



LEADING TREASURY
PROFESSIONALS

GIVING DIRECTION

ETHICS IN AN ERA OF REGULATION

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ETHICS IN AN ERA OF REGULATION

DOES ETHICS MATTER?

ACT ETHICAL CODE

ACT DISCIPLINARY RULES

Does ethics matter was originally published in the October 2010 edition of The Treasurer magazine. Since then, Justin Welby and Stuart Siddall have become respectively Archbishop of Canterbury and Finance Director of Thames Water:

www.treasurers.org/thetreasurer/201010

The ACT Ethical Code and Disciplinary Rules are available at:

www.treasurers.org/professionalguidance

Guidelines about our approach to policy and technical matters are available at:

www.treasurers.org/technical/manifesto.

The Association of Corporate Treasurers

The Association of Corporate Treasurers (ACT) sets the benchmark for international treasury excellence. As the Chartered body for treasury, we lead the profession through our internationally recognised suite of treasury qualifications, by defining standards and championing continuing professional development. We are the authentic voice of the treasury profession representing the interests of the real economy and educating, supporting and leading the treasurers of today and tomorrow.

For further information visit www.treasurers.org

Ask the experts:

Does ethics matter?

ETHICS HAS BEEN MOVING STEADILY UP THE CORPORATE AGENDA, BUT DO ORGANISATIONS REALLY NEED AN ETHICAL POLICY WHEN REGULATION HAS GROWN SO PERVERSIVE?



**Philippa Foster Back,
director,
Institute of
Business
Ethics (IBE)**

Doing business ethically is about going beyond the minimum standard

required, so ethics picks up where the law ends. Much innovative work is being done by companies that believe operating ethically enhances their business. As industry leaders, their examples encourage others to aim higher. So I'd suggest that ethics matters even more than compliance with regulation. If the ethical culture is right, then compliance will be in order.

Striving to uphold high ethical standards is the hallmark of a well-managed company. Although we at the IBE would suggest that organisations do the right thing for the right reasons, there are also business benefits in implementing an effective ethics programme: attracting and retaining quality staff; winning the confidence of investors that the business is actively managing risks; and enhancing the company's reputation. These benefits usually feed through to the share price as well as lower costs of borrowing, all of which helps the bottom line. Our research a few years back (*the Does Business Ethics Pay? report*) confirms that companies with strong ethical commitments have historically outperformed.

Having an ethical policy is worth little unless it is communicated and embedded within the organisation so that doing business ethically is part of "how we work around here". No training means potential inconsistencies in employee conduct – you don't bring the code alive. Training is a worthwhile investment, and needn't be expensive: the IBE has developed an e-learning tool as a cost-effective way of introducing the concepts of ethical behaviour to staff.

It helps if the leaders of the company "walk the talk". Supporting staff to do the right thing – for instance by setting up a speak-up line – might cost initially, but those costs are far outweighed by savings made by potentially averting risks to the company.

Treasurers are uniquely aware of their organisation's reputation and responsibilities, whether to bankers, investors, the general public or fellow employees. As part of their role is to manage risk, treasurers can view their company's ethical policy as an insurance against integrity and reputation risk. But as individuals, because of their roles as ambassadors for the company both internally and externally, all treasurers have an important role to play in setting the corporate tone and behaving with the highest probity. The ACT ethical code sets out very clearly the treasurer's responsibilities to those who put their trust in them.

One concern is that the whole ethical tone of an organisation can be changed with a change of chief executive, and not necessarily for the good. Tone and example from the top cannot be underestimated. Boards and senior management need to do more to demonstrate ethical sensitivity. They must look at the bigger picture, and their strategy, through an ethical lens.



**John Grout,
ACT policy
and technical
director**

Business needs both ethics and regulation. Ethics is the practice of making principled choices

between right and wrong. It is concerned with how people ought to act and not how they do act. Ethics is value-driven and guides the way in which we make our moral precepts actionable. Its conclusions are determined by the

contingencies of the situation; these should be considered as widely as necessary to analyse the consequences of an action or inaction.

By contrast, regulation is the way in which moral pressures – possibly based on widely shared moral principles – are translated into requirements of society, with sanctions for failure to follow them.

If everyone based their ethical approach on sound moral precepts and was able to apply them intelligently and with sufficiently good information about the consequences of their actions, we might not need regulation. But these standards are hard to achieve. Human frailty means not everyone will succeed, and perhaps everyone will fail in some or many ways.

