

# Procedural rules for dealing with complaints relating to the BCI Code of Conduct

Version 1 – May 2018



## Procedural rules for dealing with complaints relating to the BCI Code of Conduct

These rules have been created to support the implementation of the BCI Code of Conduct and are written in the interests of fairness and transparency. All matters will be treated with sensitivity in relation to the member's wellbeing, whilst reflecting the seriousness of the complaint and upholding the public interest and reputation of the BCI.

### Interpretation

1. In these rules:

'BCI' means The Business Continuity Institute.

'BCI member' means any a person holding a current grade of Student, Affiliate, Partner Affiliate, CBCI, DBCI, AMBCI, MBCI, AFBCI, FBCI or any of the honorary equivalents.

'Appellant' means a person making an application for an appeal to the appeals committee.

'Assessor' means a person, who may be a member of the BCI, but may not be a member of its board, or its professional conduct or appeals committee, who is appointed by the BCI board to advise the executive director, review complaints and exercise summary powers.

'Complainant' means an individual, who may or may not be a member of the BCI, or a corporate body.

'Informant' means an individual, who may or may not be a member of the BCI, or a corporate body, who notifies a possible breach of the code.

'Lay member' means a person, who is not a member of the BCI or an employee of the BCI.

'Legal advisor' means a solicitor or barrister retained to advise the professional conduct or appeals committee on matters of law and procedure under these rules and at hearings.

'Parties' means the BCI and any BCI member (or members) against whom a complaint or allegation of a breach of the code of professional conduct or professional misconduct is being dealt with under these rules.

'Professional Conduct Committee' means the group appointed from time to time to hear a particular case from the professional conduct committee pool.

'Summary powers' means those set out in rule 10 of these rules.

'Voting Member' means a certified member holding one of the following grades – AMBCI, MBCI, Hon MBCI, AFBCI, FBCI, Hon FBCI.

2. In these rules, words in the singular include the plural and vice versa.

### **Terms of reference**

3. The BCI board has delegated responsibility for the application of these rules and the BCI Code of Conduct to the executive director and their development is subject to BCI board approval.

### **Preliminary investigation**

4. On receipt of a written complaint or written allegation of a breach of the BCI Code of Conduct, or professional misconduct, or notification that a member has been convicted, disqualified, dismissed or removed as specified in paragraph 3 of the BCI Code of Conduct, the executive director shall undertake a preliminary assessment, which may include:

- a. a request that the complainant or informant should complete the BCI complaints form;
- b. a request that the complainant or informant should provide additional information or evidence to the BCI to support the complaint or allegation;
- c. informing the BCI member that a complaint or allegation or notification of conviction, disqualification, dismissal or removal has been made and seeking his or her written observations on the matter;
- d. consultation with an appropriately qualified individual not otherwise involved with these procedural rules;
- e. a request to the BCI board to appoint an assessor; and
- f. instructing legal advisors or other persons to carry out investigation or make further inquiries.

5. Where the executive director is satisfied that:

- a. there is insufficient evidence to support allegations of misconduct or regulatory breach (that is to say, where an allegation is not 'well-founded'), or
- b. the allegation does not amount to a breach of the code of professional conduct, or allegation of misconduct, or
- c. the complaint or allegation is 'de minimis' or trivial and it is, in all the circumstances, not in the public interest to pursue the matter, or
- d. the notification of conviction, disqualification, dismissal or removal has been satisfactorily explained and does not merit further action:

he or she may determine that the matter should not be pursued under these rules.

6. Where the executive director is satisfied that the matter is well founded, he or she may ask the assessor to consider the matter with a view to exercising the assessor's summary powers and ask the assessor to consider referring the matter to the professional conduct committee.

7. The executive director may in a case of the conviction, disqualification, dismissal or removal of a BCI member as specified in paragraph 3 of the BCI Code of Conduct direct that the matter be referred to the professional conduct committee.

