



Scheme for Certification of Design (Building Structures)

in accordance with the requirements of the
Building (Scotland) Act 2003
Building (Scotland) Regulations 2004 (as amended)

Complaints, Disciplinary and Appeal Procedures

August 2021

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1 Introduction

This document sets out the procedures that shall be followed by Structural Engineers Registration Ltd (SER) when it receives:

- i) a complaint about the conduct of any Approved Certifier or Approved Body who are members of the Scheme for Certification of Design (Building Structures) (the Scheme) in connection with their activities with regard to the certification of design under the Building (Scotland) Act 2003 and the Building (Scotland) (Procedures) Regulations 2004; or
- ii) an appeal against a decision relating to membership of the Scheme following either:
 - a) an application for membership being rejected; or
 - b) the outcome of an audit; or
 - c) termination or suspension of membership following an audit; or
 - d) termination or suspension of membership by the Disciplinary Panel.

2 Submitting a Complaint

- 2.1 Anyone wishing to make a Complaint about the conduct of any Approved Certifier or Approved Body who is a member of the Scheme shall do so in writing within 3 months of the last event that gives rise to the complaint, setting out the substance of the Complaint on the form in **Appendix 3** (also available for download from www.ser-ltd.com), and sending it, marked for the attention of the Head of Certification, to Structural Engineers Registration Ltd, 47-58 Bastwick Street, London, EC1V 3PS.

3 Submitting an appeal against a decision relating to membership of the Scheme

3.1 An appeal related to:

- i) An application for membership, or
- ii) An audit outcome

may only be lodged after the Board of Directors of SER Ltd (“SER Board”) has had the opportunity to consider representations on the matter from the applicant or Scheme Member concerned. Representations to the SER Board shall be submitted in writing, marked for the attention of the Head of Certification, to Structural Engineers Registration Ltd, 47-58 Bastwick Street, London, EC1V 3PS within 20 working days (see 4.1) of the date of notification of the decision to which they relate. The representations must clearly state all the grounds on which the decision is disputed.

3.2 Written representations shall be considered in the following circumstances:

- i) where the assessors and/or auditors and/or SRB and/or SER Board (whichever is the case) has incorrectly interpreted the scheme rules, subject to such default coming to the attention of the Head of Certification within 30 days of the SER Board issuing its decision; and/or
- ii) new evidence becomes available of which the Head of Certification becomes aware within 30 days of receipt by the member of the SER Board’s decision, and such evidence could not, in the opinion of the Head of Certification, reasonably have been provided to the assessors and/or auditors and/or SRB and/or SER Board at the time it reached its decision.

3.3 The SER Board may take whatever action it deems appropriate in the circumstances. Actions may include, but are not limited to:

- i) In respect of an application for membership;
 - a) Confirming rejection of the application; or
 - b) Overturning rejection of the application;
 - c) Referring the application and the representations made by the applicant to the assessors of the application, the SRB or its Chairman, for comment prior to taking action.
- ii) In respect of an audit outcome;
 - a) Confirming the outcome of the audit; or
 - b) Varying the outcome of the audit; or
 - c) Setting aside the audit and ordering a fresh audit with a new audit team; or

- d) Referring the audit report and the representations made by the auditee to auditors, the SRB or its Chairman, for comment prior to taking action.

3.4 The SER Board shall respond to representations made to it within 3 calendar months of receipt of the representations.

3.5 If the applicant or Scheme Member is not satisfied with the response of the SER Board to their representations, they may lodge an Appeal. A Membership Appeal shall be lodged on the form in **Appendix 5** (also available for download from www.ser-ltd.com) and sending it, marked for the attention of the Head of Certification, to Structural Engineers Registration Ltd, 47-58 Bastwick Street, London EC1V 3PS, within 20 working days (see 4.1) of the date of written notification of the Board's response on the representations made to it. A Membership Appeal must clearly state all of the grounds relied on in support of the appeal.

