

The Faculty of Party Wall Surveyors



FPWS



GUIDE TO COMPLAINTS / DISCIPLINARY PROCESS

**Faculty of
Party Wall Surveyors**
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Aims

The Faculty's aims are to educate and support surveyors and promote the highest standards of professional practice in the field of party wall surveying.

In order to achieve these aims the Faculty maintains a Code of Conduct which it requires its members to adhere to. A copy of the Code can be found on the Faculty's website here:

<https://fpws.org.uk/wp-content/uploads/2019/02/2018-05-25-003-Code-of-Conduct-COMLETE.pdf>

The Code is reviewed and updated from time to time. You can access both the current and previous versions of the Code of Conduct via the website. As at the date of this Guidance, the latest Code of Conduct was published on 29th June 2021.

To ensure compliance with the Code of Conduct the Faculty operates a two-stage disciplinary process (investigation stage and disciplinary panel stage) which falls within the purview of the Faculty's Professional Standards Department.

The purpose of the disciplinary process is to regulate members by ensuring compliance with the Code of Conduct and to appropriately sanction members who fail to do so.

Disciplinary Outcomes

The Faculty does not have any power to provide redress or remedies for complainants. The Faculty requires all of its members to have their own complaints handling procedure to address, and provide redress for, any complaints from the public, other professionals or their clients / appointing owners arising from their party wall work.

The Faculty's powers are to reprimand, suspend the member's membership, expel the member from the Faculty and/or to publicise the outcome of the disciplinary process. The Faculty may also impose a financial penalty as a contribution to the costs of its investigatory process.

If redress (such as an apology, compensation or some other remedy e.g. completion of a job, re-inspection etc.) is sought by a complainant, then they should address their complaint to the member themselves under their/their firm's complaints handling procedure.

It is noted that determination of the same or a substantially similar complaint (regardless of outcome) under a member's complaints procedure or the disciplinary processes of any other professional body or club to which the member may belong does not prevent the Faculty from instigating its own disciplinary process in the event that a complaint is also received by the Faculty. Further, the Faculty will not be bound by the outcome of any such process conducted by other organisations and will conduct its own independent investigation.

Instigation of the Disciplinary Process

Most disciplinary matters considered by the Faculty arise from complaints from members of the public, building or adjoining owners, and other professionals, including other members of the Faculty.

Complaints may be made to the Faculty orally by telephone on 01424 883300 or in writing addressed to The Faculty of Party Wall Surveyors, 3 Alexandra Parade, Park Avenue, Hastings, East Sussex TN34 2PQ or professionalstandards@fpws.org.uk

However, the Faculty also conducts spot checks on its members' compliance with the Faculty's requirements that members hold appropriate insurance, have an internal complaints procedure (CHP) and undertake annual continuing professional development (CPD). The Faculty may therefore also take disciplinary action against its members if these requirements are not met.

Disciplinary Process - Communications and Support

Complainants may communicate with the Faculty orally (by telephone), or in writing by post or e-mail as above.

Where a complaint is made orally the complainant will usually be asked to put the complaint in writing to the professional standards department.

The Faculty prefers to communicate by e-mail wherever possible.

Requests for adjustments to communication methods on the basis of disability will always be considered and reasonable adjustments will be made.

The Professional Standards Department is supported by the Faculty's administration department. In order to ensure that matters are appropriately logged and directed, all communications, in whatever form, will be through the Professional Standards Department whose details are as follows: professionalstandards@fpws.org.uk

On receipt of a complaint, the Faculty will communicate with the member concerned using the contact details for the member which are on file with the membership department. It is a member's responsibility to keep the Faculty updated if their contact details change.

Where possible, any complaint and/or response to a professional standards enquiry (including any documentary material in support) should be provided under cover of a single e-mail.

Initial Stages

The Faculty takes all complaints about its members very seriously and will consider all complaints against any of its current members, whether they arise from spot checks, other members, appointees/clients, concerned members of the public or other professionals.

When a complaint is received a complaint file will be opened and it will be allocated a unique reference number. This number will appear on all subsequent correspondence, and it would be helpful if all correspondents included it on all correspondence.

Once a complaint file has been opened, the file will be referred to an investigator for the first stage of the disciplinary process.

First Stage: Investigation

The Faculty has a panel of external investigators which it uses to investigate the complaints at first instance.