8. The executive director may, if in receipt of a certificate of a criminal conviction which relates to what in the opinion of the executive director amounts to a serious criminal conviction or is in receipt of credible information which establishes the BCI member has been charged with a serious criminal offence, determine to suspend the member from membership on an interim basis for a period of not more than six months. Upon the happening of such an event the member shall be informed as soon as possible and have a right of appeal, which shall be heard by the professional conduct committee as soon as possible and in any event in not less than 28 days.

#### **Review by the assessor and exercise of summary powers**

9. Where the executive director has determined that the matter should not be pursued the complainant or informant may ask for a review of that decision by the assessor. The assessor may undertake further enquiries as the assessor thinks fit, including taking legal advice or establishing the existence of relevant criminal convictions, disqualification, dismissal or removal.

10. The assessor may:

- a. confirm the decision of the executive director,
- b. refer the matter to the professional conduct committee for hearing, or
- c. determine that the matter is not sufficiently serious to warrant referral to the professional conduct committee but exercise one or more of his or her summary powers, which include:
  - i. sending a letter of advice to the BCI member;
  - ii. issuing a warning to the BCI member as to future professional conduct; and
  - iii. where the facts of the matter are not in dispute, issuing a reprimand to the BCI member, which will be recorded against his or her membership record.

11. The assessor shall cause the parties to be informed of his or her decision, in writing, with reasons, within 28 days of his or her decision being made.

12. The BCI member may request that the matter is heard by the professional conduct committee, rather than be dealt with by the assessor.

#### **The professional conduct committee pool**

13. The professional conduct committee for a hearing shall normally comprise four Voting Members of the BCI and a lay member. A hearing shall proceed with a quorum of two Voting Members and a lay member.

14. For every hearing the Voting Members of the BCI shall be drawn from a pool of board-approved members, none of whom shall be members of the BCI board. The lay member shall also be approved by the board. Prior to the commencement of a hearing all members of the committee shall declare their interests. In the event of an interest being declared then that person shall step down from the hearing committee.

15. The BCI board chair or a BCI board deputy chair shall appoint the chair for a hearing who shall be a Voting Member of the BCI.

#### **Appeal as to interim suspension order**

16. A professional conduct committee shall hear as soon as possible, and in any event in not less than 28 days, any appeal from a member who wishes to appeal an interim suspension order issued by the executive director. The committee shall determine its own procedure for hearing the appeal.

#### **Referral to the professional conduct committee**

17. At least 28 days before the date of the hearing, the company secretary shall notify the BCI member in writing at his or her address as recorded on the membership database:

- a. of the decision of the executive director to refer the matter to the committee and the date and time any hearing will take place;
- b. of his or her right to attend the hearing, with a friend or representative;
- c. of the specific charges to be considered, and disclose the evidence upon which BCI seeks to rely before the committee;
- d. of the powers of the committee;
- e. that the committee may proceed with a hearing in the absence of the member if it is satisfied it is fair and reasonable in all the circumstances to do so; and
- f. send the BCI member a copy of these rules.

18. The company secretary shall also invite the BCI member to disclose any evidence on which that member seeks to rely in defence at least 14 days before the date of the hearing, and ask whether he or she intends to call witnesses in which case to provide details of their names. Any such evidence received in time shall be circulated to the professional conduct committee at least seven days before the date of the hearing. The executive director and the member shall seek to agree a hearing bundle to be placed before the committee.

### **Membership**

19. In the event of a complaint, or notification that a member has been convicted, disqualified, dismissed or removed as specified in paragraph 3 of the BCI Code of Professional Conduct being received, or the executive director issuing an interim suspension order from membership, a member cannot resign until the complaint or notification has been dealt with and, if he or she attempts to do so or fails to renew an expiring membership contract, he or she will be deemed to remain a member until the complaint has been resolved or notification dealt with. As a deemed member/registrant, not only would he or she be subject to enquiry about the complaint but also he or she will be entitled to the continuing benefits of membership/registration. Thereafter a 'deemed member' might be found to be not liable, in which case he or she could then choose whether or not to resign, or if found liable would be penalised as the BCI might decide.

### **The hearing**

20. The hearing shall be recorded and a transcript may be made available to the parties on request.

21. A BCI hearing may be held in private, unless the committee directs that there are circumstances in which, in the interests of justice and a fair hearing, the matter (or part of the matter) should be held in public.

