



**INSTITUTE OF FINANCIAL ADVISERS INC.**

**DISCIPLINARY BY-LAWS**

**13 November 2008**

## 1. DISCIPLINARY BODIES AND THEIR PURPOSES AND FUNCTIONS

### 1.1 Empowered by the Constitution: The Institute has the following disciplinary bodies:

- a. Complaints Committee;
- b. Disciplinary Committee;

The disciplinary bodies are established under Clauses 30 and 31 of the Constitution.

### 1.2 Objective of the Disciplinary Process:

The objective of the disciplinary process is to ensure that any complaint about the conduct of a Member is fully and fairly heard and, if the complaint is upheld, appropriate disciplinary action follows.

### 1.3 Deed of Confidentiality:

Every member of both Committees shall sign the Institute's Deed of Confidentiality and will give the undertakings referred to therein, upon their appointment to the Committee. In the event that a member does not sign such Deed, they shall nevertheless upon accepting appointment be deemed to be bound by the terms thereof.

### 1.4 Conflict of Interest:

A person shall not be appointed as a member of a disciplinary body, or if appointed must stand down from the position, in respect of a particular investigation or disciplinary procedure if that person has any direct or indirect conflict of interest.

### 1.5 Establishment and responsibilities of Compliance Manager:

- a. The Board will appoint a person (who may be an employee of the Institute) to act as Compliance Manager to assist the Committees with the processing of complaints and the maintenance of professional standards.
- b. All complaints shall be forwarded in writing to the Compliance Manager who shall forthwith—
  - i. record such complaint in a complaints register to be kept by the Compliance Manager for the purpose;
  - ii. acknowledge receipt of all complaints in writing to the complainant;
  - iii. call for an explanation from the Member concerned unless, in the opinion of the Compliance Manager the complaint is so groundless as to warrant dismissal out of hand;
  - iv. refer copies of all complaints, and any correspondence entered into with the complainant and/or the Member concerned, to the Complaints Committee.
- c. If the Compliance Manager comes to the conclusion that the complaint is so groundless as to warrant dismissal out of hand, s/he shall, subject to the prior approval of the Chairperson of the Complaints Committee—
  - v. dismiss the complaint;
  - vi. inform the complainant; and
  - vii. confirm the findings and the dismissal of the complaint to the Complaints Committee.

### 1.6 Role of Complaints Committee:

- a. All complaints, other than those which in the opinion of the Compliance Manager are so groundless as to warrant dismissal out of hand, shall be referred in the first instance to the Complaints Committee.
- b. The Complaints Committee shall, with the assistance of the Compliance Manager and an investigating officer where appropriate, conduct a proper investigation into the allegations made.
- c. The Complaints Committee may:
  - i. if it considers that the evidence does not support the making of a charge against the Member concerned, dismiss the complaint;
  - ii. if it considers that the complaint is not sufficiently important to warrant a disciplinary hearing on disciplinary grounds, dismiss the complaint but nevertheless, if it considers the investigation was justified and that it is just to do so, make such orders as to costs relative to any investigation as it considers appropriate;
  - iii. decide that the evidence is sufficient to warrant the making of a charge against the Member concerned for a disciplinary hearing before the Complaints Committee;

- iv. decide that the evidence is sufficient to warrant the making of a charge against the Member concerned for a disciplinary hearing before the Disciplinary Committee.

#### 1.7 **Alternative Disputes Resolution Process:**

- a. The Complaints Committee may invite the complainant and the Member concerned to discuss their differences and to enter into a process of alternative disputes resolution.
- b. The Complaints Committee may defer making any decision pending the outcome of any discussions or alternative disputes resolution process entered into by both the complainant and the Member concerned.

#### 1.8 **Discretion to investigate in absence of complainant:**

Where the Compliance Manager or the Complaints Committee becomes aware of conduct of a Member which might be the subject of disciplinary proceedings, the Compliance Manager may initiate or be directed to initiate disciplinary proceedings notwithstanding that there is no other complainant or a complaint has been withdrawn. The procedures set down in these by-laws shall apply with the necessary modifications.