Investigators are appointed to the panel by the Faculty Board on recommendation by the Head of Professional Standards. Their suitability will be assessed by reference to their knowledge, experience and expertise in party wall and/or disciplinary or investigatory matters.

The Faculty usually has between two and four investigators who are barristers, three of whom are barristers in independent practice, and who are trained in, and familiar with, party wall work.

Investigators are assigned by the Professional Standards Department based on their availability. If any specialist point appears likely to arise, the Professional Standards Department will aim to allocate the complaint to an investigator with the requisite specialist experience or expertise where possible.

The investigator's role is to review the complaint, gather and collate any evidence and determine whether:

(1) The complaint is a matter which can be enquired into;

This is a jurisdictional test.

Complaints concerning a member's professional conduct whilst acting as an appointed party wall surveyor on a party wall matter fall within the Faculty's remit. Complaints which relate to other aspects of a member's work (e.g. boundary disputes, general surveying, pre-party wall appointment advice or assistance) or the personal conduct of a member when not engaged in professional activities of a party wall nature, are unlikely to fall within the Faculty's remit.

(2) There is sufficient evidence that the member has materially breached any of the Faculty's rules within the Code of Conduct so as to justify consideration of the complaint at the second stage (disciplinary panel) of the disciplinary process.

This is an evidential weight test.

Only those complaints where the evidence available to the Faculty demonstrates that it is likely, on the balance of probabilities, that a breach of one or more of the Rules of the Code of Conduct has occurred will result in a referral to a disciplinary panel.

The determination of this issue is a matter which is in the ultimate discretion of the investigator.

(3) It is necessary and proportionate to refer the complaint to the second stage of the disciplinary process.

This is a proportionality test.

Referral to a disciplinary panel prolongs the disciplinary process and adds to the costs and time burden of administering it.

Not every complaint, even those which are likely to be proved on the evidence, will be serious enough to justify referral to a disciplinary panel.

Often the investigator's powers may be considered sufficient to dispose of the complaint proportionately and achieve the stated aims of the Faculty.

All the circumstances of the complaint will be considered by the investigator who will balance all relevant factors including, but not limited to:

- (i) The seriousness of the breaches of the Rules which may be found proved;
- (ii) Whether any breach of the Rules which may be found arises from an isolated incident or appears to be part of a series of similar misconduct;
- (iii) Whether the member has previously been the subject of a complaint of a similar nature;
- (iv) The likely sanction that may be imposed if the matter were referred to a disciplinary panel and found to be proved;
- (v) Whether there are other ways in which the complaint can be satisfactorily handled to achieve the Faculty's aims of regulating its members conduct, ensuring compliance with the Code of Conduct in future, maintaining public confidence in the profession and protecting the public.

Once an investigator has been assigned to the complaint file, they will perform an initial review of the file.

An initial letter will be written to both the complainant and any member about which the complaint is made to advise them of the complaint and the next steps which will be taken in connection with it. Further correspondence may follow depending upon the circumstances of the individual complaint.

Frequently, additional information or documentation will be required in order for the investigator to properly carry out their review function and the investigator may request that the complainant and/or the member provide further material for consideration.

In order to monitor compliance with key relevant Faculty requirements, and/or because the information is necessary to assist in determination of a complaint, some members about whom a complaint is made may be asked to provide CPD records for relevant years (including all years since the events which are the subject matter of the complaint). They may also be asked to provide a copy of their internal Complaints Handling Process and their indemnity insurance.

The Faculty aims to be transparent about its investigation and to comply with the rules of natural justice, including that everyone should have a fair opportunity to know and address the complaint made against them. Members will always be provided with details of the complainant and the complaint and any documentary evidence which is relevant to it.

Except where the complaint does not fall within the Faculty's remit or does not indicate a prima facie breach of the Code of Conduct (even if taken at its highest) members about whom a complaint is made will also be given a reasonable opportunity to provide a response to the complaint and any evidence that they wish to be considered before the investigator conducts the final review and determines the matters at (2) and (3) above.

Once the investigator has requested and received relevant evidence, they will conduct a thorough review of all the material in the complaint file and both the complainant and the member will receive a written decision setting out the investigator's findings on the 3 points set out above and their decision as to how the complaint will be disposed of.