22. The committee may have the assistance of a legal advisor to advise on matters of law and procedure as he or she sees fit. The legal advisor may be present at the hearing, and may advise the committee in private. The legal advisor must take no part in any decision-making process.

23. (i) Where a member against whom an allegation is made does not attend and is not represented at the hearing then the committee shall:

- a. request evidence that the member has received notice of the hearing in accordance with the procedural rules;
- b. enquire whether any reasons for the member's absence have been communicated to the company secretary of the BCI.

(ii) If the committee is satisfied that the member has received notice of the hearing in accordance with the procedural rules then it must with care and caution exercise its discretion in deciding whether to proceed in the member's absence.

24. The committee may admit any evidence, where it is fair to do so, which may reasonably be considered to be relevant to the case.

25. The burden of proof in relation to the factual allegations rests with the BCI and the standard of proof is that applicable to civil proceedings, namely the balance of probabilities.

26. Where the committee is satisfied that it is right in all the circumstances to do so, it may determine that the charges are not well founded, and determine that there is no case to answer.

27. The chair of the professional conduct committee shall read out the charges against the BCI member and ask whether the member has admitted or denied the charges, either in writing or in person, if attending.

28. Where the BCI member has been the subject of proceedings by a court or another professional or regulatory body then any facts determined by that court or professional or regulatory body shall be accepted as proof of those facts, unless the professional conduct committee determines otherwise. In the event of such a determination the professional conduct committee will record their reasons for their decision.

29. Where the member has admitted the charges, the committee shall declare that the facts of the allegation have been proved. Where the member admits only some of the charges the committee will note this and proceed with the hearing in respect of the remaining charges in accordance with the following procedures.

30. A representative for BCI, which may include a legal representative, will set out a summary of the evidence supporting the charges. The BCI representative may call witnesses as to facts.

31. The BCI member or his or her representative shall present the member's defence and the committee shall consider any written defence representations received. The BCI member may call witnesses as to facts.

32. Each party, if present, has the right to make final submissions to the committee on the evidence concerning the charges.

33. During the hearing the committee may ask questions or make enquiries of the parties, or witnesses.

34. The committee will then consider whether it finds the charges proved, retiring to deliberate in private as necessary.

35. The committee shall inform the parties of its decision on the charges, with written reasons within 14 days of the hearing.
36. Where the committee has determined that the facts have been proved, or where the BCI member has admitted some or all of the facts, the chair shall:
- a. ask the BCI to disclose any previous conduct record against the BCI member;
  - b. ask whether the member has provided, or wishes to provide, any additional mitigation including the calling of any witness evidence as to mitigation; and
  - c. invite both parties to make final submissions as to sanction.
37. The committee will then consider the exercise of its powers, which includes:
- a. permitting membership to continue, subject to special stated conditions (e.g. completing further training or periods of mentoring etc.);
  - b. issuing a formal warning as to future conduct;
  - c. issuing a reprimand;
  - d. suspension from membership for a specified period not exceeding three years;
  - e. removal from membership; and
  - f. publication of the sanction on the BCI website.
38. The committee may exercise one or more of the powers in rule 36.
39. The committee may retire to deliberate in private on the exercise of its powers as necessary.
40. The committee shall give written reasons as to its decision and as to the exercise of its powers.

### **Adjournments**

41. The committee or its chair may adjourn the hearing at any stage. Notification of the date of resumption of the hearing must be made to the BCI member in writing 21 days before the date of the resumed hearing.

### **Directions**

42. In order to ensure the smooth running and fairness of professional conduct proceedings and the hearing, the committee may give such directions as it thinks fit, after taking advice from the legal advisor where it thinks it appropriate. The committee may delegate this power to its chair.



## Costs

43. All parties to an investigation and hearing shall bear their own costs.

## Hearing outcome and appeal

44. The BCI shall inform the BCI member and the complainant/informant of the professional conduct committee's decisions, in writing and with written reasons, within 14 days of the end of the hearing and notify the parties of their right to appeal to the appeals committee within 28 days of the date of the notification.