4 General

4.1 Working Days

4.1.1 In respect of these procedures all references to “working days” shall be to all days excluding:

- i) Saturdays and Sundays; and
- ii) Any Bank holiday in Scotland and England & Wales, or day appointed for public thanksgiving or mourning in Scotland and England & Wales; and
- iii) The days from 27 December to 31 December, inclusive, in any year.

4.1.2 The first working day of any period specified in these procedures shall be deemed to be:

- i) The working day immediately following the date on which correspondence is received at SER’s registered address; or
- ii) The working day immediately following the date on which a notification is deemed to have been delivered; or
- iii) The working day immediately following the date on which a relevant meeting takes place as may be appropriate in the circumstances.

4.2 Correspondence

All correspondence involving:

- i) Notification to a Scheme Member that a Complaint against them has been received; or
- ii) Notification of the proposed date of a hearing of a Disciplinary Panel; or
- iii) Notification of the proposed date of a hearing of an Appeals Panel; or
- iv) Notification of the decision of a Conduct Panel; or
- v) Notification of the decision of a Disciplinary Panel; or
- vi) Notification of the decision of an Appeals Panel; or
- vii) Responses from the Board to representations made to it.

shall be sent by **1ST class Royal Mail** Recorded Delivery post and shall be deemed to have been delivered to the addressee 2 working days after the date of posting.

4.3 Notifications to the Scottish Government Building Standards Division (BSD)

Notifications to BSD in respect of:

- i) A Complaint to be heard by a Disciplinary Panel; or
- ii) The decision of a Disciplinary Panel; or
- iii) Lodging of an Appeal against a decision on membership; or
- iv) Lodging of an Appeal against the outcome of an Audit; or
- v) Lodging of an Appeal against the findings of a Disciplinary Panel; or
- vi) Notification of the decision of an Appeals Panel.

shall either be made by email or by 1st class Royal Mail Recorded Delivery post.

4.4 Conflicts of interest

4.4.1 Nobody shall be permitted to serve on a Conduct Panel, a Disciplinary Panel or an Appeals Panel if there is an actual, or potential conflict of interest between themselves and the Complainant, and/or the Scheme Member and/or person who is the subject of the Complaint and/or any person or entity lodging a Membership Appeal. The following relationships or circumstances with any of these parties shall be presumed to constitute actual, or potential conflicts of interest:

- i) a family relationship; and/or
- ii) a personal friendship; and/or
- iii) being a current or former employee; and/or
- iv) being a current or former employer; and/or
- v) having a significant financial relationship or connection; and/or
- vi) having a significant business or professional relationship or connection.

4.4.2 Any person invited to serve on any of the Panels who believes that he or she comes within (or may come within) the circumstances described in section 4.4.1, in respect of the case or matter to be considered by the Panel in question, shall promptly disclose this to the Head of Certification and shall decline the invitation to serve on the Panel.

4.4.3 Any person invited to serve on any Panel who believes that he or she has (or may have) an actual, or potential conflict of interest which is not included in section 4.4.1, shall promptly disclose this to the Head of Certification and shall decline the invitation to serve on the Panel.

4.5 Timescales

4.5.1 These procedures include time limits or periods for the carrying out of various activities which are to be adhered to by all those to whom the procedures apply.

4.5.2 The Chairman of the relevant Panel, may, at any time, grant a request for an extension of any period of time provided for in the Complaints and Disciplinary and Appeal Procedures, but shall only do so:

- i) if it appears to him or her to be justified to do so; and
- ii) if it is for such a period as he or she considers reasonable.

4.5.3 The Chairman of the relevant Panel, may grant further requests for extensions of time to any previously granted, but shall only do so:

- i) if it appears to him or her to be justified to do so; and
- ii) if it is for such a period as he or she considers reasonable.

4.5.4 A request for an extension of time from

- i) SER, and/or
- iii) a Complainant, and/or
- iv) a person or entity lodging a Membership Appeal; and/or
- v) a Scheme Member who is the subject of a complaint; and/or
- vi) any other party from whom information has been requested; and/or
- vii) an Appellant,

shall be submitted, in writing using the prescribed form (see Appendix 5), to the Head of Certification.

