



NAEA

National Association of
Estate Agents

“Promoting the highest standards in residential sales”

DISCIPLINARY PROCEDURE REGULATIONS

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1. Interpretation

In these Regulations:

- 1.1. a **'member'** shall mean any person who was a member of the Association at the time when it is alleged he committed a breach of any of the Rules of Conduct whether or not he is still a member at the time the complaint is set down for a hearing before the Disciplinary Sub-committee.

Note: This means that a member under investigation may not avoid sanction by resigning from the Association prior to a hearing by the Disciplinary Sub-committee.

- 1.2. the **'Secretary'**, shall mean the Secretary, for the time being, of the Association, but he shall be entitled, at his discretion, to delegate to any other member of the staff of the Association nominated by him - other than the Compliance Officer - all or any of the functions allocated to him under these Regulations;
- 1.3. the **'Business Practices Officer'**, shall mean the Officer of the Association, elected annually by Council in accordance with Article 28(e), and, where appropriate in context includes any **'Assistant Business Practices Officer'** appointed by Council;
- 1.4. the **'Compliance Officer'** shall mean the member of the staff of the Association appointed to receive and investigate complaints and to handle the administration of all disciplinary matters, and interpretation of the Rules of Conduct;
- 1.5. the **'Tribunal'** shall mean a meeting of the Disciplinary Sub-committee called to hear an allegation that a member has been in breach of the Association's Rules of Conduct;
- 1.6. the section headings and individual subheadings do not form part of these Regulations, nor do any of the notes which are merely for explanation to assist interpretation; and
- 1.7. where appropriate the male gender shall include the female and a singular expression shall include the plural.

2. The Disciplinary Sub-committee

Appointment and Composition

- 2.1. The Disciplinary Sub-committee shall consist of not less than five members appointed by the Executive Committee to serve for one year in accordance with Article 45(a) of the Articles of Association. The members, all of whom must be past or present members of the Council, will be eligible for reappointment. The Executive Committee may fill a vacancy, howsoever caused, by appointing an additional member.

Chairman

- 2.2. The Executive Committee will nominate one of its members to hold office as chairman of the Sub-committee.

The Quorum

- 2.3. Three members of the Sub-committee shall constitute a quorum. If due to sit as a Tribunal in order to hear an allegation against a member and three regular members of the Sub-committee are not available, the Secretary may co-opt, with the agreement of the chairman, any past or present member of Council for the purpose of that hearing.

Powers and Duties

- 2.4. The Disciplinary Sub-committee shall sit as a Tribunal to:
- 2.4.1. hear and determine any cases referred to it by the Business Practices Officer concerning alleged breaches of the Association's Rules of Conduct following an investigation;
 - 2.4.2. hear and determine any matter referred to it by the Secretary, after consultation with the Business Practices Officer, regardless of whether all or any of the procedures outlined in the Disciplinary Procedure Regulations have been followed; and
 - 2.4.3. in every case where a breach of an Association Rule has been established to its satisfaction, the Tribunal may, in its discretion, impose any one or more of the penalties provided under these regulations.

- 2.5. In addition, the Disciplinary Sub-committee shall:
- 2.5.1. keep under review the operation of the Disciplinary Procedure Regulations and the efficacy of the Association's Rules of Conduct, making any recommendations to the Executive Committee; and
 - 2.5.2. prepare an annual report for the Executive Committee summarising the activities of the Sub-committee and analysing the number and types of complaint referred to the Association during the year.

3. The Business Practices Officer

Duty to review all cases

- 3.1. All complaints against a member of the Association, by whomsoever made, shall be investigated by the Compliance Officer working under the direction of the Business Practices Officer in accordance with these regulations.
- 3.2. Following the initial investigation the Compliance Officer shall bring all cases forward for individual review by the Business Practices Officer, or an Assistant Business Practices Officer, on a regular basis.
- 3.3. At this review, the Business Practices Officer will consider whether there is prima facie evidence of a breach of the Rules of Conduct in which case he shall indicate to the Compliance Officer the nature and direction the further investigation should take.
- 3.4. Where, prior to a complaint being made, legal proceedings have been commenced by either the complainant or the member, no investigations shall commence until these proceedings have concluded.
During the investigation of a complaint, should either party elect to undertake legal proceedings then the Association must be immediately notified and in those circumstances disciplinary procedures will be suspended until legal proceedings have concluded.

