



## Disciplinary Rules - 2023

Subject to legal privilege and confidential.

### 1. Definitions and interpretation

1.1. The following defined terms are used throughout the Disciplinary Rules:

<b>Appeals Tribunal</b>	Means the panel formed by the CEO in accordance with Bye-Law 14.1 (5) and Rule 9 below to consider appeals from the Disciplinary Tribunal. For the avoidance of doubt, Appeals Tribunal members shall not also be members of either: (i) the Peer Review Panel; (ii) the Disciplinary Tribunal or (iii) the Professional Conduct Committee;
<b>Applicant</b>	means either: (i) a Member applying for renewal of their membership; or (ii) a prospective Member applying to join Ciarb;
<b>Board</b>	means the Board of Trustees established pursuant to Article 8 and Bye-law 2;
<b><u>Bye-law(s)</u></b>	means the Bye-laws of Ciarb made pursuant to Article 6(18);
<b><u>Charter/Royal Charter</u></b>	means Ciarb's instrument of incorporation, most recently amended by approval of HM the King in Privy Council, which confers independent legal personality on Ciarb and defines its objectives, constitution, and powers to govern its own affairs;
<b>Chief Executive Officer/CEO</b>	means the senior executive officer, previously referred to as the Director General of Ciarb, being the person so appointed to exercise the delegated duties and responsibilities on behalf of the Board;
<b>Ciarb/the Charity/Institute</b>	means the Chartered institute of Arbitrators, incorporated by Royal Charter, and registered with the Charity Commission with number 803725 and established under Royal Charter dated 6 February 1979, as amended;

<b><u>Code of Professional and Ethical Conduct for Members</u></b>	means the Code of Professional and Ethical Conduct (October 2009) as amended from time to time, as adopted pursuant to the Bye-laws and published on the website of the Institute that Members must adhere to, and which governs their conduct;
<b>Complaint</b>	means: (i) a complaint made about a Member; or (ii) information obtained about a Member, of whatever nature, which alleges or may amount to Misconduct or a breach of Ciarb's Membership Terms and Conditions;
<b>Complainant</b>	means a third party (including but not limited to a member of the public, client or other party where the Respondent has been acting as a Practitioner) who has made a complaint about a Member;
<b>Conflict of Interests Policy</b>	means the policy set out in the Governance Manual, which provides guidance on identifying conflicts of interest and sets out Ciarb's policy on managing conflicts of interests;
<b>Disciplinary Rules</b>	means these rules which set out the process and procedures for the purpose of investigating and if necessary, sanctioning a Respondent for Misconduct or a breach of the Membership Terms and Conditions, as established by the Board of Trustees pursuant to Bye-Law 14.1 and Regulation 17.
<b>Disciplinary Tribunal</b>	means the tribunal established pursuant to Bye-Law 14.1 (4) and Rule 6. For the avoidance of doubt, Disciplinary Tribunal members shall not also be members of either: (i) the Peer Review Panel; (ii) the Appeals Tribunal or (iii) the Professional Conduct Committee;
<b>Executive</b>	means staff of Ciarb;
<b>Fellow Status</b>	means that class of Voting Membership between Associate Status and Member Status, as set out in Bye-law 8.7;
<b>General Counsel</b>	means Ciarb's chief legal officer;
<b>Governance Manual</b>	means the manual which includes governance policies of Ciarb, as made from time to time by the Board;

