

Disciplinary regulations

Escrito por Institute of Field Archaeologists

Viernes, 29 de Junio de 2007 22:48 - Actualizado Lunes, 14 de Septiembre de 2009 08:57

By-laws of the Institute of Field Archaeologists

Disciplinary Regulations

Revised Edition, September 2005

The Institute recognises that from time to time there will be allegations that a member has acted contrary to the *Code of conduct* or other by-laws of the Institute.

In common with many other professional institutes, the IFA in 2004 and 2005 reviewed its disciplinary procedures with a view to making them less cumbersome, making the Institute more credible as an effective regulatory body (especially to those outside archaeology), ensuring lay involvement where appropriate, emphasising redress or improvement rather than punishment, enabling the Institute to devote its limited resources to investigating allegations of misconduct rather than mediating in contractual or professional disputes, and ensuring compliance with human rights legislation and general principles of natural justice.

These disciplinary regulations set out the procedure by which the Institute will determine whether an allegation requires formal investigation, and if it does how that investigation will be carried out. If formal disciplinary proceedings take place, each party is given an opportunity to present his/her case or to defend himself/herself against the allegation. The procedures also allow for representation and appeal against the findings and any sanctions.

The Institute's policy is to preserve confidentiality, and it requests all those involved in any proceedings to do likewise. The Institute cannot be held responsible for breaches of confidentiality by individuals involved in proceedings.

The Institute will take all reasonable steps to ensure that proceedings are completed promptly. The failure by the last to comply with any time limit imposed by this by-law will not invalidate any disciplinary proceedings.

These regulations set out a four-stage process comprising

- a preliminary assessment either of whether an allegation could better be resolved by discussion; or of whether information that comes to the attention of the Institute might lead it to make its own allegation (clauses 1-6)
- an initial investigation of an formal allegation to determine whether there is a case to answer, whether conduct warrants only advisory recommendation, or whether to recommend appointment of a disciplinary panel (clauses 7-15)
- an investigation by a disciplinary panel (clauses 16-26), with an appeal process (clauses 27-35)
- reporting and review (clauses 36-39)

Disciplinary procedure

1 An allegation against an individual member of the Institute ('the Defendant') may be made by any person or organisation ('the Complainant') at any time about matters arising during

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membership or in the course of an application for membership. The allegation will be handled under the terms of these by-laws, whether that person is or is not a current member.

2 As an alternative to receiving an allegation from a third party, during Stages 1 and 2 the IFA may nominate someone to bring an allegation on its behalf.

Stage 1: Preliminary assessment

3 All allegations of misconduct are taken seriously. However, in many cases allegations arise from disputes which can be resolved by discussion rather than confrontation. The Institute believes that in most cases the first stage in resolving any dispute is for the person or organisation making the allegation to write to the individual concerned if the matter has not already been resolved by discussion. The Institute expects every member who is the subject of an allegation or dispute to respond in writing to an allegation promptly.

4 On being advised or on learning of a matter of potential concern from whatever source, the Hon Chair of the Council ('the Chair) or his/her nominated deputy shall have the absolute discretion to nominate an appropriate person or organisation to carry out a preliminary assessment (discussing the matter with one or more of the parties concerned as appropriate) to determine

- whether an allegation received should more appropriately be resolved by discussion, and whether to recommend to the Chair or member of the Executive committee nominated by the Chair that the Institute formally accepts the allegation
- in the case of information received by the Institute other than via a formal allegation, whether to prepare or have prepared a formal allegation.

5 The Chair or member of the Executive committee nominated by the Chair will only accept an allegation if he/she is satisfied that a genuine attempt to resolve any disputes has been made, or that such an attempt is not appropriate. If the Chair or nominee is not satisfied on this matter then he/she may give such directions to the two sides as seem appropriate.

6 The Chair or nominee may decide not to accept a formal allegation if he/she believes that there is no case to answer.

Stage 2: A formal allegation is accepted

7 Subject to clause 11, the allegation must identify the person or organisation making the allegation, identify the member against who the allegation is made, specify the conduct that has led to the allegation, and should identify the paragraphs which are alleged to have been breached in the *Code of conduct*, or any other by-laws that may apply from time to time.

8 An allegation brought by a nominated person or organisation shall be handled in accordance with the same procedures that apply to any other allegation.

9 On accepting an allegation the Chair or nominee will appoint a further person or persons

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(who shall not be the same as the person or organisation conducting the preliminary assessment) to act as investigator of the allegation, to determine any of the following one

- a. there is no case to answer
- b. there has been no significant breach of the Code of conduct but conduct warrants an advisory recommendation
- c. sufficient cause for concern to recommend appointment of a disciplinary panel

10 The Institute will process all allegations made within twelve months of the last incident or last conduct that forms the basis of the allegation. The investigator shall have absolute discretion as to whether the Institute should process any allegation about something that happened more than twelve months before the allegation was received by the Institute.