Closing cases

- 3.5. In the event that there is no evidence to justify a formal reference to the Disciplinary Sub-committee sitting as a Tribunal, or the Business Practices Officer considers that no useful purpose would be served by further investigation, then he may ask the Secretary of the Association to deal with the matter informally by either:
 - 3.5.1. notifying the member, and where appropriate the complainant, that there is no apparent justification or substance to the complaint and that all references to it will be removed from his records; or

- 3.5.2. notify the member, and where appropriate the complainant, that while there is evidence that his actions fell short of recognised best practice, they did not appear to have involved a significant breach of one of the Association's Rules of Conduct. In this case the member shall be told that no further investigation is proposed, but a caution is being issued and a record will remain on the member's file and may be taken into consideration in the event of any future complaint; or
- 3.5.3. notifying the member, and where appropriate the complainant, that there is, in the opinion of the Business Practices Officer, evidence of a breach of the Rules of Conduct, but taking into consideration such matters as the member's previous disciplinary record i.e. whether this is a first offence, or other mitigating circumstances, the Business Practices Officer is using his discretionary power not to refer the case to a meeting of the Disciplinary Sub-committee but to issue a formal warning as to future conduct and any repetition of the conduct.

Option to seek a hearing

- 3.6. Where the Secretary is authorised to issue a formal warning against future conduct as outlined in 3.5.3., he shall write to the member by recorded delivery notifying him of the intention and wording of the proposed warning, but giving the member the option of asking for the case to be formally referred to a meeting of the Disciplinary Sub-committee. If the member signifies his acceptance of the warning, or does not reply within 28 days, then the warning shall become final.
- 3.7. If the member seeks to have the case referred to the Sub-committee sitting as a Tribunal, then the Compliance Officer will bring the case back to the next review meeting with the Business Practices Officer and investigations will continue in preparation for a full hearing as though the compromise suggestion had not been made.

Reporting obligations

- 3.8. The Business Practices Officer shall report to each meeting of the Executive Committee the number of cases under consideration and the stage each investigation has reached, listing:
 - 3.8.1. those still under initial investigation by the Compliance Officer not yet ready for review;

- 3.8.2. those which, following this initial review under 3.2., appeared to represent a breach of a Rule of Conduct and were under more detailed investigation with a view to later reference to the Sub-committee; and
- 3.8.3. those that were dealt with by the Secretary under the discretionary powers outlined in 3.5
- 3.9. In this report the Business Practices Officer shall not identify by name or firm any member where the case was dismissed under 3.5.1., but will notify the Sub-committee the names of those members where note of the complaint has been recorded on their file under 3.5.2., although those names will not appear in the report or minutes of the meeting.
- 3.10. The names of any members formally warned under 3.5.3. may be minuted with a brief note of the breach of the Rules of Conduct and the terms of the warning.

4. The Power to Suspend

- 4.1. The Secretary of the Association, or the person acting in his stead, may, after consultation with the President, or in his absence a Vice-President who is not a member of the Disciplinary Sub-committee, suspend a member in any case where he considers it necessary for the protection of the public pending the decision of the Tribunal.
- 4.2. Before taking such action, The Secretary shall take reasonable steps to ascertain the true position and apparent culpability of the member, but may not answer any press or general enquiries about the incident beyond stating that the member is under suspension on authority of a senior Association Officer.

5. Procedure on Receipt of a Complaint

Allegations

- 5.1. Any allegation, by whomsoever made, that a member has committed a breach of the Rules of Conduct shall be made in writing to the Secretary of the Association who may forward it to the Compliance Officer.

Note: Although the Secretary is the Executive Officer formally responsible for administering the disciplinary procedures the intention is clearly that he should not take any part in the preliminary investigations in order that he can, when appropriate, act as legal adviser to the Disciplinary Sub-committee.

- 5.2. Upon receipt of any allegation, the Compliance Officer shall not commence a formal investigation without ascertaining that the complaint relates to a member of the Association - as defined in 1.1. of these regulations - and that it falls within the jurisdiction of the Association.

