

# CIC Approved Inspectors Register (CICAIR)

## Approval Withdrawal Appeals Protocol



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- 1.0 This protocol sets out how CICAIR Limited (*herein referred to as CICAIR*) will consider appeals against a decision to withdraw the approval of an Approved Inspector.
- 2.0 In accordance with regulation 6(2) of the Building (Approved Inspectors etc.) Regulations 2010, the approval of an Approved Inspector may be withdrawn by a notice in writing given to the Approved Inspector by the body that approved that Approved Inspector.
- 3.0 Appeal panels will determine whether or not the decision to withdraw the approval was fair and in accordance with CICAIR's processes and procedures. Should new evidence be submitted into the appeal process that had not previously been provided to or considered by CICAIR this must be declared and must only be evidence that was not available at the time of CICAIR's consideration of the withdrawal of approval. Any new evidence introduced into the appeal process must be accompanied by an explanation and will only be considered with the approval of the appeal panel Chair.
- 4.0 If an appeal is upheld and an order made to rescind the notice of withdrawal of approval CICAIR may, at the Approved Inspector's expense, undertake an audit of the Approved Inspector in relation to the issue or issues that brought the matter to the attention of CICAIR or in relation to any other aspect covered by the CICAIR monitoring and re-approvals protocol.
- 5.0 **Appeal Notification**
  - 5.1 CICAIR will advise the Approved Inspector of their right of appeal in the letter giving notice of the withdrawal of approval. Appeals will only be considered if lodged on the CICAIR appeal notification form and accompanied by payment of the appeal deposit.
  - 5.2 The period for lodging an appeal is 10 working days from the date of the letter giving notice of the withdrawal of approval.
  - 5.3 The Approved Inspector may be represented at the hearing and the appeal panel may require named individual(s) to attend the hearing if they deem it necessary. The Approved Inspector can be accompanied by up to two individuals in addition to any Approved Inspector personnel. The Approved Inspector must notify CICAIR at the time of submitting their final statement and/or documentation of the names of the individuals that will attend the hearing. Any individuals that have not been notified to CICAIR will not be admitted into the hearing.
  - 5.4 The Approved Inspector has 20 working days from the date they notify CICAIR of the intention to appeal to submit any final statement and/or documentation in support of the appeal. No further information will be accepted from the Approved Inspector after the 20 day period has passed.

5.5 If the Approved Inspector fails to attend the hearing, it will be conducted in their absence and the appeal panel will rely on the documentation provided by both parties in order to reach a decision.

## 6.0 **Appeal Panel Composition**

6.1 Appeals will be considered by an appeal panel which will be comprised of members from the CICAIR appeals committee and the approved lay panel member list.

6.2 None of the voting members of the appeal panel shall have been involved in CICAIR's consideration of the approval, the complaint or the audit process leading to the recommendation to withdraw the approval and they shall not have any professional or financial interest with the Approved Inspector.

6.3 The Registrar or Assistant Registrar will approve the panel composition once satisfied that the panel is suitably independent.

6.4 The composition of an appeal panel will be as follows:

- Two voting Approved Inspector members.
- One voting knowledgeable person member. A knowledgeable person is defined as any person who is knowledgeable about construction matters but is not a director or employee of an Approved Inspector.
- One voting lay member. A lay member is defined as any person from outside of the construction industry.

6.5 One of the voting members will act as Chair of the appeal panel and will be selected from the pool of panel Chairs approved by the CICAIR Board of Directors. The Chair may be either an Approved Inspector or a knowledgeable person.

6.6 Other non-voting attendees that will be present at the hearing will be as follows:

- A CICAIR representative to present the case for the withdrawal of the approval.
- A CICAIR legal adviser.
- The Registrar or Assistant Registrar. Either the Registrar or the Assistant Registrar are able to give evidence on matters relating to CICAIR processes or procedures.

## 7.0 **Preparing for an Appeal Hearing**

7.1 The Assistant Registrar will notify the Approved Inspector of the date of the hearing which will be the earliest convenient time for all attendees.

7.2 The CICAIR representative will prepare a Statement of Case. The Statement of Case will specify the reasoning behind the decision to withdraw the approval and this will be provided to the Approved Inspector at least 10 working days prior to the hearing.

7.3 Following the provision of the appropriate documentation, the Statement of Case and, if submitted, the final statement and/or documentation from the Approved Inspector, the appeal panel may call for further clarification from the parties. The hearing may be postponed to facilitate this process and this will be communicated to the Approved Inspector.

7.4 Following the provision of the appropriate documentation, the Statement of Case and, if submitted, the final statement and/or documentation from the Approved Inspector, the appeal panel may, at the discretion of the appeal panel chair, visit the Approved Inspector's premises prior to the formal appeal hearing to verify any of the information provided. Should a site visit be undertaken a minimum of two of the appeal panel members must be in attendance. The hearing may be postponed to facilitate this process and this will be communicated to the Approved Inspector.