<b>Lay-member</b>	means a lay person who is not a Member and who sits in disciplinary proceedings, as provided in Bye-law 14.1(3), (4) and (5);
<b>Member(s)</b>	means current member(s) of Ciarb;
<b><u>Membership Terms and Conditions</u></b>	means the terms and conditions on which Ciarb offers membership to its Members from time to time;
<b>Misconduct</b>	<p>means one or more of the following (or such other definition as set out in the Bye-Laws or Regulations of Ciarb from time to time:</p> <p>conduct which is or could prove to be injurious to the good name of the Institute, or is likely to bring the Institute into disrepute, which renders a person unfit to be a Member of the Institute;</p> <p>(1) a breach of professional or ethical conduct which shall include the Code of Professional and Ethical Conduct or other similar document published from time to time by the Institute;</p> <p>(2) falling below the standards expected of a reasonably competent Practitioner or a reasonably competent professional person acting in the field of private dispute resolution;</p> <p>(3) a failure without reasonable excuse to comply with a direction and/or a recommendation of a Peer Review Panel constituted under Bye-law 14.1; a significant breach of any of the Articles of the Charter or of the Bye-laws (or any Regulation or rule published thereunder from time to time).</p>
<b>Notice of Appeal</b>	means a notice served on the CEO to appeal against the decision of the Disciplinary Tribunal in accordance with Rule 9;
<b>Ordinary Privileges of Membership</b>	means the benefits as provided for at Bye-law 8.11 and as referred to in Regulation 23 (Voting Members) and published on Ciarb's website from time to time;
<b><u>Membership Terms and Conditions</u></b>	means the terms and conditions on which Ciarb offers membership to its Members from time to time;
<b>Peer Review Panel</b>	means such panels established pursuant to as Bye-Law 14(6), Regulation 18 (Peer Review Panel), and Rule 5 below. For the avoidance of

doubt, Peer Review Panel members shall not also be members of either: (i) the Professional Conduct Committee; (ii) the Disciplinary Tribunal or (iii) the Appeals Tribunal;

**Practitioner**

means any individual who practices as a private dispute resolver (for example including as an arbitrator, adjudicator, or mediator);

**Presenter**

means the person appointed to present the case against a particular Member before the Disciplinary Tribunal;

**Professional Conduct Committee**

means the committee established by the Board to consider any allegation of misconduct by a Respondent in accordance with Article 5.1(6), Bye-law 14, Regulations 10 (The Duties and Powers of the Board), Regulation 17 (Professional Conduct Committee) and Rule 6 below. For the avoidance of doubt, Professional Conduct Committee members shall not also be members of either: (i) the Peer Review Panel; (ii) the Disciplinary Tribunal or (iii) the Appeals Tribunal;

**Regulations**

mean the Regulations of Ciarb made from time to time by the Board in accordance with Article 8.4 of the Royal Charter;

**Respondent**

means a Member of Ciarb who is subject to a Complaint ;

**Serious/Seriousness**

means Misconduct or breach(es) of the Membership Terms and Conditions which the Professional Conduct Committee determines may be serious enough (considering Rule 6.11 below), to warrant permanent expulsion by the Disciplinary Tribunal; and

**Trustee(s)**

means member(s) of the Board, established pursuant to Article 8 and Bye-law 2 who are charity trustees under the Charities Act 2011, as amended.

- 1.2. These definitions should be read in conjunction with the Royal Charter and Bye-laws.

- 1.3. These Disciplinary Rules have been established by the Board of Trustees on the recommendation of the Professional Conduct Committee. Minor amendments to the Disciplinary Rules, for example including but not limited to, changes to departmental or other names, contact details or typographical errors, may be approved by the Chief Executive Officer in writing and shall be included in the agenda for the next Professional Conduct Committee meeting and Board meeting to be minuted.

## **2. Scope and Authority**

- 2.1. Article 5.1 (6) of the Royal Charter and Bye-law 14 (Supervision and Discipline) grants Ciarb powers to initiate and maintain an independent and impartial system of disciplinary proceedings for dealing with complaints and information against any Member including Practitioners. Ciarb only has the jurisdiction to consider complaints about its Members.
- 2.2. We recognise that many of our Members are also professionals who are members of or regulated by other bodies (for example, solicitors in England and Wales are regulated by the SRA and barristers by the Bar Standards Board).
- 2.3. A Respondent may not resign their membership when we are looking into alleged or actual Misconduct, until the Investigation or review and any ensuing disciplinary proceedings have been completed (except with the express consent in writing of the Board of Trustees) and any resignation tendered during this period shall be of no effect until either:
  - 2.3.1. 28 days after the date of the letter dismissing the complaint where the matter is dismissed under Rule 4.2 at initial assessment stage (provided always that no appeal was received in accordance with Rule 4.2 below); or
  - 2.3.2. the PCC dismisses the complaint under Rule 6.2; or
  - 2.3.3. the PCC issues a sanction under Rules 6.7.1 – 6.7.6; or
  - 2.3.4. the Disciplinary Tribunal either finds no case to answer or issues its sanction in accordance with 7.4 (and no appeal has been received in accordance with Rule 9.6); or
  - 2.3.5. the Appeals Tribunal either refuses permission to appeal or decides an appeal in accordance with Rule 9.
- 2.4. These rules govern investigation of Members through any of the following:
  - 2.4.1. Alleged Misconduct by a Respondent; or
  - 2.4.2. suspected breach by a Respondent of Ciarb's Membership Terms and Conditions.
- 2.5. Ciarb may learn about alleged Misconduct or a suspected a breach by a Member of Ciarb's Membership Terms and Conditions, in a number of ways, including:

- 2.5.1. a Member's self-disclosure;
  - 2.5.2. information in the public domain (for example, public records or the press);
  - 2.5.3. Complaints from third parties (including but not limited to complaints from the public, clients or other parties where the Respondent has been acting as a Practitioner);
  - 2.5.4. civil court or tribunal judgments;
  - 2.5.5. criminal convictions;
  - 2.5.6. information or outcomes from regulators, other membership organisations, professional bodies, appointing authorities or nominating bodies;
  - 2.5.7. information from other professionals;
  - 2.5.8. information from other Members;
  - 2.5.9. information from the Executive; or
  - 2.5.10. other sources of information and evidence.
- 2.6. Where adequate evidence has been provided or is available, the Executive of Ciarb may, at their discretion, consider anonymous complaints.
- 2.7. Where Ciarb become aware of concerns around an Applicant's conduct during a membership application or, membership renewal process, Ciarb may investigate this and the Board of Trustees delegates to the Chief Executive Officer, the power to refuse an application. Should the prospective Member wish to appeal against the Chief Executive Officer's decision to refuse admission, the Professional Conduct Committee shall hear and determine such appeal.

### **3. Time limits**

- 3.1. Subject to Rules 3.2 and 3.3 below, the time limit for Ciarb considering a complaint is 12 months from the latter of either:
- 3.1.1. the date of the alleged Misconduct or breach of the Membership Terms and Conditions;
  - 3.1.2. if the alleged Misconduct or breach comprises of multiple incidents ("continuing act"), the date for this purpose is the date that the last act or omission occurred;

- 3.1.3. the date which Ciarb became aware of the alleged Misconduct or breach of the Membership Terms and Conditions;
- 3.1.4. in the case of a Respondent acting in the capacity of an arbitrator, whichever is the latter of the date that:
- (a) the arbitration was concluded; or
  - (b) the statutory time for challenge to the award has expired; or
  - (c) any application or appeal made against the arbitrator or the award has been determined; or
  - (d) legal remedies against the arbitrator have been exhausted.
- 3.1.5. in the case of a Respondent acting in any capacity other than an arbitrator (for example, as a mediator, adjudicator or otherwise), on the:
- (a) conclusion of the private dispute resolution process; or
  - (b) the termination of the professional appointment.
- 3.1.6. in the case of an investigation by a Respondent's employer, chambers, professional body, regulator, membership organisation, professional body, appointing authority, nominating body and/or other organisation or institute, from the conclusion of that body's determination of the matter.
- 3.2. In the case of a criminal allegation, Ciarb may investigate concerns or complaints about a conviction, police caution, police warning or penalty notice for as long as they are considered 'unspent' under applicable laws.
- 3.3. In exceptional circumstances Ciarb may extend the said time limits set out above. It is for the Professional Conduct Committee or Board of Trustees (with advice from the General Counsel), to consider whether there are exceptional circumstances. In deciding whether there are 'exceptional circumstances', the following are non- exhaustive examples of issues that may be taken into account:
- 3.3.1. the severity of the alleged Misconduct or breach of the Membership Terms and Conditions;
  - 3.3.2. whether there has been delay because of action or inaction on the part of the Respondent; and/or
  - 3.3.3. whether there were good reasons for a delay (for example, in the case of a Complaint from an individual, because of their health or personal difficulties or otherwise).

