry

7.1 Deliberations

- (a) After the close of the representations, evidence and final summing-up representations (if any) of the parties concerned at the Hearing, the Alleged Offender, the Complainant (if any), the Commission and the Board's legal adviser (if any) shall withdraw from the Board's venue and the Board shall retire to consider the Case and have deliberations in private. The Board may adjourn its deliberations from time to time.
- (b) Following the conclusion of its deliberations at the Hearing, the Board may deliver its decision on whether the Alleged Offender was guilty of improper conduct under Article 13(5). If deliberations have been adjourned, any decision of the Board may be delivered:
 - (i) at a formal Hearing resumed by the Board (if the Board so requires a formal Hearing to be resumed) at which the Alleged Offender may be present; or
 - (ii) where no formal Hearing is resumed, at any time in writing pursuant to Regulation 4.6 after the Board's conclusion of its adjourned deliberations.

7.2 Consulting Board's legal adviser during deliberations or where the Hearing is conducted in the absence of Alleged Offender

- (a) If the Board considers it necessary to consult the Board's legal adviser for legal advice on any issues after the start of the Board's deliberations under Regulation 7.1 (a), such consultation should be done in the presence of the Alleged Offender (including for the purpose of Regulation 7, his solicitor, counsel or representative, where appropriate) unless the Alleged Offender has left after the start of the Board's deliberations without waiting for the result of such deliberations or has chosen not to be present during such consultation. Where the Alleged Offender is present during the consultation, he shall be given an opportunity to comment on any legal advice given by the Board's legal adviser. After such exchange, the Alleged Offender and the Board's legal adviser shall withdraw from the Board's venue to enable the Board's deliberations to continue in private.
- (b) If the Hearing was held in the absence of the Alleged Offender, any legal advice of the Board's legal adviser tendered at the Hearing (whether before or after the Board's deliberations) on whether any or all of the Alleged Offender's acts or omissions would constitute, or whether the Alleged

Offender would be guilty of, improper conduct under Article 13(5) or on any other matter that would directly affect the Board's finding or decision on improper conduct committed by the Alleged Offender shall be notified to the Alleged Offender in writing.

- (i) The Alleged Offender shall be given an opportunity to respond in writing within 28 days of the receipt of such notice (or any other reasonable period as otherwise determined by the Board). Such notice to the Alleged Offender shall specify that the Board will proceed to deliver its decision and recommendation to the Council failing receipt of such response within the specified period.
- (ii) If a response is received within the specified period, the Clerk of the Board shall forward it to every Board member. The Chairman of the Board shall consult other Board members to see if the response contains substantive issues or is such as to require a formal Hearing for attendance by the Alleged Offender. If all Board members should consider that there is no need for any formal Hearing, the decision and recommendation of the Board shall be drawn up.
- (iii) If a formal Hearing is required, then any further or new evidence that may be submitted by the Commission shall be sent to the Alleged Offender and the Complainant (if any). The Clerk shall follow Regulation 5 or such other procedure as may be directed by the Board and notify the Alleged Offender and the Complainant (if any) of the time and place of the resumed Hearing.

7.3 Plea in mitigation by Alleged Offender

- (a) After the Board has reached its decision that the Alleged Offender was guilty of improper conduct under Article 13(5), and
 - (i) where the Alleged Offender was present at the Hearing or at any formal Hearing resumed under Regulation 7.2(b)(ii) and (iii), the Alleged Offender (except where he has left before or after the start of the Board's deliberations without waiting for the result of such deliberations) shall be invited to make a plea in mitigation to the Board on any appropriate action to be taken under Article 13(4)(d); or
 - (ii) where the Board's decision is to be delivered in writing under Regulation 7.1 (b)(ii) following the Board's conclusion of its adjourned deliberations, the Alleged Offender shall be notified by the Board of its decision in writing with the notice that he is invited to make a plea in mitigation in writing to the Board on any appropriate action to be taken under Article 13(4)(d) within 28 days of the receipt of such notification (or any other reasonable period as otherwise determined by the Board) and if no such plea is received during such specified period, the Board will proceed to decide on and deliver its recommendation to the Council.
- (b) For the purpose of clarification, nothing in this Regulation 7.3 shall oblige

the Board to provide to the Alleged Offender the opportunity to make any plea in mitigation if:

- (i) he has failed or chosen not to be present at the Hearing notified under Regulation 5.1(e) or any formal Hearing resumed under Regulation 7.2(b)(ii) and (iii); or
- (ii) he has left before or after the start of the Board's deliberations at the Hearing notified under Regulation 5.1(e) or any formal Hearing resumed under Regulation 7.2(b)(ii) and (iii) without waiting for the result of such deliberations.