Most societies have adopted the general principle that preventing harm is better than compensation after the fact. But there is vigorous debate about the principles to be applied in deciding what the ethical course of action is and even in deciding what regulation to prescribe.

Regulation can make things, including social responsiveness, easier or more difficult for business. Its purpose is to change what happens away from what the market, left to itself, would determine. Effective, good regulation needs actors in society, including businessmen (yes, treasurers too), to engage in shaping it.

Law and regulation play an important role in promoting ethical behaviour and discouraging the unethical. In themselves, though, they are incomplete and can actually produce the opposite effects. Companies need to bear that in mind in designing ethics programmes but go further in setting a more general framework. That means seeing regulation as context, rather than content.

Business efforts to influence regulation must be more than self-interest if they are to be socially acceptable. Businessmen and women then require an ethical understanding and an ethical framework so they are better able to influence regulatory formation and determine their general and specific responses to regulation and ethical issues which arise in the course of business.

Of course, regulation can never anticipate all

the contingencies that may arise. A company needs a framework if it is to behave well and consistently across its activity and over time.



**Stuart Siddall,
chief
executive
of the ACT**

From the ACT's perspective, members are working in what is still, outside of the financial sector, largely an unregulated

market. This makes the articulation of a business ethics policy crucial.

Although the ACT explicitly covers business ethics as part of its international treasury management certificate (CertITM), as members move up the organisation ethics steadily becomes more implicit as a major part of the way in which people conduct themselves. So the ACT is working with the Institute of Business Ethics to raise the profile of ethics and we have scheduled a session on the issue for the 2011 annual conference.

The ACT must provide an environment in which people can ask questions when any situation involving business ethics arises that they don't feel comfortable with. The culture within the company that employs them is vital, particularly if it condones turning a blind eye to practices such as money laundering. And if they are unable to achieve satisfaction there is still the option of consulting the Serious Organised Crime Agency (SOCA).

Looking back 20 or 30 years ago there were many practices, such as paying commissions, which the authorities sanctioned provided that companies stayed within accepted parameters. This is no longer permitted; today's environment has become much more onerous and companies must go beyond simply "ticking boxes" if they want to be truly ethical.

Treasury departments operate in markets that are subject to regulation and must be aware of the rules governing contraventions such as market abuse. Yet unethical behaviour hasn't been entirely eliminated, as evidenced by the fines still imposed on cartels, such as banks that attempt to fix lending costs. The incentives for informing the authorities of such unethical practices are very high, so not only are the rules changing but also the ways in which they are enforced.

Often, the treasurer is the first person to see money coming into the company and the last one to see any money going out. He or she

needs the wherewithal to ask if there are invoices or receipts to support these payments.

Although treasurers are likely to come under various pressures when economic times are hard, both regulation and a stronger ethical culture make it less likely that employees will behave unethically. Companies will work hard to ensure that their reputation is not affected. They know that if they gain a reputation for being unethical, then other businesses, governments and investors may refuse to deal with them. So any failure to follow good business ethics runs the risk of ultimately undermining the trading position.

A SLEEPY, SUMMER MEETING OF A MANAGEMENT GROUP CAN SUDDENLY FIND ITSELF FACED WITH AN ACUTE ETHICAL DILEMMA AFFECTING OPERATIONS AND NEEDING RAPID RESOLUTION.



**Justin Welby,
dean of
Liverpool
Cathedral and
confidential
ethical adviser
to ACT
members**

Most people have three main sources for deciding on

ethics. One is likely to be upbringing and culture, another will come from learning and educational influence – whether home-grown or external – and a third is the workplace. Companies and organisations have characteristics, which include ethics, in a similar way to individuals, and members of the organisation contribute to its ethics at the same time as being shaped by corporate ethical behaviour. The result is that ethics is often implied and understood – what we do or don't do – rather than expressed.

Ethical problems seldom warn us of their arrival. A sleepy, summer meeting of a management group can suddenly find itself faced with an acute ethical dilemma affecting operations and needing rapid resolution. A casual request for a helping hand on a deal by a

counterparty can conceal action that one later regrets. Regulation sets minimum standards, with penal results for breaches; ethics is about the framework of often subconscious thinking that we use to guide us intuitively and consciously.