#### **4. Initial Assessment**

- 4.1. The Board of Trustees delegate to the Executive, the power to conduct an initial

assessment to determine:

- 4.1.1. Whether there is potential Misconduct and/or a breach of our Membership Terms and Conditions by a Respondent;
  - 4.1.2. whether the matter is in time, and if the matter may be out of time, whether there are exceptional circumstances that should be taken into account; and
  - 4.1.3. whether the alleged Misconduct or breach, is capable of proof.
- 4.2. The Board of Trustees delegate to the Executive, the power to refuse to consider an allegation, in the event that:
- 4.2.1. Ciarb has no jurisdiction to consider it because, for example, the subject of the Complaint is not a Member of Ciarb;
  - 4.2.2. the allegation is totally without merit; or
  - 4.2.3. the allegation is clearly vexatious, spurious, or malicious.
- Should a Complainant wish to appeal against the Executive's decision to refuse a complaint under this Rule 4.2, it must do so within 28 days of the date of the refusal letter. In such cases, the Professional Conduct Committee shall hear and determine such appeal.
- 4.3. As soon as reasonably practicable after receiving the Complaint or information about the Respondent, the Executive, shall invite the Respondent to submit within twenty- eight days a response outlining:
- 4.3.1. whether they dispute the alleged Misconduct or breach of the Membership Terms and Conditions, and if so, the grounds on which they dispute the allegation(s);
  - 4.3.2. supporting evidence; and
  - 4.3.3. if they admit to Misconduct or a breach of the Membership Terms and Conditions, any extenuating circumstances.
- 4.4. Ciarb's correspondence to the Respondent should clearly set out:
- 4.4.1. Sufficient details of the allegation to enable the Respondent to respond to the case against them;
  - 4.4.2. copies of redacted or unredacted evidence where this is possible, taking into account duties of confidentiality, data protection and privacy that may be owed to others);
  - 4.4.3. that Ciarb may need to share the Respondent's statement or information supplied with the Complainant, people that Ciarb thinks can help with the investigation (for example, someone with specialist knowledge or our professional advisors), the Professional Conduct Committee, Peer Review Panel, Disciplinary Tribunal, Appeals Tribunal, and others who are investigating and deciding the matter, other



professional or regulatory bodies or law enforcement agencies; and  
4.4.4. a notice that whilst the matter is under investigation, the Respondent is precluded from resigning their membership.

- 4.5. If a Respondent alerts the Executive that they need further time to respond (for example, if there are extenuating personal circumstances or ill health), the Executive may at their absolute discretion grant an extension of time. In the absence of a reply from the Respondent, or if the Respondent fails to respond in the time frame provided, the Executive may convene a Peer Review Panel, without further reference to the Respondent.
- 4.6. If the Respondent reverts and the Executive thinks further information or evidence is needed, they may request this information or evidence as part of the initial assessment and then provide further opportunities to the Respondent to reply, if the Executive considers it necessary.
- 4.7. In some circumstances, for example where the allegations are serious, it may be necessary to suspend the Respondent or put some or all of their Ordinary Privileges of Membership on hold during this process. This can be done at any stage of the process but should be considered by the Executive at the initial assessment stage. If the Executive considers it necessary to suspend a Respondent, they shall refer the matter to the Professional Conduct Committee for decision. For the avoidance of doubt, the Board shall also have the power to suspend a Respondent under this clause 4.7. Where a Respondent is suspended or has some or all of their Ordinary Privileges of Membership put on hold, this will be for no longer than is necessary to investigate and determine any allegations of Misconduct or breach of Membership Terms and Conditions. Suspension of this kind is not a disciplinary penalty and does not imply that any decision has already been made about the allegations.

## **5. Investigation and Classification – Peer Review Panel**

- 5.1. Once the Executive has conducted an initial assessment, the CEO will appoint a Peer Review Panel. The powers and functions of the Peer Review Panel are to: review evidence; establish facts; and prepare a report. Their role is not to reach an outcome decision or recommend sanctions but to report on the facts and classify the matter as either:
  - A. Category A: The Peer Review Panel is of the opinion that, from the material available, the allegation is insignificant and/or does not disclose prima facie evidence of Misconduct or a breach of the Membership Terms and Conditions; or
  - B. Category B: The Peer Review Panel is of the opinion that, from the material available, the allegation is significant and/or discloses prima facie evidence of Misconduct or a breach of the Membership Terms and Conditions.
- 5.2. If the Respondent resides outside the United Kingdom, the CEO shall ensure that the composition of the Peer Review Panel comprises one Member who