7.4 **Recommendation by Board**

After receiving any plea in mitigation under Regulation 7.3(a)(i) or (ii) or if no such plea is received under Regulation 7.3(a)(ii), the Board shall decide on and finalise in private any recommendation to the Council as to action to be taken under Article 13(4)(d).

7.5 **No case**

If in the opinion of the Board the Case is not substantiated, this decision shall be transmitted to the Council and from the Council to the parties concerned in writing.

7.6 **Drafting of recommendation of Board**

The Clerk of the Board and the Board's legal adviser (if any) shall be appointed to take charge of drafting, amending and finalising the decision and recommendation of the Board for scrutiny and comment by all Board members present and participating at the Hearing and ultimately for their signatures acknowledging their respective approval of such decision and recommendation in accordance with these Regulations.

7.7 **Notification to Alleged Offender**

If the Council makes an order or orders under Article 13(4)(d), the Clerk of the Board shall inform the Alleged Offender and the Complainant (if any) in writing of the order or orders and also in case of the Alleged Offender, his right of appeal against such order or orders.

8. Appeal

8.1 **Appeal Committee**

Within 28 days after being served with any decision of Council on, or any order or orders of the Council under Article 13(4)(d) for, improper conduct, the person whose conduct was the subject of such decision or order of the Council may appeal to the Appeal Committee by giving a written notice to the Executive in which case he shall be the appellant and the Institution shall be the respondent.

8.2 **Appointment**

Upon receipt of an appeal notice under Regulation 8.1, the Executive shall appoint an Appeal Committee to consider such appeal.

8.3 **Conduct of appeal**

The Appeal Committee shall from time to time fix directions on future conduct of the appeal in such manner as it deems appropriate. Unless the Appeal Committee directs otherwise, it shall not recall witnesses who gave evidence before the Board or call other witnesses, and the material before the Appeal Committee shall be the record of the proceedings of the Board and its report and any documents which supported such record or report together with any additional written submissions made in support of the appeal.

8.4 **Decision**

The decision of the Appeal Committee shall be communicated in writing by the Clerk of the Appeal Committee to the parties concerned.

9. **Miscellaneous**

9.1 **Procedural powers of various bodies**

- (a) Subject to the Constitution and these Regulations, the Commission, the Board and the Appeal Committee shall have the power to regulate and adopt its own practice and procedures respectively.
- (b) Either the Board or the Appeal Committee may in any case where it appears just or expedient to do so extend or abridge the time for doing anything under these Regulations or its own practice and procedures or may dispense with service of any notice and may adjourn or suspend any hearing or proceedings from time to time.

9.2 **Suspension of investigation**

Any of the Secretary, the Commission and the Board may at its discretion suspend the conduct of his or its investigation or inquiry if:

- (a) the Alleged Offender has ceased to be a member provided that the Executive may re-appoint or newly appoint such person or body to re-activate and/or continue such investigation or inquiry if the Alleged Offender is re-admitted as a member after he has ceased to be a member under Article 13(1) or (2); or
- (b) there are pending legal proceedings in respect of the Alleged Offender on the same subject matter that initiated or resulted in his or its investigation or inquiry and if in his or its view, the pending legal proceedings may affect such investigation or inquiry or its outcome.

9.3 **Appointment of Clerks for various bodies**

The Secretary may appoint persons, who may be members of the Institution's permanent staff, to act as Clerks for the Commission, the Board and the Appeal Committee respectively.

9.4 **Record of proceedings**

The Clerks of the Board and the Appeal Committee shall arrange for a record of their respective proceedings (as the case may be) taken in such form and

manner as the Board and the Appeal Committee may from time to time consider appropriate respectively.