4.5.5 A decision of the Chairman of the relevant Panel in respect of a request for an extension of time shall not be subject to appeal under these procedures.

4.5.6 A decision granting an extension of time may be made after the period for compliance with the standard time scale has already passed or after a previous extension of time granted has elapsed.

- 4.5.7 The Chairman of a Panel shall have the discretion at any time to extend the prescribed time limits of the Complaints and Disciplinary and Appeals procedures, except where it would appear that it would not be in the interests of justice to do so.
- 4.5.8 The Head of Certification shall notify the Complainant and the Member of any such extension of time, within 5 working days of the Chairman's decision to extend the period of time.

5 Acknowledgement and initial screening of Complaints

- 5.1 Within 5 working days of receipt of a Complaint, the Head of Certification (or a named deputy) shall acknowledge receipt of the Complaint to the Complainant, in writing.
- 5.2 In the event that the Head of Certification considers it necessary, further information and/or documentation may be required to be provided by the Complainant prior to the Complaint being brought to the attention of the Scheme Member. The Head of Certification may also request information from third parties.
- 5.3 Complainants have an obligation to co-operate actively with the Head of Certification and with the investigation of a Complaint. This shall include, but shall not be limited to, providing information or documentation that has been required from them by the Head of Certification to the extent that it is within their ability to do so.
- 5.4 In the event that a Complainant withdraws a complaint, the Head of Certification may nevertheless continue to refer the matter to the Conduct Panel.
- 5.5 The Head of Certification shall reject any Complaint that does not relate to:
 - i) the conduct of an Approved Certifier of Design (Building Structures) in connection with their activities with regard to the certification of design under the Building (Scotland) Act 2003 and the Building (Scotland) (Procedures) Regulations 2004; or
 - ii) the conduct of an Approved Body for Certification of Design (Building Structures) in connection with their activities with regard to the certification of design under the Building (Scotland) Act 2003 and the Building (Scotland) (Procedures) Regulations 2004; or
 - iii) a project that is to be or has been certified under the Building (Scotland) Act 2003
- 5.6 The Head of Certification shall refer any Complaint alleging a breach of section 11(4) of the Building (Scotland) Act 2003 (See Appendix 2) to a Conduct Panel

6 Conduct Panel

6.1 Constitution

6.1.1 The Conduct Panel shall consist of the Head of Certification (or a named deputy) and a member of the Board of Directors of SER, who is not an employee of either the Institution of Structural Engineers (IStructE) or the Institution of Civil Engineers (ICE).

6.1.2 The member of the Board of Directors of SER shall be the Chairman of the Panel.

6.2 Powers and Responsibilities

6.2.1 The Conduct Panel shall reject a Complaint on the grounds that it does not relate to:

- i) the conduct of an Approved Certifier of Design (Building Structures) in connection with their activities with regard to the certification of design under the Building (Scotland) Act 2003 and the Building (Scotland) (Procedures) Regulations 2004; or
- ii) the conduct of an Approved Body for Certification of Design (Building Structures) in connection with their activities with regard to the certification of design under the Building (Scotland) Act 2003 and the Building (Scotland) (Procedures) Regulations 2004; or
- iii) a project that is to be or has been certified under the Building (Scotland) Act 2003

6.2.2 The Conduct Panel shall refer to a Disciplinary Panel any Complaint alleging a breach of section 11(4) of the Building (Scotland) Act 2003 (See Appendix 2)

6.2.3 Subject to section 6.2.4 below, the Conduct Panel shall refer to a Disciplinary Panel any Complaint where it finds that there is a case to answer in respect of:

- i) a failure to abide with the criteria for membership of the Scheme; and/or
- ii) a failure to discharge the duties of an Approved Certifier of Design (Building Structures) in accordance with the rules of the Scheme; and/or
- iii) a failure to discharge the duties of an Approved Body for Certification of Design (Building Structures) in accordance with the rules of the Scheme; and/or
- iv) A breach of the Code of Conduct of the Scheme

6.2.4 If in respect of a Complaint the Conduct Panel determines that there has been a minor breach or failure involving a misapplication or non-application of the rules of the Scheme, it may decide not to refer the Complaint to the Disciplinary Panel at that stage and may itself direct that within a specified period of time the Member shall give a written undertaking to take specified actions within a specified period of time.