The investigator has the powers to take the following actions following their final review of the complaints file:

- (i) Close the complaint file with no further action;
- (ii) Close the complaint file with any one or more of the following actions:
 - (a) A request that the Faculty's Professional Standards Department conduct future spot checks as to a member's compliance with Faculty CPD, insurance or complaints procedure requirements;
 - (b) A recommendation and/or advice as to a member's future conduct;
 - (c) A request that the member comply with the Faculty's Code of Conduct.
- (iii) Refer the matter (or any part thereof) to a disciplinary panel.

There is no appeal from the investigator's decision.

If the investigator decides to close the complaints file (with or without any additional action) the complaint file will be closed.

Any closed complaints file will nevertheless lie on the members' file and may be referred to in the event that any further complaints are made against that member.

If the investigator decides that the complaint is one which can be enquired into, that there is sufficient evidence of a breach of the Faculty's Code of Conduct, and that it is necessary and proportionate to do so, it will refer the matter to a disciplinary panel under stage 2 of the Faculty's disciplinary process.

Second Stage: Disciplinary Panel

Composition of the panel

The Faculty maintains a list of potential disciplinary panel members. These panel members comprise both Faculty members and independent individuals from relevant related fields (e.g. lawyers, chartered construction professionals etc.).

Persons seeking inclusion on the list are required to demonstrate the following qualities: expertise and competence in their specialist field, fairness, the ability to apply rules and procedure correctly, commitment, integrity, impartiality, the ability to assimilate and critically analyse volumes of material, an open mind, an ability to work as part of a team, good oral and written communication skills, courtesy and authority, awareness of equality, diversity and sensitivity, good time management skills, honesty, and must have no disciplinary record of sanctions for breaches of professional conduct rules.

Panel members are approved for inclusion on the list by the Faculty Board on the recommendation of the Head of Professional Standards.

Not less than ten Faculty members across various disciplines and geographical locations will be included on the list. Faculty Board Members are disqualified from sitting on disciplinary panels for the duration of their service on the Board.

All disciplinary panel members are required to undergo training unless they have prior experience of the disciplinary processes of the Faculty and/or any another professional body or in-house complaints/disciplinary process which is considered by the Faculty Board to exempt them from the need for initial training.

All panel members are expected to undertake or participate in continuing professional training relevant to the disciplinary process as may be required from time to time by the Faculty for the duration of their time on the panel.

On receiving a referral to a disciplinary panel from an investigator under the first stage of the disciplinary process, the head of Professional Standards will ask three members of the list to form a disciplinary panel for the determination of the referral.

All panels will be composed of three persons: two members (usually Fellows) of the Faculty and one independent member.

Most disciplinary panels will be chaired by a legally qualified independent. If the chair is not a legally qualified independent, a legal advisor will be appointed to assist the panel.

If a legal advisor is appointed to assist the panel, they will take no part in the decision-making process. Their role will be limited to providing advice on procedures, and ensuring due process is followed. All legal advice will be given openly.

No-one who has previous involvement in the investigatory stage of the complaint will sit on the disciplinary panel.

The names of the those sitting on the disciplinary panel will be advised to the member.

Procedure

If the investigator considers that the complaint, or any part of it, should be referred to a disciplinary panel, the investigator will prepare a list of the matters (“the charges”) to be referred to the disciplinary panel, a summary of the complaint and a bundle of relevant documents for the disciplinary panel to consider. The investigator may also make a recommendation that an oral disciplinary hearing be considered.

If, after an initial review, the panel considers that it should consider different or additional charges it may amend the charges, but in that case must give the member a fair opportunity to respond to the amended charges before reaching a determination.

The documents prepared by the investigator will be forwarded to the disciplinary panel and to the member who is subject to the disciplinary process.

The member will then be given a further opportunity to make a detailed written submission in response, together with any additional supporting evidence they wish to rely upon.

Most disciplinary panel hearings will take place by way of a review based on the papers and without oral hearing. In some circumstances the panel may request that either the complainant or the member make themselves available by telephone to answer any queries that the panel may have. The panel may also decide to hold an oral hearing.

A member who is facing a disciplinary panel may request an oral hearing but the decision whether or not to hold an oral hearing will be taken by the disciplinary panel and is at their ultimate discretion.

The disciplinary panel is only likely to consider it appropriate to hold an oral disciplinary hearing in cases where:

- (i) there are material disputes of fact which are unlikely to be resolved without hearing oral evidence; or
- (ii) the charges arise from a dispute between two members; or
- (iii) the disciplinary charges are so serious that the disciplinary panel may be considering a sanction of suspension of, or expulsion from, membership.