9.5 **Disposal of information and records**

- (a) Unless the Board otherwise considers it inappropriate, copies of any representation made and documentary evidence prepared by or for the Commission or the Board in connection with the Case (except notes or minutes of meetings or deliberations or internal communications of the Commission or the Board which shall all remain in confidence) may be provided to the Alleged Offender or the Complainant (if any) at his request subject to payment of reasonable administrative and photocopying charges in such amounts as may be imposed by the Clerk of the Commission or of the Board (as the case may be).
- (b) All papers, records, exhibits and evidence produced, used or made in connection with the Case which may be in the possession of the Commission, the Board or the Appeal Committee (as the case may be) shall be retained by the Clerk of the Commission, the Board or the Appeal Committee until the time within which an appeal may be entered has expired, or if an appeal is made, until the Appeal Committee delivers its decision under Regulation 8.4 or the appeal is otherwise disposed of, and thereafter shall be deposited for safe-keeping with the Secretary for at least two years and then finally be disposed of at the discretion of the Executive.

9.6 **Manner of dispatching notice or order**

Any notice or order directed to be given under these Regulations to any Alleged Offender or Complainant shall be deemed to be properly served if effected personally or sent by pre-paid letter post or delivered by courier to his last known address registered with the Institution or his last known place of abode. Any notice or order, if served by post, shall be deemed to have been served on the day following that on which the letter or wrapper containing the same was posted and in proving such service it shall be sufficient to prove that the letter or wrapper containing the notice or order was properly addressed, stamped and posted. If no reply shall be received from any Alleged Offender or Complainant within any specified period from the date on which such letter shall be deemed to have been served on him, the Commission, the Board or the Appeal Committee may proceed in default.

9.7 **Publication of order**

In any case where the Council or the Appeal Committee decides that a member has been guilty of improper conduct, the Council shall, unless it sees special reason to the contrary, cause the facts of the case, a summary of findings and full particulars of its order under Article 13(4)(d) (including but not limited to the name of Alleged Offender who was the subject of the order) to be posted in the Institution's premises for a period of three months and published in the Institution's journal for a period of one month or such other period as the Council may from time to time prescribe in either case. The Council may also

send the same to the relevant Government authority or department for any further investigation (where appropriate). No such information shall be so posted, published or sent until the period for any appeal under Regulation 8.1 has expired. The Council may, and at the request of Alleged Offender shall, similarly publish the fact that a Case has been dismissed.

10. Transition

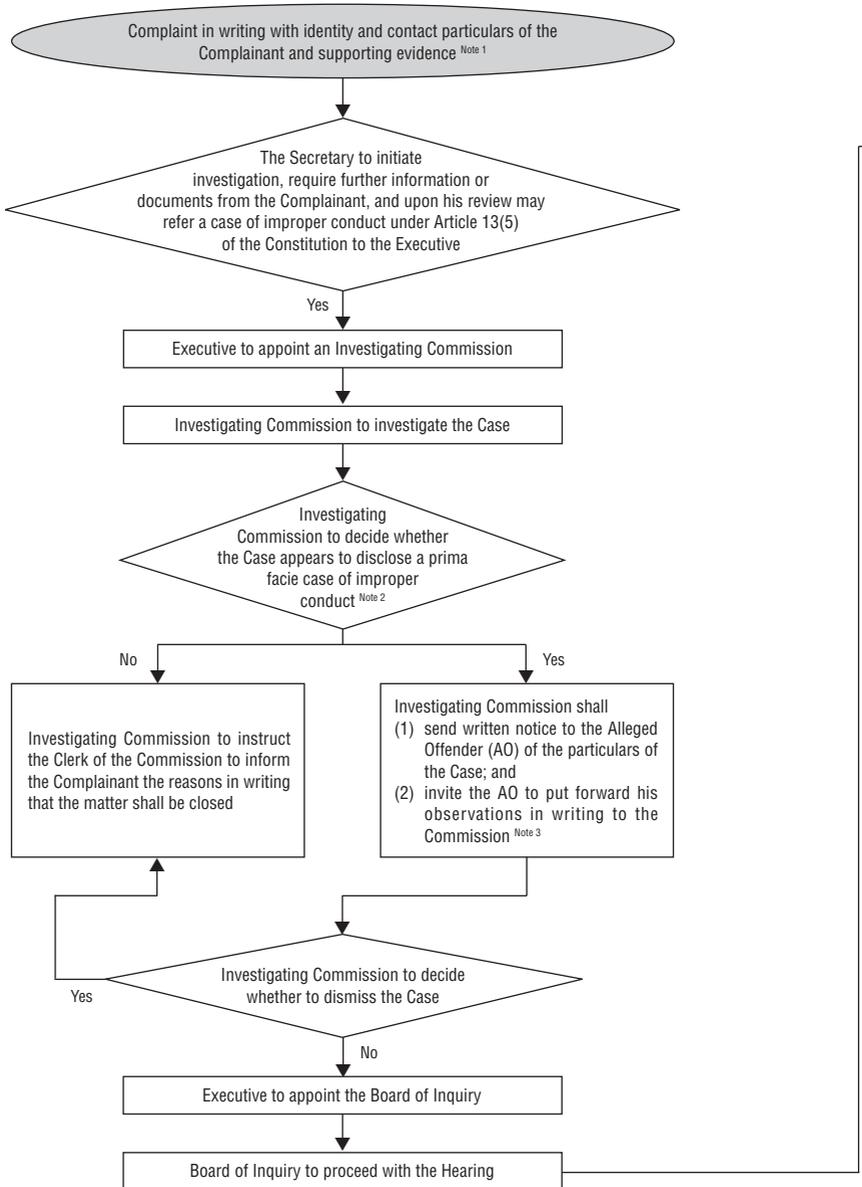
These Regulations will replace the Disciplinary Regulations (the "Previous Regulations") effective on and from 1 April 2013, but nothing herein shall affect the investigation or inquiry in respect of which a Commission was appointed before such date. The Previous Regulations shall continue to apply to such investigation or inquiry until it is concluded. For the purposes of clarification, it is hereby declared that the conduct of any investigation or inquiry suspended indefinitely or terminated before such date shall, if re-activated and/or continued after such date, be subject to these Regulations and not the Previous Regulations.