Three examples illustrate the different bases for ethics. The first is a (retrospectively) humorous meeting in the early 1980s between a New York lawyer advising a French client on the acquisition of a quoted US company and a senior executive of the client. The lawyer had flown over to France in a rush after hearing rumours of the target's stock being bought in France before the bid had been announced. The executive (long since dead) replied: "Of course, we are all buying; it's going to go up." Clash of cultures!

Second, a natural resource company meeting was considering a report that people escaping from a local country had been picked up by a support vessel near a drilling rig. "If the local country's support vessel had been on station, they would have been shot," said the report. Long and anguished discussion ensued of the right thing to do, the options being pragmatism or withdrawal from operations. Each person brought their personal views; the latter option won – just.

Lastly, late at night during preparations for a major rights issue to fund an acquisition, I suggested we skip detailed checks on one minor section of the prospectus. I was exhausted, the matter unimportant, but a colleague said quietly: "That's not what we do here." Corporate culture!

So ethics is complex in origin, and regulation is no substitute because it lacks the adaptability and elasticity needed to cope with surprise, pressure and culture, not to mention change. Ethics says that certain conduct (for example, extreme risk taking) is not merely unwise, but wrong because it is gambling with the company, and thus other people's money and employment. Regulation may say that it is legal.

All this explains why ethics must continue to be taught, thought and caught. Ethical pressures increase in hard times, although one suspects that practice does not deteriorate. Treasurers have an essential role because they are so often both the interface with financial and insurance markets and also centrally involved in risk management. Ethical risk does not feature in as many analyses of risk as it should, but its consequences can be more devastating than simple equipment failure, because reputational damage ultimately, and often quickly, impacts on the capacity to generate and raise funds.

The IBE report, Does Business Ethics Pay?, is available at bit.ly/a8st6P
Justin Welby can be contacted at dean@liverpoolcathedral.org.uk



ACT

LEADING TREASURY
PROFESSIONALS

THE ETHICAL CODE

ASSOCIATION OF CORPORATE TREASURERS

1. This Code applies to:
 - (a) All members of the Association of Corporate Treasurers (hereinafter referred to as "ACT"), as defined in Article 2.6 of the ACT's Articles of Association, namely:
 - (i) Associate Members;
 - (ii) Members;
 - (iii) Honorary Fellows;
 - (iv) Fellows; and
 - (v) Corporate Members;
 - (b) Duly appointed representatives of Corporate Members;
 - (c) Students;
 - (d) Faculty Members; and
 - (e) International Affiliates.
2. For the purposes of this Code any reference to a 'member' includes all persons and bodies corporate to whom this Code applies, as described at paragraph 1 above.
3. This Code sets down principles, which should be followed by all members of the ACT. In the event a member contravenes the Code, a complaint may be made against him under the ACT's Disciplinary Rules and he may become liable to disciplinary action in accordance with those Rules.
4. This Code provides a framework for the conduct of all treasury activities. The fundamental philosophy behind this Code is the view that corporate treasurers should act in accordance with the highest professional standards.
5. The ACT has a significant proportion of members not engaged in corporate treasury management. There are, for example, members in accountancy, banking and other financial occupations, in financial management other than treasury, and in general management and consultancy. Some members are self-employed either on their own or in partnership. As the principal object of the ACT is to serve as the professional body for those engaged in treasury management, this Code deals primarily with the ethical issues of that occupation, but also covers issues which affect members in all occupations.
6. Throughout this Code masculine pronouns are intended to refer to members of either sex.

Fundamental principles

7. The fundamental principles governing the conduct of a member of the ACT are:
 - (a) Integrity, which includes:
 - (i) avoiding conflict between the member's private self-interest and that of his employer or clients;
 - (ii) serving his employer, or, where applicable, his clients, honestly and in good faith;
 - (iii) acting honestly and in good faith towards all those outside his own organisation (in addition to those mentioned above) who deal with him;
 - (iv) fulfilling the duties of trust owed by reason of the actual appointment or appointments held by him; and
 - (v) upholding, in whatever way is appropriate to the member's occupation or appointment, the standards of integrity and fair dealing required for the honest conduct of business and for the effective functioning of the financial markets in which the member or his employer play a part.
 - (b) Independence in making professional judgements and in giving opinions and statements.
 - (c) Courtesy and consideration to all with whom he has contact in his professional work.
 - (d) Professional competence, which includes:

