

Procedure

Code of Conduct For Members

Purpose

1. This document sets out the procedure that will be followed when a complaint is made that a Member has breached the Code of Conduct (“the Code”).
2. Its purpose is to:
 - provide a mechanism for Members and staff to complain that a Member has breached the Code;
 - ensure that all allegations received are properly investigated and a decision taken in good time as to whether the complaint, in whole or part, should be upheld or rejected;
 - ensure that, where allegations are upheld, appropriate corrective action is taken to rectify the breach and to help prevent recurrence.
3. The procedures set out herein apply when another Member or a member of staff wish to make a complaint as to a Member’s behaviour. External complaints will be addressed in accordance with the Tribunal’s External Complaints Procedure. The Code of Conduct will apply to consideration of a complaint made under the External Complaints Procedure.

Applicability

4. All Members are bound by the Code. Allegations under this procedure must be made no more than three months after the alleged breach of the Code and should be made as soon as possible after the alleged breach has occurred.

Procedure for alleging that a Member has breached the Code

5. If a Member considers that another Member has breached the Code they should bring the alleged breach to the attention of the President.
6. If a Member considers that the President has breached the Code they should bring the alleged breach to the attention of either the Solicitor or Lay Vice-President.
7. All references to the President below should be substituted with the words Vice President if the Member alleged to have breached the Code is the President.
8. If a member of staff considers that a Member has breached the Code they should bring the alleged breach to the attention of the Clerk. If the Clerk considers, either of the Clerk’s own volition or following a member of staff raising an issue, that a Member

has breached the Code the Clerk will formally report the alleged breach to the President.

9. All allegations received under this procedure will be recorded in a Register maintained by the Clerk and/or the Head of HR and Office Administration. The outcome of the complaint will also be recorded.

Preliminary Consideration

10. On receipt of an allegation of a breach of the Code by the Member, the President must, having sought such clarification as s/he thinks necessary, inform the Member in writing of the details of the allegation and invite him/her to submit written comments within 14 days, or such other period as may be specified. The President must also inform the Clerk of the complaint that has been made.
11. Following consideration within 28 days of the Member's written comments, if the President is satisfied, on the basis of all the information available to him/her, that the complaint is unfounded, no further action will be taken. The President must inform the Member, the Clerk and the person who made the allegation of his/her decision with brief reasons.
12. Within 28 days if the President is satisfied, on the basis of all the information available to him/her that a breach of the Code may have occurred, s/he must immediately write to the Member concerned:
 - stating that the allegation will be investigated;
 - setting a date for the individual to meet the President (preferably within 14 days from receipt of the letter); and
 - informing the Member of his/her entitlement to be accompanied at that meeting.

Meeting with the President

13. The President will meet the Member concerned to discuss the allegation made. The President will then decide the appropriate course of action to be taken. The Head of HR and Office Administration will attend the meeting to make a record of the discussion and not as a participant.
14. The President may:
 - determine that no breach of the Code has occurred and that no further action is required;

- determine that no breach of the Code has occurred but provide informal advice to the Member as to his/her future conduct;
 - determine that no breach of the Code has occurred but that the Member's behaviour falls short of accepted standards and provide advice as to his/her future conduct;
 - direct further investigation of the allegation;
 - conclude that a breach of the Code has occurred and provide formal advice to the Member as to his/her future conduct;
 - conclude that a breach of the Code has occurred and direct the Member to take specified action to rectify his/her conduct including, but not limited to, issuing an apology or attending relevant training;
 - conclude that a breach of the Code has occurred and warn the Member as to his/her future conduct;
 - conclude that a breach of the Code has occurred and reprimand the Member;
 - conclude that a breach of the Code has occurred and determine that the Member will not be permitted to sit on hearings until the breach is rectified and/or for a specified period;
 - conclude that a breach of the Code has occurred which is sufficiently serious to justify referral of the matter to the Master of the Rolls with a recommendation that the Member's term of appointment should be ended, or that reappointment should be refused;
 - implement more than one of the outcomes above.
15. The Standard of Proof applied under this procedure will be the Standard of Proof applied by the Tribunal to proceedings before it.
16. The President must inform the Member, the person who made the allegation, and the Clerk of his/her decision. The outcome should be confirmed to the Member in writing if it is first communicated orally.

Further Investigation

17. If the President directs further investigation, the Clerk shall investigate and report his/her findings to the Member concerned and invite his/her comments within

28 days. As part of that investigation the Clerk may seek any further evidence and interview any person s/he considers necessary.