#### 1.9 **Disciplinary hearing:**

- a. Where the Complaints Committee considers the evidence is sufficient to warrant the making of a charge for a disciplinary hearing, either before the Complaints Committee or the Disciplinary Committee, it shall so advise the Compliance Manager who shall formulate a Notice of Charge.
- b. The Compliance Manager, acting personally or through counsel, shall present the case before the Complaints Committee or the Disciplinary Committee.

#### 1.10 **Decisions of Complaints Committee:**

As soon as practicable after completion of the hearing of the complaint, the Complaints Committee shall do any one or more of the following:

- a. uphold or dismiss the complaint without further action; or
- b. uphold the complaint and impose any one or more of the following penalties:
  - i. Censure the Member;
  - ii. Require from the Member concerned any undertaking or undertakings it considers appropriate relating to the conduct of his or her practice;
  - iii. Order the Member to make reports on his or her practise in such manner and at such times and to such persons as are specified by the Complaints Committee;
  - iv. Order the Member to take advice in relation to the management of his or her practice from such persons as are specified by the Complaints Committee;
  - v. Make such orders as to costs relative to any investigation or hearing as it considers appropriate.

#### 1.11 **Publication of decisions of Complaints Committee: Where the Complaints Committee—**

- a. upholds or dismisses the complaint without further action; or
  - b. upholds a complaint and imposes any one or more of the penalties referred to above;
- it shall be empowered to direct publication of the details and outcome of the issues considered, without disclosure of the name of the Member concerned or the name of the complainant and in such a way that identification is not possible, in any newsletter of the Institute.

#### 1.12 **Notice of decision:** All decisions of the Complaints Committee reached on any complaint referred to it shall be advised in writing to the complainant and the Member concerned within fourteen days of the making of the decision. Such advice shall include notice of the right of appeal (if any).

#### 1.13 **Appeal Against Decision of Complaints Committee:** The Member concerned may appeal to the Disciplinary Committee against all or any part of a decision of the Complaints Committee upholding the complaint. The appeal shall be lodged in writing with the Compliance Manager within 28 days after the notice of the decision of the Complaints Committee is posted to the Member.

- 1.14 No decision of a Complaints Committee shall take effect until after the expiration of 28 days from the date on which the decision of the Complaints Committee is posted to the Member concerned and where the Member exercises the right of appeal, unless and until the Disciplinary Committee has disposed of the appeal
- 1.15 **Role of the Disciplinary Committee:** The Disciplinary Committee shall be responsible for:
- a. The hearing of complaints referred to it by the Complaints Committee;
  - b. The hearing of appeals from decisions of the Complaints Committee;
  - c. Imposing an appropriate sanction where a breach has been made out.
- 1.16 **Decisions of Disciplinary Committee:** As soon as practicable after completion of the hearing of any complaint or appeal, the Disciplinary Committee shall do any one or more of the following:
- a. In the case of a complaint:
    - i. uphold or dismiss the complaint without further action; or
    - ii. uphold the complaint and impose any one or more of the following penalties:
      - a. Impose any fine on a Member, not exceeding \$10,000;
      - b. Suspend the membership of the Member;
      - c. Terminate the membership of the Member;
      - d. Terminate the Member's membership of any class of Member;
      - e. Censure the Member;
      - f. Require the Member to give any undertaking or undertakings relating to the conduct of his or her practice;
      - g. Require the Member to pay to the Institute any costs, charges and expenses incurred by the Institute, the Complaints Committee or the Disciplinary Committee as a result of the proceedings, including the costs of undertaking the investigation of any complaint;
      - h. Order the Member to make reports on his or her practice in such manner and at such times and to such persons as are specified by the Disciplinary Committee;
      - i. Order the Member to take advice in relation to the management of his or her practice from such persons as are specified by the Disciplinary Committee;
      - j. Require the Compliance Manager to notify any relevant Government or statutory authority;
    - iii. In the case of an appeal affirm, reverse or vary any decision or order of the Complaints Committee and in particular may:
      - a. substitute any penalty that the Complaints Committee might have imposed;
      - b. refer the matter to the Complaints Committee for reconsideration; and/or
      - c. make such order as to costs as it considers appropriate.
- 1.17 **Publication of Decisions of Disciplinary Committee:** Where the disciplinary Committee—
- a. in the case of a complaint:
    - i. upholds the complaint without further action; or
    - ii. upholds the complaint and imposes any one or more of the penalties referred to above;it shall be empowered to direct publication of the details and outcome of the issues considered, with or without disclosure of the name of the Member concerned and/or the name of the complainant, in any newsletter of the Institute or in any other media;
  - b. in the case of an appeal, affirms, reverses or varies any decision of the Complaints Committee as set out above, it shall be empowered to exercise the same powers in respect of publication as are conferred on the Complaints Committee.
  - c. dismisses a complaint, it shall be empowered to direct publication of the details and the outcome of the issues, without disclosure of the name of the Member concerned or the name of the complainant in such a way that identification is not possible in any publication of the Institute in any other media.