- (i) compliance with the technical and professional standards expected of him not only as a member of the ACT, but also by virtue of the seniority and responsibility of his position; and
 - (ii) carrying out his duties with reasonable care and skill, particularly where his failure to do so could adversely affect members of the public, persons, including bankers, dealing with his employer or, where applicable, clients.
- (e) Confidentiality, which includes refraining from disclosing or using for his own purpose or for some other improper purpose confidential information obtained in the course of his employment, in the performance of his duties or through his membership of the ACT (including, for the avoidance of doubt, the ACT's Directory of Members) or other information which he knows to be of a confidential nature.
- (f) Compliance with the laws, regulations and conventions of the countries and markets in which he transacts business, including company law, tax law, exchange control regulations, and regulations to protect the interests of the public dealing in financial and similar markets; in the United Kingdom, for example, these would include the City Code on Take-Overs and Mergers, the Rules and Regulations of the Stock Exchange and Regulations issued under the Financial Services and Markets Act 2000.
- (g) Compliance with the codes and rules of other professional bodies to which the member belongs.

Relationships and duties

8. A member who acts as a treasurer or who manages the treasury function has duties, derived from the fundamental principles set out in paragraph 7, to a number of different classes of people.
- (a) The first such class is his own employer. The nature of the treasurer's employment can breed conflicts of interest, especially where other parties place special trust in the integrity of the treasurer by virtue of his membership and professional standing. The member must avoid misleading those parties not only by mis-statements, but also by omitting material information. Where this type of conflict of interest causes difficulty, the member should seek legal advice or request guidance from the ACT.
 - (b) Another class of people to whom a duty is owed are members of the public or others likely to read and act on documents which the member prepares for use outside his own organisation. Examples are an offer document, a circular to shareholders or a disclosure letter.
 - (c) A third class is represented by bankers and others with whom a member deals on his employer's behalf in the course of his duties. Here too his professional duty is to honour the trust which such outside parties may reasonably place in him as a member and by virtue of his appointment. Whenever this causes conflicts of interest, he should ensure that the outside parties understand his position clearly, and, if he thinks it appropriate to do so, seek legal advice or guidance from the ACT.
 - (d) A fourth class is his fellow employees, and particularly his junior staff, who look to him as a person of professional integrity.
9. The duties described in paragraph 8 above shall be complied with, so far as applicable, by members working as treasury staff, or engaged in other financial activities.
10. Members who are employed but who are not engaged in the activities covered by paragraphs 8 or 9 above, will have analogous relationships. They too must conduct themselves in those relationships in accordance with the principles and duties contained in paragraphs 7 and 8 above.

11. Members in a professional practice must comply with:
 - (a) 'mutatis mutandis' the principles and duties set in paragraphs 7 and 8 above;
 - (b) the rules of any profession to which they belong; and
 - (c) the normal standards of a professional in practice, including courtesy towards competitors, care on behalf of their client's interests, safeguarding client's funds entrusted to them, and maintaining the respect in which the public holds their profession.
12. In addition, every member has a professional and collegiate relationship with his fellow members of the ACT.
13. It is the duty of every member not to conduct himself in a manner which may bring himself or the ACT into disrepute.

Gifts, services and hospitality

14. The treasurer's role as a buyer of financial and similar services can cause ethical dilemmas in a number of ways. They can arise if a member engaged in treasury management is offered hospitality, commissions or gifts or personal services either free or at less than market prices, or if he conducts personal business with a supplier of financial or other services who also conducts or seeks to conduct business with the member's employer. In such situations a member should comply with the following principles and rules:
 - (a) He must not accept gifts, services or hospitality in any way which could affect, or which might appear to affect, his judgement or loyalty or the proper performance of his duties.
 - (b) He must avoid any impairment of his integrity and independence of judgement, especially in the choice of parties to deal with on his employer's behalf.
 - (c) He must ensure that his employer is aware of and has agreed to any personal business that he may conduct with parties who also conduct or seek to conduct business with his employer, and disclose any benefits thereby received or to be received by him.
15. Members not engaged in treasury management should follow the same principles where analogous issues arise.



ACT

LEADING TREASURY
PROFESSIONALS

DISCIPLINARY RULES

ASSOCIATION OF CORPORATE TREASURERS

ASSOCIATION OF CORPORATE TREASURERS - DISCIPLINARY RULES

1. These Rules apply to:

(a) All members of the Association of Corporate Treasurers (hereinafter referred to as "ACT"), as defined in Article 2.6 of the ACT's Articles of Association (the "Articles"), namely:

- (i) Associate Members;
- (ii) Members;
- (iii) Honorary Fellows;
- (iv) Fellows; and
- (v) Corporate Members.