18. At the conclusion of the investigation the Clerk shall submit a report to the President, including any comments made by the Member. The President may:
 - determine that no breach of the Code has occurred and that no further action is required;
 - determine that no breach of the Code has occurred but provide informal advice to the Member as to his/her future conduct;
 - determine that no breach of the Code has occurred but that the Member's behaviour falls short of accepted standards and provide advice as to his/her future conduct;
 - conclude that a breach of the Code has occurred and direct the Member to take specified action to rectify his/her conduct including, but not limited to, issuing an apology or attending relevant training;
 - conclude that a breach of the Code has occurred and provide formal advice to the Member as to his/her future conduct;
 - conclude that a breach of the Code has occurred and warn the Member as to his/her future conduct;
 - conclude that a breach of the Code has occurred and reprimand the Member;
 - conclude that a breach of the Code has occurred which is sufficiently serious to justify referral of the matter to the Master of the Rolls with a recommendation that the Member's term of appointment should be ended, or that reappointment should be refused;
 - implement more than one of the outcomes above.
19. The President must inform the Member, the person who made the allegation, and the Clerk of his/her decision. The outcome should be confirmed to the Member in writing if it is first communicated orally.

Sanction

20. Where it has been found that a breach of the Code has occurred the range of sanctions available to the President are any one or more of the following:

- direct the Member to take specified action to rectify his/her conduct including, but not limited to, issuing an apology or attending relevant training;
- provide formal advice to the Member as to his/her future conduct;
- warn the Member as to his/her future conduct;
- reprimand the Member;
- determine that the Member will not be permitted to sit on hearings until the breach is rectified and/or for a specified period;
- refer the matter to the Master of the Rolls with a recommendation that the Member's term of appointment should be ended, or that reappointment should be refused;
- implement more than one of the outcomes above.

21. Should a Member be found to have breached paragraph 29 of the Code which states that:

“In Court Members must seek to be courteous, patient, tolerant, and punctual and to respect the dignity of all. Members must not display bias or prejudice. Members must respect the rights and worth of every person and treat everyone equally whilst ensuring that the proceedings are fair, orderly, and efficient.”

the matter will in all cases be referred to the Master of the Rolls for consideration given the importance of Members ensuring that they demonstrate these particular behaviours. The Member will not be permitted to sit on hearings whilst the Master of the Rolls is considering the allegation.

22. In case of serious breach or failure by the Member to take action to rectify his or her conduct the President may refer the matter to the Master of the Rolls and/or recommend that the Member not be reappointed at the expiration of their term. Whether such action will be taken will depend on factors such as the seriousness of the conduct in question, whether there is a pattern of such conduct, the intent of the Member concerned and the effect upon the Tribunal or others of the conduct.
23. For the avoidance of doubt, the record of the allegation will be provided to the Master of the Rolls on an application for reappointment in cases falling short of a referral to the Master of the Rolls.

24. Where the matter has been referred to the Master of the Rolls for consideration the Master of the Rolls may ultimately decide that the breach of the Code was sufficiently serious that the Member should be removed from office.

Appeals Process (for matters not referred to the Master of the Rolls)

25. For all matters determined by the President, which have not been referred to the Master of the Rolls, if either the person who made the allegation or the Member who was the subject of the allegation is not prepared to accept the President's decision that person and/or Member can ask the Board (sitting without the President) to review the decision.
26. In the event that the President has made his/her decision following the meeting with the Member but without asking the Clerk to investigate further, the Board will ask the Clerk to undertake an investigation and prepare a report for the Board's consideration.
27. The Board will review the matter on the papers, including the investigation report prepared by the Clerk and the record of the meeting between the President and the Member. Prior to doing so they will invite the person who made the complaint, the Member subject to the complaint and the President to submit any further written submissions no later than 7 days prior to the Board's review. Subject to the rules of natural justice the Board may regulate its own procedure.
28. The Board may overturn the President's decision, vary or uphold it in respect of whether or not a breach of the Code had occurred. If the Board concludes that there has been a breach of the Code the Board may substitute the sanction imposed by the President with the sanction it considers appropriate.
29. Consideration by the Board marks the end of the Tribunal's process for dealing with alleged breaches of the Code. The person who made the complaint and the Member who was the subject of the complaint shall be bound by the decision of the Board.



Edward Nally
President for and on behalf of the Policy Committee