## 8.0 **The Order of the Hearing**

8.1 The appeal panel Chair has full discretion to alter the order and timings of the hearing.

8.2 The Approved Inspector representative(s) and the CICAIR representative enter the hearing.

### 8.3 ***Opening Statement by the Registrar or Assistant Registrar***

8.3.1 The Registrar or Assistant Registrar will welcome attendees and provide an overview of the purpose of the hearing.

8.3.2 The parties will be advised that the hearing will be recorded.

### 8.4 ***Open of Hearing***

8.4.1 The appeal panel Chair will open the hearing, conduct introductions and outline the hearing procedure and the expected conduct of participants.

8.4.2 The appeal panel Chair explains that the appeal panel has the power to deliver one of three possible decisions:

- To reject the appeal and determine the minimum period of withdrawal before any new application would be considered; or
- To uphold the appeal and order that the notice of withdrawal of approval is rescinded and a lesser sanction imposed; or
- To uphold the appeal and order that the notice of withdrawal of approval is rescinded with no alternative sanction imposed.

### 8.5 ***Presentation by the CICAIR Representative***

8.5.1 The CICAIR representative has up to 45 minutes to present the Statement of Case. The Approved Inspector and/or their representative(s) may not question the CICAIR representative.

### 8.6 ***Presentation by the Approved Inspector***

8.6.1 The Approved Inspector representative(s) have up to 45 minutes to present their position. The CICAIR representative may not question the Approved Inspector.

### 8.7 ***Questioning by the Appeal Panel***

8.7.1 The appeal panel Chair will facilitate the questioning of the Approved Inspector by the appeal panel members. The appeal panel may also clarify any aspects of the case with the CICAIR representative should they need to do so.

8.8 ***Summing up by the CICAIR Representative***

8.8.1 The CICAIR representative has up to 15 minutes to sum up their position.

8.9 ***Summing up by the Approved Inspector***

8.9.1 The Approved Inspector representative(s) have up to 15 minutes to sum up their position.

8.10 ***Close of Hearing***

8.10.1 The appeal panel Chair outlines the timeframe for the notification of the decision to the Approved Inspector.

8.10.2 The Approved Inspector representative(s) and the CICAIR representative exit the hearing.

8.11 ***Case Review***

8.11.1 The appeal panel reviews the case documentation, the reasons for the decision(s) taken by CICAIR and the representations from the Approved Inspector representative(s) and the CICAIR representative.

8.12 ***Decision***

8.12.1 Any decision taken by an appeal panel shall be made on a majority basis. In the event of a split decision, the appeal panel Chair will have the casting vote.

8.12.2 The appeal panel makes its decision and the appeal panel Chair will ensure that the reasons for the decision are clear and based upon the evidence and not assumptions about the case.

8.12.3 Should the appeal panel decide that further information is required from either party the panel can defer any decision until that information has been satisfactorily provided.

8.13 ***Decision Notification***

8.13.1 The decision of the appeal panel will be notified to the Approved Inspector within a recommended 10 working days of the hearing.

8.13.2 If an appeal is rejected, the Approved Inspector has no further right of appeal under CICAIR procedures. The withdrawal of approval would proceed and no further correspondence or communication would be considered.

8.13.3 If an appeal is rejected, the period of notice that will be given before the Approved Inspector's approval is withdrawn will be 20 working days from the date of the written notification of the appeal outcome. This period will be to allow for the notification to insurers and clients of the withdrawal of approval and for the appropriate transfer of work arrangements to be put in place.

8.13.4 Where an Approved Inspector has had its approval withdrawn, CICAIR will amend the list of Approved Inspectors held by it in accordance with regulation 7(3)(a) of the Building (Approved Inspectors etc.) Regulations 2010, and the Registrar shall notify the Ministry of Housing, Communities and Local Government (MHCLG), the Welsh Government, the

Association of Consultant Approved Inspectors (ACAI), Local Authority Building Control (LABC) and the Approved Insurance Scheme providers as soon as reasonably practicable of the withdrawal of approval of an Approved Inspector in accordance with regulation 7(3)(b) of the Regulations.

8.14 If the Approved Inspector is dissatisfied with how the matter has been handled by CICAIR, they can ask their MP to take the matter to the independent Parliamentary and Health Service Ombudsman (PHSO) in England or the Public Services Ombudsman for Wales (PSOW).

8.14.1 A record of all appeal outcomes shall be kept on the Approved Inspector's file and shall be made available to any CICAIR panel.

#### 9.0 **Period of Withdrawal and Re-Application**

9.1 Should an Approved Inspector have their approval withdrawn this does not preclude them from lodging a new application for approval with CICAIR at a future time.

9.2 The written notification of the appeal outcome will set out the minimum period of withdrawal based on the determination of the appeal panel. No further application from that Approved Inspector or the Directors of that Approved Inspector shall be considered until this period has passed.

#### 10.0 **Charging**

10.1 Where an appeal panel decides to uphold the appeal, the Approved Inspector shall have the appeal deposit returned to them.

10.2 Where an appeal panel decides to reject the appeal, the Approved Inspector will be liable for the full costs of the hearing and will forfeit the appeal deposit. Typical appeal hearing costs are usually between £3,000 and £6,000 but for a discussion about expected hearing costs, contact the Registrar.