(b) Duly appointed representatives of Corporate Members;

(c) Students;

(d) Faculty Members; and

(e) International Affiliates.

2. The definitions set out at Article 1 of the Articles apply equally to these Rules save that, for the purposes of these Rules, any reference to a 'member' includes all persons and bodies corporate to whom these Rules apply, as described at paragraph 1 above, and the word 'membership' shall be construed accordingly. Throughout these Rules masculine pronouns are intended to refer to members of either sex.

Liability for disciplinary investigation

3. A member is liable to disciplinary investigation if:

- (a) it is alleged that he is guilty of a breach of the ACT's Ethical Code;
- (b) he is convicted by any competent court on a criminal charge involving dishonesty, violence or indecency or is found by a competent court in any civil action to have acted fraudulently or dishonestly;
- (c) he is adjudicated bankrupt or becomes unable to meet his business commitments; or
- (d) he fails to comply with these Rules.

Penalties

4. Under these Rules a member may be:

- (a) (i) excluded from membership or from serving as a corporate representative;
- (ii) suspended from exercising rights of membership for a period of up to two years;
- (iii) reprimanded;

A student may, in addition or instead, be:

- (b) (i) excluded from being a student and sitting any of the ACT's exams;
- (ii) suspended from being a student and sitting any of the ACT's exams for a period of up to two years.

Complaints and Committee of Investigation

5. Any complaint against a member in respect of any of the matters set out in paragraph 3 above or the occurrence of one of the events therein set out which becomes known to the ACT shall immediately be reported by the Chief Executive to the President who is required forthwith, following consultation with the Chief Executive, to appoint a Committee of Investigation.

6. The Committee of Investigation shall consist of either three or five members of the Council, at least one of whom shall be the Deputy President or the Immediate Past President. One of such persons (to be nominated by the President) shall act as Chairman. The Committee of

Investigation shall have power to co-opt not more than two other persons (whether or not members of the ACT) in order to give specialist or technical advice and the Committee of Investigation may obtain legal advice at any stage in its investigations. Not less than three members of the Committee of Investigation shall constitute a quorum.

7. The Committee of Investigation shall be charged with investigating the complaint, forming a view as to whether a *prima facie* case has been made out against the member, and making a decision whether in all the circumstances and in its discretion the case ought to go to a Disciplinary Committee.
8. The Committee of Investigation shall have the power to call for, and every member shall have a duty to furnish such information, documents, records or other evidence as the Committee deems necessary for its investigations subject to legal restrictions on matters of confidentiality or legal privilege. If the consent of any other person or party is required for the production of evidence, all persons including the member against whom a complaint has been made will use their best endeavours to obtain such consent.
9. The Committee of Investigation shall conduct its investigations in the strictest confidence. The member concerned shall be advised in writing by the Chairman of the Committee of Investigation of the complaint made against him within 28 days of the complaint being received by the ACT. Such notification to the member concerned shall include details of (i) the nature of the complaint made against him, including, where known, a short summary of the alleged facts upon which the complaint is based; and (ii) the relevant provisions of these Rules and/or the ACT's Ethical Code in respect of which it is alleged he is in breach. The Chairman of the Committee of Investigation may, in his discretion, disclose the identity of the complainant. However, the member concerned shall have no right to require disclosure of the identity of the complainant.
10. The member concerned shall be entitled to make representations in writing and submit relevant documents and / or written witness evidence to the Committee of Investigation, in reply to the complaint against him. In addition, the member concerned and the Chairman of the Committee of Investigation shall each have the right to call for a hearing regarding the complaint.
11. At any such oral hearing before the Committee of Investigation the member concerned shall be entitled to be heard in person and / or be represented by a barrister and / or a solicitor and / or any other person. The member concerned and / or his representative shall be entitled to call witnesses, cross-examine witnesses called against him and address the Committee of Investigation.
12. If the member concerned does not attend any such hearing when so requested by the Chairman of the Committee, then provided the Committee is satisfied that notice of the hearing was properly given to him in accordance with paragraph 50 below, the Committee may deal with the matter in the member's absence.
13. If the Committee of Investigation is satisfied, on a simple majority, that a *prima facie* case has been made out, and considers that in the light of all the circumstances the matter should be referred to a Disciplinary Committee, it shall formulate and refer a formal complaint to such Committee, together with (i) a summary of the facts upon which the complaint is based; and (ii) copies of any relevant written representations, documents or witness evidence in relation to the complaint; and (iii) a summary of any relevant oral representations or evidence in relation to the Complaint. In the case of an equality of votes, the Chairman of the Committee of Investigation shall have a second or casting vote.
14. In deciding whether to refer a formal complaint to a Disciplinary Committee, the Committee of Investigation shall be entitled to take into account the result of investigations into any previous complaints received by the ACT concerning the member. In the event the Committee of Investigation intends to take account of such matters in reaching its decision, the member concerned shall be notified of the relevant prior complaint(s) and shall be given an opportunity to make any representations he may choose in relation to that prior complaint.

