

Association of Construction Attorneys revised scheme

September 2023

SCHEME

RULES & REGULATIONS

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1.0 INTRODUCTION

- 1.1** This document contains the Association of Construction Attorneys scheme as defined by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

2.0 DEFINITIONS

2.1 In the Membership Qualification Regulations, Qualification Courses, Education and Training, Rules of Conduct, Financial Rules and any other information and Rules which follow, words and expressions used have these meanings unless otherwise stated:-

"the Act" the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990.

"Admissions Board" the Admissions Board of the Association of Construction Attorneys

"The Association of Construction Attorneys" A company limited by Guarantee ref no. SC344543

"Attorney" means a Member or Fellow of the Association

"Client" includes both professional client and lay client.

"Code of practice" that required by section 25(2) (b) (ii) of the Act.

"Company" a company incorporated by registration under the Companies Acts

"Construction Litigation" means litigation arising out of a construction matter

"Construction matter" means any of the following:

(a) a dispute (including a dispute concerning contractual obligations or delictual or other non-contractual liability) arising out of the design, management, procurement, planning processes, construction, commissioning, decommissioning, alteration, supply and maintenance (but not conveyancing) of buildings, roads, bridges, architectural and landscaping systems and associated plant, equipment and materials, civil and structural engineering structures and associated plant, equipment and materials, mechanical engineering systems and associated plant, equipment and materials, electrical engineering systems and associated plant, equipment and materials, plumbing engineering systems and associated plant, equipment and

materials, communication engineering systems and associated plant, equipment and materials, process engineering systems and associated plant, equipment and materials, power generation and transmission systems and associated plant, equipment and materials, control systems and associated plant, equipment and materials, offshore oil & gas production and exportation systems and associated plant, equipment and materials, marine & subsea construction and associated plant, equipment and materials, on & offshore drilling and associated plant, equipment and materials, shipbuilding and associated plant, equipment and materials and any works altering, forming or to form part of the land;

(b) a dispute arising out of personal injuries or property damage sustained in relation to a construction site or operation;

(c) a dispute arising out of a cautionary obligation or a personal guarantee owed or given by an organisation, company, partnership or individual engaged or previously engaged in a construction or construction related business;

(d) the insolvency or Administration of an organization, company, partnership or individual engaged in a construction or construction related business;

(e) a reference to the courts in an arbitration arising out of a matter mentioned in any of paragraphs (a) to (d) above, including enforcement of an arbitration award.

(f) a reference to the courts in an adjudication arising out of a matter mentioned in paragraphs (a) to (d) above, including enforcement thereof;

"Firm" an unincorporated partnership of Member/Fellows including partnerships between Member/Fellows and others and includes Member/Fellows who are sole practitioners.

"Interim Practising Certificate" means a certificate issued to individual Members giving the rights of audience and the right to conduct litigation, subject to certain conditions;

"Member" means a Member or Fellow of the Association holding an interim Practising Certificate or a Practising Certificate;

"Non-Member" means a person who is not a Member, whom the Chairman considers suitably qualified to sit on the Admissions Board or the Complaints Board of the Association;

"Practising Certificate" means a certificate issued to individual Members/Fellows giving the rights of audience and the right to conduct litigation.

“Prospective Member” means an individual who seeks to qualify as a Member

“**Register**” a list, available on request to any member of the public, identifying if a member holds an interim Practising Certificate or Practising Certificate

"**rights of audience**" and "**rights to conduct litigation**" are to be construed in accordance with the Act.

3.0 STATEMENT OF RIGHTS

3.1 A Member of the Association of Construction Attorneys has the following rights:-

- (a) The right to conduct construction litigation in the sheriff court (including ordinary actions, summary applications and Simple Procedure) together with the right to conduct an appeal to the Sheriff Appeal Court and the Court of Session in any case conducted by a Member in the Sheriff Court at first instance;
- (b) A right of audience in respect of construction litigation in the sheriff court proceeding by way of Simple Procedure, including a right of audience in an appeal to the Sheriff Appeal Court in that case;
- (c) A right of audience in respect of construction litigation in procedural hearings (including case management conferences however conducted) in ordinary actions in the sheriff court and in an appeal to the Sheriff Appeal Court in any case conducted by a Member at first instance;
- (d) A right of audience in respect of construction litigation in the sheriff court which is proceeding by way of an undefended ordinary action, in relation to a motion for decree.
- (e) The right to conduct construction litigation in the Court of Session at first instance, including any appeal to the Inner House of the Court of Session that may arise thereafter, but no right of audience.

3.2 A Member of the Association is an officer of court.

4.0 MEMBERSHIP CATEGORIES

4.1 Membership

4.1.1 The classes of membership shall be:-

- (a) Member
- (b) Fellow

4.2 (a) Member: A Member is an individual who has been granted a Practising Certificate or interim Practising Certificate by the Admissions Board to conduct Construction Litigation.

(b) Fellow: A Fellow is a Member who has held a Practising Certificate for not less than three years and who has, following an application to the Admissions Board, been granted the status of Fellow by the Admissions Board. A Fellow is of sufficient standing and experience to train and mentor Prospective Members to become Members of the Association.

5.0 ENTRANCE REQUIREMENTS

5.1 To become a Member of the Association of Construction Attorneys the Admissions Board must be satisfied that the individual possesses a relevant legal qualification, a professional/construction qualification, relevant construction experience, relevant litigation experience and practical legal training.

5.2 Legal Qualification Requirements

5.2.1 Individuals wishing to become a Member will have to demonstrate to the Admissions Board that they have obtained a legal qualification. To meet this requirement one of the following will be required:-

LLM or MSc. in Construction Law from a Scottish educational establishment approved by the Admissions Board;

LLM or MSc. in Construction Law from an educational establishment in England & Wales or Northern Ireland approved by the Admissions Board together with a qualification or certification approved by the Admissions Board showing training in the Scottish Law of contract and delict.

LLB from a Scottish University;

Law degree from an educational establishment in England & Wales or Northern Ireland approved by the Admissions Board, together with a qualification or certification approved by the Admissions Board and showing training in the Scottish Law of contract and delict.

5.3 Professional/Construction Qualification

5.3.1 To become a Member of the Association of Construction Attorneys an individual must possess one of the following:-

- A Professional qualification from a recognised Professional Body (see Appendix 1);

- A Construction qualification (See Appendix 1). The Construction qualification must be in addition to the qualification requirements under Section 5.2;

5.4 Relevant Construction Experience

5.4.1 All individuals applying for membership must demonstrate, to the satisfaction of the Admissions Board, that they possess a broad range of construction experience.

5.5 Litigation Experience

5.5.1 To become a Member of the Association of Construction Attorneys it must be demonstrated, to the satisfaction of the Admissions Board, that that the applicant has gained experience of the litigation process.

5.6 Practical Legal Training

5.6.1 To become a Member of the Association of Construction Attorneys it must be demonstrated, to the satisfaction of the Admissions Board, that the applicant has obtained practical experience and/or successfully completed training courses in all of the following areas

- Advocacy
- Drafting
- Interviewing
- Negotiating
- Practical Legal Research
- Instruction of Counsel/Solicitor Advocate/Solicitor

5.6.2 An individual who is engaged in Practical Legal Training in terms of paragraph 5.6.1 (“a Prospective Member”) must do so under the supervision of a Member who is a Fellow.

6.0 INTERIM PRACTISING CERTIFICATE

6.1.1 On completion of the Entrance Requirements (noted at section 5.0 above) to the satisfaction of the Admissions Board the applicant will be issued with an Interim Practising Certificate and allowed to use the title 'Member'. The Interim Practising Certificate will be issued for a period of two years. During this period the Member will be supervised by a Fellow of the Association of Construction Attorneys. The Admissions Board will assign the Fellow that will supervise the Member. If the Admissions Board is unable to allocate a Fellow to undertake the supervision then an Advocate/Solicitor shall be appointed.