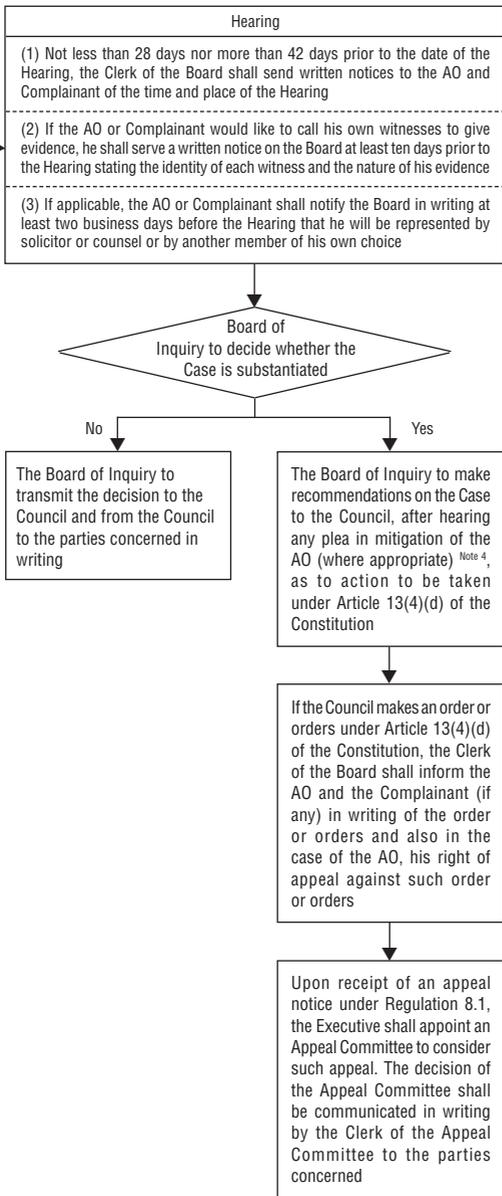
GUIDANCE NOTE ON THE ROBUSTNESS OF AN OFFENCE NECESSARY TO ESTABLISH A PRIMA FACIE CASE OF IMPROPER CONDUCT

The liability of a member of the HKIE to disciplinary action is confined to cases of improper conduct which includes any act or default which is likely to bring discredit on that member or on the Institution. To be guilty of improper conduct, the member must have behaved badly, in some way or other. However, performing bad work, even if the bad workmanship amounts to negligence in law, does not usually constitute improper conduct. The negligence or incompetence must be so gross and inexcusable that it can fairly be interpreted as bad behaviour and not simply error, before it does so.