resides in that Respondent's region and, if there is a Complainant and they reside in a region other than the United Kingdom or the region of the Respondent, one Member of Ciarb who resides in the Complainant's region. Before being appointed to a Peer Review Panel, individuals must make declarations of interest in line with Ciarb's Conflicts of Interest Policy to ensure they are independent of the Respondent and Complainant. This should help to ensure that the matter is investigated free of bias and influence. No confidential information or information disclosing personal data should be shared with any Peer Review Panel member before they have been conflict checked.

- 5.3. When the Peer Review Panel are investigating alleged Misconduct or a breach of the Membership Terms and Conditions, it will take account of any criminal proceedings, investigations by third parties (including but not limited to regulators) or civil claims that are ongoing with the same or similar facts, and will be careful not to prejudice those proceedings.
- 5.4. The Peer Review Panel shall investigate the case in the first place and will need to plan the scope and terms of the investigation. This may include defining the scope, purpose, and objectives of the investigation. In particular, they will think about:
  - 5.4.1. the scope of any international angle, as this will impact significantly on the investigative process;
  - 5.4.2. keeping the scope of the investigation proportionate to the issues and value;
  - 5.4.3. the objectives and relevant policies;
  - 5.4.4. inter-dependencies such as if there are ongoing criminal investigations (in such case, the internal investigation may need to be suspended);
  - 5.4.5. steps to be undertaken as part of the investigative process and proposed timeline.
- 5.5. Sometimes, the process of investigation will uncover new issues that mean the Peer Review Panel needs to review the scope and purpose of the investigation. It is important to make sure that the plan remains fit for purpose as the investigation evolves, and to take legal advice throughout.
- 5.6. The giving of oral evidence and examination of witnesses should be exceptional and should be reserved for situations where, for example, the Complainant or Respondent need to give oral evidence by way of a reasonable adjustment instead of making written submissions.
- 5.7. The Peer Review Panel shall provide a provisional copy of their report (without the categorisation decision) to the Respondent to check for factual accuracy. The Respondent shall have 14 days (or such other reasonable period as determined by the Peer Review Panel from time to time) to read the draft report and to let the Peer Review Panel know if there are any factual mistakes in it.

- 5.8. The Peer Review Panel will prepare a final written report which classifies the complaint into one of two categories:
- A. Category A: The Peer Review Panel is of the opinion that, from the material available, the allegation is insignificant and/or does not disclose prima facie evidence of Misconduct or a breach of the Membership Terms and Condition; or
  - B. Category B: The Peer Review Panel is of the opinion that, from the material available, the allegation is significant and/or discloses prima facie evidence of misconduct or a breach of the Membership Terms and Conditions.

## **6. Professional Conduct Committee**

- 6.1. The Peer Review Panel will submit its written report to the Professional Conduct Committee.
- 6.2. If the Peer Review Panel classified the complaint as falling within Category A, the Professional Conduct Committee should dismiss the matter, unless they consider that the decision was incorrect in law or in fact or further investigation is required.
- 6.3. If the Peer Review Panel classified the Complaint as falling within Category B, the Executive shall write to the Respondent on behalf of the Professional Conduct Committee, to confirm the outcome of the investigation and invite them to an interview (to be held via videoconference), with the Professional Conduct Committee (or a sub-committee thereof). The invitation letter should set out sufficient information about the allegations and their possible consequences which should enable the Respondent to understand the case against them and prepare their case. Copies of any documents or evidence on which the Professional Conduct Committee intends to rely at the interview should be provided to the Respondent. The Respondent may be accompanied at the interview by a companion whose role shall be limited to putting the Respondent's case, summing up, and responding on the Respondent's behalf to any view expressed at the interview and conferring with the Respondent during the interview. The Respondent should also be asked if there are any additional documents or witness statement they would like to rely on and in such case, should be asked to provide these in advance of the interview.
- 6.4. If the Respondent or their companion cannot attend the interview, the Professional Conduct Committee (or a sub-committee thereof) will attempt to arrange an alternative time for the interview to take place. If the Respondent fails to attend without good reason or is persistently unable to do so (for example, for health reasons), the Professional Conduct Committee (or a sub-committee thereof) may have to take a decision based on the available evidence including any written representations that the Respondent may have made. In such case, the Respondent should be given 28 days to make further written representations before any decision is reached.
- 6.5. At any interview the Professional Conduct Committee (or sub-committee thereof) shall consider any further evidence, background, context, or