6.2 The Association of Construction Attorneys will add the successful applicant's name to the register of members. The member will be identified as holding an interim Practising Certificate. The register will be made available to any member of the public on request.

6.2.1 The period of supervision is to ensure that the Member will be able carry out the rights defined in the scheme, as noted at paragraph 3.1 above, to the standard expected by the Admissions Board and the Courts.

6.2.2 While in possession of an Interim Practising Certificate the Member must not carry out the following:-

- lodge any document at a court without the supervisor having reviewed it and confirmed in writing that he is content.
- attend Court without the supervisor until instructed (by the supervisor) that this requirement is no longer necessary.
- attend Court without the supervisor being informed.

6.2.3 Following the period of supervision the assigned Fellow will prepare a report for the Admissions Board with a recommendation in respect of the issuing of a Practising

Certificate. During this period the Applications Board will extend the period of the Interim Practising Certificate until a decision has been made on the application. The recommendation will be one of the following:-

- Issue the Applicant with a Practising Certificate
- That another Interim Practising Certificate is issued and a further period of supervision is undertaken. Only two interim Practising Certificates will normally be issued to each applicant unless otherwise directed by the Admissions Board. Thereafter, the applicant must wait for a period of two years before re-applying for an Interim Practising Certificate.
- That no Practising Certificate is issued, that no further supervision is offered under the current application and that the individual can no longer use the title 'Member'.

7.0 PRACTISING CERTIFICATES

7.1 On completion of the Entrance Requirements and the period of supervision and subject to the approval of the Admissions Board the applicant will be issued with a Practising Certificate.

7.2 The Association of Construction Attorneys will add the successful applicant's name to the register of members. The member will be identified as holding a practicing certificate. The register will be made available to any member of the public on request.

7.3 The Practising Certificate will remain valid and the person's name will remain on the register (subject to any disciplinary action) providing that the following is undertaken on a yearly basis:-

- Proof that the appropriate professional indemnity insurance is in place.
- Proof that the appropriate Continuing Professional Development requirements, as laid down by the Association, have been met
- Payment of the annual subscription.

7.4 Practising Certificates can be withdrawn at any time by the Complaints Board of the Association of Construction Attorneys.

8.0 TRANSITIONAL PERIOD

8.1 A Transitional Period, as regards the issuing of Interim Practising Certificates and operation, will apply. The transitional period will last for a minimum period of three years. The transitional period will terminate after the three year period provided the number of registered Members with ‘Practicing Certificates’ reaches 50 in number. At this stage the scheme will be reviewed by the Lord President and the Scottish Ministers. At this review, the Lord President and the Scottish Ministers may:-

- (a) withdraw approval of the scheme;
- (b) terminate the transition period;
- (c) extend the transition period. In this situation, the extension will terminate at the new review date or at the date when the number of registered members with practicing certificates reaches 50 in number, whichever is the sooner.

8.2 Interim Practising Certificate

8.2.1 On completion of the Entrance Requirements (noted at section 5.0 above) to the satisfaction of the Admissions Board the applicant will be issued with an Interim Practising Certificate and allowed to use the title ‘Member’. The Interim Practising Certificate will be issued for a period of one year.

8.2.2 While in possession of an Interim Practising Certificate the Attorney must not carry out the following:-

Ordinary Cause Actions

- Lodging any document at a court without Counsel/Solicitor having reviewed it and confirmed in writing that he is content.
- attend Court, in respect of undefended cases, without Counsel/Solicitor being present, unless instructed by Counsel/Solicitor that this requirement is not necessary.

8.2.3 Prior to expiry of the Interim Certificate the Member may apply to the Admissions Board for a Practising Certificate. If the Member applies for a Practising Certificate the Applications Board will extend the period of the Interim Certificate until a decision has been made on the application. The applicant is to provide documentary evidence substantiating experience gained in drafting and preparing a writ and appearing in Court. If the Admissions Board is satisfied that the member has gained relevant experience it will prepare and submit a report to the Lord President seeking his approval that it issues a Practising Certificate as described at paragraph 7.0 above. If the Admissions Board is not satisfied that the Member has gained relevant experience a further Interim Practising Certificate may be issued with the restrictions noted at paragraph 8.2.2 above.

8.2.4 Only two interim certificates will be issued to each applicant. Thereafter, the applicant must wait for a period of two years before re-applying for an Interim Certificate.

8.3 Admissions Board

8.3.1 The Admissions Board during the Transitional Period shall comprise of six persons, of whom two will be Associates/Members of the Association and a minimum of four of whom will be non-affiliated members of the Association. During the Transitional Period one of the non-affiliated members will be a Patent Agent with Litigator Rights in England the other will be Solicitor or an Advocate. All appointments to the Admissions Board will require the approval of the Lord President.

8.3.2 A maximum of 10 Interim Practising Certificates will be issued by the Admissions Board during the first year of the Transitional Period.

8.4 Disciplinary Board

8.4.1 The Disciplinary Board during the Transitional Period shall comprise seven persons, of whom five will be Associates/Members of the Association and two of whom will be non-affiliated members of the Association. During the Transitional Period one of

the non-affiliated members will be a Patent Agent with Litigator Rights in England the other will be Solicitor or an Advocate. If a complaint is about an Attorney that is a member of the Complaints or Appeals panel that person must not sit on the panel. If the complaint is about the Head of the Complaints Board the Chairman or Vice Chairman of the Association of Construction Attorneys must assume the role of Head of the Complaints Board.

8.5 Fellows

8.5.1 During the Transitional Period a Member can apply to become a Fellow having been in the possession of a Practising Certificate for a period of two years. During the Transitional Period no Fellow can undertake supervision of a Member with an Interim Practising Certificate.

9.0 CONTINUING PROFESSIONAL DEVELOPMENT

- 9.1** It will be a requirement of Members/Fellows holding Practising Certificates that they follow the structured Continuing Professional Development (CPD) plan as laid down by the Association of Construction Attorneys. The plan will require members to undertake a minimum of 20 hours per year of Continual Professional Development, 10 hours of which must be in subjects/topics relevant to the work of the Association of Construction Attorneys.
- 9.2** Members/Fellows that hold Practising Certificates will be required to provide, on a yearly basis, details of the CPD undertaken.
- 9.3** The Continued Professional Development requirements will be reviewed and monitored by the Admissions Board of the Association.

10.0 CODE OF PRACTICE

10.1 Introduction

10.2 Generally

10.3 Professional Conduct

10.4 Conduct of litigation

10.6 Withdrawing of a Member/Fellows Services

10.7 Costs, fees and payment

10.8 Conflict of interest

10.9 Confidentiality

10.10 Below standard professional work and negligence

10.11 Professional Indemnity insurance

10.12 Advertising and Publicity

10.13 Relations with the Faculty of Advocates and Solicitor Advocates

10.14 Complaints against Individuals

10.15 Clients Money

10.16 Member/Fellows in private practice

10.17 Employed Member/Fellows

10.1 Introduction

- 10.1.1 The Code of Practice outlines the standards required of all classes of membership (Attorney) of the Association of Construction Attorneys, in relation to their exercise of rights acquired under the Act.
- 10.1.2 If an Attorney is unclear in respect of the requirements of the Code of Practice then advice should be sought from the Association of Construction Attorneys for clarification of the requirements.
- 10.1.3 The Code of Practice is established to meet the requirements of section 25(2) (b) (ii) of the Act
- 10.1.4 The Rules of Conduct have been drafted with regard to section 26(2) of the Act.

