



Construction Industry Council Adjudicator Nominating Body Complaints Procedure (January 2017)

1.0 Introduction

- 1.1 The Construction Industry Council (CIC) is the representative forum for the professional bodies, research organisations and specialist business associations in the UK construction industry. Through its collective membership of 500,000 individual professionals and more than 25,000 firms of construction consultants, the CIC has a key role in the industry providing a single voice for professionals in all sectors of the built environment.
- 1.2 The CIC in its role as an Adjudicator Nominating Body maintains a Register of Adjudicators deemed to have the knowledge and skills to act as adjudicators because they have been assessed as suitable to act by a Qualifying ANB. Once an adjudicator has been listed on the Register of Adjudicators, the adjudicator is required to keep up to date on adjudication law, practice and procedure through Continuing Professional Development.
- 1.3 The CIC's ANB Management Board is one of the specialist committees and panels maintained by the CIC, and is independent of the CIC Executive. The ANB Management Board acts as the reference point within CIC for all issues and matters relating to adjudication that affect CIC's members. This includes maintaining the Register of Adjudicators, and making adjudicator nominations when requested to do so.
- 1.4 This Complaints Procedure has been established to regulate the consideration of any complaint made to the CIC concerning the conduct of an adjudication for which it has appointed the adjudicator. The CIC will not consider complaints about or against an adjudicator except in relation to an adjudication for which they were appointed by CIC; nor will it consider complaints where there is ongoing arbitration or litigation in respect of that adjudication until those proceedings have been completed.
- 1.5 The CIC will investigate a complaint about the manner in which an adjudication has been dealt with, as part of its aim to maintain the highest standards of performance from adjudicators included on the Register of Adjudicators. In investigating complaints the CIC is acting in an administrative capacity and not a judicial capacity and therefore it cannot entertain challenges to, or appeals from, the decisions of Adjudicators. The outcome of this Complaints Procedure can never be compensation to the Complainant or amendment of an Adjudicator's decision.

2.0 Definitions

2.1

'Adjudicator'	a person who has been appointed by CIC in its role as an ANB to determine a dispute.
'ANB'	an Adjudicator Nominating Body.
'ANB Management Board'	a specialist committee maintained by the CIC in respect of adjudication matters.
'Admonition'	a warning and advice to an Adjudicator concerning their Improper Conduct and notice that any further finding of Improper Conduct may lead to the imposition of a more severe penalty.
'Appeals Panel'	a panel appointed by the Registrar to consider appeals against a decision of a Disciplinary Panel.
'Chair'	the Chair of the ANB Management Board, unless the complaint is against the Chair of the ANB Management Board, in which case references to 'the Chair' shall be deemed to be references to the Registrar.
'CIC'	the Construction Industry Council.
'Complainant'	the person who or body which submits a complaint to CIC covered by this Complaints Procedure.
'Disciplinary Panel'	a panel appointed by the Registrar to consider an allegation of Improper Conduct referred by an Investigation Panel.
'Improper Conduct'	any act, conduct or omission by the Adjudicator which in the opinion of an Investigation Panel, Disciplinary Panel or Appeals Panel is unfitting in the conduct of an adjudication.
'Investigation Panel'	a panel appointed by the Registrar to consider an allegation of Improper Conduct made to the CIC by a Complainant.
'Mandatory Training Requirement'	a training requirement which in the opinion of an Investigation Panel or Disciplinary Panel the Adjudicator must undertake within a prescribed period of time.

'Protocol'	the document produced by CIC setting out the protocol for a hearing before the Investigation Panel or the Disciplinary Panel.
'Register'	the register of adjudicators maintained by the CIC in its role as an ANB.
'Registrar'	the person appointed by CIC to maintain the Register and arrange the appointment of adjudicators.
'Qualifying ANB'	an ANB, other than CIC, on whose register an Adjudicator is included.
'Reprimand'	a severe reproof of an Adjudicator concerning their Improper Conduct and notice that any further finding of Improper Conduct may lead to the imposition of a more severe penalty.