## 2. GROUNDS FOR DISCIPLINE

### 2.1 Grounds for Complaints

- a. Misconduct by a Member, individually or in concert with others, including the following acts or omissions, shall constitute grounds for a complaint, whether or not the act or omission occurred in the course of a client relationship. The term "misconduct" includes:
  - i. Any act or conduct which violates the provisions of the Constitution, any By-Laws and any Rules made under the Constitution and the Code of Ethics and Practice Standards.
  - ii. Any act of omission which violates the criminal law of New Zealand, provided however, that conviction in any criminal proceedings shall not be prerequisite to the institution of disciplinary proceedings, and provided further, that acquittal in a criminal proceeding shall not prevent a disciplinary action.
  - iii. Any other acts or omissions amounting to unprofessional conduct.
  - iv. Any failure to respond to a request by the Compliance Manager and/or the Complaints Committee and Disciplinary Committee, without good cause shown, or obstruction of any such person or body in the performance of its duty.

### **3. PROCEDURAL GUIDANCE**

- 3.1 Appendix 1 of these Bylaws sets out a suggested procedure for the processing of a complaint.
- 3.2 Appendix 2 of these Bylaws sets out a suggested procedure for the conduct of a complaints hearing.
- 3.3 Failure to comply with the suggested procedures shall not invalidate the process or proceedings unless the procedural error or errors are so serious as to cause the Member to not receive a fair hearing and such error or errors are incapable of remedy.
- 3.4 Notwithstanding the procedural guidelines the Compliance Manager, the Complaints Committee and the Disciplinary Committee may establish and regulate their own procedure so as justly and expeditiously to attain the objective of the disciplinary process.

### **4. CRIMINAL CONVICTIONS**

#### **4.1 Proof of Conviction or Professional Suspension**

Except as otherwise provided in these proceedings:

- a. a certificate from the clerk of any court of criminal jurisdiction indicating that the Member has been convicted of a crime in that Court, or
  - b. a letter or any other document from a government or financial services self-regulatory organisation to the effect that a Member has been the subject of an order of a professional suspension by that authority,
- shall conclusively establish the existence of the conviction or professional suspension for the purposes of disciplinary proceedings, and shall be conclusive proof of that crime, or of the basis for such suspension.

#### **4.2 Member's Duty to Report Conviction**

Every Member, upon being convicted of an offence punishable by imprisonment, shall notify the Compliance Manager in writing of such conviction or suspension within 10 days of the date of the conviction or suspension, but this requirement shall not apply where the conviction or suspension does not bring into question the ability of the Member to practice and maintain the standards set for membership of the Institute.

