

CIC Approved Inspectors Register (CICAIR) Disciplinary Protocol



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Issue 6 – November 2023

- 1.0 This protocol sets out how CICAIR Limited (*herein referred to as CICAIR*) will conduct disciplinary proceedings against an Approved Inspector.
- 2.0 Disciplinary panels are convened when a CICAIR complaint panel recommends that a complaint or part of a complaint is valid and sufficiently serious.
- 3.0 Disciplinary panels can also be convened should CICAIR, as a result of or independently of any complaint, consider that:
 - an Approved Inspector may be in breach of the Code of Conduct for Approved Inspectors or the conditions governing the registration of the Notice of Approval;
 - an Approved Inspector has been convicted of an offence under Section 57 of the Building Act 1984;
 - an Approved Inspector, one of their directors, a staff member or others working on their behalf has been convicted of any other civil, criminal or regulatory offence, whether or not it is in connection with their work.
- 4.0 An Approved Inspector must notify CICAIR, as soon as they become aware, of a conviction for any civil, criminal or regulatory offence committed by them, one of their directors, a staff member or others working on their behalf, whether or not it is connection with their work. They must also notify CICAIR if any of those noted above have been disqualified as a company director or have been the subject of adverse findings by another professional or regulatory body.
- 5.0 In the cases outlined by section 3.0, references in this protocol to the complaint and/or complainant will be taken to mean CICAIR and the protocol will be adapted accordingly.
- 6.0 CICAIR may take any proportionate action as it deems fit for any breach of the Code of Conduct for Approved Inspectors or for any breach of the conditions governing the registration of the Notice of Approval.
- 7.0 Should a CICAIR disciplinary panel, at any stage during the course of disciplinary proceedings, identify information or circumstances relating to the same alleged breaches of the Code of Conduct for Approved Inspectors that are subject to such disciplinary proceedings but which had not been identified by the complainant or as a result of the complaint investigation, CICAIR may notify these to the Approved Inspector in writing as additional grounds for the disciplinary proceedings. In such a case, a reasonable time, being not less than the relevant timings set out in this protocol, will be given to the Approved Inspector to respond to such additional grounds. A CICAIR disciplinary panel may take the additional grounds and the Approved Inspector's response to them into account when determining an outcome.

8.0 The burden of proof lies with the Approved Inspector to demonstrate that the allegations are unfounded. In the case of defaults under the Building Act the burden of proof shall be “beyond reasonable doubt” and for all other non-Building Act allegations it shall be on the “balance of probabilities”.

9.0 Any disciplinary action taken by CICAIR shall be binding, subject to appeal.

10.0 Disciplinary Hearing Notification

10.1 The Approved Inspector will be notified in writing of the date, time and location of the disciplinary hearing. The date of the hearing will not be any sooner than one calendar month after the hearing notification and will not be any later than three calendar months after the hearing notification.

10.2 The Approved Inspector may, in exceptional circumstances, request an alternative date for the hearing but agreeing a date change is at the discretion of CICAIR. Such a request must be lodged within five working days of the disciplinary hearing notification.

10.3 The complainant, unless the complainant is CICAIR, may not attend the hearing but the complainant will be notified of the date of the hearing and will have 10 working days from the date of the hearing notification to submit any final statement that they wish to be considered. The complainant can choose not to submit a final statement if they have nothing further to add.

10.4 The Approved Inspector will have 10 working days from the date of the hearing notification to exercise full disclosure and to submit any final statement that they wish to be considered. The Approved Inspector can choose not to submit a final statement if they have nothing further to add.

10.5 Only information that has been provided through the complaint investigation process will normally be considered at the hearing. Should any 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 disciplinary process will only be considered with the approval of the disciplinary panel Chair. No further information will be accepted from complainant or the Approved Inspector after the deadlines detailed in sections 10.3 and 10.4 have passed.

10.6 The Approved Inspector may be represented at the hearing and the disciplinary 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 of the names of the individuals that will attend the hearing within 10 working days from the date of the hearing notification. Any individuals that have not been notified to CICAIR will not be admitted into the hearing without the approval of the disciplinary panel Chair.

10.7 If the Approved Inspector fails to attend the hearing, it will be conducted in their absence and the disciplinary panel will rely on the Statement of Case and the complaint documentation in order to reach a decision.