3.0 General

- 3.1 Failure by the Complainant or the Adjudicator to comply with the time periods for submissions or observations set out in this Complaints Procedure shall entitle the Investigation Panel or the Disciplinary Panel, as the case may be, to either:
- Continue to the next stage of the Complaints Procedure; or
 - At its discretion, extend the time period for the missing submission or observation to be supplied.
- 3.2 The Investigation Panel and the Disciplinary Panel may take into account any information they consider relevant to the complaint. The standard of proof shall be the civil standard and the burden of proof lies on the Adjudicator to demonstrate that there has been no Improper Conduct as alleged in the complaint.
- 3.3 The Investigation Panel, the Disciplinary Panel and the Appeals Panel shall each have collective responsibility for their decisions, which shall be by a simple majority and shall be treated as the decision of all members of the Investigation Panel, Disciplinary Panel or Appeals Panel, as the case may be. Where there is no majority, the Chair of the Investigation Panel, Disciplinary Panel or Appeals Panel, as the case may be, shall have a casting vote. There shall be no recording of any minority view, and the decision shall be presented as the collective view.
- 3.4 Those appointed to the Investigation Panel or the Disciplinary Panel must have no prior connection with the matter or any relevant connection with the persons

concerned but this restriction as to the persons concerned shall not apply to the Investigation Panel and Disciplinary Panel members insofar as the Complainant is the ANB Management Board or the Adjudicator about whom a complaint is made is an ANB Management Board member.

- 3.5 Where the Investigation Panel or the Disciplinary Panel or the Appeals Panel decides to uphold any part of the complaint, the Adjudicator will be liable for the full costs of any hearing. Information on expected hearing costs can be obtained from the Registrar.

4.0 Making a complaint

- 4.1 A Complainant may make a complaint of Improper Conduct against an Adjudicator under this Complaints Procedure by e-mail to 'adjudication@cic.org.uk' or in writing to the Adjudication Registrar, Construction Industry Council ANB, 26 Store Street, London WC1E 7BT, with whom all correspondence shall be conducted.
- 4.2 The Complainant must either have been one of the parties (or a party's representative) in an adjudication where the Adjudicator was nominated by the CIC in its role as an ANB, or the ANB Management Board itself by recorded decision at a Board meeting, after its attention has been brought to alleged Improper Conduct by an Adjudicator in relation to an adjudication. The Complainant must enclose all the information that they wish to rely upon to support an allegation of Improper Conduct against the Adjudicator.
- 4.3 Within five business days of receipt of the complaint the Registrar shall send an acknowledgement to the Complainant and copy the complaint and any supporting documents to the Chair.

5.0 The Investigation Panel

- 5.1 The Chair may at his or her own discretion through the Registrar, request further information from the Complainant about the complaint.
- 5.2 The Chair shall instruct the Registrar to appoint an Investigation Panel of not less than three members of the ANB Management Board to review an allegation of Improper Conduct made by a Complainant. The Investigation Panel shall elect one of its members as Chair of the Investigation Panel. The quorum for all Investigation Panel reviews shall be three members of the ANB Management Board. Reviews may

be conducted using telephone or video or similar conference facilities or by electronic means if the Chair of the Investigation Panel so decides.

- 5.3 If the allegation does not appear to the Investigation Panel to disclose any apparent case of Improper Conduct, the Investigation Panel may dismiss the complaint without the Adjudicator being involved or informed about the allegation. A simple mistake or error of judgment shall not necessarily constitute Improper Conduct.
- 5.4 In all other cases, the Registrar will send the Adjudicator a copy of the allegation, with an invitation to make a written submission within twenty business days. Resignation by the Adjudicator from the Register before or after a complaint has been made to the Registrar shall not prevent the investigation of a complaint.
- 5.5 If the Adjudicator fails to make a submission within twenty business days, the Investigation Panel shall refer the matter to a Disciplinary Panel, unless the Investigation Panel exercises its discretion to extend the twenty business day period.
- 5.6 The Investigation Panel shall review the Adjudicator's submission within fifteen business days of receiving it, and may dismiss the complaint if satisfied that there is no apparent case of Improper Conduct. It may also dismiss the complaint if it considers that the alleged Improper Conduct is of such a nature that no action is required, or that the complaint cannot be pursued for lack of evidence.
- 5.7 Where the complaint is not dismissed, the Investigation Panel will instruct the Registrar to write to the Complainant, enclosing a copy of the Adjudicator's submission, and request observations from the Complainant within twenty business days.
- 5.8 During its investigations, the Investigation Panel may instruct the Registrar to invite the Complainant and/or the Adjudicator to appear before it, on separate occasions, accompanied if they wish by a legal representative, the hearing to be conducted in private. The Adjudicator and Complainant will attend any such hearings at their own cost.
- 5.9 If the Adjudicator or the Complainant as the case may be does not attend at such hearing then, provided that the Investigation Panel is satisfied that the requisite notice was served on the Adjudicator or the Complainant and that there are no reasonable grounds for the failure to attend, the Investigation Panel may continue in such a manner as it considers appropriate
- 5.10 At the conclusion of its review, the Investigation Panel shall have the power to order:-

- dismissal of the complaint;
- an Admonition;
- a Reprimand with or without a Mandatory Training Requirement and a suspension from the Register until the Mandatory Training Requirement has been fulfilled; or
- a referral of the complaint to a Disciplinary Panel.