10.2 Generally

- 10.2.1 An Attorney is responsible for work carried out and shall conduct him/herself in a professional manner. An Attorney must exercise personal judgment in all professional activities.
- 10.2.2 An Attorney must not conduct him/herself, whether in pursuit of their profession or otherwise, in a manner which is:-
- (i) dishonest or otherwise discreditable or;
 - (ii) prejudicial to the administration of justice or;
 - (iii) likely to diminish public confidence in the Association of Construction Attorneys, the legal profession or the administration of justice or otherwise bring the Association of Construction Attorneys or any section of the legal profession into disrepute.

10.2.3 Attorneys must not discriminate on grounds of race, ethnic origin, sex, religion or political persuasion.

10.3 Professional Conduct

10.3.1 Attorneys shall act in accordance with the following principles:-

- (i) that the client has the freedom to instruct an appropriate professional of his choice;
- (ii) where an Attorney is approached, with regard to accepting instructions in a matter, the Attorney shall explain to the client whether he/she is qualified to do the work. The Attorney must offer to provide the client with written advice as to the alternatives available and the appropriateness of using any particular route as well as informing the client with regard to any difference in the level of Professional Indemnity insurance in comparison with Solicitors.
- (iii) The Attorney is to make the client aware that he/she is bound by the Complaints Procedure of the Association. In addition the Attorney is to make the client aware of the right to refer matters of complaint in the first instance to the Scottish Legal Complaints Commission and to provide a written copy of the complaints procedure on request;
- (iv) that the Attorney is independent and may decide whether to accept instructions or not according to his own judgment;
- (v) that the Attorney has a duty to act in the best interests of the client;
- (vi) that the Attorney shall accept instructions and continue to act only where the client can be represented competently and diligently with the exercise of reasonable care and skill (and see 10.10 below);
- (vii) an Attorney has an overriding duty to the Court to ensure in the public interest that the proper and efficient administration of justice is achieved. The Attorney must assist the Court in the administration of justice and must not deceive or

knowingly or recklessly mislead the Court;

- (viii) that the Attorney shall exercise judgment before accepting instructions where it is known that a third person has stipulated that the particular Attorney shall act;
- (ix) where instructions are received from a third party the Attorney should seek instructions from the client;
- (x) that an Attorney shall not act or shall cease to act further where the instructions would involve the Attorney in a breach of the law or of this Code of Conduct. However, the Attorney may continue to act if the client changes his instructions appropriately;
- (xi) that an Attorney shall not act or shall cease to act further, where there is a conflict of interest between himself/herself, or his/her firm or his/her employer and the client or prospective client, or between two existing clients or between an existing client or former client and a prospective client (and see 10.8 below);
- (xii) that an Attorney must not accept instructions to act in a matter where another Association Attorney is acting for the client in the same matter, until either the first retainer has been determined by the client, or the first Association Attorney has consented to the Attorney acting in his place;
- (xiii) that an Attorney will keep the client's business and affairs confidential (and see 10.9 below);
- (xiv) that an Attorney is under a duty to keep the client properly informed and to comply with reasonable requests from the client for information concerning the matters entrusted to the Attorney;

- (xv) that an Attorney is under a duty to consider and advise a client on the availability of legal aid where the client might be entitled to assistance.

10.4 Conduct of Litigation

10.4.1 Attorneys must not in carrying out his duties or in instructing Counsel devise information that is presented as fact to advance the client's case and must not draft any statement of claim, pleading, affidavit, witness statement or notice of appeal containing:-

- (i) any statement of fact or contention which is not supported by his client or by his/her instructions;
- (ii) any contention which the attorney does not consider to be properly arguable;
- (iii) any allegation of fraud unless he/she has clear instructions to make such allegation and has before him/herself an extract of conviction which as it stands establishes a prima facie case of fraud;
- (iv) in the case of an affidavit or witness statement, any statement of fact other than the evidence which in substance according to his instructions the Attorney reasonably believes the witness would give if the evidence contained in the affidavit or witness statement were being given orally;

10.5 The Attorney in drafting (notwithstanding items 10.4.1 (i) - (iv) noted above) a pleading, affidavit or witness statement containing specific facts, matters or contentions must only do so following confirmation (from the Client or otherwise) as to their accuracy.

10.6 Withdrawal of an Attorney's services.

10.6.1 An Attorney shall not withdraw his services and cease to act for a client except for good reason and upon reasonable notice.

10.6.2 On withdrawing services the Attorney must, subject to any lien, deliver to the client all papers and property to which the client is entitled or hold them to the client's order.

10.7 Costs, fees and payment.

10.7.1 In all matters the Attorney must consider with the client whether the likely outcome will justify the likely cost or risk involved.

10.7.2 When confirming acceptance of the client's instructions the Attorney shall state the basis of the fees to be charged. The Attorney shall in so far as reasonably possible provide the client orally and in writing with an estimate of likely costs and of the costs of alternatives available (see 10.3.1 (ii) above).

10.7.3 The Attorney may, at the outset of accepting instructions, require the client to make a payment on account of costs and disbursements to be incurred and may agree at any time appropriate arrangements for further payments on account of costs and disbursements to be incurred and for periodic settlement of sums due.

10.7.4 Unless there is an agreement to the contrary, an Attorney is personally responsible for paying the proper costs of Counsel, any professional agent or other person instructed by him on behalf of the client whether or not he receives payment from the client.

10.8 Conflict of interest

10.8.1 An Attorney shall not act or shall cease to act further, where there is a conflict of interest between him/herself, or his/her firm or his/her employer and the client or prospective client, or between two existing clients or between an existing client or former client and a prospective client. In instances where an Attorney considers that no conflict of interest exists but that there may be the perception that one may or could exist then the Client should be notified of all the relevant details.

10.8.2 If an Attorney acquired relevant knowledge concerning a former client when acting for him, the Attorney shall not accept instructions to act against the former client.

10.9 Confidentiality

- 10.9.1 The duty upon an Attorney to keep confidential the client's affairs extends to ensuring that the Attorney's partners, directors and employees also observe that duty.
- 10.9.2 The duty to keep confidential the client's affairs applies irrespective of the source of the information.
- 10.9.3 The duty to keep confidential the client's affairs continues until the client permits disclosure or waives the confidentiality.

10.10 Below standard professional work and negligence

- 10.10.1 All Attorneys are under a duty to represent the client competently and diligently with the exercise of reasonable care and skill, and to keep the client properly informed.
- 10.10.2 Complaints from clients which allege breach of the duty in 10.10.1 shall be dealt with properly and promptly by the Attorney. For situations where the complaint is not resolved to the client's reasonable satisfaction see section 11.0 below.
- 10.10.3 If the client makes a claim against an Attorney or notifies the intention of doing so, or if the Attorney discovers an act or omission which would justify such a claim, the Attorney is under a duty to inform the client that he should seek independent advice.
- 10.10.4 Attorneys must notify clients in writing that the Association of Construction Attorneys operates a Complaints Handling Procedure. This information may be conveyed by inclusion in the Attorney's terms and conditions.
- 10.10.5 The Attorney is under a duty to inform the Client of the existence of the Scottish Legal Complaints Commission and his rights to use this body.

10.11 Professional Indemnity Insurance

- 10.11.1 **Attorneys**, when engaged in activities covered by these Rules, shall carry indemnity

insurance against loss arising from claims as described in the Association's approved policy:-

- by an Attorney or by former Association Attorneys in connection with their practice, firm or corporate body;
- by any employee or former employee of an Association Attorney or former Attorney.

10.11.2 The form of the indemnity insurance, including level of indemnity, will be as prescribed by the Association.

10.11.3 Attorneys must inform clients of the level and extent of Professional Indemnity Insurance held.

10.12 Advertising and Publicity

10.12.1 Attorneys may engage in any advertising or promotion in connection with his/her activities (or that of a firm or company the Attorney is involved with) provided that it conforms to the British Code of Advertising Practice.

10.12.2 Advertising and publicity must not be likely to diminish public confidence in the Association of Construction Attorneys, the legal profession or the administration of justice and must not otherwise bring the Association or the legal profession into disrepute.