Note: Although it is longstanding Association policy not to place any unnecessary restriction on a member's commercial activities, Rule 2(2)(b) does bring other activities outside 'estate agency work' into consideration if, exceptionally, a member's actions are such that they bring the Association itself into disrepute.

Establish the legitimacy of the Complaint

- 5.3. The Compliance Officer should always endeavour to establish whether the complainant has raised the issue with the member personally or with his immediate superior in the estate agency. Although this is not a formal precondition of any investigation of the alleged complaint by the Association, it should be recommended to ensure that the sense of grievance is not due to a simple misunderstanding based upon incorrect or insufficient information.

Note: Although the Association does not presently offer a full Arbitration Service, it does from time to time act in an informal conciliatory role, and has been able to re-establish negotiation leading to a compromise that avoids the necessity for a disciplinary investigation.

Neither the Disciplinary Sub-committee, nor the Association, has the power to award damages for any breach of contract that may have occurred: such matters must be pursued, if appropriate, through the Courts.

Clearly interpretation of this Regulation must be left to the discretion of the Compliance Officer.

- 5.4. If it appears there are legitimate grounds for investigating the complaint, the Compliance Officer shall first explain to the complainant the nature and consequences of the Association's disciplinary procedure and the necessity to seek written consent to set these procedures in motion.

Notification to the Member

- 5.5. Upon receipt of such consent the Compliance Officer shall send details of the allegation to the member marked 'Private and Confidential' to his last known address, This letter shall refer to these Regulations - include a copy where appropriate - and invite his observations in writing upon the complaint within 14 days.
- 5.6. Upon receipt of such observations the Compliance Officer may, unless otherwise directed by the Business Practices Officer, notify the complainant of the main issues raised by the member, and invite further written comments within 14 days.

Note: The objective at this stage is two-fold: to establish the extent of the common ground between the parties and thus identify those facts actually in dispute; and secondly to ascertain the extent of the alleged breach, if any, of the Rules of Conduct.

Procedure in the event of non-reply from the Member

- 5.7. If the member declines to respond to the letter from the Compliance Officer within the 14 days, then, following the next review meeting, the Business Practices Officer shall write to the member reminding him of his obligation under the Association's Rules to co-operate in the disciplinary investigation and reminding him that a failure to reply within 14 days is a breach of Rule 14.

Note: Nothing in this Regulation is intended to require a member to give information or supply copies of documents that may in any way incriminate him. Subject to that limited reservation, however, a member is expected to co-operate with any investigation, and should not wilfully delay procedures.

- 5.8. In the absence of a reply from the member within a further 14 days, the Business Practices Officer shall bring the case to a hearing of the Tribunal citing this additional offence.

Procedure in the event of non-reply from the complainant

- 5.9. If the complainant does not respond to the new information or make any relevant observations, then on the expiry of 14 days, the Business Practices Officer shall review the case and, if necessary, authorise the Compliance Officer to continue the investigation seeking evidence from other sources or further clarification from the member in order to ascertain whether the original allegation of a breach of the Rules of Conduct can be substantiated.

Formal notification

- 5.10. Once the Business Practices Officer is satisfied that there is prima facie evidence of a breach of the Rules of Conduct he shall notify the member formally of his intention to refer the matter to the Tribunal for determination.

6. Proceedings Before the Tribunal

The summary of the Case

- 6.1. The Business Practices Officer shall prepare a summary of the case which will include:
- 6.1.1. the identity of the member, the complainant, and the substance of the main allegation; and
 - 6.1.2. the Rule, or Rules, of Conduct which have been breached.

Note: This summary will not normally contain details of the evidence, nor include further documentation, and while in preparing the summary the Business Practices Officer may seek legal advice from the Secretary in general terms, he will not discuss the specific detail revealed by the investigations.

- 6.2. The Business Practices Officer shall send this summary to the Secretary asking him to convene a meeting of the Disciplinary Subcommittee to sit as a Tribunal to hear the case, indicating how long he anticipates the matter will take.

- 6.3. In consultation with the Business Practices Officer, the Compliance Officer will prepare the detailed case papers, including the original written complaint, the member's observations - if any were received - and the complainant's further comments on these observations - if any - together with particulars of the Rule or Rules of Conduct which the member is alleged to have contravened. If the Business Practices Officer intends to call additional witnesses then a summary of their proposed testimony may be included in the detailed presentation of the case.

