

RULES OF THE PROFESSIONAL CONDUCT COMMITTEE

1. INTRODUCTION

- 1.1 The Professional Conduct Committee (the "Committee") is established pursuant to section 23 of the Building Control Act 2007 (the "Act"). Any person may complain to the Committee concerning an action of a Quantity Surveyor or a Building Surveyor ("Registered Surveyor") which is alleged to amount to professional misconduct or poor professional performance.
- 1.2 Section 61 (3) of the Act entitles the Registration Body (being the Society of Chartered Surveyors in Ireland) (the "SCSI"), to make rules for facilitating and carrying out its functions and the functions of the other boards and committees provided for under the Act. This document contains the rules for the time being for the Committee. If there is a conflict between these rules and the provisions of the Act, the provisions of the Act shall take precedence.

2 MEMBERSHIP & GENERAL

- 2.1 The Committee comprises a Chairperson and 11 ordinary members, 5 of whom are nominated for appointment by the SCSI, and 5 of whom are not Registered Surveyors and are nominated for appointment by the Minister for Housing, Planning, Community and Local Government. The remaining member is also not a Registered Surveyor and is nominated for appointment by the Minister for Housing, Planning and Local Government with the consent of, the Minister for Business, Enterprise and Innovation. The Chairperson of the Committee shall be a solicitor, a barrister or a former judge of the Circuit Court, High Court or Supreme Court and is appointed by the Minister with the consent of the Minister for Business, Enterprise and Innovation.
- 2.2 The term of office of members of the Committee shall be for a period of 3 years unless the member dies or resigns in writing during that time. A member shall not serve for more than two consecutive terms of office. Where a member sooner dies or resigns, a casual vacancy arises which may be filled in accordance with section 70(4) (b) of the Act.
- 2.3 Meetings of the Committee will be held in private unless the Chairperson directs otherwise and only in exceptional circumstances.
- 2.4 Proceedings of or communications to or by the Committee in the course of an inquiry, and reports of the Committee made in the exercise or performance of its powers, duties or functions, under Part 6 of the Act, shall in any action for defamation, be absolutely privileged.
- 2.5 Any member of the Committee who is a party to a complaint shall take no part in any Committee proceedings related to that complaint.
- 2.6 It shall be compulsory for all members of the Committee to declare any conflicts of interest in relation to all complaints before the Committee. The Chairperson of the Committee will consider any such conflict and make a decision as to the member's future involvement in any particular matter in which there is a conflict.
- 2.7 Members of the Committee shall keep confidential to themselves those matters arising in consideration of a complaint, save for those matters that are in the public domain or are otherwise disclosed to them. Members of the Committee are not permitted to disclose or discuss any matters relating to a complaint with any members of the public or media or any other parties, save to staff of the SCSI or any professional advisors to the Board or in the context of court proceedings concerning a decision of the Committee.
- 2.8 Neither the Committee nor the SCSI shall be liable for costs incurred by any party to the complaint in taking legal or other advice on the complaint, or availing of legal or other representation or the costs of any witness engaged by the parties in respect of the complaint.
- 2.9 The Committee has no authority or jurisdiction to award costs. Any party to a complaint is responsible for his / her costs.

- 2.10 All complaints should be made in writing, signed by the party making the complaint (the "Complainant") and submitted to the Director of Regulation within the SCSl. In so far as it is possible, complaints should be submitted to the SCSl on the SCSl's prescribed complaint form.
- 2.11 The Registered Surveyor shall be provided with a complete copy of the complaint made against him or her and invited to make a written response in relation to same within 21 working days of the date of the correspondence sending him or her the complaint or such other period as may be prescribed by the Committee.
- 2.12 The Complainant may then be sent the Registered Surveyor's response for further consideration and if the Complainant sends into the SCSl a further submission, that submission may be sent to the Registered Surveyor for his or her consideration with a request to receive a written response within 21 working days of the date of the correspondence, or such other period as may be prescribed by the Committee.
- 2.13 The Committee may perform its functions whether or not there is a vacancy in its membership and none of its proceedings are invalidated by any defect in the appointment of a member to it.