11 Within 28 days of acceptance of the formal allegation by the Institute, the Institute must send a copy of all of the information to the member against who the allegation is made unless exceptional circumstances apply. Those exceptional circumstances are where the identity of the complainant needs to be withheld to enable the allegation to be made as identified in sections 30 and 31 of the Freedom of Information Act 2000. If those circumstances apply then the investigator shall have the discretion as to the information disclosed. <http://www.opsi.gov.uk/acts/acts2000/20000036.htm>

12 The member against who the allegation is made will be invited by the investigator to give a written response to the allegation. The investigator shall have the discretion to carry out any other investigations to assist in determining the allegation.

13 The investigator shall have the discretion to recommend to the Executive committee any one of the following findings

- a. that there is no case to answer
- b. in the event that there does not appear to have been any significant breach of the Code of conduct that investigations have revealed opportunities for improvement in specified areas, whether the subject of the allegation or not. The finding shall make advisory recommendations regarding any potential for improvements or redress, eg using the Institute's arbitration scheme, redoing a piece of work, apologising, or making a compensatory payment not exceeding £2000
- c. that the facts appear to reveal a sufficient cause for concern that the Executive committee be asked to appoint a disciplinary panel to investigate the matter in accordance with this by-law

14 The Executive Committee shall consider the recommendation of the investigator at the next most suitable meeting at which at least three members of the Executive Committee are present. Members of the Executive Committee will firstly vote upon whether there is a case to answer. In the absence of a vote that there is no case to answer by a majority of those present, the Executive Committee shall decide that there is no case to answer. If the majority of those present decide that there is a case to answer, members will then vote upon whether there should be an advisory recommendation in accordance with clause 13b or the appointment of a disciplinary panel in accordance with clause 13c. In the absence of a majority in favour of the appointment of a disciplinary panel, the decision of the Executive Committee shall be to make an advisory recommendation in terms to be agreed by the Committee. The Executive Committee will inform the parties to the allegation of its decision, where appropriate, specifying

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those parts of the allegation or allegations which are to be considered by a disciplinary panel.

15 If the member against who the allegation is made wishes to appeal against an advisory recommendation and the findings that led to it, the Executive Committee may refer the matter to a disciplinary panel (Stage 3).

Disciplinary Procedure - Stage 3

A disciplinary panel considers an allegation

Appointment

16 The Chair will appoint a disciplinary panel of six people who will normally be IFA members. If the Chair has or has had a sufficiently close personal or professional relationship with either party that a reasonable person would consider it to be potentially prejudicial then the panel shall be appointed by another person nominated by the Executive committee who does not have a potentially prejudicial interest.

17 The person appointing the disciplinary panel shall make enquiries of each potential member of the panel to ensure that they do not have a potentially prejudicial interest in the matter they are about to consider.

18 The Chair or nominee shall notify the person or organisation making the allegation and the person who is the subject of the allegation about the appointment of the panel, identifying the members of the panel and informing the person who is the subject of the allegation of the right to be represented.

Procedures of the Disciplinary Panel

19 The disciplinary panel shall be able to act if four or more of the panel is present. A Chair of the panel shall be elected at the first meeting, and if the Chair is absent at any subsequent meeting then an acting Chair shall be appointed for that meeting only.

20 The disciplinary panel may agree administrative and procedural matters as seem appropriate to the members of the panel by telephone, e-mail, fax or correspondence. Written records of all decisions taken and information shall be circulated to the parties to the dispute. The panel may also decide to conduct meetings or interviews with one or more persons who may have evidence which may assist the panel in determining the allegation and related matters. Minutes shall be kept of such meetings or interviews and they shall be circulated to the parties to the dispute.

21 The disciplinary panel may at any stage decide to cease or suspend its work if it considers that the evidence does not disclose a case to answer that it is a frivolous or vexatious allegation, or that it is inappropriate to continue due to anticipated or actual civil or criminal proceedings, serious illness, or any other compassionate ground.

Sanctions

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22 The disciplinary panel may make any one of the following five findings on each element of an allegation. The panel has the authority to impose the first two sanctions (a or b); the latter three (c, d or e) must be referred to the Executive committee which alone has the authority to impose them

a. that there is no case to answer

b. in the event that there does not appear to have been any significant breach of the Code of Conduct, that investigations have revealed opportunities for improvement in specified areas, whether the subject of the allegation or not. The finding shall make advisory recommendations regarding any potential for improvements or redress, eg using the Institute's arbitration scheme, redoing a piece of work, apologising, or making a compensatory payment not exceeding £2000

c. that the Executive Committee should issue a formal reprimand (normally drafted by the disciplinary panel)

d. that the Executive Committee should suspend the member against who the allegation is made from membership of the Institute for at least one year and no more than three years

e. that the Executive Committee should expel the member against who the allegation is made from membership of the Institute

23 The disciplinary panel shall report its findings to the person making the allegation, to member against who the allegation is made and the Executive Committee.