Note: Although any disciplinary investigation has to have regard to good judicial practice, it is Council's express intention to deal fairly with a member and hence this obligation that the Business Practices Officer should out-line all the material evidence he has decided to put before the Tribunal of which he is aware at that time. Later evidence may be admitted at the discretion of the chairman of the Tribunal.

- 6.4. The Secretary shall set down a date for the hearing giving not less than 28 days notice of the date, time and place of the hearing to the member and to the complainant. The notice to the members of the Sub - committee who will form the Tribunal shall include the summaries of the cases set down for hearing, and of the statements prepared in accordance with paragraph 6.3.

Note: In the interests of natural justice, the Tribunal should approach each case with an open mind. The information provided to the Tribunal in advance is to enable the members to appreciate the nature of the complaint and of the evidence to be given for and against the member. The Tribunal will not of course come to a conclusion on the basis of statements provided in advance, but only after consideration of these at the hearing and taking into account the submissions made on behalf of the Association and of the member.

- 6.5. The Compliance Officer will send a copy of this presentation to the member, at his last known address, by recorded delivery, not less than 14 days prior to the date of the hearing. The letter will invite the member to attend the hearing, remind him that he may be represented, bring additional evidence, make further representations, and call witnesses - all at his own expense - providing that the Secretary is given notice of his intentions and supplied with any evidence upon which he wishes to rely not less than seven days prior to the hearing.

Note: The intention of this Regulation is not to require the member to incur great costs, but it is not fair that the Association should automatically meet such expenses. The Tribunal is required to pay regard to costs after it has arrived at its finding and may well order the Association to refund legitimate expenses in any case not found proved.

- 6.6. The meeting of the Tribunal shall be held in private. The member and the complainant will be invited to be present in order to make such further relevant representations as either may think fit. Both shall be entitled to legal representation by Counsel, a Solicitor, or any such other person as the Tribunal may permit provided that the Secretary shall have been notified of the intention to be represented not less than seven days prior to the hearing.
- 6.7. The Association's legal adviser may be present at the hearing and the Tribunal shall be entitled to consult him at any stage during the proceedings.

Note: While the Secretary, as the legal adviser to the Association, will normally attend all hearings, the Tribunal may, in the unavoidable absence of the Secretary, ask a Solicitor to be in attendance to act as legal advisor.

Lodge representations and a plea

- 6.8. If the member does not intend to be present he shall lodge any submissions which he wishes to make in writing with the Secretary at least seven days before the hearing. The Secretary, or the Association's legal adviser, shall put this submission to the Tribunal at the hearing, together with the member's plea(s) to the allegations whether made orally, or in writing.

Proceedings in absence

- 6.9. If a member fails to attend in person or to be represented before the Tribunal at the hearing or at any adjourned hearing of which notice has been given to him in accordance with these Regulations, then the Tribunal may proceed to hear the case in his absence and without further reference to him.

- 6.10. The case shall be presented by the Business Practices Officer who may present written evidence to the Tribunal, call the complainant, and any other witnesses where written notice has been given to the member not less than 14 days prior to the hearing, or if the Tribunal so directs in any other manner as it shall, in its absolute discretion, think fit.

Hearing the Allegations

- 6.11. In cases where the member is present, or is represented, at the commencement of the Tribunal hearing, the Business Practices Officer shall present the summary of the case and the Rules of Conduct which the member has allegedly contravened and a plea or pleas will be taken.
- 6.12. The Business Practices Officer will then present the case against the member, putting the various items of documentary evidence before the Tribunal. He will call the complainant, if present, and put questions to him. He may call other witnesses provided notice of that intention were given to the member not later than 14 days prior to the hearing, or as the Tribunal so directs. The member or his representative may question the complainant and any other witnesses, and the Business Practices Officer shall be entitled to re-examine.

