



The Chartered Institution of Wastes Management

9 Saxon Court, St Peter's Gardens, Marefair, Northampton, NN1 1SX
Tel: 01604 620426 Fax: 01604 621339

Changes to the Regulations of the Institution

Disciplinary Regulations

At their meeting in April 2014 the General Council considered a report and approved proposals to amend the Institution's constitutional documents to improve the operation of the Disciplinary Regulations and particularly the Procedure.

The main objectives of the review were to remove impediments and to simplify the current procedure, to ensure the cost of the process is proportionate and, as far as possible, to future-proof the processes. The terminology used in the amended version is simpler to understand and use, better reflects natural justice and is less akin to criminal law procedures.

Because of these changes it is difficult to produce a document which is directly comparable with the current procedure. It has not been possible therefore to provide a track change version. The accompanying amended Disciplinary Regulations includes all the necessary changes and can be compared to the current version on the website.

All the proposed changes have been considered by an independent legal adviser and are considered to be appropriate and should provide an improvement to the existing procedure.

Resolution

That the Disciplinary Regulations be amended as set out in the document accompanying this report.

Timing of Elections

Each year in the spring there are calls for nominations and elections for General Councillors and subsequently for various Committee positions. Nominations for these Committee positions can only be undertaken once the composition of the General Council is known. The timing of elections for General Council is specified in Regulation 15 which states that: **the nomination....must be received one month prior to the date fixed for the Centre annual general meeting.** It is recommended that this statement is removed and replaced with: **in accordance with a timetable agreed by the Board of Trustees.**

This change will provide the flexibility to allow the election of General Councillors to begin much earlier with results still being made available at the respective Centre annual general meeting.

Resolution

That Regulation 15 be amended to remove "**one month prior to the date fixed for the Centre annual general meeting**", and replaced by "**in accordance with a timetable agreed by the Board of Trustees**".

Registration of Gifts and Hospitality

Regulation 118 states that Applicable Persons must declare receipt of a gift or hospitality over the value of £50. In preparing the CIWM Bribery Act Policy and following discussions with an independent legal advisor it is recommended the threshold is reduced to £25 to put it in line with the figure in common business use.

Resolution

That Regulation 118 relating to the Registration of Gifts and Hospitality be amended and the threshold for registration reduced from £50 to £25.

Disciplinary Regulations

Purpose

62. Any investigation into an alleged breach of the Professional Conduct Regulations shall be conducted in accordance with the following Disciplinary Regulations.

Investigation Panel, Disciplinary Tribunal and the Appeals' Panel

63. In discharge of its disciplinary powers the Board of Trustees authorises the Chief Executive Officer together with at least two members of the Corporate Governance and Professional Ethics Committee of the Institution to assemble when required an investigation panel ("the Investigation Panel"), a disciplinary tribunal ("the Tribunal") and an appeals' panel ("the Appeals' Panel"). None of the members of the Appeals' Panel shall be a Member of the Institution as defined in clause 2.6 of the Charter but the Panel may be assisted by a Member and, where appropriate, a Barrister or Solicitor with experience relative to the nature of the appeal.

64. DELIBERATELY LEFT BLANK

Complaints

65.1 Should the Chief Executive Officer receive a written complaint or become aware by other means of any action, omission or failure which appears to him to indicate that a Member or holder of a certificate, diploma or other qualification (hereafter called in either case 'the Respondent') may have been guilty of:

65.1.1 a breach of the Professional Conduct Regulations being in force at any material time;

65.1.2 conduct which might be considered to be prejudicial to the interests of the Institution; or

65.1.3 a breach of any term or condition of a certificate, diploma or other qualification

65.2 then he shall as soon as reasonably practicable:

65.2.1 assemble the readily available facts for presentation to not less than two members of the Corporate Governance and Professional Ethics Committee who shall decide whether an investigation is warranted.

65.3 In the event of the Members of the Corporate Governance and Professional Ethics Committee in conjunction with The Chief Executive Officer deciding that an investigation is

warranted they shall set up an Investigation Panel consisting of three Trustees with knowledge and experience appropriate to the nature of the investigation.

