

INCOSE UK Disciplinary and Appeals Procedure

Introduction

An essential function of a professional institution is self-regulation: the setting and regulation by members of appropriate standards of professional competence.

Therefore INCOSE UK has put in place a Code of Conduct¹ which lays out an expected standard for all INCOSE UK members. This document outlines the disciplinary and appeals procedure in support of that Code of Conduct.

This disciplinary and appeals procedure adheres to the principles laid down by the Engineering Council [1].

Procedure

Raising a complaint

The INCOSE UK Code of Conduct [1] clearly sets out the expectations in respect of professional competence and behaviour and is communicated and demonstrably accepted by members as part of joining INCOSE UK or upon renewal of existing membership.

Any legitimate complaint against a member must be framed as an alleged breach of a provision of the code and submitted to the head of the INCOSE UK Secretariat who will log the complaint before it is processed. Complaints must be raised in writing and must be attributable.

Preliminary Investigation

Once a complaint has been received a Preliminary Investigation will decide whether or not there is a case to answer. The Preliminary Investigation will be assigned to a member of the INCOSE UK Council by the President².

The investigation will first determine whether or not there is a case to answer; that is the alleged misconduct would, if admitted or proved, lie within the ambit, or jurisdiction, of the Disciplinary Panel. If so, evidence should be assembled to assess the validity of the complaint. The subject of the complaint will be informed and kept informed of developments; evidence submitted by the complainant will be disclosed to the subject and vice versa.

¹ All references to the 'Code of Conduct' or 'Code' in this document refer to the INCOSE UK Code of Conduct made up of the INCOSE Code of Conduct and the INCOSE UK Addendum.

² Note that in the case of the complaint being against the President, the responsibility will pass to the President Elect.

No Case to Answer	This will result in the dismissal of the complaint. The subject and the complainant shall be informed of the reason for the decision (lack of jurisdiction or insufficiency of evidence). Records of the complaint, including the evidence, will not be maintained beyond the time limit for any appeal by the complainant against the decision.
--------------------------	---

A Case to Answer	This will result in a referral to a Disciplinary Panel. The 'case to answer' will be framed in detailed and particular terms, clearly related to the Code of Professional Conduct, such that the subject can understand the allegation against him or her.
-------------------------	--

The Preliminary Investigation should determine whether any criminal or civil court proceedings related to the alleged misconduct are likely or under way. If so, then the disciplinary hearing may not proceed until court proceedings, including any appeal, are complete, since the court proceedings might otherwise be prejudiced. Where the subject has been convicted of a criminal offence or found liable in a civil court, the disciplinary hearing must separately determine whether the subject's conduct (including, but not limited to, that proven in court) amounts to a breach of the code of conduct. An adverse court verdict should not in itself form the basis of a complaint.

Disciplinary Hearing

The disciplinary process involves the collection, examination and clarification of evidence. Prejudicial material that is irrelevant to the 'case to answer' should not be presented to the Panel.

The complainant and the subject should have timely access to evidence and responses.

The disciplinary hearing will be conducted by a panel of not fewer than three senior and experienced members. The Panel acts as impartial assessors of the complaint. They also decide sanctions from a list prescribed in Regulations and advise the UK Council of their finding.

The Chairman of the Disciplinary Panel shall report directly to the UK Council.

Panel members shall be independent. A person who has participated in a Preliminary Investigation may not act as a member of the Panel for the same case. In serious cases, consideration should be given to inviting a legal adviser to attend to advise the parties on the legal process but not to vote on the decision.

Where the allegation relates to matter of a specialised nature the Panel should consider engaging an independent expert witness. The Panel may make a decision after examining the evidence or, in more serious or complex cases, organise an extended hearing to which all parties are invited.

Parties involved are entitled to invite to the hearing either:

- A lawyer, whom they may pay to represent them, including to speak on their behalf; or
- A non-lawyer "McKenzie Friend", who may support, quietly advise and take notes for them but may not speak on their behalf.

Either party should be required to give reasonable advance notice if they intend to be legally represented, so that the other party can arrange legal representation if considered necessary.

Consideration should be given to adjourning the hearing if the subject is unable to be present or represented as it is in the interests of all parties that they attend wherever possible to present their cases. Even if the subject fails to appear on the day, a brief adjournment should be considered to allow enquiries to be made.

The hearings should be conducted with transparent fairness. They comprise a statement by the investigator (or his representative) of the complaint and evidence to support it (with any cross-examination of witnesses) followed by a rebuttal (by the subject or his representative) with evidence (which is also open to cross-examination). Additionally, evidence may include written statements, at the Panel's discretion. Neither party should be 'ambushed' with new evidence which has not been disclosed in advance.

A complainant may be invited or permitted to attend the proceedings (accompanied if desired by a 'friend') and may be called as a witness, but has no automatic right of audience.