#### **4.3 Commencement of Disciplinary Proceedings**

- a. Upon receiving notice that a Member has been convicted of an offence, other than any offence which does not bring into question the ability of the Member to practice and maintain the standards set for membership of the Institute, the Compliance Manager shall immediately institute investigation proceedings leading to an enquiry.
- b. If the Member's criminal conviction or professional suspension is either proved or admitted, the Member shall have the right to be heard only on the matter of rebuttal of any evidence presented other than the proof of the conviction or suspension.

## **5. AUTOMATIC REINSTATEMENT IF CONVICTION REVERSED**

A Member subject to a suspension under the provision of these procedures shall have the suspension lifted immediately upon filing with the Board a certificate demonstrating that the underlying criminal conviction or professional suspension has been reversed, but the reinstatement of membership shall have no effect on any proceeding conducted pursuant to these procedures against the Member.

## **6. REINSTATEMENT OF MEMBERSHIP**

### **6.1 Reinstatement after Suspension**

- a. A Member who has been suspended for a period of 12 months or less shall have his/her membership automatically reinstated on the expiration of the suspension period.
- b. Any Member suspended for a period longer than 12 months shall not have automatic reinstatement. An affidavit is to be filed with the Institute stating that he/she:
  - i. has fully complied with the suspension provisions (if any applied);
  - ii. fully understands the Code of Ethics; and
  - iii. will fully comply with all its provisions upon being reinstated to membership of this Institute.

### **6.2 Re-joining after Expulsion**

- a. Unless the Board gives special leave to do so, an expelled Member may not apply to re-join the Institute for a period of at least 5 years from the date of expulsion.
- b. A new application is required to be forwarded to the Compliance Manager by the Applicant with supporting statements from both the Nominator and Seconder of the application. The application will be accompanied by such evidence as the Compliance Manager reasonably requires as to the Member's character, conduct & suitability to membership.
- c. The Compliance Manager will then consider the application and provide the Board of Directors with a recommendation.

## **7. CONFIDENTIALITY**

### **7.1 Confidentiality**

Except as otherwise provided in these procedures, all proceedings conducted pursuant to these By-Laws shall be confidential and all records shall remain confidential and shall not be made public. Provisions of the Privacy Act will be complied with at all times.

### **7.2 Exceptions for Confidentiality**

Proceedings may be disclosed if:

- a. the proceedings are predicated on a criminal conviction or criminal proceedings or professional suspension;
- b. the Member has waived confidentiality; or
- c. such disclosure is required by legal process of the court of law or other Governmental body or agency having appropriate jurisdiction; or
- d. the Board of Directors deems it appropriate in all the circumstances to do so.

### 7.3 Deletion of Records

- a. All files of complaints which have been upheld shall be held by the Institute for a period of six (6) years before being expunged.
- b. All files of complaints which have not been upheld will be destroyed after one (1) year.

## 8. RECOVERY OF PENALTY AND COSTS

- 8.1 At the conclusion of the disciplinary process as herein set out such penalty and costs as may be directed to be paid by the member shall be a debt immediately due and payable by that Member to the Institute. A certificate signed by the Chairperson of the disciplinary body shall be sufficient evidence of the sum due by the Member to the Institute for the purposes of recovery of that sum.

## APPENDIX ONE

### Suggested Procedure for the Processing of a Complaint

1. **Steps in the complaint procedure:** the steps of the complaints procedure are detailed below. Each step is then further expanded upon in the body of this section.

STEP	ACTION
1	A complaint is received by the Compliance Manager
2	The complaint is recorded in the complaints register
3	A preliminary review is carried out by the Compliance Manager
4	Compliance Manager carries out full investigation
5	Complaints Committee will review the complaint and may take one or more of the following courses of action
	i. Dismiss the complaint if there is no case to answer (refer 3.5)
	ii. Hold a formal hearing
	iii. Make a finding and impose a penalty if appropriate
	iv. Pursue an alternative disputes resolution process
	v. Refer the matter to the Disciplinary Committee for appropriate action