65.4 No member from the same Centre as a Respondent or who has any linked interest with the Respondent or his business may participate in the Investigation Panel or the Tribunal.

65.5 The Chief Executive Officer shall use his best endeavours to bring to the attention of the Respondent the nature of the complaint and ensure the Respondent has access to a copy of these Disciplinary Regulations. He shall not be obliged to ensure that the Respondent has a copy of the complaint in writing but may do so if such action is necessary to allow a fair and accurate assessment of the facts.

66. In the event of legal action being taken in relation to the case, whether civil or criminal, no further disciplinary action shall be taken until that has been concluded and if the result is a conviction for a serious criminal offence the matter will be referred to the Board of Trustees for consideration of action under Bye Law 27. Such consideration to have regard to Guidance on the use of Bye Law 27 detailed in the Practice Directions.

Investigation Panel

67. The Respondent may, within twenty-one days of receipt of the notice, respond in writing to the Chief Executive Officer giving his answer to and/or comments upon the complaint. The Chief Executive Officer shall pass any such response to the Investigation Panel.

68. The Investigation Panel shall, as soon as reasonably practicable, gather any further information/evidence that may be available, investigate the complaint as it sees fit and consider the written response (if any) from the Respondent. If the Investigation Panel considers it necessary or desirable it may invite the Respondent to appear before it (sitting in private) and allow him to comment upon the complaint.

69. Having considered the complaint and any response received from the Respondent, the Investigation Panel shall as it sees fit:

69.1 dismiss the complaint;

69.2 order that no further action be taken; or

69.3 direct that the complaint, or any part of it, be the subject of a charge or charges brought before the Tribunal.

70. Where the matter of which the complaint is made is admitted by the Respondent and the Panel is of the opinion that the matter should be disposed of in accordance with

paragraphs 69.1 or 69.2 above, it may direct the Respondent to attend on the Chairman of the Board of Trustees at his convenience so as to be admonished by him and/or given advice as to future conduct.

Charges

71. If the Investigation Panel directs that any charges be brought then the Chief Executive Officer, as soon as is reasonably practicable, shall formulate the charge or charges in writing and serve a copy thereof upon the Respondent together with a notice of the date and place appointed for the Hearing.

Disciplinary Tribunal

72. The Tribunal for the hearing of any particular charge or charges shall consist of three Trustees provided that none of them shall have served on the Investigation Panel investigating the initial complaint.

73. The three Trustees to sit shall be approved by at least two members of the Corporate Governance and Professional Ethics Committee.

74. Members of the Tribunal shall appoint one of their number to act as Chairman. The chairman shall preside at any Hearing and shall determine the day upon which the Tribunal will sit.

75. If, after the start of the Hearing, any member of the Tribunal shall not be available to continue sitting then, provided that the Tribunal continues to consist of at least two members, the Tribunal may continue the Hearing in the absence of such member who will then cease to take any part in the Hearing. Should the two remaining members fail to agree upon a decision at the conclusion of the Hearing the complaint shall be re-heard by a newly constituted Tribunal.

Hearing

76. So far as is reasonably practicable but subject always to the provisions of these Disciplinary Regulations and saving always that the Tribunal shall be master of its own procedure, the Hearing shall correspond to established, industry standard disciplinary procedures.

77. The Hearing shall be in private and no person shall be present apart from those provided for by these Disciplinary Regulations unless the chairman so permits. The Respondent may appear by himself or upon notice in writing being received by the Chief Executive Officer not less than seven days before the date fixed for the Hearing, the chairman shall permit the Respondent to be assisted by one other identified person.

78. The case against the Respondent shall be presented by the Chief Executive Officer or by any other person whom the Chief Executive Officer considers is a fit and proper person to present the case. The Chief Executive Officer or his agent presenting the case shall be entitled to open the case to the Tribunal and make a closing speech upon the facts as well as any submissions on the constitution.

79. The Tribunal shall keep a record of the Hearing, to include any evidence given. Such record may consist of a note containing a reasonably accurate synopsis of the proceedings, a shorthand note or a mechanical or digital recording.