3 INVESTIGATION STAGE

- 3.1 The quorum for the Committee is 6, the majority of which shall be persons who are not Registered Surveyors. There may be reckoned for the purposes of that majority the Chairperson of the Committee if he or she is present at the meeting.
- 3.1 The meetings of the Committee shall be in private.
- 3.2 The Committee will consider the complaint and supporting documentation together with the Registered Surveyor's responses and supporting documentation and any further response from the Complainant or the Registered Surveyor pursuant to the exchange at 2.11 or 2.12 above.
- 3.3 The Committee will consider whether it is their opinion that a prima facie case has been established for an inquiry with respect to the complaint. In forming an opinion as to whether a prima facie case exists or not, the Committee shall consider the alleged facts giving rise to the complaint and form an opinion as to whether a prima facie case has been established that would warrant the complaint proceeding further.
- 3.4 Where the Committee is of the opinion that a prima facie case has not been established, it shall so inform the Complainant in writing and shall not proceed any further. The Registered Surveyor shall be notified of this opinion. No appeal shall lie from this decision.
- 3.5 Where the Committee considers that there is a prima facie case, the Committee may, where it considers it appropriate to do so, request the Complainant and the Registered Surveyor who is the subject of the complaint, to seek resolution of the complaint by mediation before a person(s) appointed on foot of rules established by the SCSl. If the Complainant and the Registered Surveyor consent to such mediation being conducted such mediation shall be conducted accordingly.
- 3.6 Where mediation resolves the complaint, the Committee shall consider the complaint to be resolved and have no further involvement in the matter.
- 3.7 Where the Committee considers that there is a prima facie case and does not consider that it is appropriate to request the Complainant and the Registered Surveyor to seek resolution of the complaint by mediation or where mediation does not result in the resolution of the complaint, the Committee will then consider whether an inquiry should be held.
- 3.8 Having decided to hold an inquiry, the Committee shall record its decision that there is a prima facie case to hold an inquiry and that mediation was not appropriate in the circumstances or that mediation did not resolve the complaint.

4 INQUIRY STAGE

- 4.1 The meetings of the Committee shall be in private unless in exceptional circumstances where the Chairperson of the Committee has ruled otherwise.
- 4.2 The proceedings will be recorded by such means as the Chairperson may determine.
- 4.3 The Committee has the powers, rights and privileges vested in the High Court or a Judge thereof in hearing an action for the purposes of:-
- (a) enforcing the attendance of witnesses and examining them on oath or otherwise; and
 - (b) compelling the production of documents and a summons signed by the Chairperson shall be sufficient validation of same.
- 4.4 Where a person summoned by the Chairperson to attend before a hearing of the Committee or to produce a document-
- (a) makes a default in attending,
 - (b) fails or refuses to produce a document that is within that person's power to produce, or
 - (c) refuses to take an oath or refuses to answer a question which the Committee may lawfully ask that person shall be guilty of an offence under section 57 (7) of the Act and shall be liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.
- 4.5 A witness at a hearing has the same immunities and privileges as if he or she were a witness before the High Court.
- 4.6 The Chairperson will not consider any requests for adjournments of the Committee at inquiry stage, save where such requests are made in writing at the first available opportunity and save in exceptional circumstances, no later than 2 weeks prior to the date of the inquiry. Where applications for adjournments are made on medical grounds, the application must be supported by a medical certificate and/or medical report outlining the reasons why an adjournment is necessary.
- 4.7 Any request by the Complainant to withdraw the Complaint must be made in writing, the receipt of such a request shall not prejudice the right of the Registrar to make a complaint in his or her own right on foot of any information which comes to the Registrar's attention.
- 4.8 Where it has decided that a prima facie case has been established and that an inquiry should be held with respect to the Complaint, the Chairperson shall notify the other members of the Committee, the Complainant and the Registered Surveyor of the following:-
- (i) The date
 - (ii) The time
 - (iii) The place for the hearing
- 4.9 The Notice of Inquiry sent to the Registered Surveyor shall be sent by prepaid registered post to the address recorded in the Register for the Registered Surveyor. The Notice of Inquiry shall contain details of the nature of the alleged complaint against the Registered Surveyor and shall inform the Registered Surveyor of his or her right to appear before the Committee and to be represented by a person of his or her choice.
- 4.10 Within 14 working days, or such other agreed extended time, of receipt of the Notice of Inquiry referred to above, the Registered Surveyor is requested to give to the Registrar, written notice of whether he or she intends to appear at the hearing and if he or she is to be legally represented, the name and address of his or her legal representative.

