



# EXPERT WITNESS INSTITUTE

**THE EXPERT WITNESS INSTITUTE  
MEMBER COMPLAINTS PROCEDURES**

**February 2024**

The Expert Witness Institute  
PO Box 797  
Redhill  
RH1 9JS

020 3880 0064  
[info@ewi.org.uk](mailto:info@ewi.org.uk)  
[www.ewi.org.uk](http://www.ewi.org.uk)

## **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 procedures is to provide a method of enforcing the Joint Expert Witness Institute and The Academy of Expert's Code of Practice, 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 26 of the Articles of Association. The code is included at Appendix 1 of 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. WHAT WE CAN INVESTIGATE**

4.1 The Institute takes the conduct of its members very seriously. It is important to remember that we are a membership body and do not have any regulatory functions. Therefore, serious breaches of our code of professional conduct may result in removal from membership, but we cannot stop a member from engaging in further Expert Witness work outside of our purview.

4.2 The following table outlines what we can and cannot investigate.

<b>We can consider</b>	<b>We cannot consider</b>
<ul style="list-style-type: none"> <li>• Complaints considered to be Misconduct</li> <li>• Complaints which relate to the member’s practice as an Expert Witness, specifically:               <ul style="list-style-type: none"> <li>○ Independence, impartiality, objectivity and integrity</li> <li>○ Duty to the Court or Tribunal</li> <li>○ Non-compliance with the relevant rules, regulations, practice directions or guidelines of the court</li> <li>○ Proven breach of Confidentiality</li> <li>○ Undisclosed arrangement which could compromise their impartiality</li> <li>○ Undisclosed conflict of interest</li> <li>○ Lack of Indemnity insurance</li> <li>○ Inaccurate, misleading or bad taste marketing/publicity</li> </ul> </li> <li>• Complaints which have previously been referred to the Expert’s professional body which have identified issues with their professional practice</li> <li>• Criticism from a court or Judge</li> </ul>	<ul style="list-style-type: none"> <li>• Complaints against Associate Members, Student Members, Honorary Fellows, Corporate Members, Corporate Partners, and Supplier Partners who are not bound by the same Code of Conduct</li> <li>• Complaints concerning the expert’s professional opinion</li> <li>• Complaints which relate to the methodology used by the Expert Witness</li> <li>• Complaints where the case is currently ongoing</li> <li>• Complaints which ask us to make a judgment on a point of law (eg. Breach of contract)</li> <li>• Complaints made anonymously</li> <li>• Complaints made prior or during litigation or pending or potential litigation regarding the case or expert services</li> <li>• If the expert is no longer a practicing member of our institute</li> </ul>

If you have a complaint about one of our Corporate Members or Corporate Partners, please contact the Institute who will advise you regarding the type of complaints that can be investigated.

**5. RAISING A COMPLAINT**

5.1 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.

- 5.2 If the Board or a member of the EWI Staff become aware of an issue with the performance of a member in the practice as an Expert Witness, the Board of Governors reserves the right to nominate an individual to bring a disciplinary complaint against any EWI member. That individual should submit a complaint in line with the process detailed in Section 7 and it will be handled in the same way as any other complaint.

## **6. CONDUCT**

- 6.1 The EWI will only entertain a complaint based on breach of the Code of Practice 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.

## **7. HOW A COMPLAINT CAN BE MADE**

### **7.1 Complaint Validation**

- 7.1.1 Any complaint about the conduct of a member should be submitted online using the Member Complaint form. You will be required to provide your details, identify the specific areas of the code of conduct that have been breached, brief details of the complaint and examples to support your case. A word version of the form will be available if you are unable to use the online version.
- 7.1.2 Only complaints submitted via these methods will be considered.
- 7.1.3 Complaints made anonymously will not be entertained.
- 7.1.4 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.
- 7.1.5 All complaints will be acknowledged by the EWI within 3 working days of receipt.
- 7.1.6 Within 7 calendar days of receipt of the complaint, the Chief Executive Officer will assess the validity of the case based on the information provided.
- 7.1.7 If the case is not deemed to be valid, the Chief Executive Officer will write to the Complainant outlining the reasons why the complaint cannot be investigated.
- 7.1.8 Following any declaration as to invalidity, the complainant has the right to object and provide reasons with supporting evidence within 28 calendar days of declaration.
- 7.1.9 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.