10.13 Relations with the Faculty of Advocates, Solicitor Advocates, Law Society.

10.13.1 Attorneys shall at all times conduct themselves in a professional manner with officers of the court and all branches of the legal profession.

10.13.2 All Attorneys shall be aware of the requirements of the current edition of the appropriate Code of Conduct issued by the Faculty of Advocates, Solicitor Advocates body or the Law Society.

10.13.3 In instructing Counsel, Solicitor Advocates, or Solicitors, it is the Attorney's duty to provide the necessary instructions and supporting documents in good time.

- 10.13.4 Where Counsel, Solicitor Advocate, or a Solicitor is instructed this does not affect the Attorney's responsibility to the client for the conduct of the matter.
- 10.13.5 When the proper conduct of the matter so requires the Attorney shall arrange conferences between Client and Counsel, Solicitor Advocate or Solicitor.
- 10.13.6 Where an Attorney instructs Counsel, Solicitor Advocate or a Solicitor that Attorney shall be present throughout court proceedings unless otherwise agreed or where a local agent is appointed.
- 10.13.7 Where Counsel, a Solicitor Advocate or a Solicitor is instructed the Attorney is personally liable for the payment of the proper fees of whether or not the Attorney has been paid by the client.

10.14 Complaints against Attorneys

- 10.14.1 The Association has established a Complaints Procedure to investigate complaints of professional misconduct and inadequate professional services against Attorneys and where appropriate to discipline Attorneys.

10.15 Client's money.

- 10.15.1 Attorneys shall not handle Clients' Money. The Attorney must inform the Client that in respect of payment from Defenders or payment to Pursuers that the money is to be paid directly to or from the Client and not through the Attorney. Payment of fees and expenses on behalf of the Client is not deemed to fall under the heading of 'Clients Money'.
- 10.15.2 Attorneys must take all reasonable steps to ensure that their practice or that of their firm is efficiently and properly administered and that proper records are kept.

10.16 Attorneys working in Private Practice Partnerships/Limited Liability Partnership

10.16.1 Attorneys in a firm may practise providing that the Attorney ensures that his partner(s) conducts business in a manner to enable compliance with the Code of Practice.

10.17 Employed Attorneys (including Company Directors).

10.17.1 Employed Attorneys may conduct litigation on instruction from their employer to act on behalf of his/her employer's clients. The Attorney may also conduct litigation on instruction from their employer on his/her employer's behalf. Once instructed the Attorney must undertake the work on his/her account and must not instruct others to carry out the work on his/her behalf. If the Attorney receives assistance from any other person he is deemed to have carried out the work on his/her own account.

10.17.2 When in the employment of others, the Attorney must ensure that his/her employer conducts business in a manner to enable compliance with the Code of Practice.

10.17.3 When in the employment of others, the Attorney must ensure that his Employer's client is made fully aware of the Association of Construction Attorney's complaint procedure and the right to refer matters of complaint about to the Scottish Legal Complaints Commission.

11.0 COMPLAINTS PROCEDURE

11.1 Introduction

- 11.1.1 The Association recognises that there may be complaints by clients and non-clients regarding the professional services provided by, and the conduct of, Attorneys.
- 11.1.2 The Association encourages Attorneys to resolve complaints directly with the person complaining wherever possible. However, in some instances, resolution will not be possible and such persons must be signposted, at the earliest opportunity, to the SLCC, as the gateway for formal complaints.
- 11.1.3 The Legal Profession and Legal Aid (Scotland) Act 2007 (the 2007 Act) applies in respect of any service or conduct complaints made about Attorneys, who are defined in Section 46 as “practitioners”.
- 11.1.4 The Association is named in the 2007 Act as a “Relevant Professional Organisation”, which has the responsibility of dealing with complaints about the conduct of Construction Attorneys.
- 11.1.5 The Association is also subject to Handling Complaints, raised under Section 23 of the 2007 Act, which relates to how the Association deals with conduct complaints.
- 11.1.6 Where, under Part 1 of the 2007 Act, the Scottish Legal Complaints Commission (‘SLCC’) has decided that a complaint about the conduct of an Attorney should be accepted for investigation, the SLCC will remit the complaint to the Association for it to deal with under its conduct complaints procedures.
- 11.1.7 Where a complaint has elements of both conduct and service, the SLCC and the Association will liaise and agree which investigation should proceed first.
- 11.1.8 The Association has processes and policies in place to investigate and determine conduct complaints. These processes are overseen by the SLCC, as part of its statutory

monitoring function under Section 36 of the 2007 Act.

- 11.1.9 The Association recognises that there may be complaints by clients, members of the public and other Attorneys of the Association against Attorneys in relation to their professional activities.
- 11.1.10 In addition to the complaints procedure outlined in this scheme, the Association will comply with the statutory requirements of the Legal Profession and Legal Aid (Scotland) Act 2007.
- 11.1.11 All Attorneys are under a duty to represent the client competently and diligently with the exercise of reasonable care and skill, and to keep the client properly informed; Rule 10.10.1. Attorneys are required to deal properly and promptly with complaints which allege breach of the duty in Rule 10.10.1; Rule 10.10.2.
- 11.1.12 Where a complaint has not been resolved to the client's reasonable satisfaction or has been referred to the Association by the SLCC in respect of a matter of conduct it will be dealt with in accordance with the Association's Complaints Procedure, set out below.

11.2 Complaints Board

- 11.2.1 General.
- 11.2.2 The Complaints Board will investigate complaints against Attorneys. The Chairman of the Association will decide on the persons who are to sit on the Complaints Board. The Complaints Board shall comprise of a minimum of six persons consisting of Members/Fellows of the Association and Non-Members of the Association.
- 11.2.3 Members/Fellows will only constitute a maximum of 50% of the membership of the Complaints Board. The Complaints Board will appoint a Head of the Complaints Board from within the members of the Complaints Board. If agreement cannot be reached the Head of the Complaints Board will be appointed by the Chairman of the Association. The Head of the Complaints Board will carry out the initial investigation of any complaint against an Attorney. A Complaints Panel may also be formed to deal

with the complaint. The Panel for any particular complaint shall be decided by the Head of the Complaints Board and shall consist of three persons of whom not more than two shall be Member/Fellows of the Association.

- 11.2.4 The role of the Complaints Board is to investigate complaints of professional misconduct against Attorneys and, where appropriate, to discipline Attorneys.
- 11.2.5 The Head of the Complaints Board has power to take the steps set out in Rule 11.3.8.
- 11.2.6 Any reference to the Complaints Board or investigation by it is without prejudice to any other rights a complainant may have.
- 11.2.7 The Complaints Board may consider complaints about the professional activities of Attorneys from clients, past clients, potential clients, members of the public or from other Attorneys.

11.3 Complaint procedure

- 11.3.1 Many complaints will first be made by the complainant direct to the Attorney concerned. The Attorney shall make every effort to resolve any such complaint. See Code of Practice Section 10.0.
- 11.3.2 Where the Attorney cannot resolve a complaint to the reasonable satisfaction of the complainant the Attorney is under a duty to remind the complainant of the existence of the Code of Practice and of this Complaints Procedure, and of the complainant's right to contact the Scottish Legal Complaints Commission ('SLCC') in the first instance.
- 11.3.3 When the Association receives a written complaint which appears to relate to allegations of professional misconduct or inadequate professional services, it will be referred to the Head of the Complaints Board who may:-
- make further enquires which he may consider appropriate
 - if the complainant has not already done so, advise the complainant of his or

her right to contact the SLCC in the first instance

- refer the complaint to the SLCC
- take such further steps as may be necessary.

11.3.3A Where the SLCC refers a complaint to the Association for consideration, the Head of the Complaints Board may:-

- appoint a Panel to enquire into the complaint
- if required appoint an Investigating Officer to act on his/her behalf
- take such further steps as may be necessary.