### 2. Lodging and Recording of Complaints:

- a. All complaints must be in writing and directed to The Compliance Manager, (Institute of Financial Advisers, P O Box 5513, Wellington).
- b. Completion of such Complaint Form (as the Compliance Manager may prescribe) is preferred because this provides the essential information necessary to initiate an investigation. *(However when this form is not available or appropriate, a letter outlining the details of the complaint may be acceptable.)*
- c. All complaints are to be recorded in a complaints register.
- d. The Compliance Manager will acknowledge receipt of the complaint in writing to the complainant within 21 days.
- e. The Compliance Manager will seek the appropriate and necessary information to properly assess the complaint
- f. The Compliance Manager shall keep a record of progress of the complaint.

### 3. Preliminary Review and Investigation:

- a. The Compliance Manager will take the following actions:
  - i. ascertain if all the necessary information has been received from the complainant
  - ii. request clarification or any further information from the complainant if required, within 21 days of receipt of the complaint. The complainant will be advised that he/she has 21 days to respond or it will be assumed the complaint will not proceed.
- b. When all the required evidence has been received from the complainant, the Compliance Manager will determine within 21 days what further action should be taken. If it is determined that further action is to be taken, the Compliance Manager will:
  - i. advise the Member in writing that a complaint has been received
  - ii. state the relevant Code or Rule pertaining to the allegation
  - iii. request the Member to respond to the allegation, giving any supporting documentation within 21 days

- iv. advise the Member that failure to provide a response, without good cause, is in itself a breach of the rules of the Institute. Good cause includes, without limitation, an assertion that a response would violate a constitutional privilege against self incrimination

*(When seeking an explanation from the Member, the Compliance Manager may engage in correspondence and/or discussions about the matters raised, or request additional information, from the complainant, the Member, the client, or any other party in order to form a fair view of the complaint, subject always to compliance with the Privacy Act.)*

#### **4. Rights of Member and Complainant:**

- a. The Compliance Manager shall, except where it is not considered appropriate, provide to the Member copies of all written submissions received from the complainant.
- b. The Compliance Manager shall, except where it is not considered appropriate, provide to the complainant copies of all written submissions received from the Member.

#### **5. Insufficient Grounds for Complaint:** If the Compliance Manager determines that the complaint is so groundless as to warrant dismissal, he/she shall, subject to the prior approval of the Chairman of the Complaints Committee:

- a. dismiss the complaint
- b. inform the complainant and the Member, and
- c. confirm the findings and the dismissal of the complaint to the Complaints Committee

#### **6. Criminal Evidence:** If the preliminary evidence indicates the circumstances could be criminal misconduct, the Compliance Manager will not proceed with any investigation, and, subject to the approval of the Chairman of the Disciplinary Committee, may refer the complaint to the NZ Police for their investigative procedures. Usual monitoring is to continue.

- a. If the Police investigation results in a conviction, the Complaints Committee will proceed in accordance with these Bylaws.
- b. If there is no conviction, the Complaints Committee will determine whether to pursue the complaint under the Code of Ethics, or dismiss the complaint.

#### **7. Determination by the Complaints Committee:** Whether the Member has replied or not, the Compliance Manager will prepare a report for the Complaints Committee, setting out the results of the investigation. Based on this report, the Committee is to reach a decision in accordance with these Bylaws.

#### **8. Referral to Disciplinary Committee:** The Complaints Committee may refer to the Disciplinary Committee such matters as a breach of fundamental rules which shall include but not be limited to:

- a. offences against the Constitution, the Rules or Bylaws of the Institute
- b. matters governing the handling of money and documents for clients
- c. failure to comply with disclosure requirements
- d. negligence or incompetence of such a degree or of such frequency as to reflect on a Member's suitability to practice to the standards required by the grade of membership to which he or she belongs
- e. conviction of an offence punishable by imprisonment where the conviction reflects on the suitability of the Member to comply with the Rules or Bylaws of the Institute

- f. failure by a Member to respond to a request and/or to produce to the Compliance Manager, Complaints Committee or investigating officer any books, documents or papers, without good cause
- g. grave impropriety or unprofessional conduct
- h. matters of an apparent criminal nature.