additional information from the Respondent. The Respondent should be given a reasonable opportunity (with the help of their companion) to present their version of events and produce relevant evidence in support, including witness statements. Once the Respondent has presented their side of the case, and there are no further questions, the interview should generally be adjourned before a decision is reached. The Professional Conduct Committee will then reconvene the meeting to confirm whether it upholds the allegations against the Respondent.

6.6. If the Professional Conduct Committee (or a sub-committee thereof) upholds the allegations against the Respondent, they should also consider the sanction (in accordance with its powers under Rule 6.7 below. In sanctioning the Respondent, the Professional Conduct Committee should invite representations from the Respondent, for its consideration, on any of the following (if applicable):

6.6.1. the Respondent's view(s) of the Misconduct or breach of the Membership Terms and Conditions, including but not limited to any expressions of apology, regret, or remorse;

6.6.2. the Respondent's conduct record, including whether there is a suggestion that this shows a repetition or a pattern of Misconduct and/or breaches of the Membership Terms and Conditions;

6.6.3. any mitigating personal circumstances;

6.6.4. how co-operative the Respondent has been during the investigation process and any remedial action they have taken since the event(s).

6.7. The Professional Conduct Committee (or a sub-committee thereof) may issue any of following sanctions:

6.7.1. Closer monitoring of the Respondent through regular reporting;

6.7.2. that the Respondent takes certain steps (for example undergoing supervision or re-training or receive other assistance from Ciarb or elsewhere in order to improve the Respondent's work, competence and conduct so as to conform with the expected professional standards);

6.7.3. in the case of a Respondent having Chartered Status or Fellow Status, to withdraw or downgrade that status without limit of time or for a specific period;

6.7.4. restrict or prevent the involvement of the Respondent in certain activities related to Ciarb (for example, sitting on a branch or other committee or panel of Ciarb);

6.7.5. restrict or prevent the Respondent's Ordinary Privileges of Membership;

- 6.7.6. suspend the Respondent from membership of Ciarb for a period not exceeding twelve months (during which time they shall not be entitled to the Ordinary Privileges of Membership including but not limited to using post nominals and appearing on Ciarb's directory of Members);
  - 6.7.7. after considering all of the extenuating circumstances, use its discretion to recommend to the Board of Trustees, that Ciarb should enter into a compromise agreement with the Respondent. The decision to enter into a compromise agreement is a matter reserved to the Board of Trustees.
- 6.8. If applicable and appropriate, the Professional Conduct Committee will:
- 6.8.1. Specify time limits in which the Respondent must comply with the sanction(s) imposed; and/or
  - 6.8.2. Refer the Respondent back to the Peer Review Panel so that the Peer Review Panel can monitor the Respondent's compliance with the sanction(s).
- 6.9. To the extent that the Professional Conduct Committee imposes time limits and/or monitoring set out at 6.8 above, the Peer Review Panel must report back to the Professional Conduct Committee, with:
- 6.9.1. updates on the level of co-operation received from the Respondent;
  - 6.9.2. updates on compliance with the timelines (and an outline of any mitigating circumstances if the timeline is not met);
  - 6.9.3. a follow-up report to ascertain whether the Respondent has complied with sanction and/or directions; and
  - 6.9.4. in the event of alleged non-compliance, to express an opinion as to whether the same should be treated as Misconduct in and of itself.
- 6.10. If the Peer Review Panel classified the complaint as falling within Category B and Professional Conduct Committee on the facts of a case, are of the opinion that the sanctioning powers set out at 6.3 above, are insufficient given the Seriousness of the Misconduct or breach(es) of Membership Terms and Conditions, then they should either:
- (a) decline jurisdiction and refer the matter to the Disciplinary Tribunal; or
  - (b) after considering all of the extenuating circumstances, use its discretion to recommend to the Board of Trustees, that Ciarb should enter into a compromise agreement with the Respondent. The decision to enter into a compromise is a matter reserved to the Board of Trustees.
- 6.11. For the avoidance of doubt, permanent expulsion from Ciarb shall be a matter reserved to the Disciplinary Tribunal and/or Appeals Tribunal. For the purpose of clause 6.10 and this clause 6.11., Seriousness can be a serious incident either in isolation or because it represents persistent Misconduct or breach(es). It is for the Professional Conduct Committee to consider, on the facts, what amounts to a Serious incident. As a guide, this could include incidents:

- 6.11.1. That are clearly willful or show a deliberate or reckless disregard; and/or
  - 6.11.2. Where the Respondent is subject to criminal investigation which could or has resulted in criminal convictions or caution (save for the lesser serious crimes such as actions that result in fixed penalty notices, or minor motoring offences); and/or
  - 6.11.3. which call the Respondent's integrity and/or honesty into question or demonstrate a potential abuse of trust.
- 6.12. To the extent that the issue under investigation is subject to another live investigation (for example, criminal proceedings or an investigation by a third party such as a professional body, institute, or regulator), the investigation may be put on hold until the criminal proceedings or live investigation have concluded. However, if they believe it reasonable to do so, the Peer Review Panel may still carry out their own investigation and the Professional Conduct Committee may still issue sanctions. If the Peer Review Panel does continue with its own investigation, they should be careful not to prejudice the criminal proceedings or other investigation. A Respondent may also be less likely to cooperate if they believe it could harm their defence to the criminal proceedings. While taking this into account, the Peer Review Panel should investigate the matter as thoroughly as is reasonable and, if required, make a recommendation based on the facts available to them at that time.

## **7. The Disciplinary Tribunal**

- 7.1. To the extent that the Professional Conduct Committee has referred the case to the Disciplinary Tribunal to hear and determine any Serious charge against a Respondent of Ciarb, the CEO shall appoint:
- 7.1.1. a Presenter who shall have the conduct of the case on behalf of Ciarb and who will present the case against the Respondent at the hearing before the Disciplinary Tribunal; and
  - 7.1.2. an odd number of persons, comprising no fewer than three to sit on the Disciplinary Tribunal, comprising:
    - (a) a chair who must be either a person who holds or has held judicial office under the Crown, or the equivalent in other jurisdictions, or be a qualified lawyer with a minimum of 10 years post qualification experience and who is ideally still a practising lawyer;
    - (b) a Lay-member; and
    - (c) a Member of Ciarb who is experienced in the field of private dispute resolution practiced by the Respondent and, where applicable, the field that is the subject of the Complaint. .
- 7.2. If the Respondent resides outside the United Kingdom, the CEO shall try to ensure that, if possible, the composition of the Disciplinary Tribunal comprises one Member who resides in that Respondent's region. Before appointing a

Disciplinary Tribunal or sharing any information with them, all members of the Disciplinary Tribunal must be conflict checked to ensure they are independent of the Respondent, the Complainant, and matter being investigated, and free of bias and influence.

- 7.3. In determining the charge against the Respondent, the Disciplinary Tribunal shall operate the civil burden of proof, namely, the balance of probabilities.
- 7.4. If the Disciplinary Tribunal finds that the charge is proved, it may decide to impose one or more of the following sanctions:
  - 7.4.1. any of the sanctions set out at 6.7 above; or
  - 7.4.2. suspension for a period longer than 12 months; or
  - 7.4.3. permanent expulsion from Ciarb; or
  - 7.4.4. after considering all of the extenuating circumstances, use its discretion to recommend to the Board of Trustees, that Ciarb should enter into a compromise agreement with the Respondent. The decision to enter into a compromise agreement is a matter reserved to the Board of Trustees.
- 7.5. Each party to the Disciplinary Tribunal shall bear its own costs, fees, charges, disbursements, or expenses incurred for the purpose of, or in connection with the Disciplinary Tribunal.