Whether or not a member has chosen to admit or deny the disciplinary charges against him/her he will be entitled to make submissions to the disciplinary panel in mitigation of the sanctions to be applied in respect of any charges admitted or found to be proved.

Burden and standard of proof

The disciplinary panel will first consider whether, on the evidence before it, the charges are proved on the balance of probabilities (i.e. is it more likely than not that the Code of Conduct has been breached by the member in the manner charged).

Only if one or more of the charges are found to have been proved will the disciplinary panel consider whether, and if so what, sanction should be imposed.

Each member of the panel will have an equal vote and the outcome will be determined by a straight majority.

The Disciplinary panel will apply the following principles:

- (i) proportionality
- (ii) accountability
- (iii) consistency
- (iv) transparency

Supplemental guidance about Oral hearings

Where the disciplinary panel decides that an oral hearing will be held, the member will be given an opportunity to provide dates of unavailability before a hearing date, time and place is set.

No formal rules of evidence will apply to the oral hearing and hearsay evidence will be permitted.

The disciplinary panel has the power to control the nature and extent of the evidence that it receives and the procedure that it will follow in order to reach a determination on the charges but must adopt a fair process and comply with the rules of natural justice.

This means that the panel may restrict the nature or amount of evidence that either the investigator or the member wishes it to consider.

The investigator from the first stage will present the charges and the evidence in support.

The member has the right attend with a supporter or a representative (whether legal or lay representative) and to call witness evidence in support.

If any oral evidence is called, the evidence will not be taken on oath.

Powers of the Disciplinary Panel

The Disciplinary panel has the powers to take the following actions:

- (i) dismiss the charges and honourably discharge the member;
- (ii) dismiss the charges with a determination of “not proved”;
- (iii) find the charges proved and determine the appropriate sanction.

The sanctions available to the disciplinary panel in the event that it finds some or all of the disciplinary charges to be proved are as follows:

- (i) Impose no sanction;
- (ii) Impose a requirement to undergo further education and/or training;
- (iii) Impose Conditions on Membership which may include:
 - (a) Not to undertake certain work (e.g. not to act as third surveyor);
 - (b) Not to take certain actions (e.g. send out unsolicited correspondence) unless and until those actions have been approved by the Faculty.
- (iv) Reprimand the member for any defined period of up to 3 years;
- (v) Impose a period of mentoring by a senior Faculty member (up to a maximum period of 12 months)
- (vi) Suspend the member for a period up to twelve months;
- (vii) Expel the member;
- (viii) Require a payment of costs;
- (ix) Require publication of the member’s name and the outcome of the disciplinary process on the Faculty’s website and newsletter/blog/e-bulletin.

The Sanctions above are not mutually exclusive and (i) to (vii) appear in order of severity.

Where Sanction (i) above is imposed there will usually be no other Sanctions except for costs.

Sanctions (viii) (Costs) and (ix) (Publication) will usually be applied in addition to any other sanction except that where Sanction (i) above is imposed there will usually be no other Sanctions except for costs.

Costs will only be imposed to recover the Faculty's costs incurred. Any costs that the member is required to pay will not exceed the costs of the investigation (which includes the entirety of both the first and second stages) but the disciplinary panel has power to require less than the total costs incurred to be paid (see further information under "Costs" below).

Notification of Outcomes

Following the disciplinary hearing (whether the hearing is held on the papers or orally), the disciplinary panel will provide both the complainant and the member with a written decision setting out their findings on the charges, the reasons for the findings and the details of any sanction to be imposed.

Appeal

There is no automatic right of appeal against a disciplinary panel decision either as to whether the charges are proved and/or as to the sanction imposed.

A member who is dissatisfied with the outcome of the disciplinary panel may however seek the disciplinary panel's permission to appeal.

Permission to appeal will usually only be granted where:

- (i) new evidence that was not reasonably available before the disciplinary panel first considered the matter has become available; and/or
- (ii) the member asserts that the sanction imposed for any breach of the Code of Conduct that was found to be proved is too harsh.

If permission to appeal is given on the basis of new evidence, the appeal will be by way of re-hearing and will be heard by the same disciplinary panel as determined the matter in the first instance.

If permission to appeal is granted on the basis that the sanction imposed was, or may have been, too harsh, a new disciplinary panel will be convened to hear the appeal. The remit of the new panel will be limited to considering the sanction to be imposed for any breaches of the Code of Conduct that were found proven by the original disciplinary panel. The members of the new disciplinary panel will be selected from the list of potential panel members by Head of Professional Standards or in the event that the Head of Professional Standards is conflicted the overseeing Director of the Professional

Standards Department and will not include the original investigator or any member of the original disciplinary panel.