- 4.11 If the Registered Surveyor fails to appear in person or by his or her legal representative at a hearing or adjourned hearing concerning the allegations outlined in the notice of inquiry, the Committee, may, if satisfied that the Registered Surveyor has been given adequate opportunity to appear before the Committee to argue his or her case and has provided no sufficient reason for the non-attendance, hear the case in the Registered Surveyor's absence.
- 4.12 The Committee may require that a legal assessor be present for any meeting or hearing.

5 THE REGISTRAR

- 5.1 The evidence against the Registered Surveyor will be presented by the Registrar or by a representative (which could include a legal representative) on behalf of the Registrar.
- 5.2 The Registrar does not act for or represent the Complainant in the inquiry.
- 5.3 The Registrar shall be entitled to call an expert witness or witnesses to give evidence to the Committee.

6 THE INQUIRY

- 6.1 At the inquiry stage, the Committee will deal with any preliminary issues and or applications from any party. The Registered Surveyor will indicate to the Committee whether he or she is defending the allegations, the subject matter of the Complaint or not.
- 6.2 The inquiry shall begin by the Registrar's legal representative outlining the case against the Registered Surveyor and calling any witnesses in person, including any expert witnesses and producing any other evidence.
- 6.3 The Registered Surveyor or his or her legal representatives shall then be entitled to call witnesses, including any expert witnesses and adduce any other evidence.
- 6.4 At the conclusion of the evidence both the legal representative for the Registrar and the Registered Surveyor or his or her legal representative shall be entitled to address the Committee and make submissions.
- 6.5 Any witness giving evidence to the Committee may be examined by the party who called them or their representative, and cross-examined by the other party and their representative.
- 6.6 The Committee shall thereupon complete the inquiry, after conclusion of the hearing, and shall in due course prepare a report in accordance with section 57 (10) of the Act.
- 6.7 The Committee shall produce a report in writing embodying its findings including:
- (d) the nature of the complaint,
 - (e) the evidence before it,
 - (f) such other matters relating to the Registered Surveyor as it thinks fit, and
 - (g) its opinion as to whether professional misconduct or poor professional performance was established and
 - (h) the reasons for its decision.
- 6.8 The findings of the Committee shall not be made public without the consent of the Registered Surveyor unless the Committee finds the Registered Surveyor guilty of professional misconduct or poor professional performance.

- 6.9 Where the Committee finds that the Registered Surveyor is not guilty of professional misconduct or poor professional performance, the Committee shall take no further action in the matter and shall notify the Registered Surveyor of same. The Committee shall inform the Complainant of his or her right of appeal to the Appeals Board against its findings.
- 6.10 Where the Committee determines that the Registered Surveyor is guilty of professional misconduct or poor professional performance, the Registered Surveyor or his/her legal representatives may apply to the Committee to request to be allowed to make oral or written submissions to the Committee on sanction prior to any decision being made on sanction by the Committee.
- 6.11 Where the Committee determines that an Registered Surveyor is guilty of professional misconduct or poor professional performance, it may do one or more of the following:-
- (i) Advise, admonish, or censure the Registered Surveyor in relation to the conduct or performance of;
 - (j) Impose on the Registered Surveyor a fine of a specified amount and failing payment by him or her of the fine to the SCSl within two months of his or her being notified of its imposition the Registrar may erase the Registered Surveyor's name from the Register;
 - (k) Direct that during a specified period, registration of the Registered Surveyor's name shall not have effect;
 - (l) Erase the Registered Surveyor's name from the Register;
 - (m) Direct that the Registered Surveyor's name remain on the Register but impose such conditions for the name remaining on the Register as the Committee considers appropriate, to be complied with by the Registered Surveyor.
- 6.12 The Chairperson of the Committee shall forthwith notify the Registered Surveyor of its decision by prepaid registered post to be sent to the Registered Surveyor's address as given on the Register, of the Committee's decision, the date thereof and the reasons therefor and of the Registered Surveyor's right to appeal to the Appeals Board against the decision.
- 6.13 When the Registered Surveyor, Complainant and Registrar receive written notification of the findings of the Committee, the Committee shall, with that notification, inform the parties of the right to appeal its decision to the Appeals Board within 3 months of the date of such decision. In the event of any such appeal, the decision of the Committee is stayed and for any further period provided for a further appeal to the High Court.

7 VARIATION OF THESE RULES

- 7.1 The SCSl at its own initiative and in accordance with its own rules or upon a request from the Committee, and in consultation with it, may vary any or all of these provisions at any time.