11.3.4 Where the SLCC refers a complaint to the Association for consideration, the Head of the Complaints Board shall write to the Attorney:-

- a) informing him of the allegation or information which suggests he may be liable for disciplinary action;
- b) providing him with copies of any relevant documentation received or obtained by the Head of the Complaints Board;
- c) inviting him to provide a written response within a period specified by the Head of the Complaints Board, which will be no more than 28 days from the date of the letter;
- d) advising him that any response will be disclosed to the maker of the allegation (if any) for comment.

11.3.5 Having considered any written representation provided by the Attorney and having made further enquiries he considers necessary (including seeking comments on any representations) the Head of the Complaints Board shall:-

- a) decide whether there is a realistic prospect of establishing that the Attorney is liable to disciplinary action; and

- b) decide what further action, if any, should be taken by the Association

11.3.6 Where the Head of the Complaints Board has determined that there is no realistic prospect of establishing that an Attorney is liable to disciplinary action he shall:-

- a) in cases where representations have been sought, write to the Attorney to notify him of the decision;
- b) advise the Attorney that the allegation or information received will be held by the Association and may be reconsidered by the Head of the Complaints Board on receipt of a fresh allegation or fresh information about the Attorney;
- c) write to any maker of the allegation to notify him of the decision.

11.3.7 Where the Head of the Complaints Board has determined that there is a realistic prospect of establishing that an Attorney is liable for disciplinary action, he shall:-

- a) decide, having regard to the seriousness of the allegation or information and the public interest, whether or not the Association will take further action in the matter;
- b) inform the Attorney and any maker of the allegation of the decision and his reasons.

11.3.8 Where the Head of the Complaints Board has determined that the Association should take further action he shall take one or more of the steps set out below:-

- a) serve the Attorney with a Fixed Penalty Notice;

- b) with the written agreement of the Attorney make a Consent Order;
- c) refer the matter to a Complaints Panel for consideration under section 11.6 (interim measures);
- d) refer the matter to a Complaints Panel for consideration under these Rules (discipline).

11.4 Fixed Penalty Notices

11.4.1 A Fixed Penalty Notice shall be in accordance with the Procedures Note/Sentencing Policy approved by the Complaints Board of the Association of Construction Attorneys.

11.5 Consent Orders

11.5.1 A Consent Order shall consist of terms requiring the Attorney to:-

- a) take or desist from taking certain actions within a specified period of time;
- b) if appropriate, pay a fine in accordance with the provisions of the published sentencing policy;
- c) if appropriate, pay costs to the Association in accordance with published scales.

11.5.2 The Head of the Complaints Board may invite the Attorney to provide their written agreement to a Consent Order within a specified period of time.

11.5.3 The Head of the Complaints Board may refer the Attorney to a Complaints Panel where:-

- a) the Attorney has not provided their written consent to a Consent Order within

the time specified by the Head of the Complaints Board;

- b) any of the terms of the Consent Order have been breached.

11.6 Interim measures

11.6.1 Where the Head of the Complaints Board refers the matter to the Complaints Panel for a hearing to consider interim measures, or where the Complaints Panel has directed a review of interim measures, the Head of the Complaints Board shall serve notice of the hearing by special post on the Attorney with reasonable notice.

11.6.2 The hearing may be in the form of a conference call.

11.6.3 The hearing shall be conducted in accordance with the provisions of these Rules save that the provisions may be modified by the Complaints Panel in the interests of justice. The procedure will usually consist of the following stages:-

- a) the Head of the Complaints Board (or if appointed an Investigating Officer) may outline the allegation or information received by the Association and address the Complaints Panel as to why it might be necessary to impose (or renew) interim measures, and may adduce relevant evidence;
- b) the Attorney may present his case in relation to the imposition of interim measures and may adduce relevant evidence;
- c) The Complaints Panel may put questions to any witnesses including the Attorney if he gives evidence;
- d) The Complaints Panel shall consider its decision in the absence of the parties and announce its decision and give reasons.

11.6.4 No person shall give oral evidence at the hearing unless the Complaints Panel considers such evidence is relevant to enable it to discharge its functions.

11.6.5 If the Complaints Panel is satisfied that there is credible evidence demonstrating the Attorney may be liable for disciplinary action and it is necessary having regard to the seriousness of the allegation or information and the public interest and the interests of the Attorney, the Panel may:-

- a) take no action or conclude any interim measures;
- b) suspend the Attorney's registration with the Association, with immediate effect, for a period not exceeding twelve months;
- c) require the Attorney to refrain from practising all or part of the role of an Attorney for a period not exceeding twelve months;
- d) direct that shortly before the end of the period of interim measures (if not previously concluded) the matter shall be referred back to a Complaints Panel for a review.

11.6.6 Where there has been a change of circumstances, on the application of the Attorney, or of his own volition, the Head of the Complaints Board may refer a case back for review of an interim suspension by a Complaints Panel.

11.6.7 The Complaints Panel shall have power to conclude interim measures in any case where they are determining disciplinary action.

11.7 Cancellation

11.7.1 The Head of the Complaints Board may cancel a referral to the Complaints Panel in the following circumstances:-

- a) the death of an Attorney;
- b) very exceptionally on the application of an Attorney who wishes to resign their registration with the Association (only applicable where the resignation is deemed sufficient penalty in respect of the complaint received);

- c) in circumstances where there is no longer a realistic prospect of establishing that the member is liable for disciplinary action;
- d) in other circumstances as determined by the Head of the Complaints Board, having regard to the seriousness of the allegation or information and the public interest.

11.8 Notices

11.8.1 When a hearing is required to consider a matter under the provisions of these Rules, the Head of the Complaints Board shall fix a date, place and time for the hearing and, in correspondence sent by special post, shall:-

- a) set out the charge or decision subject to review or appeal;
- b) give the Attorney notice of the hearing which shall not, except in the case of interim measures hearings under paragraph 11.6.1, be less than 28 days from the date of the letter;
- c) inform him of the date, time and place of the hearing;
- d) provide him with a copy of these Rules;
- e) send him a listing questionnaire relating to the hearing containing provision for the Attorney to make admissions in response to the charge and in Appeal Panel cases requiring him to indicate within 7 days whether he wishes to request an oral hearing which he could then attend.

11.9 Public Hearings

11.9.1 Complaints Panels shall usually sit in public except when considering interim measures.

11.9.2 The Attorney who may be liable for disciplinary action or the Head of the Complaints Board may request that the hearing in whole or in part shall be held in private. The

Panel may only grant such a request in whole or in part where it considers that exceptional circumstances apply which justify that decision.

11.10 Legal Assessor

11.10.1 Complaints Panel may be advised by a suitably qualified and experienced legal assessor.

11.10.2 The legal assessor may advise a Panel on the following matters:-

- a) any question of law as to evidence or procedure;
- b) any other matter arising in connection with these rules including any relevant associated guidance issued by the Association;
- c) the drafting of any written decision and the structuring of the Panel's reasons.

11.10.3 Where a legal assessor advises a Panel, he shall do so in the presence of the parties (if present) or, if the advice is tendered after the Panel has retired for any reason, the parties shall be informed as to what advice has been given prior to the Panel reaching any decision.

11.11 Proceeding in absence of the Attorney

11.11.1 Where the Attorney whose case is being considered by a Panel is not present and is not represented the Panel may proceed in the absence of the Attorney if they are satisfied that notification under section 11.8 has been properly given.

11.12 Oral Hearings and Representation

11.12.1 Where the Attorney has requested an oral hearing before the Complaints Panel the matter shall be considered as set out below and an oral hearing should be granted where it is considered this will assist in fairly dealing with the matter:.