Disciplinary Committee

15. When the Committee of Investigation decides to refer a formal complaint to a Disciplinary Committee, it shall notify the Chief Executive and the President.
16. The Chief Executive shall forthwith notify the Chairman of the Advisory Board who will nominate a Disciplinary Committee.
17. The Disciplinary Committee so nominated shall consist of three or five persons (depending on the recommendation of the Chief Executive) from the Advisory Board. The Disciplinary Committee shall be chaired by the Chairman of the Advisory Board or, in his absence, such person as the nominated members of the Disciplinary Committee shall agree.
18. The Disciplinary Committee:
 - (a) shall not include any Council member, nor any person who has been a Council member in the previous 2 years, nor any person on the executive staff of the ACT nor any person from the Committee of Investigation in relation to the complaint;
 - (b) shall include at least one person who is not a member of the ACT.
19. Following receipt of a formal complaint from the Committee of Investigation, the Chairman of the Disciplinary Committee nominated as aforesaid shall, through the Chief Executive, in accordance with paragraph 50 below, (i) notify the member concerned of the nature of the complaint against him; (ii) provide the member concerned with a copy of the formal complaint and accompanying documents submitted to the Disciplinary Committee in accordance with paragraph 13 above; and (iii) give the member concerned at least 21 days' notice of the time and place of the hearing of the complaint by the Disciplinary Committee.
20. At any such oral hearing before the Disciplinary Committee the member concerned shall be entitled to be heard in person and/or be represented by a barrister and/or a solicitor and/or any other person. The member concerned and/or his representative shall be entitled to call witnesses, cross-examine witnesses called against him and address the Disciplinary Committee.
21. If the member fails to attend any such hearing and the Disciplinary Committee is satisfied that the notice of the hearing was properly served on him in accordance with paragraph 50 below, the Disciplinary Committee may proceed with the hearing in his absence.
22. At any such hearing the complaint shall be presented to the Disciplinary Committee by a person (whether or not a member of the Committee of Investigation or the ACT) nominated by the Committee of Investigation. Such person so nominated by the Committee of Investigation may be a barrister or solicitor. He shall put forward the complaint and the relevant evidence before the Disciplinary Committee and he may call witnesses and cross-examine witnesses called by the member concerned.
23. If the Disciplinary Committee decides, by a simple majority, that the complaint has been proved wholly or in part it shall make an order to that effect. Such an order may, in the Disciplinary Committee's discretion, include such of the penalties set out in paragraph 4 above as it considers appropriate, having regard to the member's status and the Disciplinary Committee's views as to the nature and seriousness of the complaint and such other circumstances as the Disciplinary Committee may consider relevant, except that in the case of any determination involving exclusion from membership under sub-paragraph 4(a)(i) the order shall take the form of a recommendation to the Council that the Council should pass a resolution to that effect in accordance with the Articles. If the Disciplinary Committee is of the opinion that the complaint is wholly unfounded, it shall make an order to that effect. In the case of an equality of votes, the Chairman of the Disciplinary Committee shall have a second or casting vote.

24. Any order of the Disciplinary Committee shall be notified to the member concerned, in accordance with paragraph 50, within 7 days of the date of the order.
25. An order of the Disciplinary Committee shall take effect from the date 21 days after the date of service on the member of the order of the Committee, save in the event that prior to such date the member lodges a valid Notice of Appeal. Notice of the order shall also be given to the Council.