- 7.1.10 If the complaint is still deemed to be invalid, the Chief Executive Officer will write to the Complainant outlining the reasons why the complaint cannot be investigated.
- 7.1.11 If the complaint is deemed to be valid, the Chief Executive Officer will notify the Designated Governor of the complaint and ask the complainant to provide further information and detail to support their complaint and advise them on how this should be submitted.
- 7.1.12 On receipt of the complaint, the Designated Governor will review the information submitted. If the Designated Governor considers by reference to the nature of the complaint that it is one of serious misconduct, then the 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. Examples of such cases may include where the Member is under investigation by their regulatory body and has been suspended pending review or credible allegations that the member poses a risk to a member of the public.
- 7.1.13 In cases which amount to Serious Misconduct the Board will also consider whether the complaint should be dealt with by a Tribunal Panel.
- 7.1.14 If a case amounts to Misconduct but the Designated Governor considers the complaint to be complex, the Designated Governor may also request the appointment of a Tribunal Panel to review the complaint.
- 7.1.15 A Tribunal Panel will consist of two members of the Membership Committee who will be appointed to work with the Designated Governor. If a Tribunal Panel is appointed, they will follow the Formal Complaint Review process in line with 7.2.

## **7.2 Complaint Review**

- 7.2.1 The investigation procedure will normally be by documents only. However, in exceptional circumstances, the Designated Governor or Tribunal has the power to request oral evidence or to order a formal hearing and to decide on the procedural aspects, following written submissions by the complainant and the member.
- 7.2.2 The complainant will be required to submit a detailed complaint. The information provided by the complainant must set out the nature of the matter in which the member was instructed and full details about the circumstances of the complaint. The document must contain sufficient detail to enable the Institute and the member to understand the precise allegations of misconduct that are being made.
- 7.2.3 A copy of the complaint and any supporting evidence will be sent to the member concerned.
- 7.2.4 The member must respond to the complaint, fully and in writing, within 21 calendar days of being sent the complaint.
- 7.2.5 A copy of the response will be sent to the complainant who will have 7 calendar days to make any response.

- 7.2.6 Following those 7 calendar days, a copy of all the documentation will be passed to the Designated Governor (or Panel).
- 7.2.7 The Designated Governor (or Panel) will complete an initial review of the complaint and member response within 21 calendar days to determine whether any further information is required.
- 7.2.8 If the Governor (or Panel) require further information from the Member or the complainant, the Chief Executive Officer will inform the relevant party(s) of the request.
- 7.2.9 If not, the Designated Governor (or Panel) will complete their full review of the complaint.
- 7.2.10 If further information has been requested, the Complainant and/or Member must respond, fully and in writing within 14 calendar days of being sent the request.
- 7.2.11 The Designated Governor (or Panel) will have a further 21 calendar days to complete their full review of the complaint and decide on the balance of probabilities that the complaint is upheld, partially upheld, or dismissed. They will also decide on any sanctions to be imposed.
- 7.2.12 Following the investigation, the complainant and the member will be informed of the result of the complaint and of any sanctions (if appropriate) outlining the reasons for the decision.

## **8. COOPERATION WITH PROCESS**

- 8.1 Failure by the complainant to co-operate with the Institute's investigation process may result in the complaint being rejected.
- 8.2 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.

## **9. SANCTIONS**

- 9.1 In cases where the complaint is upheld or partially upheld, the Designated Governor (or Panel) 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.

- 9.2 There will be no entitlement to refund of annual subscriptions already paid during a period of suspension or following expulsion from the Institute.
- 9.3 It is important to remember that we are a membership body and do not have any regulatory functions. Therefore, serious breaches of our code of professional conduct may result in removal from membership, but we cannot stop a member from engaging in further Expert Witness work outside of our purview.