80. The Tribunal may sit with a clerk for recording purposes and a member of the Corporate Governance and Professional Ethics Committee who shall be able to demonstrate a good working knowledge of the Constitution who may advise the Tribunal and who will have access to appropriate legal advice should that be deemed necessary at any time during the proceedings.

81. The chairman may, at any time, adjourn the Hearing and appoint such other date for the resumed Hearing as he sees fit.

82. At the commencement of the Hearing the charge or charges shall be read in the presence of the parties provided that if the Respondent does not appear then the Tribunal may, if satisfied that the Respondent has had notice of the Hearing or that the Chief Executive Officer has taken reasonable steps to give such notice, proceed with the Hearing and the charge or charges shall be read in the absence of the Respondent.

83. After the charge or charges have been read:

83.1 if present, the Respondent may admit or deny any charge; or

83.2 in the absence of the Respondent, if the Tribunal is satisfied that it has before it a document which upon the face of it was prepared by or on behalf of the Respondent for submission to the Tribunal and by which the Respondent admits any charge, then the Tribunal shall direct the clerk to record such admission or admissions and that the appropriate charge or charges are proved whereupon the Tribunal may as it sees fit:

83.2.1 consider the consequences of such charge or charges being proved, in accordance with these Disciplinary Regulations; or

83.2.2 adjourn such consideration of consequences either to another date or until the completion of the hearing of any charge or charges which remain outstanding.

84. The Tribunal may hear at the same time as many charges against a Respondent as may to the Tribunal appear just and reasonable. Further, the Tribunal may hear charges against more than one Respondent at the same time provided that such charges concern

and/or arise out of the same or substantially the same facts and these Disciplinary Regulations shall be read accordingly.

85. The Tribunal may receive oral, documentary or other evidence of any fact which appears to it to be relevant to the hearing of the case before it provided that:

85.1 any statement or other document in writing made for the purpose of presentation to the Tribunal:

85.1.1 is dated and the maker's name is clearly stated; or

85.1.2 purports to be signed by the maker and contains a statement to the effect that the maker believes the contents of the statement or document to be true; and

85.2 a copy of that statement or document was posted to the address of the Respondent not less than fourteen clear days previously and either the Respondent has not objected thereto by a notice in writing delivered to the Chief Executive Officer not less than seven days before the Hearing, or, if he has objected, the Tribunal is satisfied that it is reasonable and just to hear the evidence notwithstanding that objection.

86. If the Tribunal is so satisfied and hears that evidence then it shall become evidence in the Hearing for all purposes and the Tribunal may attach such weight to it as seems to it to be just.

87. The Tribunal may receive and proceed upon any oral admission as to any fact or matter which is made to it by the Respondent.

88. The Tribunal may, at any stage of the Hearing, allow such amendment of any charge as may seem to it to be just, provided that in so doing it shall consider whether it is desirable to adjourn the Hearing so as to give the Respondent time to consider the amended charge.

Decision

89. All decisions of the Tribunal shall be by simple majority.

90. After hearing all the evidence and any speeches and/or submissions by the parties the Tribunal shall consider its decision which shall be announced by the chairman and recorded.

Consequences

91. Where any charge is proved the Tribunal shall, before imposing any penalty upon the Respondent:

91.1 if dealing with any charge which was admitted, hear from the Chief Executive Officer or his representative a summary of the facts of that charge;

91.2 hear from the Chief Executive Officer or his representative details of any previous breach of the Professional Conduct Regulations by the Respondent; and

91.3 consider any evidence and/or submission in mitigation which the Respondent shall reasonably wish to lay before it.

92. After hearing any mitigation the Tribunal shall consider what, if any, penalty to impose upon the Respondent in respect of each and any proven charge. The penalties available to the Tribunal in any case are any one or more of the following:

92.1 admonition in the case of any Respondent;

92.2 suspension from such privileges of membership of the Institution as may be appropriate in the case of any Respondent;

92.3 expulsion from membership of the Institution; and

92.4 revocation of the certificate, diploma or other qualification, if appropriate.