- 6.2.5 In the event that the Member fails to provide a required written undertaking in the terms and within the time period directed by the Conduct Panel under 6.2.4 or fails to carry out specified actions properly and/or within the specified period of time, the Conduct Panel may direct that the Complaint be referred to a Disciplinary Panel for hearing and determination.
- 6.2.6 In the event that the Member provides a written undertaking as required and within the time period specified by the Conduct Panel and complies fully with its terms (including as to taking specified actions properly within the specified period of time) no further action will be taken in respect of the Complaint.
- 6.2.7 Notwithstanding section 6.2.6, whether or not the Conduct Panel refers a Complaint to the Disciplinary Panel, it may direct that an audit or other investigation of the Member shall take place on such terms and within such a period of time as it shall specify. The Complainant shall be notified that an audit or other investigation is to take place including an estimate of the likely time for its completion, and, in accordance with section 6.3.8 may be provided with a copy (redacted or otherwise as determined by the Conduct Panel) of the outcome of the audit and/or further investigation

6.3 Procedures

- 6.3.1 Within 5 working days of the receipt of a Complaint and any further information deemed necessary by the Head of Certification (see section 5.2) the Head of Certification (or a named deputy) shall
- i) arrange for the appointment of a Conduct Panel to consider the Complaint
 - ii) notify, in writing, the Member that is the subject of the Complaint, , and provide the Member with a copy of the Complaint together with all information gathered in respect of sections 5.2 and 6.3.3(iii)
 - iii) require the Member to submit a written response (“the Response”), to the Head of Certification, within 20 working days of receipt of the Complaint.
 - iv) Provide a copy of the Response to the Complainant within 5 **working** days of receiving it. Except where the Conduct Panel shall consider it necessary and give permission, neither the Member nor the Complainant shall be entitled to make any further submissions or submit further evidence after the Response.
- 6.3.2 The Conduct Panel may conduct its business and proceedings in whatever manner, including but not limited to physical meetings, telephone conversations and exchange of hard copy and/or electronic correspondence, that it considers appropriate in the particular circumstances.
- 6.3.3 The Conduct Panel shall consider:
- i) the Complaint as submitted including any supporting evidence;

- ii) Any further information obtained in respect of section 5.2
- iii) Any relevant records available from SER's systems
- iv) The Response, including any supporting evidence;

6.3.4 The Conduct Panel may at that stage reach a decision in accordance with its powers and responsibilities under section 6.2.

6.3.5 The Conduct Panel shall arrive at its decision in respect of the Complaint on the balance of probabilities on the basis of its assessment of the documents before it (see section 6.3.3).

6.3.6 The Conduct Panel may defer reaching a decision and require, within a specified period of time, further information or documentation to be provided by:

- i) The Complainant; and/or
- ii) The Member; and/or
- iii) The Head of Certification

and may also request, within a specified period of time, further information or documentation from any third party.

6.3.7 Scheme Members and Complainants have an obligation to actively co-operate with the Conduct Panel in its consideration of a Complaint and, in particular, to provide such information and documentation as required of them by the Panel, to the extent that it is within their ability to do so.

6.3.8 Any additional information and/or documentation received in accordance with section 6.3.6 shall be provided to the Member and to the Complainant.

- i) The Member shall be entitled to make representations in respect of any new matters raised by the Complainant and/or Head of Certification and/or third party, within 20 working days of receipt of that information.
- ii) The Head of Certification shall provide the Complainant with a copy of the Member's representations, if any, within 5 working days of receiving it.
- iii) The Complainant shall be entitled to make representations in respect of any new matters raised by the Member and/or Head of Certification and/or third party, within 20 working days of receipt of that information. (iv) The Head of Certification shall provide the Member with a copy of the Complainant's representations, if any, within 5 working days of receiving it. Except where the Conduct Panel shall consider it necessary and give permission, neither the Complainant or the Member shall be entitled to make any further submissions or submit further evidence in respect of the information received in 6.3.8(ii) and 6.3.8 (iv) respectively.

