

# CIC Approved Inspectors Register (CICAIR) Disciplinary Appeals Protocol



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- 1.0 This protocol sets out how CICAIR Limited (*herein referred to as CICAIR*) will consider appeals against the decision of a CICAIR disciplinary panel to sanction an Approved Inspector.
- 2.0 Subject to paragraph 3.0 below, Approved Inspectors can lodge an appeal with CICAIR in relation to all sanctions imposed under the *Sanctions Guidance*.
- 3.0 Approved Inspectors have no right of appeal against a level 1 (caution) sanction, imposed by a Complaints Panel.
- 4.0 There is no right of appeal for the party that raised the complaint against any decision of CICAIR.
- 5.0 Appeal panels will not rehear an appellant's case, but will determine whether or not the complaint investigation and sanction was fair and in accordance with CICAIR's processes and procedures. Only information that has been provided through the complaint investigation and disciplinary process will normally be considered. Should new evidence be submitted this must be declared and must only be evidence that was not available at the time of the complaint investigation and must be accompanied by an explanation. Any new evidence introduced to the appeal process will only be considered with the approval of the appeal panel Chair.
- 6.0 Appeal Notification**
  - 6.1 CICAIR will advise the Approved Inspector of their right of appeal in the notification letter informing the Approved Inspector of the outcome of a disciplinary hearing. Appeals will only be considered if lodged on the CICAIR appeal notification form, setting out the grounds for the appeal, and accompanied by payment of the appeal deposit.
  - 6.2 The available grounds of appeal are:
    - a) error of fact;
    - b) error of law;
    - c) unduly harsh sanction; and
    - d) new evidence not reasonably available at the time of the Disciplinary Panel hearing and determination.
  - 6.3 The period for lodging an appeal is 10 working days from the date of the decision notification letter from CICAIR.
  - 6.4 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 without the approval of the appeal panel Chair.

6.5 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 and to advise CICAIR of any individuals who will accompany them to the hearing. No further information will be accepted from the Approved Inspector after the 20-day period has passed.

6.6 If the Approved Inspector fails to attend the hearing, it will be conducted in their absence and the appeal panel will rely on the complaint documentation in order to reach a decision.

## **7.0 Appeal Panel Composition**

7.1 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.

7.2 None of the voting members of the appeal panel shall have been members of the complaint panel or the disciplinary panel that assessed the complaint and they shall not have any professional or financial interest with the Approved Inspector, the complainant or the project.

7.3 The Registrar will approve the panel composition once satisfied that the panel is suitably independent.

7.4 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.

7.5 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.

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

- The Chair of the disciplinary panel to present the case for the levying of the sanction.
- The 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.

## **8.0 Preparing for an Appeal Hearing**

8.1 The Assistant Registrar will notify the parties of the date of the hearing which will be the earliest convenient time for all parties.

8.2 The Chair of the disciplinary panel that levied the sanction will prepare a Statement of Case.

The Statement of Case will specify the charges and the reasoning behind the disciplinary panel's decision and this will be provided to the Approved Inspector at least 10 working days prior to the hearing.

- 8.3 Following the provision of the complaint file, 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. If necessary, the Registrar may postpone the hearing and will communicate this to both the complainant and the Approved Inspector.

## **9.0 The Order of the Hearing**

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

- 9.2 The Approved Inspector representative(s) and the disciplinary panel Chair enter the hearing.

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

- 9.3.1 The Registrar or Assistant Registrar will welcome attendees and provide an overview of the complaint, the CICAIR complaints handling process and the purpose of the hearing.

- 9.3.2 The parties will be advised that the hearing will be recorded.

### **9.4 *Open of Hearing***

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

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

- To reject the appeal and maintain or increase the sanction, having regard to the *Sanctions Guidance*; or
- To uphold the appeal and reduce or overturn the sanction, having regard to the *Sanctions Guidance*; or
- To uphold the appeal on the basis that there was a defect in the earlier stages of the complaint and disciplinary process. In these cases, the Registrar will arrange a complete rehearing of the complaint by a new complaint panel.

### **9.5 *Presentation by the Disciplinary Panel Chair***

- 9.5.1 The disciplinary panel Chair has up to 45 minutes to present the Statement of Case. The Approved Inspector representative(s) may not question the disciplinary panel Chair.

### **9.6 *Presentation by the Approved Inspector***

- 9.6.1 The Approved Inspector representative(s) have up to 45 minutes to present their position. The disciplinary panel Chair may not question the Approved Inspector.

### **9.7 *Questioning by the Appeal Panel***

- 9.7.1 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 disciplinary panel Chair should they need to do so.

## **9.8 *Summing up by the Disciplinary Panel Chair***

9.8.1 The Disciplinary Panel Chair has up to 15 minutes to sum up their position.

## **9.9 *Summing up by the Approved Inspector***

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

## **9.10 *Close of Hearing***

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

9.10.2 The Approved Inspector representative(s) and the disciplinary panel Chair exit the hearing.

## **9.11 *Case Review***

9.11.1 The appeal panel reviews the case file, the decision(s) taken by the complaint panel and the disciplinary panel, and the representations from the Approved Inspector and the disciplinary panel Chair.

## **9.12 *Decision***

9.12.1 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.

9.12.2 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.

9.12.3 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.

## **9.13 *Decision Notification***

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

9.13.2 If an appeal is rejected, the Approved Inspector has no further right of appeal under CICAIR procedures. This would conclude the complaint and no further correspondence or communication from either party would be considered.

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

## **10.0 *Charging***

10.1 Where an appeal panel decides to uphold the appeal and either reduce or overturn the sanction or order a rehearing of the complaint, 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 disciplinary appeal

hearing costs are usually between £3,000 and £6,000 but for a discussion about expected hearing costs, contact the Registrar.