**9. Alternative Disputes Resolution Process:** At any point during the complaints procedure the Complaints Committee may:

- a. invite the complainant and the Member to discuss their differences and to enter into a process of alternative disputes resolution
- b. defer any decision pending the outcome of any discussions or alternative disputes resolution process entered into by both parties.

**10. Notice Served on Member:**

- a. The Compliance Manager will advise the Member by registered mail or by personal service, at least 21 days before the date of the hearing, the following details:
  - i. specific details of the allegation,
  - ii. the date, time and place of the hearing,
  - iii. that both the Member may submit to the committee written representations relating to the allegations,
  - iv. that the Member may require that they attend the hearing in person or by counsel,
  - v. that a full copy of the complaint file is available to provide the Member with an opportunity to prepare for the hearing,
  - vi. If the Member wishes to attend the hearing but is unable to do so due to extenuating circumstances, they may apply to the Committee for an alternative date.
  - vii. The Complaints Committee and Disciplinary Committee may hear a complaint by reference to the documentary evidence before it without the appearance of the Member or the complainant. However, the Member has the right to attend and speak at the hearing or by counsel.
- b. At least 7 days before the hearing, the Member shall advise the Compliance Manager in writing whether they:
  - i. intend to be present at the hearing
  - ii. intend to be represented at the hearing by counsel

**11. Procedures for Hearings:** The Disciplinary Committee and the Complaints Committee, shall establish the procedures not laid down by these Bylaws in respect of procedures for hearings.

*(A suggested procedure for hearings is detailed in Appendix 2)*

## APPENDIX TWO

### Suggested Procedure for Conduct of Hearings

1. **Fair Hearing & Natural Justice:** The over-riding object of any hearing procedure is to ensure that the persons affected receive a fair hearing and natural justice. In accordance with the principles of natural justice, which requires the observance of certain minimum standards and procedures in the conduct of a hearing, the following rules shall apply:
  - a. give notice of the accusation and adequate time to prepare a defence
  - b. disclose all documents to the interested parties at least 14 days before any hearing
  - c. to act fairly, in good faith, without bias
  - d. to give each party the opportunity to adequately state their case
  - e. all evidence shall be presented in open hearing
  
2. **Suggested Procedure:** The paragraphs which follow suggest a procedure which may be helpful when conducting a hearing.
  
3. **Pre-hearing Briefing:** A briefing session should be held prior to the actual hearing. The purpose of this meeting is to acquaint the Committee Members of their role and how the hearing will be conducted.
  
4. **Opening:** At this hearing the Chairperson will:
  - a. Ascertain if each Committee member has received their copy of the file
  - b. Not discuss the evidence prior the hearing
  - c. Outline the role of the Committee for the hearing:
    - i. hear all the evidence
    - ii. ask pertinent questions of both the Member and the complainant
    - iii. be fair and objective and avoid creating an impression of prejudice
    - iv. not become embroiled in argument with either party
    - v. not get side-tracked - into issues which are not relevant
  - d. Emphasise the confidential nature of the proceedings
  - e. Outline the following procedure:
    - i. The Chairperson's opening remarks shall include the introduction of:
      - a. the Committee members by name
      - b. the Member (and counsel if applicable)
      - c. the complainant
      - d. the Compliance Manager (and counsel if applicable)
      - e. a brief statement of the reason for the hearing stating that the Committee is appointed with power to conduct the hearing in accordance with the Institute's Constitution and Bylaws
    - ii. The Chairman will advise all parties of the following in full:
      - a. The Committee is not a judicial body and this is not a hearing by a Court of Law. Therefore, the hearing will not be restricted by legal rules as to admissibility of evidence.
      - b. The Committee cannot compel witnesses to appear or to give evidence under oath. However, any witness or other person may testify under some other judicial declaration if they so desire.
    - iii. The principles of Natural Justice shall prevail.
    - iv. The Chairman of the Committee shall be responsible for seeing that the correct procedure is followed. If any question or dispute as to procedure arises, it is the Chairman's responsibility to decide the matter.