Many of the HKIE's Rules of Conduct are sweeping in their scope and require the exercise of judgment to determine whether an adequate level of compliance has been attained. Such judgments are necessarily subjective. In applying judgment it is useful to bear in mind the standard applied in the preceding paragraph. In general, an individual's act or default which breaches a Rule must be such as to cause a reasonable, objective person, knowing the facts of the matter, to consider that the individual has brought discredit on himself and/or has damaged the reputation of the HKIE before a prima facie case of improper conduct can be established.

Every effort should be made to weed out shallow complaints which may be motivated by malice or commercial interest.





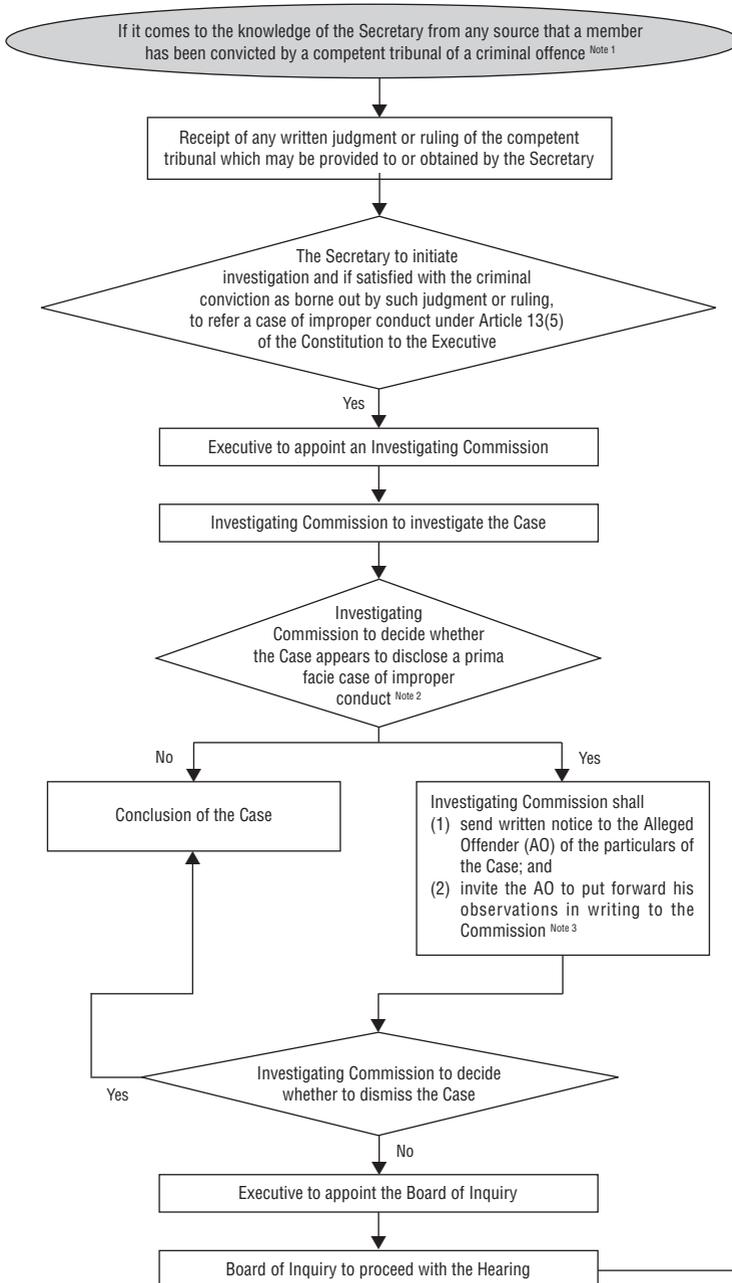
Note:

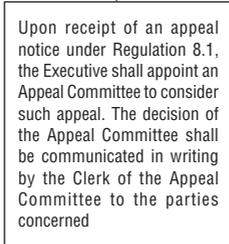
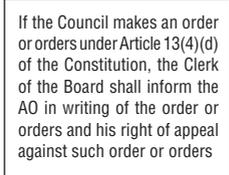
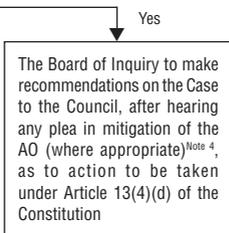
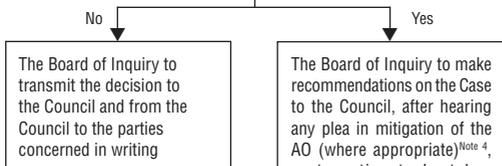
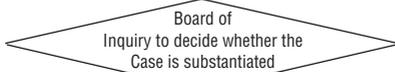
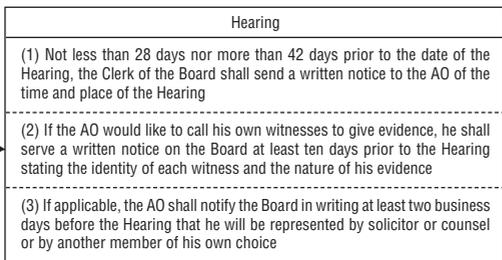
1. The Complainant by submitting relevant information and documents to the Institution is deemed to have provided his consent to the Institution's use of such information and documents and disclosure of the same to the Alleged Offender and such relevant parties as are appropriate for the purposes of the Regulations. Any withdrawal of Complaint by the Complainant at any time may not necessarily result in the suspension or termination of the investigation or the proceedings under the Regulations, which may be continued by the Secretary, the Commission, the Board or the Council (as the case may be) at its discretion.
2. If the Complaint is made against a Council Member or a member of the Panel from which any Board of Inquiry may be formed and the Commission decides that a prima facie case exists, the Commission to promptly notify the Secretary in writing of the existence of such a prima facie case. The Secretary then to give written notice to the Alleged Offender of the suspension of his functions and duties.
3. The Alleged Offender is under no obligation to make any observations to the Commission, but that, if he does not do so (or if the Commission does not regard any explanations of his as satisfactory), the Case will be referred to the Board of Inquiry, which will then give him a full opportunity of presenting his Case.
4. The Board shall not be obliged to provide the Alleged Offender the opportunity to make any plea in mitigation if:
 - (i) he has failed or chosen not to be present at the Hearing or any formal Hearing as resumed; or
 - (ii) he has left before or after the start of the Board's deliberations at the Hearing or any formal Hearing as resumed without waiting for the result of such deliberations.

This flowchart illustrates the contents of the Disciplinary Regulations and serves as reference information only. If there is any difference between the flowchart and the contents of the Disciplinary Regulations, the Disciplinary Regulations should for all purposes be considered definitive.

Disciplinary Regulations – Flowchart (Convicted Cases)

April 2013





Note:

1. Any case involving a member as a tainted witness or his own admission of guilt in any legal proceedings, or resulting in his acquittal or lack of prosecution shall not be regarded as falling within the scope of referral by the Secretary to the Executive under Regulation 2.1, but without prejudice to any investigation that may be initiated under Regulation 2.2.
2. If the criminal conviction is in relation to a Council Member or a member of the Panel from which any Board of Inquiry may be formed and the Commission decides that a prima facie case exists, the Commission to promptly notify the Secretary in writing of the existence of such a prima facie case. The Secretary then to give written notice to the Alleged Offender of the suspension of his functions and duties.
3. The Alleged Offender is under no obligation to make any observations to the Commission, but that, if he does not do so (or if the Commission does not regard any explanations of his as satisfactory), the Case will be referred to the Board of Inquiry, which will then give him a full opportunity of presenting his Case.
4. The Board shall not be obliged to provide the Alleged Offender the opportunity to make any plea in mitigation if:
 - (i) he has failed or chosen not to be present at the Hearing or any formal Hearing as resumed; or
 - (ii) he has left before or after the start of the Board's deliberations at the Hearing or any formal Hearing as resumed without waiting for the result of such deliberations.

This flowchart illustrates the contents of the Disciplinary Regulations and serves as reference information only. If there is any difference between the flowchart and the contents of the Disciplinary Regulations, the Disciplinary Regulations should for all purposes be considered definitive.

**THE HONG KONG INSTITUTION OF ENGINEERS
9/F ISLAND BEVERLEY, 1 GREAT GEORGE STREET
CAUSEWAY BAY, HONG KONG
TEL: 2895 4446 • FAX: 2577 7791
EMAIL: hkie-sec@hkie.org.hk
WEBSITE: <http://www.hkie.org.hk>**

CON.05.00/04.13