Hearing the Member's Defence

- 6.13. The chairman of the Tribunal shall ask the member, or his representative, to present his case. The Business Practices Officer shall be permitted to ask questions of the member and any witnesses he calls. The member or his representative, is entitled to re-examine.
- 6.14. For the avoidance of doubt, the Tribunal may consider such written or other recorded matter as it shall think fit, and may hear evidence from third parties whether they are present at the request of the Tribunal, the complainant, or the member. Any such third party may be questioned by the Business Practices Officer, the complainant, the member, or the member's representative.
- 6.15. At the conclusion of the hearing the Business Practices Officer may sum up the case against the member. The member, or his representative, may briefly respond, but may not introduce additional evidence. The Tribunal will then, in camera, consider its findings and may, exceptionally, reserve these for a period not exceeding 28 days.

- 6.16. In the event that the Tribunal finds one or more of the allegations against the member proved, it may in its absolute discretion elect to make no findings on any other allegation or allegations made against the member.
- 6.17. If the member or a representative is present, he may then make any submission in mitigation, before the Tribunal announces its course of action in accordance with options set out in 7.1. and 7.2. below.
- 6.18. In a case where the finding was reserved, the Secretary shall write to the member and, if appropriate, the complainant, giving details of the findings, reasons, and, where a breach of the Rules has been substantiated, its proposals for penalty and costs. A member may, within a further period of 14 days, send in a written submission, or give notice that he wishes a further hearing before the committee, to raise mitigation.
- 6.19. In such a case the Secretary shall present the submission to the next meeting of the Tribunal, or give the member notice of the date and time when he may reappear before the Tribunal. Such hearing shall be restricted solely to one of mitigation and at such a hearing the Business Practices Officer may raise any matters of aggravation.

7. Penalties and Costs

- 7.1. In the event that the Tribunal is satisfied that there has been a breach of the Rules of Conduct, it may either make no order or impose any one or more of the following penalties in respect of each breach of any one of the Rules of Conduct as it shall in its absolute discretion think fit.
 - 7.1.1. a caution or reprimand;
 - 7.1.2. a fine not exceeding such maximum sum as the Council may from time to time determine;
 - 7.1.3. a reclassification of the member's membership;

- 7.1.4. a suspension of membership for such period as the Tribunal shall think fit; or
 - 7.1.5. expulsion of the member from the Association.
- 7.2. Whether or not the member is present at the hearing, or has admitted the alleged breach in writing, then in addition to one or more of the penalties set out above, the Tribunal may seek a formal undertaking from the member relating to his future conduct for a period of time not exceeding five years, and, in the light of this undertaking, order that the fine, reclassification from or suspension of membership, be suspended for the period that the undertaking is not breached.
- 7.3. In the event within the agreed time-scale of any breach of an undertaking given in accordance with 7.2., then the suspended penalty may be brought into immediate effect while the member will be required to answer any further complaints and risk further disciplinary action by the Tribunal.
- 7.4. If a period of suspension is prescribed under 7.1.4., then the Tribunal shall specify the date on which the suspension shall commence and the date on which it shall expire. During the period of suspension the member shall remain subject to the Rules of Conduct of these Regulations. He may not, however, use his designatory initials, nor in any other way advertise his membership, nor participate in Association activities, including attendance at branch meetings or any other event. On the expiration of the period of suspension the suspended member's membership shall only be restored provided that:
- 7.4.1. throughout the period of his suspension he has complied with the Rules of Conduct; and
 - 7.4.2. he shall at the date of the expiration of the period of his suspension comply in all respects with the current requirements of the Association relating to reinstatement of membership.
- Note: While this restriction on the use of designatory initials may be inconvenient if the member has been using them on his firm's note paper and publicity material, the penalty will be strictly monitored and enforced. While a member may resign rather than accept suspension all the benefits of membership would then be instantly lost and he would also have to stop advertising all connections with the Association immediately. A suspended member will not be liable for payment of his subscription for the period of suspension.*

- 7.5. Subject to the provisions of 7.8. and 9.3. below, no penalty under 7.1. shall take effect, or fine and cost become payable, if the member gives notice of appeal, or until the time in which an appeal may be lodged, has expired.
- 7.6. In the event that a member agrees to give a formal undertaking as to his future conduct in the terms outlined in 7.2., then that undertaking shall only be accepted by the Tribunal if he agrees to it having immediate effect and he foregoes the right to appeal.
- 7.7. All decisions of the Tribunal shall be reported to the Executive Committee and Council. A report of the case and of the findings may be published in *'The Estate Agent'* and the media as may be appropriate, unless the Tribunal has specifically ordered otherwise.
- 7.8. The Tribunal may order the costs and expenses relating to any proceedings before them be paid by any member against whom a complaint is preferred and heard by the Tribunal in such sum as the Tribunal may in its absolute discretion direct.