5.11 The Registrar shall notify the Complainant, the Adjudicator and the Chair of the decision of the Investigation Panel.

5.12 If the Investigation Panel decides to refer a matter to a Disciplinary Panel, the Registrar shall notify the Chair that a Disciplinary Panel is required.

6.0 The Disciplinary Panel

6.1 Within twenty business days of the Investigation Panel's decision that the complaint should be referred to a Disciplinary Panel, the Registrar shall appoint a Disciplinary Panel of not less than three members of the ANB Management Board but no-one on the Investigation Panel shall sit on the Disciplinary Panel in respect of the same complaint. The Disciplinary Panel shall elect one of its members as Chair of the Disciplinary Panel. The quorum for all Disciplinary Panel reviews shall be three members of the Disciplinary Panel. Reviews may be conducted using telephone or video or similar conference facilities or by electronic means if the Chair of the Disciplinary Panel so decides.

6.2 Within twenty business days of receiving the referral from the Investigation Panel, the Disciplinary Panel will instruct the Registrar to write to the Adjudicator asking if the Adjudicator wishes to have the complaint decided solely on the basis of the documents provided to the Investigation Panel, or if the Adjudicator wishes to have a hearing. The Disciplinary Panel shall also be entitled of its own volition to require the Adjudicator to attend a hearing.

6.3 Where either the Adjudicator or the Disciplinary Panel desire a hearing, the Registrar shall write to the Adjudicator providing information on the date and venue of the hearing and the Adjudicator's right to be represented by a solicitor or counsel. The Disciplinary Panel will conduct any hearing in private and Adjudicators attend at their own cost.

- 6.4 If the Adjudicator does not attend at the hearing then, provided that the Disciplinary Panel is satisfied that the requisite notice was served on the Adjudicator and that there are no reasonable grounds for the failure to attend, the Disciplinary Panel may continue in such a manner as it considers appropriate.
- 6.5 The Disciplinary Panel shall make its decision in respect of the complaint on the basis of the evidence supplied by the Investigation Panel, taking into account the oral evidence at the hearing, if any. Such decision shall be made within twenty business days of any hearing date, or of a decision that there shall be no hearing, providing brief reasons. The Registrar shall inform the Chair, the Adjudicator and the Complainant of the Disciplinary Panel's decision.
- 6.6 If a Disciplinary Panel decides that a complaint is not proved, it shall dismiss the complaint. If a Disciplinary Panel decides that a case of Improper Conduct on the part of the Adjudicator is proved it shall have the power to order:-
- the removal of the Adjudicator from the Register on 35 business days' notice;
 - a suspension of the Adjudicator from the Register for any period;
 - an Admonition or Reprimand;
 - a Mandatory Training Requirement;
- or a combination of the above penalties.
- 6.7 Where a Disciplinary Panel decides that the Adjudicator shall be removed from the Register and the Adjudicator does not exercise a right of appeal the Registrar will also inform the Adjudicator's Qualifying ANB(s) of the Disciplinary Panel's decision.
- 7.0 The Appeals Panel**
- 7.1 Where the Disciplinary Panel decides that the Adjudicator shall be removed from the Register, the Adjudicator has a right of appeal.
- 7.2 Any appeal must be made within ten business days of receipt of the Disciplinary Panel's decision to remove the Adjudicator from the Register. The Adjudicator's appeal shall be made by application to the Registrar, who shall inform the Chair.
- 7.3 The Registrar shall appoint an Appeals Panel consisting of no less than two experienced adjudicators selected from different ANBs, and a lay member. Those appointed to the Appeals Panel must have no prior connection with the matter or any

relevant connection with the persons concerned. The Appeals Panel shall elect its own chair.

7.4 The Appeals Panel shall meet as soon as practicable, examine all relevant documentation and at its discretion interview the Adjudicator, in order to review the process by which the decision and the sanction imposed by the Disciplinary Panel have been reached. The Appeals Panel shall determine its own procedure save that any interview shall be conducted in private.

7.5 On conclusion of its deliberations the Appeals Panel shall have the power to:-

- uphold the decision of the Disciplinary Panel; or
- modify the decision of the Disciplinary Panel; or
- rescind the decision of the Disciplinary Panel

giving brief reasons. The Registrar shall report the Appeals Panel's decision and brief reasons to the Adjudicator, the Complainant and the Chair. If the Appeals Panel's decision results in the removal of the Adjudicator from the Register, the Registrar shall also inform the Adjudicator's Qualifying ANB(s).