## **8. The Procedure before the Disciplinary Tribunal**

- 8.1. The Disciplinary Tribunal shall give such directions concerning the conduct of the case before it as are consistent with the rules of natural justice and the effective disposal of the proceedings.
- 8.2. The Respondent may be represented by a lawyer, or another advisor of their choice.
- 8.3. The Disciplinary Tribunal have power, at any stage of the proceedings, on its own initiative or upon the application of a party, order that:
  - 8.3.1. all or part of the case be heard in private; and/or
  - 8.3.2. the identities of specified parties, witnesses or other persons referred to in the proceedings should not be disclosed to the public.
- 8.4. After the conclusion of the hearing, the Disciplinary Tribunal shall give a reasoned decision in writing, normally within two months.
- 8.5. In imposing any sanction under 7.4 above, the Disciplinary Tribunal shall be entitled to take into account any previous finding of Misconduct or breach(es) of the Membership Terms and Conditions by the Respondent.
- 8.6. If at any stage of the proceedings before the conclusion of the hearing, the disciplinary proceedings are compromised, such compromise shall have no effect unless or until the Professional Conduct Committee and the Disciplinary Tribunal has ratified the same, and the Respondent expressly agrees that the

compromise shall not affect Ciarb's ability to publish the disciplinary proceedings and/or their outcome.

- 8.7. The Presenter and the members of the Disciplinary Tribunal shall be entitled to receive such remuneration and expenses as may be approved by the CEO.

## **9. The Appeals Tribunal**

- 9.1. The Appeals Tribunal shall hear and determine any appeal from the Disciplinary Tribunal. The CEO shall appoint an Appeals Tribunal upon receipt of a Notice of Appeal which meets the requirements set out at 9.6 below.

- 9.2. An appeal shall be heard, considered and decided upon by an independent Appeals Tribunal. The members of an Appeals Tribunal shall have no commercial or (in so far as it is possible) personal connection to the subject of the appeal in question. The Appeals Tribunal shall consist of three persons comprising:

- (a) a chair who must be either a person who holds or has held judicial office under the Crown, or the equivalent in other jurisdictions, or be a qualified lawyer with a minimum of 10 years post qualification experience and who is ideally still a practising lawyer;
- (b) a Lay-member; and
- (c) a Member of Ciarb who is experienced in the field of private dispute resolution practiced by the Respondent and, where applicable, the field that is the subject of the Complaint. .

- 9.3. Upon hearing the appeal, the Appeals Tribunal may:

- 9.3.1. allow the appeal; or
- 9.3.2. dismiss the appeal; or
- 9.3.3. vary the sanction or the order which the Disciplinary Tribunal made at first instance; or
- 9.3.4. remit the matter to the Disciplinary Tribunal for a re-hearing; or
- 9.3.5. make no order on the appeal.

- 9.4. The members of the Appeals Tribunal shall be entitled to receive such remuneration and expenses as may be approved by the CEO.

- 9.5. Either Ciarb, or the Respondent, as the case may be, shall be entitled to seek permission to appeal the decision of the Disciplinary Tribunal.

- 9.6. The appellant shall serve on the CEO a Notice of Appeal within twenty-eight days of the date on which the decision of the Disciplinary Tribunal was communicated to them in writing. The Notice of Appeal should set out with sufficient particulars the grounds of the appeal, and set out their grounds of appeal, which must be on one or more of the following grounds:



- (ii) state why the Disciplinary Tribunal was wrong on the law or on the facts;
- (iii) that the decision was not reached in accordance with the principles of natural justice; and/or
- (iv) new evidence has become available, and such evidence could not, in the reasonable opinion of Ciarb, have been provided at the time the decision was made.

- 9.7. The Appeals Tribunal shall give permission to appeal if it is of the opinion that the appeal has a reasonable prospect of success.
- 9.8. If the Appeals Tribunal refuses permission to appeal, its reasons will be notified in writing to the appellant, normally within two months. The decision of the Appeals Tribunal shall be final and binding on the appellant.
- 9.9. If the Appeals Tribunal gives permission to appeal, it will at the same time give directions to the Presenter and to the appellant concerning the conduct of the appeal and the hearing of the appeal.
- 9.10. The appellant may be represented by a lawyer, or another advisor of their choice but such cost shall be borne by the appellant respectively.
- 9.11. For the avoidance of doubt, it is declared that there shall be no rights of appeal from the decision of the Appeals Tribunal.