Appeals

26. The member may appeal an order of the Disciplinary Committee by serving a valid Notice of Appeal on the Chief Executive, in accordance with paragraphs 27 and 50 within 21 days of service of the order on the member concerned or such longer period as the Disciplinary Committee may allow.
27. The Notice of Appeal must:-
 - (a) state the specific order being appealed;
 - (b) state the order being sought from the Appeal Committee;
 - (c) set out the ground(s) of appeal and the substantive injustice of allowing the order appealed against to stand. The grounds so stated shall not thereafter be amended except with the permission of the Appeal Committee;
 - (d) set out the facts upon which the appeal is based;
 - (e) attach a copy of every document and witness statement that was placed before the Disciplinary Committee in connection with the order appealed against;
 - (f) where appropriate, apply for permission to present any new evidence that was not placed before the Disciplinary Committee in accordance with paragraph 38 below;
 - (g) state the appellant's time estimate for the oral hearing of the appeal;
 - (h) be accompanied by an appeal fee of £500. The appeal fee shall not be repaid to the appellant unless the Appeal Committee allows the appeal.
28. The appeal shall be heard by an Appeal Committee, to be appointed by the Chief Executive as and when the need arises, consisting of three people which shall consist of (i) a lawyer as chairman (who shall be, or have been, a solicitor or barrister qualified in the United Kingdom with at least 10 years' experience in practice and who has had no prior involvement with the complaint), (ii) one Fellow of the ACT and (iii) one non-member of the ACT.
29. The Appeal Committee shall not include (i) any Council member, nor any person who has been a Council member in the previous 2 years, (ii) any person on the executive staff of the ACT, (iii) any member of the Committee of Investigation or Disciplinary Committee who has been concerned with the complaint which is the subject of appeal or any other person who has been so concerned.
30. The Council shall have power to pay remuneration and the reasonable expenses of the members of the Appeal Committee.
31. The Chairman of the Appeal Committee may, upon the application of the appellant or otherwise, make any order, give any direction or instruction considered necessary for the proper conduct of the appeal proceedings, including but not limited to the following:-
 - (a) lengthening or shortening any time limit;
 - (b) adapting or dispensing with any procedural steps set out in these Rules;
 - (c) requiring a record to be made of the proceedings or any part of them;
 - (d) requesting any person to attend the hearing;
 - (e) holding a preliminary hearing; and
 - (f) adjourning a hearing for such period and upon such terms as he considers appropriate.

The decision of the Chairman of the Appeal Committee in respect of the matters set out above shall be final.

32. The Appeal Committee shall notify the member of the time and place of the appeal hearing giving at least 28 clear days' notice. The appeal proceedings shall be by way of a re-hearing of the original complaint or of such part thereof as is the subject of appeal. The Appeal Committee may hear oral evidence from witnesses (as appropriate), subject to the restriction on introduction of new evidence referred to at paragraph 38. The Appeal Committee shall conduct the appeal hearing in such manner as it considers fit.
33. At the oral hearing before the Appeal Committee the member concerned shall be entitled to be heard in person and/or be represented by a barrister and/or a solicitor and/or any other person. The member concerned and/or his representative shall be entitled to call witnesses, cross-examine witnesses called against him and address the Appeal Committee, subject to the restriction on introduction of new evidence referred to at paragraph 38.
34. If the member does not attend the hearing fixed as aforesaid then, provided that the Appeal Committee is satisfied that notice of the hearing was served upon the member as prescribed in paragraph 50, the Appeal Committee may proceed to hear the appeal in the absence of the member.
35. At any such Appeal hearing the complaint may be presented to the Appeal Committee by a person (whether or not a member of the Committee of Investigation or the ACT) nominated by the Committee of Investigation. Such person so nominated by the Committee of Investigation may be a barrister or solicitor. He shall put forward the complaint and the relevant evidence before the Appeal Committee and may call witnesses and cross-examine witnesses called by the appellant.
36. The Appeal Committee may if it sees fit instruct a solicitor or counsel to act as legal advisor to the Appeal Committee on the hearing of any appeal.
37. The Appeal Committee may if it sees fit require a representative or representatives of the Disciplinary Committee to attend the hearing of any appeal to answer questions from the Appeal Committee.
38. On any appeal, the Appeal Committee shall hear new evidence that was not placed before the Disciplinary Committee only where the Appeal Committee has given permission for that new evidence to be presented. An application for permission to present new evidence must be made in writing in the Notice of Appeal, setting out the nature and the relevance of the new evidence and the reason(s) why it was not presented to the Disciplinary Committee at the original hearing. Save in exceptional circumstances, the Appeal Committee shall not grant permission to present new evidence unless it is satisfied with the reason(s) given as to why it was not, or could not have been presented to the Disciplinary Committee and is satisfied that such evidence is relevant. The Appeal Committee's decision as to whether permission shall be granted to present the new evidence shall be final.
39. On any appeal, the Appeal Committee may, by a simple majority, affirm, vary or rescind any order of the Disciplinary Committee or may substitute any other order or orders, on such terms and conditions if any as it thinks appropriate, except that in the case of any order involving exclusion from membership under sub-paragraph 4a(i) the order shall take the form of a recommendation to Council that it should pass a resolution to that effect in accordance with the Articles.
40. Any order of the Appeal Committee shall be notified to the member concerned in accordance with paragraph 50 within 14 days of the date of the order. Notice of the order should also be given to the Council. An order of the Appeal Committee shall take effect upon service of the order on the member in accordance with paragraph 50.
41. There shall be no appeal to any Court of Law or otherwise from an order or other decision of the Appeal Committee or, in the case of an order recommending exclusion from membership, from any resolution of Council affirming such order, except where the member would be entitled to do so under the general law.

