



# RIAS

## **Complaints and Disciplinary Procedure**

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### 1. Introduction

This document sets out the procedures to be followed on the receipt of a complaint pertaining to a breach of the RIAS's Code of Professional Conduct by a Chartered or Non-chartered Member of the RIAS. For a description of the various classes of membership of the RIAS see [doc ref].

This document sits alongside procedures for dealing with grievances and the RIAS Whistle Blowing policy. Any particular issue may fall under one or more of these headings and those wishing to pursue a complaint against a member of the RIAS should make themselves aware of each of these procedural routes. A summary is provided in the RIAS 'How to complain' document available on the Incorporations website. If on initial investigation it is considered that a complaint should be dealt with in part or wholly as a grievance and / or whistle blowing, the complainant will be informed and the complaint dealt with under those procedures.

In addition, the RIAS has separate procedures [Appendix C] in place to deal with corporate complaints against the organisation as a whole. These cover matters of action and governance on the part of the RIAS as a whole, rather than those of individual members or Members of staff.

### 2. Ombudsperson

From time to time the RIAS will appoint a Complaints Ombudsperson who will acknowledge receipt of the complaint, and oversee the procedures described in Sections 4, 5 and 6 below. The Ombudsperson will be required to act with neutrality at all times, declare any conflict of interest and step aside, in favour of another if required.

The Ombudsperson may make recommendations to RIAS Council but takes no role in any disciplinary decisions. The Ombudsperson may call on additional internal and external resources from staff and consultants, with regard to, the investigation of a complaint.

If in the opinion of the Ombudsperson the complaint is of such a nature that any aspect of charities or wider law may have been breached, then they are responsible for bring these to the attention of the relevant authorities.

### 3. Complaints

For the purposes of this document a complaint can be received from:

- A member of the public, client, construction professional and any other person or organisation with which the member of the RIAS has had contact
- A member of the RIAS
- A member of RIAS staff
- An RIAS Working Group, Committee or RIAS Council
- A public or regulatory body

The first thing to establish is the nature and validity of any complaint in principle. For a complaint to be considered it must relate to the members behaviour or actions and how these may bring the member or the Incorporation in to disrepute. It must:

- Be made in writing
- Be from a person or body who has a relationship with the subject of the complaint and must confirm the full nature of that relationship
- Detail the nature of the complaint

It is sufficient for a relationship to be formed where a member has circulated information or made public statements, which in the view of the complainant brings the member or the Incorporation in to disrepute. A complaint can not however be brought on the basis of 'hearsay'.

Where complaints relate to the provision of architectural services by a Chartered Member, this should in the first instance be directed to the Chartered Member themselves or their employer and if this is not dealt with satisfactorily in the eyes of the complainant, the Architects Registration Board who have the statutory duty to investigate.

Examples of issues which may form the grounds for a complaint against a member are included in the RIAS Code of Professional Conduct.

Complaints must not be made vexatiously and should be made according to the appropriate procedures and channels and held in confidence by the complainant, until such time as the RIAS have investigated the matter. The outcome of any investigation and disciplinary procedure may be:

- Complaint dismissed, no action against the member is required
- Reprimand
- Suspension of the member from RIAS
- Suspension of the member from the RIAS Council, Working Groups or Committees (and other roles in the RIAS) for a period of time
- Expulsion of the member from the RIAS Council, Working Groups or Committees????
- Expulsion of the member from the RIAS

Where the subject of the complaint is a Member of RIAS Council, it may be that the Ombudsperson and/or RIAS Council will be required to refer the matter to the Office of the Scottish Charities Regulator as that Member has explicit duties to discharge with regard to The Charities and Trustee Investment (Scotland) Act 2005 and must not be hindered in so doing by other RIAS Council Members.

Both the complainant and the member will be kept fully informed of the process and outcome of any investigation and/or disciplinary procedure.

If, following assessment and in the view of RIAS Council a complaint has been made vexatiously by one member against another they may decide to refer the actions of the complainant back to the

Ombudsperson. Equally where the complainant is not a member of the RIAS, but in the view of the RIAS has acted vexatiously, the RIAS Council may feel further public action by the Incorporation is necessary to protect the member and the Incorporation.