11.0 Disciplinary Panel Composition

- 11.1 Disciplinary hearings will be conducted by a disciplinary panel which will be comprised of members from the CICAIR disciplinary committee.
- 11.2 None of the voting members of the disciplinary panel shall have been members of the complaint panel that investigated the complaint and they shall not have any professional or financial interest with the Approved Inspector, the complainant or the project. This section does not apply to disciplinary action brought by CICAIR independently of any complaint.
- 11.3 The Registrar will approve the panel composition once satisfied that the panel is suitably independent.
- 11.4 The composition of a disciplinary 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.
- 11.5 One of the voting members will act as Chair of the disciplinary 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.
- 11.6 Other non-voting attendees that will be present at the hearing will be as follows:
- The Chair of the complaint panel that investigated the complaint to present the Statement of Case. The Registrar will present the Statement of Case if the disciplinary action has been brought by CICAIR.
 - 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 and procedures.

12.0 Preparing for a Disciplinary Hearing

- 12.1 The Chair of the complaint panel that investigated the complaint will prepare a Statement of Case. The Statement of Case will specify the charges and the reasoning behind the complaint panel's decision(s) in relation to the alleged breach(es) of the Code of Conduct and this will be provided to the Approved Inspector at least 10 working days prior to the hearing.
- 12.2 Following the provision of the complaint file, the Statement of Case and, if submitted, the final statements from the complainant and/or the Approved Inspector, the disciplinary panel may call for further clarification from the parties. If necessary, the Registrar may postpone the hearing and will communicate this in writing to both the complainant and the Approved Inspector.

13.0 The Order of the Hearing

- 13.1 The disciplinary panel Chair has full discretion to alter the order and timings of the hearing.
- 13.2 The Approved Inspector representative(s) and the complaint panel Chair enter the hearing.

13.3 Opening Statement by the Registrar or Assistant Registrar

13.3.1 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.

13.3.2 The parties will be advised that the interview will be recorded.

13.4 Open of Hearing

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

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

- To request further information from the complainant and/or the Approved Inspector in order to reach a decision; or
- To dismiss the complaint in full; or
- To uphold the complaint in full or in part and issue a sanction.

13.5 Presentation by the Complaint Panel Chair

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

13.6 Presentation by the Approved Inspector

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

13.7 Questioning by the Disciplinary Panel

13.7.1 The disciplinary panel Chair will facilitate the questioning of the Approved Inspector by the disciplinary panel members. The disciplinary panel may also clarify any aspects of the case with the complaint panel Chair should they need to do so.

13.8 Summing up by the Complaint Panel Chair

13.8.1 The complaint panel Chair has up to 15 minutes to sum up their position.

13.9 Summing up by the Approved Inspector

13.9.1 The Approved Inspector representative(s) has up to 15 minutes to sum up their position.

13.10 Close of Hearing

13.10.1 The disciplinary panel Chair outlines the timeframe for the notification of the decision to the Approved Inspector.

13.10.2 The Approved Inspector representative(s) and the complaint panel Chair exit the hearing.

13.11 Case Review

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

13.12 Decision

13.12.1 Any decision taken by a disciplinary panel shall be made on a majority basis.

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

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

13.12.4 Should the disciplinary panel decide to dismiss the complaint in full this would conclude the complaint and no further action would be taken and no further correspondence or communication from either party would be considered.

13.12.5 Should the disciplinary panel decide that the complaint should be upheld in full or in part, a sanction will be levied against the Approved Inspector in accordance with the *CICAIR Sanctions Guidance*.

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

14.0 Decision Notification

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

14.2 In the event of a minor, moderate, serious or unacceptable Code of Conduct breach decision the notification will explain the Approved Inspector's right of appeal and the process for lodging an appeal.

15.0 Right of Appeal

15.1 Approved Inspectors can appeal a level 1 sanction (minor breach of the Code of Conduct), a level 2 sanction (moderate breach of the Code of Conduct), a level 3 sanction (serious breach of the Code of Conduct) and a level 4 sanction (unacceptable breach of the Code of Conduct) levied against them by a disciplinary panel. Approved Inspectors have no right of appeal against a level 1 sanction (minor breach of the Code of Conduct) levied against them by a complaint panel.

15.2 Appeals will be considered in accordance with the *CICAIR Disciplinary Appeals Protocol*.

15.3 There is no right of appeal for the party that raised the complaint against a decision of a CICAIR complaint or disciplinary panel.

16.0 Charging

- 16.1 Where a disciplinary panel decides to dismiss the complaint in full, CICAIR will bear the costs of the hearing.
- 16.2 Where a disciplinary panel decides to uphold any part of the complaint, the Approved Inspector will be liable for the full costs of the hearing. Costs are payable within 14 days of the invoice for payment being received by the Approved Inspector.