11.12.2 Where there is to be an oral hearing the Attorney has the right to appear in person

before the Complaints Panel and may, if he so wishes, be represented by a lawyer, a representative from any professional organisation of which he is a member or, at the discretion of the Complaints Panel, any other Attorney of his choice. A representative may not give evidence at the hearing.

11.13 Voting

11.13.1 Where the Complaints Panel is required to decide an issue;-

- a) the matter shall be put to a vote;
- b) no panel member shall be allowed to abstain;
- c) the matter shall be decided by a simple majority.

11.14 Costs

11.15 The Complaints Panel may make such order for costs against the Attorney or the Association as it considers fair and reasonable, subject to the requirement that an estimate of costs incurred by a party shall be served on the other parties at least 24 hours before the hearing.

11.16 Adjournments

11.17 The Head of the Complaints Board, (or Complaints Panel after the commencement of a hearing), may at any stage adjourn a hearing. In such circumstances the parties shall be informed in writing, by special post, of the date, time and place of a resumed hearing.

11.18 If for any reason any member of the Complaints Panel is during the course of the hearing unable to continue to attend, or attend the adjourned hearing, the hearing may be re-heard by a new Panel appointed by the Head of the Complaints Board.

11.19 Panel Decisions

11.19.1 All Complaints Panel decisions under these Rules shall be notified by the Association to the Attorney and the complainer by special post within 14 days of the conclusion of hearing.

11.20 Publication and Records

11.20.1 Publication of all decisions under these Rules shall be at the discretion of the Complaints Panel.

11.20.2 All Complaints Panel decisions under these Rules shall be recorded on the Attorney's record.

11.21 Complaints Panel Procedures

11.21.1 At any hearing before a Complaints Panel:-

- a) the rules on the admissibility of evidence that apply in civil proceedings (Scotland) shall usually apply, although the Complaints Panel may receive relevant evidence which would not be admissible if it is satisfied that admission of that evidence is necessary to ensure a fair hearing;
- b) where the Attorney has been convicted of a criminal offence a certified copy of the conviction shall be admissible as proof of that conviction;
- c) the parties shall be permitted to call witnesses to give oral evidence and the Complaints Panel may request the attendance of witnesses or the provision of documents;
- d) any witness called shall first be examined by the party calling him, may be cross-examined by the other parties or their representatives, may be re-examined and may be asked questions by the Complaints Panel.

11.21.2 Save where the Complaints Panel decides otherwise the order of proceedings before the Complaints Panel shall be as follows:-

- a) The Panel Chairman shall read out the charge;
- b) The Chairman asks the Attorney or his representative (if present) if any of the matters are admitted;
- c) The Chairman shall invite the Presenting Officer to present the case against the Attorney and to adduce relevant evidence in support of that case;
- d) At the conclusion of the case against the Attorney the Chairman shall invite the Attorney or his representative (if present) to address the Complaints Panel and to adduce relevant evidence in relation to the charge;
- e) If the Attorney or his representative has addressed the Complaints Panel the Chairman shall then invite the Investigating Officer (who may be the Head of the Complaints Board) to make his closing address;
- f) The Chairman shall invite the Attorney or his representative (if present) to make his closing address;
- g) If necessary, the Complaints Panel shall then retire to make its findings as to the facts and whether the Attorney is liable to disciplinary action in the absence of the parties and before doing so may seek legal advice from its Legal Assessor;
- h) The Chairman shall then announce the Complaints Panel's findings as to the facts and whether the Attorney is liable to disciplinary action, together with the Panel's reasons, before those parties who are present;
- i) The Chairman shall then invite the parties present to address the Complaints Panel as to penalty (where the charge has been found proved and as to costs, and to adduce evidence as to any previous disciplinary record held by the Association and any mitigation;
- j) The Complaints Panel shall then retire to make its decision in relation to any penalty to be imposed and costs in the absence of the parties and before doing so may seek legal advice from its Legal Assessor:

- k) The Chairman shall then announce the Complaints Panel's decision and reasons as to penalty and its decision as to costs before those parties who are present.

11.22 Burden of Proof

11.22.1 The burden of proof shall be on the Association and where the Complaints Panel must determine issues of fact the standard of proof shall be on the balance of probabilities.

11.23 Penalties

11.23.1 The penalties available to the Complaints Panel are:-

- a) to caution the Attorney against repeating the conduct or action which is found to have constituted the contravention;
- b) to reprimand or severely reprimand the Attorney;
- c) to require the Attorney to give one or more undertakings as to future conduct;
- d) to fine the Attorney;
- e) to instruct compensation be paid;
- f) to impose conditions on the Attorney's continued registration of the Association;
- g) to expel the Attorney from the Association.

11.24 Decisions of the Complaints Panel

11.24.1 All decisions of the Complaints Panel shall usually take immediate effect unless the Panel directs otherwise. In the event of an appeal by the Attorney no fine shall become payable until the determination of the Appeal but all other penalties shall continue pending determination of the Appeal.

11.25 Appeals

11.25.1 An Attorney or a complainer may appeal to the Appeal Panel against:-

- a) a decision of the Fixed Penalty Reviewer (Head of the Complaints Board);
- b) a decision of the Complaints Panel.

11.26 Appeals Procedure

11.26.1 Any appeal or requirement for review by the Association shall be lodged with the Chairman of the Association within 28 days of service of notification of the decision to be appealed or reviewed. If the complaint is concerning the Chairman of the Association the matter will be dealt with by the Vice Chairman or Secretary of the Association.

11.26.2 The Appeal Panel shall be decided by the Head of the Complaints Board and shall consist of three persons of whom not more than two shall be Member/Fellows of the Association. No person that sat as a member of the initial Complaints Panel may sit on the Appeal Panel.

11.26.3 An appeal shall only be accepted by the Association if it is:-

- a) in writing in the form prescribed by the Association from time to time;
- b) specifies the grounds relied on in support of the appeal.

11.26.4 An appellant may withdraw his notice of appeal at any stage. In such circumstances the Appeal Panel may make an award for costs.

11.26.5 No appeal shall be allowed to proceed to the Appeal Panel without the permission of the Chairman or Vice Chairman of the Association.

11.26.6 An Appeal Panel shall review the decision of the Complaints Panel or Fixed

Penalty Reviewer having regard to:-

- a) the evidence presented to the Complaints Panel or Fixed Penalty Reviewer;
- b) any representations made to the Complaints Panel or Fixed Penalty Reviewer if available in written form, including any transcript of any hearing;
- c) the appellant's grounds of appeal;
- d) any representations which the appellant or the Head of the Complaints Board may wish to make to the Appeal Panel regarding the findings and/or penalties imposed by the Complaints Panel or Fixed Penalty Reviewer.

11.26.7 The parties may not provide new evidence to the Appeal Panel without leave of the Panel.

11.26.8 The burden shall be on the Appellant to satisfy the Appeal Panel that the order being appealed was wrong.

11.26.9 Where the Attorney has been granted an oral hearing before the Appeal Panel, except where the Panel decides otherwise, the order of proceedings before the Appeal Panel shall be as follows:

- a) The Panel shall hear and consider any preliminary legal arguments;
- b) The Investigation Officer shall outline the decision which is the subject of the Appeal and direct the Panel to any relevant evidence including transcripts of any hearing;
- c) If present, the Appellant may address the Panel on their grounds for appeal;
- d) The Panel may allow either party present an opportunity to make a closing address;

- e) The Panel may then retire to make its decision in relation to the Appeal and in relation to costs in the absence of the parties, and before doing so may seek legal advice from its Legal Assessor;
- f) the Chairman shall announce the Appeal Panel's decision and reasons and its decision as to costs before those parties who are present.

11.26.10 Only where the Panel considers that the decision of the Complaints Panel or Fixed Penalty Reviewer was wrong may the Panel allow the appeal.