Sections 4 and 5 of this Complaints and Disciplinary Procedures requires that evidence be sought from all appropriate sources and ensures that any member who is the subject of a complaint is allowed to present such information or justification for their actions as they consider fit. The subject of a complaint is entitled to legal representation at their own cost at any hearing or panel discussion.

On conclusion of the matter and any sanction imposed by RIAS Council, the member is entitled to appeal through the offices of the Construction Industry Council If they consider they have been treated unfairly.

#### **4. Immediate Action on Receipt of a Complaint**

It is possible for a complaint regarding a Member to arrive at the Incorporation's door at any time and from any direction. Even from within the RIAS itself.

The complainant, or potential complainant, must in the first instance be referred to the RIAS' 'How to Complain' document available on the Incorporation's website. This lays down the requirement to provide a complaint in writing with sufficient detail and where applicable, evidence, to allow initial consideration by the Ombudsperson.

On receipt of the complaint the Ombudsperson must firstly reassure themselves that they do not have a conflict of interest in the matter. For example, they may be a close friend or have a business relationship with the complainant or member, which would debar them from assessing the matter at hand.

With a neutral Ombudsperson in place he or she must then decide:

1. Does the matter relate to a member either bringing themselves and/or the Incorporation into disrepute, as defined by the Code of Professional Conduct?
2. Has the complainant provided clear evidence of action (or lack of action) on the part of the member?
3. Has the complainant explained why they consider the actions or otherwise of the member has brought either them and/or the Incorporation in to disrepute?

The Ombudsman may wish to seek specific advice, with regard to, these aspects and may wish to speak to the complainant and/or the member and/or others named by either party before reporting to Council. In doing so the Ombudsperson will compile a record of such conversations.

Copies of such advice as may be given, and records of any conversations will be kept confidential. The Ombudsperson will however share their record of their conversations with their interlocuter giving them the opportunity to fact check them.

Prior to the Ombudsperson reporting to RIAS Council they may determine that there is an issue at hand but that may better be addressed through some other means such as mediation. If such other means is rejected by one or other of the parties concerned the Ombudsperson will prepare a report for RIAS Council detailing:

- The initial complaint
- The information provided
- Any advice and recommendations that have been sought
- Any additional information obtained from initial conversations
- Any further evidence or information which has been provided by either party or from the Ombudspersons own research

- Any recommendation the Ombudsperson may feel it is appropriate to make

Where possible this is to be provided in a way which ensures the anonymity of the complainant and the member. RIAS Council will consider the report and whether there is a prima facie case for a formal investigation and the result of their deliberation will be provided in confidence to both parties.

The Ombudsperson must also consider whether the subject of the complaint is of sufficient concern that they should report the matter to one or other competent legal authority.

## **5. Investigation Committee**

If RIAS Council consider that there are sufficient grounds for a formal investigation, then the Ombudsperson must convene under their chair an Investigation Committee of no less than three and no more than five persons, including themselves. The additional Members of the Investigation Committee may be drawn from members and/or non-members of the RIAS and should include those with specialist knowledge and experience of dealing with the matter of the complaint.

Each Member of the Investigation Committee must reassure themselves that they do not have a conflict of interest in the matter. This may only become apparent on disclosure of names and other personal details and the Ombudsperson must be ready to dismiss and reappoint Members of the Investigation Committee if this becomes the case.

The Investigation Committee may choose to go about its business in the manner they think appropriate to the circumstances, however records of meeting, conversations etc must be kept, collated and retained. Such actions as the Investigation Committee undertakes must be proportionate to the subject of the complaint.

The Investigation Committee must be mindful that any actions they take may be open for scrutiny through an appeals process and that they have a duty to protect the Complainant, the member and the Incorporation through the proper application of the 'Complaints and Disciplinary Procedures'.

It is likely that the Investigation Committee will wish to gather further evidence and personal testimony. In so doing all parties are entitled to have their legal representatives in attendance. All parties should be reminded that they have a duty to answer those questions reasonably put to them by the Investigation Committee.