An INCOSE UK member who resigns after a complaint has been made, or whose membership would be terminated for non-payment of subscriptions, will be deemed to remain in membership until the disciplinary process has reached its decision. If this decision is that the person be expelled from membership, his or her deemed membership will allow that to be effected and shown on the record should he ever seek to re-join the same or another Institution.

Standard of Proof

As membership of INCOSE UK is entirely voluntary, and therefore no breach of the Code of Conduct can be serious enough to cause loss of livelihood of the member, the test of 'balance of probability' will be used when judging evidence.

Sanctions

If the complaint is admitted or upheld, the Panel determines which section of the Bylaws, Regulations or Code of Professional Conduct has been breached, hears any mitigation and decides the sanction. Sanctions may include:

- Exclusion from membership of the INCOSE UK Chapter, with a recommendation to INCOSE central for full withdrawal of membership
- Exclusion from acting as an UKAB Member Organisation's representative
- Exclusion from INCOSE UK Events
- Suspension of membership or membership privileges (not including access to facilities for maintenance of CPD)
- Reprimand accompanied by advice on future actions.

Right of Appeal

The right of appeal is available to the complainant for the period of 30 days following notification of the outcome of the Preliminary Investigation.

The right of appeal is available to the subject for the period of 30 days following notification of the outcome of the Disciplinary Hearing.

The appeal process consists of two parts: leave (permission) to appeal and, if granted, hearing by an Appeal Panel. The Appeal will be considered by persons who have had no contact with the case beforehand. INCOSE UK may decide to have a legal advisor in attendance for either or both parts of the process.

Leave (Permission) to appeal is not granted automatically and one or more specific grounds should be identified. The normally recognised grounds for appeal are:

- **Jurisdiction:** whether the alleged misconduct would be within the scope of the provisions of the Bylaws or the code of conduct
- **Procedure** was not followed
- **Perversity:** the decision was perverse in the light of the evidence
- **New evidence** which could not reasonably have been produced at the original hearing
- **Proportionality:** the sanction imposed as an outcome of the Disciplinary Hearing was disproportionate to the gravity of the breach

The argument under each ground must stand on its own. Leave to appeal may be granted on two or even more grounds, but will not be granted in response to an accumulation of individually insufficient arguments under two or more grounds.

An appeal against 'no case to answer' will be considered by one person independent of INCOSE UK, usually an alternative INCOSE Chapter. In these circumstances only, leave to appeal and the appeal itself may be considered as a single process and be conducted by the same person. If there are valid grounds for appeal he should review the material presented to the Preliminary Investigation, the record of its decision and any additional evidence admitted.

If the independent reviewer decides that there is a 'case to answer' the Institution should refer the case to a Disciplinary Panel.

Leave to appeal against a Disciplinary Panel decision should be considered by a panel of three INCOSE UK members. If leave to appeal is granted the Institution will with minimum delay convene an Appeal Panel comprising at least three senior persons including one lay person independent of the INCOSE UK. It should be as independent of INCOSE UK Council as is practical. The appeal hearing will follow the same principles as the disciplinary hearing, modified to suit the accepted grounds for appeal; a full re-hearing is not essential in all circumstances.

If the appeal is upheld the Appeal Panel may reverse the decision of the Disciplinary Panel or up-hold its decision, but reduce the sanction.

Appeal to the Engineering Council

Appeal to the Engineering Council is only available if a member, in losing his or her membership as a result of disciplinary action by the Institution, also loses his or her registration and INCOSE UK's appeals process has been exhausted. This appeal is carried out under the relevant Engineering

INCOSEUK_DA_Procedure_1.0

Approved by the INCOSE UK Council on 14th December 2017

Council Regulation. Complaints not amounting to an appeal to the Engineering Council in respect of other matters may result in the Engineering Council discussing the case with INCOSE UK only to confirm that the procedure approved as part of the licensing process had been followed.

Records of Proceedings

An impartial record will be made of every Preliminary Investigation and of each hearing within the disciplinary and appeals process. The record should comprise:

- A copy of all written evidence submitted
- A summary of the oral evidence in support of the alleged breach and in rebuttal or mitigation, including any salient points elicited in cross-examination
- A summary of the Panel's reasons for its decision.

Summaries will be in a form similar to minutes of a meeting: they will not be verbatim records but should contain sufficient detail for a reviewer to understand the issues and to be able to judge whether the proceedings had been fairly and properly conducted. Summaries of hearings may not be written by a person who has played any other part in any stage of the proceedings, and must be approved by the panel chairman.

The summary of the Panel's reasons for its decision should be disclosed to both parties with the notification of the decision. Any further disclosure, for example in the event of an appeal, should be made equally (in both timing and content) to both parties.

Where a complaint has been upheld, INCOSE UK will maintain the records of written evidence and summaries for a period of six years following completion of a case (or expiry of any period of notice to appeal).

Where there was no case to answer, the evidence will not be kept beyond the expiry of any notice to appeal.