5. **Submissions & Evidence:** The Chairperson shall then proceed as follows:
- a. The Chairman shall read the charges.
  - b. The Compliance Manager and counsel will present their submissions and evidence both written and oral. Any new documents or written evidence should be circulated to the Member and the Member's counsel, and the members of the hearing Committee at least 21 days prior to the hearing.
  - c. The Member or counsel shall have the opportunity to cross-examine any witnesses.
  - d. Members of the Committee may question witnesses on any matters connected with the complaint during their testimony.
  - e. The Member or his/her counsel presents the defence both written or oral.
  - f. The Compliance Manager or counsel shall have the opportunity to cross-examine the Member regarding the evidence presented.
  - g. Members of the Committee may question the Member on any matters connected with the complaint during his/her testimony.
  - h. Both Compliance Manager and Member should be allowed the opportunity to make a final statement personally or by their counsel.
6. **Conclusion of Hearing:** Chairman's procedure after all the evidence has been submitted:
- a. When the Chairman is satisfied that all the evidence has been heard he/she shall ask both the complainant and Member if they feel the hearing has been fair and objective. Should the answer be "No" the Chairman should find out why and attempt to rectify the situation.
  - b. When this has been done, the Chairman shall stress the confidential nature of the proceedings and caution all concerned against discussing the complaint with anyone. The Chairman shall state that Committee findings will be reported as soon as practicable.
  - c. The Chairman shall request that all copies of the complaint file be returned to him/her. The Member may, however, retain a copy on request.
  - d. The hearing shall then be adjourned by the Chairman and all except the members of the Committee shall be excused.
7. **Deliberations:** The members of the Committee shall then determine:
- a. Whether the Member is guilty or not guilty of each charge brought against the Member.
  - b. If the Member is found guilty, the penalty shall be prescribed in accordance with the Bylaws.
  - c. The Committee may call for submissions as to penalty and costs.
8. **Sanctions**
- a. If, after proper hearing, the Committee finds that the Member is guilty of one or more offences, the Committee must determine the appropriate penalty. This is basically a matter of judgement to be determined in each case in the light of all the facts and circumstances of that case.
  - b. Commercially significant sanctions are necessary to achieve credibility within and outside our industry to engender Member and consumer confidence. Consideration may be given to ensuring that aggrieved consumers receive a remedy.
  - c. Sanctions should be flexible enough to reflect the nature and seriousness of the breach of the code and damage suffered by the complainant. For example, censures, warnings, corrective letters, publicity, restitution, repair, corrective advertising, withdrawal of advertisements, fines, suspension, or expulsion.
  - d. The coverage and detail of public reporting should have regard to the costs and commercial consequences of doing so, but normally should include identified breaches of the code and remedial action taken.

- e. The following additional factors should be considered:
  - i. The Bylaws state the penalties that can be sanctioned.
  - ii. If the Member is found guilty of one or more offences, the Committee may prescribe more than one penalty.
  - iii. Was this the first, or a subsequent offence?
  - iv. What length of time has the Member been in the industry? If relatively new in the business they may be entitled to some consideration for lack of knowledge or experience.
  - v. Extent and seriousness of the offence?
  - vi. Attitudes of the Member? If the Member appears to be unrepentant or indicates flagrant disregard for the rules, it will weigh against the Member.
  - vii. Was it a deliberate breach or technical oversight? If it appears that the Member quite deliberately and knowingly broke the rules, it will weigh against the Member. If it appears that the Member is basically sincere and honest in his/her intentions though some requirements were overlooked, then a lesser penalty may be indicated.
  - viii. The amount of the costs award should be taken into account so that the aggregate of costs and penalty is reasonable in the circumstances.