

THE EXPERT WITNESS INSTITUTE

COMPLAINTS AND DISCIPLINE RULES

The Expert Witness Institute
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1. INTRODUCTION

1.1 The Expert Witness Institute (EWI) was launched in November 1996 to service and support experts. It acts as a voice for the expert witness

community, supporting experts from all professional disciplines and lawyers who use the services of experts. The Institute functions to encourage, train and educate experts and to improve and maintain their standards and status. The EWI actively works with a wide range of professional bodies to achieve this.

1.2 The EWI is independent of outside commercial interests and is democratic, transparent and fully accountable to its members. It is a non-profit making company limited by guarantee. The objective of the EWI is the support of the proper administration of justice and the early resolution of disputes through fair and unbiased expert evidence. To achieve this objective, the EWI:

- Provides support to experts of all professional disciplines
- Encourages lawyers to make use of experts wherever specialised knowledge is required.
- Engages in the training of experts to maintain and enhance standards and their status.
- Works actively with other allied professional bodies and associations.
- Makes representations to Government and to professional bodies and associations

2. PURPOSE

2.1 The purpose of these rules is to provide a method of enforcing the Expert Witness Institute "Code of Practice for Experts", and to provide a framework for dealing with complaints against members. The Code is, for these purposes, a code prepared and approved by the Governors under Article 42 of the Articles of Association. The code is attached to these procedures.

2.2 The procedures set out are designed to be transparent to all users, and to ensure fairness to all concerned in dealing with complaints.

2.3 The Expert Witness Institute will only look into complaints about aspects of the conduct of one its current members with regard to his or her duties as an expert witness. If the complaint refers to a member's professional work and the subject matter about which a member acts as an expert, the complaint should be made to the member's primary professional or regulatory body.

3. THE CODE OF PRACTICE FOR EXPERTS

- 3.1 The code sets out the behaviour expected of all EWI members when acting in the course of their duties as an expert witness. Breach of the Code or any part of it may provide grounds for complaint and may result in disciplinary action being taken by the EWI.

4. RAISING A COMPLAINT

- 4.1 A complaint against the conduct of a EWI member may be made by any person with a direct connection with the matter, case or claim in respect of which the conduct of the EWI member is alleged to relate. This will include the lay client, instructing solicitor, the barrister in the case, a member of the judiciary who dealt with the case at any stage or the client, solicitor or barrister on the other side of the case.
- 4.2 The Board of Governors reserves the right to nominate an Individual to bring a disciplinary complaint against any EWI member on its behalf if it learns of any potential cause from whatever source. That individual should prepare an allegation in line with clause 6 and it will be handled in the same way as any other allegation.
- 4.3 An allegation against any member may be brought if the individual was a member at the time of the alleged breach. The disciplinary process will continue even if the member has since ceased to be a member, or ceases to be a member during the process.

5. CONDUCT

- 5.1 The EWI will only entertain a complaint based on breach of the Code of Professional Conduct which amounts to misconduct. A claim will not normally be entertained solely on the grounds that the expert was allegedly guilty of negligent advice or conduct.

6. HOW A COMPLAINT CAN BE MADE

- 6.1 Any complaint about the conduct of a member must be in writing addressed to:

The Designated Governor
The Expert Witness Institute
159-161 Temple Chambers
3-7 Temple Avenue
London
EC4Y 0DA

- 6.2 The complaint must set out the nature of the matter in which the member was instructed and full details about the circumstances of the complaint. The letter or document must contain sufficient detail to enable the Institute and the member to understand the precise allegations of misconduct that are being made.
- 6.3 Only complaints made in writing will be considered.
- 6.4 Complaints made anonymously will not be entertained.
- 6.5 As a condition of making the complaint, the complainant may be required to waive any legal professional privilege to the case or matter in question.

7. PROCEDURE

- 7.1 All complaints will be acknowledged by the EWI within 14 calendar days of receipt. A copy of the complaint will be sent to the member concerned. This will include all attachments and appendices to the complaint.
- 7.2 The complaint will be referred to a Governor of the Institute designated by the Board to deal with complaints. He or she will then decide whether or not to investigate the matter and decide as to whether the complaint is potentially one of misconduct or serious misconduct. In cases of allegations which the Board of Governors consider to be serious or in matters of great complexity the matter will be referred to two Fellows of the Institute who will form a disciplinary Tribunal.
- 7.3 Within 28 calendar days of receipt of the complaint or 14 calendar days after the complaint has been referred to the Designated Governor (whichever is the earlier), the Governor has the power to declare a complaint as invalid through want of reasonable grounds of complaint or if he/she considers that there is evidence of abuse of process.