Publication of Outcome

INCOSE UK Council will be notified of the progress and outcome of a disciplinary case; however it will not be invited to ratify the finding and sanction, since it has not heard the evidence.

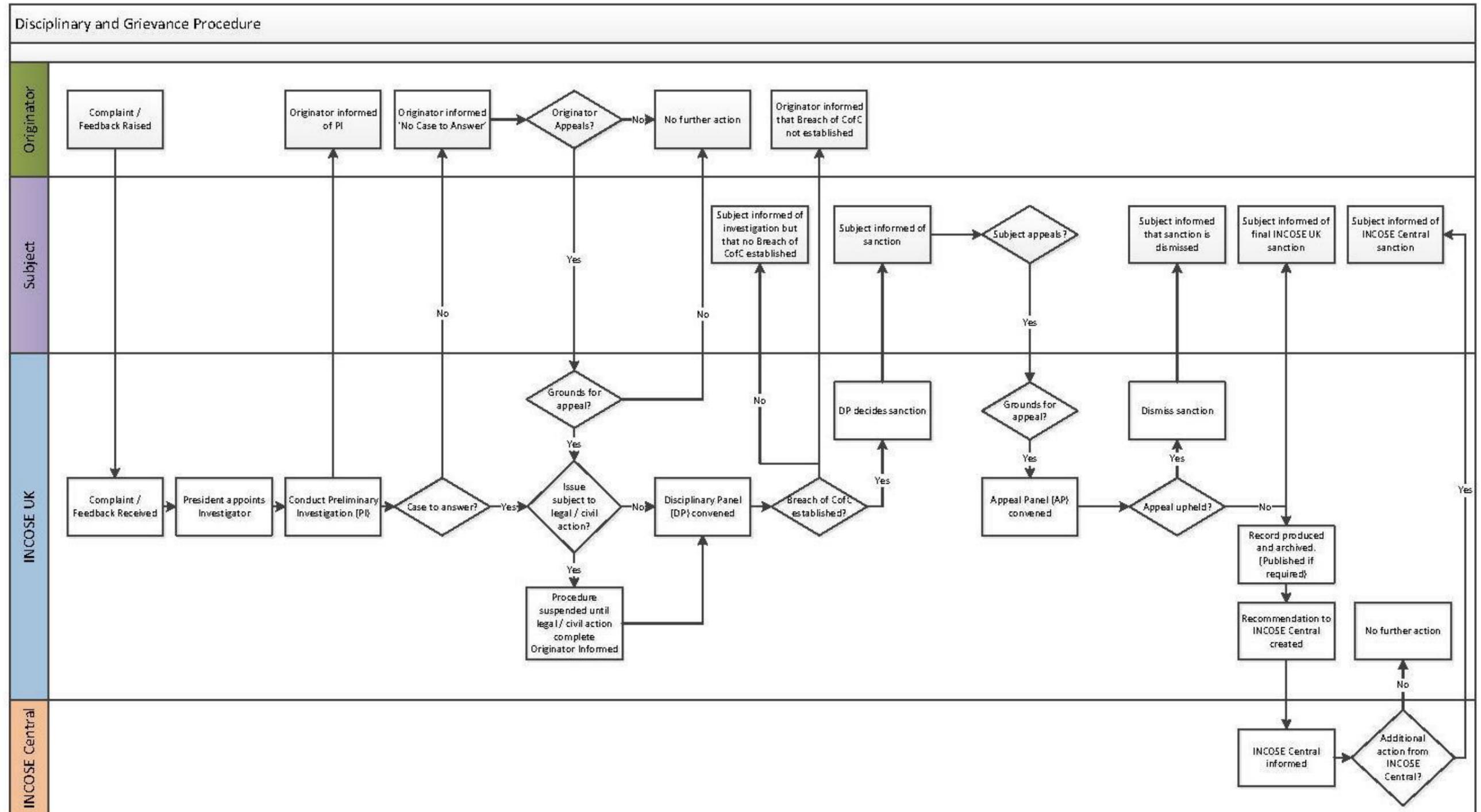
If INCOSE UK Council chooses to discuss a case, any person who is or has been involved in the process should absent themselves.

INCOSE UK reserved the right to publish details of established breaches of the Code of Professional Conduct. This might in fairness extend to publishing, at the request of the subject, notification that a complaint has not been upheld. In the case of an Professional Registrant, the Engineering Council will be informed. In the case of an ASEP / CSEP, INCOSE Central will be informed. Any additional action which the Engineering Council or INCOSE Central may choose is not within the remit of INCOSE UK and is therefore outside the scope of this procedure.



INCOSE UK is required to inform the Engineering Council of any expulsion, whether or not the individual is registered by the Institution.

Flowchart



References

1. Engineering Council Disciplinary Procedure Guidance
2. INCOSE Code of Conduct including the INCOSE UK Addendum.