8. Notification of Findings to Member and Complainant

- 8.1. The findings of the Tribunal and details of any penalty and the costs imposed shall be communicated to the member and the complainant by the Secretary in writing within 14 days after the conclusion of the hearing before the Tribunal.
- 8.2. The member will be notified that, unless he agrees to give a formal undertaking in accordance with 7.2., he may appeal against the finding, the penalty, or both, and his attention will be directed to the right of appeal.

9. The Right of Appeal

- 9.1. The member shall have the right to appeal to the Association's Appeals Committee provided notice is lodged with the Secretary within 14 days of the date of the written communication referred to in 8.1. above.

- 9.2. The notice shall be given to the Secretary in writing accompanied by the fee prescribed and upon the service of such notice, any penalties imposed by the Tribunal shall be held in abeyance pending the hearing and determination of any appeal.
- 9.3. The Tribunal may, nevertheless, at the conclusion of its hearing, order the immediate suspension of the member concerned pending the hearing and the determination of any appeal if it is satisfied that such suspension is necessary for the protection of the public, and the provision of these Regulations as to penalties being held in abeyance pending the hearing and determination of any appeal shall not apply to that suspension.
- 9.4. A member wishing to appeal shall pay a prescribed fee as advised by the compliance officer which must accompany his notice. This fee may be refunded in full if the appeal is successful or partially successful, but will be taken as a contribution towards the costs of the appeal hearing if the finding and penalty is upheld.
- 9.5. A member may request a full transcript of the hearing before deciding whether to proceed with an appeal. This will be provided on prepayment of the estimated cost of the transcript service - any balance due to be refunded or paid by the member. If having considered the transcript the member decided not to appeal, he shall not be entitled to reclaim the cost.

10. The Appeals Committee

Appointment and Composition

- 10.1. The Appeals Committee shall be appointed annually by Council after recommendations for such appointments have been made by the College of Fellows. It shall consist of five members of the College all of whom must be actively involved in estate agency practice, and none of whom are serving as Officers or presently members of the Executive Committee. One of the members of the Appeals Committee shall be named by the College as Chairman. The Council shall fill any vacancy, howsoever caused, by appointing another member of the College who is not also a current member of the Executive Committee.

- 10.2. The Appeals Committee - three members of which shall constitute a quorum - shall hear and determine any appeal made by a member of the Association against any findings of the Tribunal that he has committed a breach of the Rules of Conduct or against any penalty and costs imposed in respect of such breach.
- 10.3. The Appeals Committee shall have the right to:
 - 10.3.1. dismiss the Appeal;
 - 10.3.2. allow the Appeal;
 - 10.3.3. vary the findings of any/or the penalties and/or costs imposed by the Tribunal.
- 10.4. The Appeals Committee may make any order as to costs of the appeal as, in its absolute discretion, it considers reasonable.

Proceedings before Appeals Committee

- 10.5. The complainant and the member shall be notified by the Secretary in writing of the date, time, and place of the hearing of the appeal. Any hearing before the Appeals Committee shall be held in private. It shall not be a rehearing and the Committee shall consider the transcript of all the evidence heard and have available the written submissions.
- 10.6. It may review the findings of, and any penalty imposed by the Tribunal, but shall not be entitled to receive any evidence not before the Tribunal unless it concludes that such evidence could not reasonably have been heard before that Tribunal. The Appeals Committee may then hear a submission by the member or his representative, or by such other person as it shall decide.
- 10.7. The findings of the Appeals Committee and details of any variation in the penalties to be imposed shall be communicated to the member and to the complainant by the Secretary in writing within 28 days after the conclusion of the Appeal.
- 10.8. The Appeals Committee may in its absolute discretion as it shall think fit authorise the publication of the findings of the Appeals Committee and of any variation proposed to the earlier penalty and order for costs.
- 10.9. The decision of the Appeals Committee shall in all respects be final and binding.