11.26.11 Where the Appeal Panel allow the appeal they may :-

- a) vary the Complaints Panel's finding that the Attorney was liable to disciplinary action; and/or
- b) vary the penalty imposed by the Complaints Panel or Fixed Penalty Reviewer to one of greater or lesser severity;
- c) refer the matter back to a Complaints Panel or Fixed Penalty Reviewer for a new hearing or consideration.

11.26.12 All decisions of an Appeal Panel shall take effect from the date specified by the Appeal Panel.

11.27 Review of the Complaints Procedure

11.27.1 The Complaints Board shall report annually to the Association on complaints received and their outcome.

11.27.2 The Association shall review on an annual basis the operation of the Complaints/Disciplinary Procedures.

11.28 Role of the Scottish Legal Complaints Commission

- 11.28.1 Where the matter is a service matter the SLCC will determine whether investigation is required and, if the complaint is investigated and upheld, it will inform the practitioner of its decision. The SLCC will be responsible for any sanctions and the implementation of any recommendations following a complaint. In the event that an Attorney does not comply with the recommendations of the SLCC and the SLCC refers the case to the Association, as a conduct complaint, the Association will consider disciplinary action under its Complaints Procedure as noted above.
- 11.28.2 The SLCC will investigate the Association's handling of a complaint from a complainant where the SLCC considers that is a matter of conduct and it has referred the matter to the Association to deal with under its Complaints Procedure. In such an instance, the Association will co-operate fully with the Scottish Legal Complaints Commission (SLCC) and will act on any recommendation by the SLCC within three months of receiving that recommendation.
- 11.29** Where an issue of conduct has been referred to the Association by the SLCC, the Association will notify the SLCC of its decision as regards the matter.

12.0 ADMISSIONS BOARD

12.1 Association Admissions Board

12.1.1 The Admissions Board will administer applications from individuals wishing to become Members of the Association. The Admissions Board will administer and be responsible for the issuing of Practising Certificates. The Admissions Board will also administer applications from Members wishing to become Fellows of the Association.

12.1.2 The Chairman of the Association will decide on the number of persons who are to sit on the Admissions Board. The Admissions Board shall comprise of a minimum of six persons consisting of Members/Fellows of the Association and Non-Members of the Association. Members/Fellows will only constitute a maximum of 50% of the Admissions Board. No person applying for membership shall sit on the Admissions Board while making an application.

12.1.3 The Admissions Board will appoint a Head of the Admissions Board from within its members. If agreement cannot be reached the Head of the Admissions Board will be appointed by the Chairman of the Association. The Head of the Admissions Board will deal with applications for practising certificates and applications from Members to become Fellows. The Head of the Admissions Board will appoint an Admissions Panel to decide on any application. The Admissions Panel shall consist of three persons of whom not more than two shall be Members of the Association. The Admissions Panel will appoint a Chair to deal with the application.

12.1.4 The Head of the Admissions Board will receive applications for Practising Certificates (including renewal) and applications for Fellowship status. The Head of the Admissions Board will carry out all necessary investigations and will prepare and submit a written report to the Admissions Panel in respect of each application.

12.2 Membership application procedure

12.2.1 Written applications for Membership shall be referred to the Head of the Admissions Board who will:-

- Review the application to ensure that the Entrance Requirements (Section 5.0) have been met.
- If required request that the applicant provides further information in respect of the application.
- Appoint a Panel to decide if the application is to be accepted by the Association
- Prepare and submit a written report with recommendations to the Admissions Panel in respect of each application for membership.
- If required appoint an Admissions Officer to act on his/her behalf

12.2.2 The Admissions Panel will review the report prepared by the Head of the Admissions Board the Panel and will decide on whether or not to accept the application. The Admissions Panel will deal with each application as follows:-

- a) the matter shall be put to a vote;
- b) no panel member shall be allowed to abstain;
- c) the matter shall be decided by a simple majority.

12.2.3 The Admissions Panel will then instruct the Head of the Admissions Board to write to the applicant:-

- Informing him/her that the application has been accepted and an Interim Practising Certificate is to be issued in accordance with Section 6.0 and that a Fellow of the Association will be appointed for the required period of supervision.

Or

- Informing him/her, with reasons, that the application has been unsuccessful

12.3 Interim Practising Certificate procedure

12.3.1 Where an Interim Practising Certificate is to be issued to an individual the Admissions Board shall instruct the Head of the Admissions Board to:-

- Select and appoint a Fellow of the Association to supervise the individual for the required period of one year in accordance with Section 6.0.
- Ensure that the appointed Fellow in Supervising no more than two applicants.
- Report back to the Board on completion of the period of supervision.

12.4 Practising Certificate application procedure

12.4.1 Written applications for a Practising Certificate or renewal of a Practising Certificate shall be referred to the Head of the Admissions Board who will:-

- Review the application to ensure that the necessary Requirements (Section 7.0) have been met.
- In respect of renewal of Practising Certificates ensure that the requirements of Section 9.0 (Continual Professional Development) and any requirements of Section 10 (Code of Practice) have been met
- Review the recommendation report prepared by the supervising Fellow of the Association.
- If required request that the applicant provides further information in respect of

the application.

- Appoint a Panel to decide if the application is to be accepted by the Association
- Prepare and submit a written report with recommendations to the Admissions Panel in respect of each application for a Practising Certificate.
- If required appoint an Admissions Officer to act on his/her behalf

12.4.2 The Admissions Panel will review the report prepared by the Head of the Admissions Board the Panel and will decide on whether or not to accept the application. The Admissions Panel will deal with each application as follows:-

- a) the matter shall be put to a vote;
- b) no panel member shall be allowed to abstain;
- c) the matter shall be decided by a simple majority.

12.4.3 The Admissions Panel will then instruct the Head of the Admissions Board to write to the applicant:-

- Informing him/her that the application has been accepted and a Practising Certificate is to be issued in accordance with Section 7.0.

Or

- Informing him/her that the application has not been accepted and that a further period of supervision is required

Or

- Informing him/her, with reasons, that the application has been unsuccessful

12.5 Fellowship status application procedure

12.5.1 Written applications for Fellowship status shall be referred to the Head of the Admissions Board who will:-

- Review the application to ensure that the necessary Requirements (Section 4.4) have been met.
- If required request that the applicant provides further information in respect of the application.
- Appoint a Panel to decide if the application is to be accepted by the Association
- Prepare and submit a written report with recommendations to the Admissions Panel in respect of each application for Fellowship status.
- If required appoint an Admissions Officer to act on his/her behalf

12.5.2 The Admissions Panel will review the report prepared by the Head of the Admissions Board the Panel and will decide on whether or not to accept the application. The Admissions Panel will deal with each application as follows:-

- a) the matter shall be put to a vote;
- b) no panel member shall be allowed to abstain;
- c) the matter shall be decided by a simple majority.

12.5.3 The Admissions Panel will then instruct the Head of the Admissions Board to write to the applicant:-

- Informing him/her that the application for Fellowship status of the Association has been granted.

Or

- Informing him/her, with reasons, that the application has been unsuccessful

12.6 Panel Decisions

12.6.1 All application decisions under these Rules shall be notified, to the applicant, by the Head of the Admissions Board within 31 days of the panel decision.