93. The Tribunal may impose any combination of penalties in respect of any proven charge as seems to it to be just. Further, the Tribunal may require the Respondent to contribute such sum towards the costs of the investigation and the Hearing as seems to it to be just. The chairman shall announce such penalty, if any, as is imposed together with any order for costs and they shall be recorded.

94. If the Tribunal shall dismiss any charge then, upon the application of the Respondent, the Tribunal may award the Respondent such sum, if any, in respect of his costs as seems just and such costs shall be paid by the Institution to the Respondent.

95. At the conclusion of the Hearing the Chief Executive Officer shall forthwith send a written notification of the outcome to the Respondent and in the case of any proven charge, if no notice of appeal is served upon him within the time allowed, a notification to any relevant complainant.

Right of Appeal

96. A Respondent may, within fourteen days of notification of the decision of the Tribunal, by a notice in writing delivered to the Chief Executive Officer, appeal against any finding that any charge was proven and/or any penalty. The grounds upon which the Respondent may appeal are that:

96.1 fresh evidence is available which could have materially affected the finding of the Tribunal but which was not laid before the Tribunal because it was not then available or there is some other substantial reason to justify it being received on appeal;

96.2 the Tribunal made a material error;

96.3 there was a material irregularity in the course of the Hearing;

96.4 or the finding of the Tribunal was not justified upon the evidence before it;

96.5 the penalty imposed was too severe.

97. The notice of appeal shall contain the ground or grounds of the appeal and the Respondent shall, at the time of delivering such notice, inform the Chief Executive Officer which, if any, parts of the record of the Hearing before the Tribunal he wishes to be made available for use at the appeal.

98. Upon receipt of any notice of appeal the Chief Executive Officer shall pass the same to the Tribunal who shall then, within a reasonable time and with legal advice if necessary, decide whether, in the case of 96.1, 96.2 or 96.3 above, the grounds for appeal warrant a review by the Tribunal of the decisions made.

99. If a review is warranted:

99.1 the Tribunal may be re-convened to consider the new evidence or the nature of the error or 99.2 the case may be re-heard by a newly constituted Tribunal.

100. Where no review is warranted, the Chief Executive Officer shall arrange for an Appeals' Panel to be convened.

101. The Appeals' Panel may, at its own discretion, consult with or co-opt a legal adviser at any time during the hearing of the appeal. Such adviser shall be a barrister or solicitor who shall advise the Appeals' Panel but shall have no vote.

102. The chairman of the Appeals' Panel may adjourn any Hearing as he sees fit and upon the hearing of an appeal the Appeals' Panel shall:

102.1 make decisions by simple majority;

102.2 have the like powers to those enjoyed by the Tribunal; and

102.3 have power to make any decision or impose any penalty which was open to the Tribunal and to allow or dismiss appeals, vary penalties and orders for costs, remit any charge for re-Hearing before a differently constituted Tribunal and to do all such things as may be reasonably necessary for the hearing of the appeal.

103. At the hearing of an appeal, the Chief Executive Officer shall produce for the use of the Panel and the parties that part of the record of the Hearing as the Respondent shall have identified to the Chief Executive Officer in accordance with paragraph 97 of the Disciplinary Regulations and any other parts of the record as appear to him to be necessary or desirable.

104. The Appeals' Panel shall determine the appeal upon such parts of the record of the Tribunal as shall be before it, such other fresh evidence as it shall decide to admit, and on the submissions made by or on behalf of the Respondent and the Chief Executive Officer or his agent. At the conclusion of the hearing of an appeal the chairman of the Appeals' Panel shall announce its decision which shall be recorded.

Publication

105. If the Chief Executive Officer does not receive any notice of appeal within the time limited as aforesaid or, in the alternative, at the conclusion of any appeal then he shall, as soon as is reasonably practicable, notify the Board of Trustees of the outcome of the Hearing and/or appeal.

106. At the conclusion of an appeal the Chief Executive Officer shall forthwith send a written notification of the outcome of that appeal to the Respondent and if any appeal against a proven charge is dismissed, the Chief Executive Officer shall notify any relevant complainant of the outcome of the proceedings.