In exceptional circumstances, the Faculty Board may also refer a matter to appeal if it considers that the sanction imposed by the disciplinary panel is too lenient. Such power is expected to be used rarely and will result in a new disciplinary panel being convened, whose remit will be limited to re-considering the sanction to be imposed for the breaches that the original panel found to be proved.

Resignation or Lapse of Membership during the Disciplinary Process

If a member resigns his/her membership after being notified of the receipt of a complaint, his/her resignation will not be effective until all proceedings brought against them under the Faculty's Complaints/Disciplinary Procedure have been concluded and a disciplinary panel may nevertheless impose any of the available sanctions at the conclusion of the second stage that it considers to be appropriate. This may only be overridden by the Head of Professional Standard in exceptional cases.

If a member fails to renew their membership or pay their renewal subscription after the commencement of the first stage of the disciplinary process, their membership will be deemed not to have been suspended or lapsed until the conclusion of the disciplinary process and a disciplinary panel may nevertheless impose any of the available sanctions at the conclusion of the second stage that it considers to be appropriate.

Timetables

There is no fixed timetable within which the disciplinary process will be concluded. The Faculty aims to deal with all complaints and disciplinary matters expeditiously, but timetables may vary and will depend upon the facts and complexity of the individual complaint, the extent of further enquiry and evidence gathering required and the co-operation and speed of response to any enquiry of both the complainant and the member.

As a general guideline, the Faculty aims to complete the investigatory stage within 2 months of the initial complaint being received in writing.

If the matter is referred to a disciplinary panel the Faculty aims to provide the disciplinary panel decision within 6 months of the initial complaint being received in writing.

However, due to the Faculty's limited resources or the particular circumstances of a complaint, in some instances this period may be prolonged.

The Faculty will always endeavour to keep both complainants and members informed of the progress and timetable of any complaint.

Record Keeping

The Faculty prefers not to receive original documentation. Where original documentation is received, it will be copied and the originals returned to the sender.

All records relating to the complaint will be kept for a minimum three years.

Records relating to complaints where a sanction is imposed by a disciplinary panel (other than suspension of, or expulsion from, membership) are usually kept for six years.

Decision letters relating to complaints where a sanction of suspension of, or expulsion from, membership are imposed by a disciplinary panel may be kept indefinitely.

A disciplinary panel may recommend that the Complaint File are retained for a different duration.

Publication of the Decision

Publication of the outcome of the appeal will be the default position unless the member has been honourably discharged or no other sanction has been imposed.

Only in exceptional circumstances will publication of the outcome of the disciplinary proceedings not take place if a sanction is imposed.

Publication may be either of the full decision of the disciplinary panel or a summary of the charges and findings. Publication may be recommended to take place on the Faculty website and/or in the Faculty newsletter/blog/e-bulletin.

Costs

The member being disciplined is solely responsible for any and all costs that s/he may incur in responding to disciplinary charges. No costs incurred by a member in responding to a disciplinary enquiry and/or attending a disciplinary hearing will be reimbursed by the Faculty.

No complainant will be asked to make any contribution to the Faculty's costs of operating the disciplinary process.

No member will be asked to pay any costs at the conclusion of the first (investigatory) stage of the disciplinary process, regardless of the outcome.

At the conclusion of the second (disciplinary panel) stage of the disciplinary process, a member against whom any disciplinary charges have been found to be proved may be required to pay a contribution to the Faculty's costs of the investigation.

The disciplinary panel will usually require the member to pay the costs (or a contribution to the costs) of the Faculty if a breach of the Code of Conduct is found to have been proved. The amount of the

costs is in the disciplinary panel's discretion except that it must not require a member to pay more than the actual costs of the disciplinary process (including both the first and second stages).

The disciplinary panel will also determine when and how the costs should be paid.

Prior to the disciplinary hearing, the member will be asked to complete a basic means form. The member may choose whether or not to return the form and provide information as to their means. However, if no means form has been completed (unless one has not been sent) then the Disciplinary Panel will assume that the member has the means to pay costs at any level in an immediate lump sum.

Failure to make payment when required to do so is itself a disciplinary offence and any member who fails to pay promptly may be subject to further disciplinary action and expelled from membership.

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