- 7.4 Following any declaration as to invalidity in accordance with clause 7.3, the complainant has the right to object and provide reasons with supporting evidence within 28 calendar days of declaration. Any declaration as to invalidity will be confirmed or withdrawn within a further 28 days of receipt by the EWI of objection by the complainant with supporting evidence.
- 7.5 The complainant will be informed of a decision under clause 7.4 by the Designated Governor of the Institute.
- 7.6 If the nature of the complaint is of serious misconduct, a member may be suspended from membership whilst the complaint is being investigated. Such a decision to suspend may only be made by the Designated Governor and with the agreement of the EWI Board of Governors.
- 7.7 The member must respond to the complaint, fully and in writing, and a copy of the response will be sent to the complainant.
- 7.8 The Designated Governor, or Fellows, may call for further information from the complainant and/or the member against whom the complaint has been made. Failure by the complainant to co-operate with the Institute's investigation process may result in the complaint being rejected. Failure by the member to provide information reasonably required will permit the Designated Governor or Tribunal to make an inference from the failure to provide the requested information.
- 7.9 Subject to any further representations being made by either party, the Designated Governor or Tribunal (as may be the case) will decide on the balance of probabilities that the complaint is upheld or decide that the complaint is dismissed.
- 7.10 The investigation procedure will normally be by documents only. However, in exceptional circumstances, the Designated Governor or Tribunal has the power to order a formal hearing and to decide on the procedural aspects, following written submissions by the complainant and the member. The Designated Governor or Tribunal has the power to award costs in the event of a formal hearing.
- 7.11 At all times the EWI and any person representing the Institute will act in accordance with the rules of natural justice.
- 7.12 Following the investigation, the complainant and the member will be informed whether the complaint has been upheld or dismissed and a fully-reasoned explanation will be given if requested.

- 7.13 Within 14 calendar days of issue of the decision as to outcome of the complaint, the member has the right to make a statement in mitigation.
- 7.14 Following the 14 calendar day period for the member to make a statement in mitigation and within a further period of 7 calendar days, the Designated Governor or Tribunal will decide on the sanction to be imposed. This will be any or a combination of the following:
- a) A formal admonition
 - b) A period of suspension of membership
 - c) A period of suspension of membership and a requirement to undergo further training
 - d) Expulsion from the Institute
 - e) If they see fit the Board of Governors may direct that the findings of the investigation shall be reported to the member's regulatory body.
 - f) Any member who is erased from membership will not be entitled to reapply to EWI for a period of three years from the date of termination.
- 7.15 Notification in writing will be given to the member and to the complainant at the discretion of the Designated Governor.
- 7.16 There will be no entitlement to refund of annual subscriptions already paid during a period of suspension or following expulsion from the Institute.

8. APPEALS

- 8.1 The member, if the complaint is upheld, may give written notice of appeal against the decision. Such an appeal must be notified within 42 calendar days from the notification to the member of the decision as to liability with regards to the complaint.
- 8.2 The appeal will be referred to the Board of Governors to be dealt with, within a reasonable period of time. The Board may:
- a) deal with the appeal without further information being required, or
 - b) request further information from the member, or
 - c) deal with the matter by way of oral hearing.
- 8.3 The Board may confirm the sanction originally imposed or substitute any of the other sanctions set out above.

8.4 For the purposes of 8.2 and 8.3, the Board shall consist of a minimum of 8 Governors but shall not include the Designated Governor.

8.5 The complainant and the member will be informed in writing of the result of any appeal.

9. NOTIFICATION OF DECISIONS TO THE PUBLIC

9.1 The EWI Board of Governors has the power to decide whether and how the decision and any sanction (if applicable) is to be made public; the Board of Governors will consider and decide this matter at the first available Board of Governors meeting following the expiry of the Appeal period and notification of the outcome of any Appeal to the complainant and member.

9.2 Any decision to make public the decision on liability and sanction will be communicated to the complainant and member within 14 calendar days of the Board Meeting.

10. COMING INTO FORCE

10.1 These rules come into force with effect from 1 January 2016

10.2 Only complaints received after 1 January 2016 will be subjected to these rules