45. If no request for an appeal is made, the BCI shall action the decision of the committee, including publication as directed.

## Appeals

46. Where the professional conduct committee finds the charge proved:

- a. the BCI member and/or the complainant/informant may appeal to the appeals committee against the finding or the outcome and sanction, or both, within 28 days after the professional conduct committee's outcome and decision was sent to them; and
- b. the executive director may, if it appears to him or her that a penalty imposed by the professional conduct committee in respect of the member has been unduly lenient, within the period of 28 days starting with the day after the hearing, refer the case to an appeals committee.

## Notification of appeal

47. An appeal shall only be accepted by the BCI if it:

- a. is in writing to the company secretary; and
- b. specifies the grounds relied on in support of the appeal or review.

48. An appellant may withdraw his or her notice of appeal at any stage.

## The appeals committee

49. The committee for a hearing shall normally comprise four full members of the BCI and a lay member, none of whom shall have been involved in the investigation or hearing of the original case. A hearing shall proceed with a quorum of two full members and a lay member.

50. For every hearing the Voting Members of the BCI shall be drawn from a pool of board-approved members, none of whom shall be members of the BCI board. The lay member shall also be approved by

the board. Prior to the commencement of a hearing all members of the committee shall declare their interests.

51. The BCI board chair or a BCI board deputy chair shall appoint the chair for a hearing who shall be a voting member of BCI.

52. The appeals committee shall review the decision of the professional conduct committee in the light of:

- a. the evidence presented to that committee;
- b. any representations made before that committee; and
- c. the appellant's grounds of appeal.

53. The appeals committee shall conduct any hearing in accordance with the procedure set out at rules 57 to 62 and shall consider its decision at the conclusion of the hearing and after having heard the appellant's case.

54. The appeals committee's decision shall be:

- a. announced;
- b. confirmed by letter sent to the BCI member; and
- c. supported by written reasons.

55. An appeals committee may at its discretion adjourn any hearing.

56. Where a case has been referred to an appeals committee it may affirm or vary the professional conduct committee's finding and may, in addition:

- a. vary any sanction or outcome imposed by the professional conduct committee to one of greater or lesser severity;
- b. determine that the case be reheard by the professional conduct committee and give directions for such a hearing.

### **The appeal hearing**

57. The appeals committee may hear and consider any preliminary legal arguments and any advice from a legal advisor, if present. The appeals committee shall not hear oral evidence or receive documentation not seen by the professional conduct committee, unless in exceptional cases the appeals committee

determines otherwise. The appeals committee shall sit in private session unless the appeals committee determines otherwise.

58. The chair or the appellant, if present, shall outline the decision which is the subject of the appeal and direct the appeals committee to any relevant evidence including transcripts of any hearing.

59. If present, the appellant may address the appeals committee on his or her grounds for appeal.

60. The appeals committee may allow either party, if present, an opportunity to make a closing address.

61. The appeals committee may then retire to make its decision in relation to the appeal and before doing so may seek legal advice from its legal advisor if present. If the legal advisor retires with the appeals committee then he or she shall take no part in the decision making process.

62. The chair shall announce the appeals committee's decision and reasons.

#### **Notification of the appeals committee's decision**

63. The appeals committee shall notify the parties of its decision and reasons in writing, within 28 days of the date on which its decision was made.

#### **Voting**

64. In reaching a decision both the professional conduct committee and the appeals committee may decide a matter by a simple majority.

#### **Guidance**

65. From time to time the BCI board may issue explanatory leaflets or guidance, supplementary to these rules, on its investigation and professional conduct processes.

#### **Records management**

66. Records, data, evidence and manuscripts relating to cases that are resolved by the executive director after preliminary investigation, or by the assessor, will be held for three years from the date of resolution and then destroyed.

67. Records, data, evidence and manuscripts relating to cases that are referred to the professional conduct and appeals committees will be held for six years from the date of the final hearing and then destroyed.

68. The Executive Director will inform the BCI board of all complaints and outcomes.

## Complaints

To register a complaint, please visit <https://www.thebci.org/about-bci/governance.html> where you will be able to download the complaint form.



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