Costs

42. Any order made by the Disciplinary Committee under paragraph 23 above, including an order that no further action be taken, may direct that the member pay a sum to be specified by way of costs to the ACT. In the event that the Disciplinary Committee shall find that the complaint is unfounded, it may direct that the ACT pay a sum to be specified by way of costs to the member.
43. Any costs payable by the member shall be paid within 21 days of the date of the service of the order save that, if valid notice of appeal is given (in accordance with paragraphs 27 and 50), such costs shall not be payable until determination of the appeal and shall then be subject to any order made by the Appeal Committee. Any such costs payable by the ACT shall be paid within 21 days of the date of the order of the Disciplinary Committee.
44. The Appeal Committee may in its order cancel, reduce or increase any costs order made by the Disciplinary Committee, and may direct that the member pay to the ACT or the ACT pay to the member, as the case may be, a sum to be specified by way of costs of the appeal.
45. Any costs ordered by the Appeal Committee under paragraph 44, together with any costs due under paragraphs 42 and 43, varied, if such be the case, by the Appeal Committee, shall be paid to or by the ACT within 21 days of the date of service on the member of the order of the Appeal Committee.

Publication

46. Whenever the Disciplinary Committee makes an order under paragraph 23 above it shall, at its discretion but subject to paragraph 49, cause its order to be published in such manner as it thinks fit, provided that if the Disciplinary Committee has ordered that no further action be taken on the complaint and/or that the complaint is unfounded, the order shall not be published unless the member so requests.
47. The Appeal Committee shall cause any order made by it to be published as soon as practicable in such a manner as it thinks fit, provided that if the Appeal Committee has ordered that no further action be taken on the complaint and/or that the complaint is unfounded, the order shall not be published unless the member so requests.
48. Unless the Disciplinary Committee, or as the case may be, the Appeal Committee in its absolute discretion otherwise directs, any such publication shall state the name of the member and the order or orders made against him, but need not include the name of any other person concerned in the complaint or appeal.
49. No publication under paragraph 46 shall be made until after the expiry of the appeal period referred to in paragraph 26 above and in the event that valid notice of appeal is given (in accordance with paragraphs 27 and 50) then, unless the appeal is abandoned, no publication under paragraph 46 shall take place but publication shall be under paragraph 47.

Notices

50. Any notice or order required or authorised to be given or served under these Disciplinary Rules shall be given or served by pre-paid letter sent in the case of the ACT to the Chief Executive at the registered office for the time being of the ACT and in the case of a member to his last known address. Any notice or order so given or served shall be deemed to have been given or served 48 hours after it has been posted.

Resigning/Former Members

51. As provided in article 12.1 of the ACT's Articles, the Council is not obliged to accept the resignation of a member in respect of whom a complaint has been referred to the Council or any committee appointed by it under these Rules until such complaint has been finally resolved in accordance with these Rules.

52. Former members of the ACT remain liable to disciplinary action in accordance with these Rules (notwithstanding the cessation of their membership), to the extent that the relevant matters complained of occurred at a time when they were a member of the ACT.



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