The investigation process is not a legal process where individuals or other legal entities can be forced to provide testimony and the Investigation Committee must be mindful of the potential life-changing consequences for members as a result of the process.

## **6. Reporting**

On completion of the investigation the Ombudsperson will prepare a report outlining the complaint, the investigation process, the evidence and testimony received and recommendations for consideration.

Both the complainant and member will be afforded sight of a draft copy of the draft report once approved by the Investigation Committee. Short of any recommendations that the Investigation may consider it appropriate to make to RIAS Council. Each party will be allowed to offer factual corrections and offer a final statement.

A finalised report, complete with any factual changes the Investigation Committee agree are necessary and the final statements from both parties will be provided to RIAS Council. If possible the identities of those involved should be kept anonymous.

## **7. RIAS Council Decision**

RIAS Council must then consider the report and any recommendations made by the Investigation Committee. In doing so any Members of RIAS Council who consider that they have a potential conflict of interest should remove themselves from discussing and deciding upon the matter. The possible sanctions that Council can apply are noted in Section 3 above.

Once Council has made its decision the Ombudsperson is charged in communicating this to both complainant and member, together with RIAS Council's reasoning for their decision. If necessary RIAS may consider that the matters in hand should also be referred to other competent authorities if it has not already been so done.

## **8. Right of Appeal**

Where a member is unhappy with the outcome of the complaints process they have two options open to them. Where they consider that the RIAS has not followed due process in dealing with the complaint and subsequent disciplinary procedure, the member may choose to lodge a formal complaint through the RIAS Corporate Complaints Procedure. Alternatively where they disagree with any sanction imposed by RIAS Council they may appeal through the Construction Industry Council procedures.

Where the Complainant is unhappy with the outcome of the complaints process they may choose to lodge a formal complaint through the RIAS Corporate Complaints Procedure. The only grounds for such a complaint is that the RIAS has failed to follow their own 'Complaints and Disciplinary Procedure'. The Complainant has no right to appeal RIAS Council's decision about what sanction if any to apply to the Member.

## **9. Time Scales**

The RIAS undertake to deal with complaints in a timely manner, albeit ensuring that sufficient time is allowed to properly investigate the issues raised and report to RIAS Council, the complainant and the subject of the complaint.

On receipt of a written complaint the RIAS will acknowledge the receipt of that complaint within 5 working days, outlining to the complainant the steps that will be undertaken. The RIAS will pass the complaint to the Ombudsperson to initially examine the nature of the complaint as soon as possible but in no more than 4 working weeks. This backstop timeframe allows for unavailability of the Ombudsperson for whatever reason or the potential need to appoint another Ombudsperson to deal with the matter.

If in the view of the Ombudsperson the complaint has some prima facie basis which requires investigation the Ombudsperson will determine the nature of that investigation and the time frame within which they expect to be able to report to RIAS Council.

Such time frames as the Ombudsperson may initially determine will remain flexible to allow for the expansion of the investigation, for example if evidence emerges that more than one Member is suspected of being complicit in the matters under investigation or that the matters are such that input from or separate investigations are deemed appropriate by external stakeholders.

On completion of their investigation the Ombudsperson will present their report to the next available Council. Depending on the nature of the complaint and the matters being investigated it may be that the Ombudsperson deems it appropriate to provide one or more progress reports to Council for their consideration and decision as appropriate.

## **10. Media**

On conclusion of the Complaints and Disciplinary Procedure, RIAS Council must consider, in the light of what advice seems advisable, the scope of any public statements which it may be appropriate to make.

For example, in the case of a relatively private matter where no sanction was applied, any comments may well be confined to the Council report in the Quarterly (which may be anonymised) those facts which it is felt hold a lesson for other members.

In the case of a high-profile issue, that is already in the public domain, it may be that RIAS Council considers it appropriate to provide a press release in order to demonstrate that it is undertaking due professional oversight and in order to protect or redress any harm which may have come from the matters about which complaint has been made.