12.7 Review of the Admissions Procedure

12.7.1 The Admissions Boards shall report annually to the Association on applications received and their outcome.

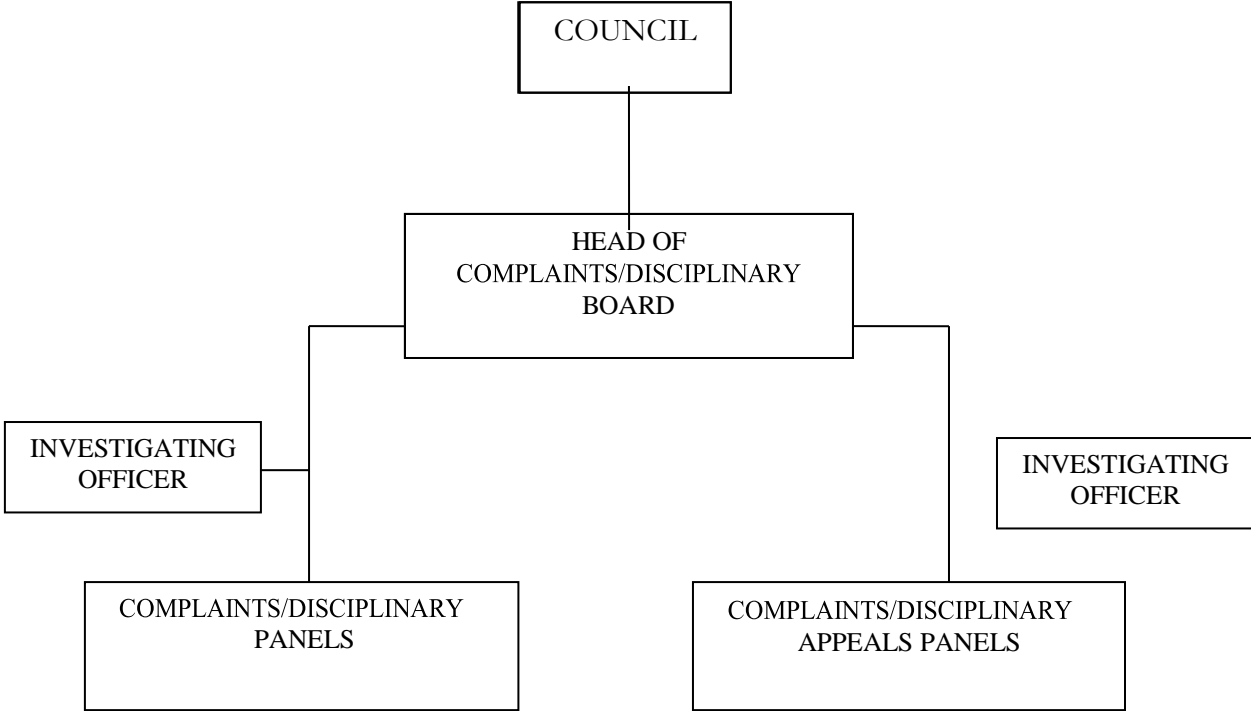
12.7.2 The Association shall review on an annual basis the operation of the all the Admissions Procedures and Admission Requirements.

13.0 STATEMENTS

- 13.1** In accordance with section 25(2) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 the Association has complied with the provisions of Schedule 2 of the said Act.

STRUCTURE FOR COMPLAINTS PROCEDURE

ASSOCIATION OF CONSTRUCTION ATTORNEYS



APPENDIX 1

List of Recognised Professional Bodies.

Royal Institution of Chartered Surveyors

Institution of Civil Engineers

Institute of Highway Engineers

Institute of Structural Engineers

Chartered Institute of Builders

Royal Institute of British Architects

Royal Incorporation of Architects in Scotland

Chartered Institution of Building Services Engineers

The Institute of Electrical Engineers

The Institution of Mechanical Engineers

Other bodies considered to be of equal standing to the above list by the Admissions Board.

Construction qualification

Doctorate in a Construction related subject

Masters Degree in a Construction related subject

Bachelors Degree in a construction related subject

HND/HNC or OND/ONC in a construction related subject

City and Guilds in Design

Qualifications considered to be of equal standing to the above list by the Admissions Board.

APPENDIX 2

PRACTICAL LEGAL TRAINING COURSE OUTLINE

INTRODUCTION

The course will comprise four modules, as follows:

- Module 1 – Foundation Module
- Module 2 – Ordinary Cause Actions in the Sheriff Court
- Module 3 – Simple Procedure, Summary Applications, Commercial Actions and Enforcement
- Module 4 – Court of Session actions

The content of each module is outlined in further detail below.

Each module will comprise two seminars, each of approximately three hours duration. Preparatory reading will be required in advance of each seminar. In addition, assignments will be set at the first seminar in each module, for submission in advance of the second module. Assignments will be reviewed and returned to students at the second module, with comments.

Formal assessment of the modules will be by way of the Assignments issued throughout the course. Completion of the course and the submission of competent assignments will be required before the Association will issue an Interim Practising or Practising Certificate.

While seminars will include a lecture component, students will have completed preparatory reading in advance and the emphasis will be on skills development.

It is anticipated that each module will require students to be engaged for sixteen hours; six hours in class and a further ten hours in preparatory reading and written assignments.

AIMS AND OBJECTIVES

The collective aim of the three modules will be:

- (a) to develop skills relevant to the conduct of civil litigation in the sheriff court in the context of contractual and commercial disputes under small claims and summary cause procedures;
- (b) to develop skills relevant to the drafting of an initial writ and conduct of the early stages of an ordinary cause action.

This course is not designed to teach substantive law.

OBJECTIVES:

By the end of the three modules, students should be able to:

- demonstrate an understanding of the Scottish court system and the rules of jurisdiction
- analyse potential claims
- conduct Small Claims and Summary cause actions
- draft an initial writ
- critically analyse written pleadings
- demonstrate an understanding of enforcement procedures
- demonstrate an understanding of professional ethics and the rules of conduct in the context of civil litigation in the Sheriff Courts

FOUNDATION MODULE

Preparatory Reading will be assigned in advance of the first seminar.

Seminar 1

- The Scottish Court System
 - Sheriff Court
 - Court of Session
 - Appeals
- Jurisdiction
 - Territorial Jurisdiction
 - Privative jurisdiction of the Sheriff Court
 - Privative Jurisdiction of the Court of Session
 - Concurrent Jurisdiction of the Sheriff Court and the Court of Session
- Civil Jurisdiction and Judgements Act 1982
- Introduction to Written Pleadings – basic drafting skills (Assignment for submission before Seminar 2 – draft an initial writ)

Seminar 2

- Feedback on drafting assignments
- Case Analysis

- Written Pleadings (continued)
- Professional Ethics
- Consolidation of Foundation Module

MODULE 2 - ORDINARY CAUSE ACTIONS IN THE SHERIFF COURT

Preparatory Reading will be assigned in advance of the first seminar.

Seminar 1

- Ordinary Cause Procedure
- Written pleadings - Relevancy
- Written Pleadings - Specification
- Drafting the Initial Writ
- Diligence on the Dependence

(Assignment for submission before Seminar 2 – draft an initial writ)

Seminar 2

- Acting for the Defender
- Analysing the initial writ
- Drafting Defences
- Adjustments
- Notes of basis of preliminary pleas
- The Options Hearing
- Further Procedure
- Consolidation of Module Two

MODULE 3 – SIMPLE PROCEDURE, SUMMARY APPLICATIONS, COMMERCIAL ACTIONS AND ENFORCEMENT

Preparatory Reading will be assigned in advance of the first seminar.

Seminar 1

- Simple Procedure
- Summary Applications
- Appearing in court – introduction to oral advocacy (practical exercise)

(Assignment for submission before Seminar 2 – draft a statement of claim, note of defence and a summary application)

Seminar 2

- Feedback on written assignments
- The Proof
 - preparing for the proof
 - evidence
 - examination in chief, cross examination, re-examination
 - objections
 - submissions
- Commercial Actions
- Enforcement/ diligence
- Consolidation of Module Three

MODULE 4 – COURT OF SESSION ACTIONS

Preparatory Reading will be assigned in advance of the seminars.

Seminar 1

- Choice of forum
- Pleadings
- Multiple defenders
- Amendment
- Interdicts, interim and permanent
 - Undertakings
 - Contempt
- Counterclaims

- Sists
- Decree by default
- Caution
- Debates & relevancy
- Specification in pleadings
- Recovery of evidence
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