## **10. APPEALS**

- 10.1 The Complainant or Member may submit an appeal within 42 calendar days from the notification of the outcome of the original complaint.
- 10.2 Any appeal should be submitted in writing and should clearly set out the reasons for the appeal with supporting evidence.
- 10.3 The appeal will be referred to the Board of Governors to be dealt with. Where the complaint was reviewed by the Designated Governor, the Appeal Panel will consist of three members of the Board (not including the Designated Governor) who will be appointed to review the appeal. Where the complaint was reviewed by a Tribunal Panel, the Appeal Panel will consist of five members of the Board (not including the Designated Governor or any that served on the Tribunal Panel) who will be appointed to review the appeal.
- 10.4 The Appeal Panel will be sent a copy of the original complaint, any further information received and the documented outcome.
- 10.5 The Appeal Panel will complete an initial review of the appeal within 21 calendar days to determine whether further information is required.
- 10.6 If the Appeal Panel requires further information from the Member or the complainant, the Chief Executive Officer will inform the relevant party(s) of the request.
- 10.7 If not, the Appeal Panel will complete their full review of the appeal.
- 10.8 If further information has been requested, the Complainant and/or Member must respond, fully and in writing within 14 calendar days of being sent the request.
- 10.9 The Appeal Panel will have a further 21 calendar days to complete their full review of the appeal and decide whether the decision should be upheld or not.
- 10.10 The Appeal Panel may confirm the sanction originally imposed, substitute any of the other sanctions set out above, or remove sanctions following the outcome of the appeal.

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

## **11. NOTIFICATION OF DECISIONS TO THE PUBLIC**

- 11.1 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.
- 11.2 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.

## **12. COMING INTO FORCE**

- 12.1 These rules come into force with effect from 26<sup>th</sup> February 2024.
- 12.2 Only complaints received after 26<sup>th</sup> February 2024. will be subjected to these rules.



## **APPENDIX 1 – JOINT CODE OF PROFESSIONAL PRACTICE**

All members of the Expert Witness Institute agree to abide by the EWI and TAE Joint Code of Conduct and the EWI Membership Rules.

### **Expert Witness Institute and The Academy of Experts Joint Code of Conduct**

The EWI and Academy agreed this 'joint' Code and have adopted it so that it applies to members of either organisation. We believe this is a positive step towards the raising and policing of higher standards for all Experts.

This code of Practice should be followed by all members. It may also be considered Best Practice for other Experts both in England & Wales and around the world.

The Code was endorsed on 22nd June 2005 by Rt Hon Lord Phillips of Worth Matravers Master of the Rolls & Chairman of the Civil Justice Council and again on 26th June 2006 the Code was endorsed by the Master of the Rolls, Rt Hon Sir Anthony Clarke and the President of the Queens Bench Division, Rt Hon Sir Igor Judge for use in Criminal proceedings.

### **Preamble**

This Code of Practice shows minimum standards of practice that should be maintained by all Experts.

It is recognised that there are different systems of law and many jurisdictions in Europe, any of which may impose additional duties and responsibilities which must be complied with by the Expert.

There are in addition to the Code of Practice, General Professional Principles with which an Expert should comply.

These include the Expert:

- Being a "fit and proper" person
- Having and maintaining a high standard of technical knowledge and practical experience in their professional field
- Keeping their knowledge up to date both in their expertise and as Experts and undertaking appropriate continuing professional developments and training.

## The Code

1. Experts shall not do anything in the course of practising as an Expert, in any manner which compromises or impairs or is likely to compromise or impair any of the following:
  - i. the Expert's independence, impartiality, objectivity and integrity,
  - ii. the Expert's duty to the Court or Tribunal,
  - iii. the good repute of the Expert or of Experts generally,
  - iv. the Expert's proper standard of work,
  - v. the Expert's duty to maintain confidentiality.
2. An Expert who is retained or employed in any contentious proceeding shall not enter into any arrangement which could compromise his impartiality nor make his fee dependent on the outcome of the case nor should he accept any benefits other than his fee and expenses.
3. An Expert should not accept instructions in any matter where there is an actual or potential conflict of interests. Notwithstanding this rule, if full disclosure is made to the judge or to those appointing him, the Expert may in appropriate cases accept instructions when those concerned specifically acknowledge the disclosure. Should an actual or potential conflict occur after instructions have been accepted, the Expert shall immediately notify all concerned and in appropriate cases resign his appointment.
4. An Expert shall for the protection of his client maintain with a reputable insurer proper insurance for an adequate indemnity.
5. Experts shall not publicise their practices in any manner which may reasonably be regarded as being in bad taste. Publicity must not be inaccurate or misleading in any way.
6. An Expert shall comply with all appropriate Codes of Practice and Guidelines.