24 If the disciplinary panel recommends sanctions (c), (d) or (e) the Executive Committee shall consider the disciplinary panel's report about the investigation at its next available meeting; and may review the recommended sanction if the subject of the allegation has provided evidence of remedial action (eg Continuous Professional Development).

25 The Executive Committee may impose one of the sanctions that has been recommended by the panel or may substitute any of the other lesser sanctions available to the disciplinary panel. At least three members of the Executive Committee must be present in the absence of which the matter will be deferred to the next suitable meeting of the committee. When the matter is considered, members of the Executive Committee will firstly vote upon whether to impose the sanction recommended by the panel. In the absence of a majority of those present voting in favour of the recommended sanction, the Executive Committee shall impose a lesser sanction and, if more than one lesser sanction is available, members of the committee will then vote upon which of those sanctions to impose. In the absence of a majority in favour of the imposition of any particular sanction, the Executive Committee shall impose the lesser available sanction.

26 In the event of expulsion membership shall not be renewed unless and until the membership application is supported by sufficient evidence to enable the Institute in its discretion to conclude the applicant has taken sufficient steps to ensure that the circumstances of the allegation, or similar instances, would be unlikely to arise again.

Appeal

27 The member against who the allegation is made may appeal the finding of the panel and/or the sanction imposed by the disciplinary panel and/or the Executive Committee to the Council

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within 28 days of the date of the relevant decision of the panel or Executive Committee provided that they remain a member throughout the disciplinary panel's investigations.

28 The members of the Executive committee will not participate in the Council's consideration of the appeal. Therefore an acting Chair of the Council shall be elected at the first meeting, and if the acting Chair is absent at any subsequent meeting then another acting Chair shall be appointed for that meeting only.

29 The Council may refuse to accept any appeal if it is frivolous or vexatious.

30 In any case where the sanction was not suspension or expulsion then the Council may decide the appeal in its discretion.

31 In the event of the an appeal against suspension or expulsion then an appeal panel of six people shall be appointed by the acting Chair, unless he or she has or has had a sufficiently close personal or professional relationship with either party that a reasonable person would consider it to be potentially prejudicial. If the Chair has such a potentially prejudicial interest then the panel shall be appointed by another person nominated by the Council who does not have a potentially prejudicial interest.

32 The person appointing the appeal panel shall make enquiries of each potential member of the appeal panel to ensure that they do not have a potentially prejudicial interest in the matter they are about to consider. The appeal panel shall be made up of not less than five members of the Institute. The remaining appeal panel member may or may not be an archaeologist and/or a member of the Institute.

Procedures of the Appeal Panel

The appeal panel shall be able to act if four or more of the panel is present. A Chair of the appeal panel shall be elected at the first meeting, and if the Chair is absent at any subsequent meeting then an acting Chair shall be appointed for that meeting only.

33 The appeal panel may agree administrative and procedural matters as seem appropriate to the members of the panel by telephone, e-mail, fax or correspondence. Written records of all decisions taken and information shall be circulated to the parties to the dispute. The appeal panel shall review the evidence submitted to the disciplinary panel but may also decide to conduct meetings or interviews with one or more persons who may have evidence which may assist the appeal panel in determining the appeal. Minutes shall be kept of such meetings or interviews and they shall be circulated to the parties to the dispute.

34 The appeal panel may at any stage decide to cease or suspend its work due to anticipated or actual civil or criminal proceedings, serious illness, or any other compassionate ground.

35 The decision of the appeal panel is final. It may

- overturn the finding and impose no sanction

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- confirm the finding and impose a lesser sanction (from those available to the disciplinary panel)
- confirm the finding and sanction

Disciplinary Procedure - Stage 4 Reporting and review Reporting

36 In the event of a suspension or expulsion the Institute will publish an account of the case in any publication as it shall decide. Any account shall include the name of the member(s) involved and the details of the sanction decided, unless there are exceptional compassionate grounds for not doing so. The Institute may also make this information known to third parties by other means.

37 In the event of a formal reprimand the Institute will publish an account of the case in any publication as it shall decide. Any account may include the name of the member(s) involved. The Institute may also make this information known to third parties by other means.

Annual review

38 Whatever the outcomes of any cases, the Institute will normally arrange for a review of allegations annually and publish an account of the number and nature of cases brought including advisory recommendations, but will not name the parties to cases that have not reached a conclusion, where the allegation was not upheld, or where lesser sanctions than reprimand, suspension or expulsion applied.

39 The review will be undertaken by a lay person (who is not a member of the Institute) who will review the papers from all of the proceedings in the period of the review. The review report will be presented to the next meeting of the Council which shall have absolute discretion as to how to respond to matters identified in the review report.