6.3.9 If the Conduct Panel directs that an audit or other investigation is required (section 6.2.7), the Head of Certification shall arrange for this to be undertaken by a member or members of SRB or the Audit Pool, who shall provide a written report of their findings to the Head of Certification who shall in turn (and normally within 10 working days) provide a copy of that report to:

- i) the Conduct Panel; and
- ii) the Member.

6.3.10 If the Conduct Panel, on considering the report of the findings of the audit or other investigation undertaken, consider that it is likely to be significant in respect of its decision on the Complaint, it may provide a copy of that report or, at its discretion, a redacted version or summary of the relevant parts of that report, to the Complainant.

6.3.11 Normally within 10 working days of the final date specified for the provision of further information or documentation, or within 10 working days of the Conduct Panel being provided with a copy of a report of any audit or other investigation findings (whichever is the later), the Conduct Panel shall reach a decision in accordance with its powers and responsibilities under section 6.2.

6.3.12 The Conduct Panel's reasoned decision shall be issued in writing by the Head of Certification (or a named Deputy) to:

- i) the Complainant; and
- ii) the Member: and, if the Complaint is to be heard by the Disciplinary Panel
- iii) BSD

As soon as is reasonably practicable, and normally within 5 working days of the decision of the Conduct Panel:

6.3.13 The Conduct Panel shall have no power to reconsider or revise any decision it has made except in the following circumstances:

- i) In any case where the Conduct Panel has incorrectly interpreted the Scheme Rules, including but not limited to the code of conduct, or the decision of the Conduct Panel was not reached in accordance with natural justice, subject to such default coming to the attention of the Head of Certification within 30 days of receipt by the Member and/or the Complainant of the Conduct Panel's decision;
- ii) New evidence becomes available of which the Head of Certification becomes aware within 30 days of receipt by the Member and/or the Complainant of the Conduct Panel's decision, and such evidence could not, in the opinion of the Conduct Panel, reasonably have been provided to the Conduct Panel at the time it reached its decision.

- 6.3.14 A Member and/or Complainant shall make an application for a review of a decision by the Conduct Panel, on the form set out in **Appendix 4** clearly stating the grounds, as provided in 6.3.13, on which the application is made. The application shall be sent to the Head of Certification within 30 days of receipt by the Member and/or Complainant of the Conduct Panel's decision.
- 6.3.15 The Head of Certification shall send the application for review to the Conduct Panel as soon as is reasonably practicable, and normally within 5 working days of receipt of the application.
- 6.3.16 In respect of a decision by the Conduct Panel to review its decision, any additional information provided in accordance with section 6.3.12 shall be provided to the Member (in the case of an application made by the Complainant) and to the Complainant (in the case of an application made by the Member). The Member and or the Complainant shall be entitled to respond to such information in accordance with section 6.3.8.

7 Disciplinary Panel

7.1 Constitution

7.1.1 The Disciplinary Panel shall consist of:

- i) A member of the Board of Directors of SER who is not an employee of either IStructE or ICE; and
- ii) Two members of IStructE nominated by the President of IStructE; and
- iii) Two members of ICE nominated by the President of ICE.

7.1.2 No member of the Disciplinary Panel shall be a member of the SRB or Audit Pool.

7.1.3 No member of the Disciplinary Panel shall be a member of the Conduct Panel that considered the Complaint.

7.1.4 The Disciplinary Panel shall elect a Chairman from amongst its membership and may do so without having to convene a hearing.

7.1.5 The quorum of the Disciplinary Panel shall be three members, including the Chairman.

7.1.6 The Disciplinary Panel may sit with a legal advisor, who shall be a practicing barrister or solicitor qualified and practicing in England & Wales. The Panel's Legal Adviser shall not be a member of the Disciplinary Panel and shall have no vote on any decision.

7.1.7 The Disciplinary Panel may appoint any other adviser as in its sole discretion it deems necessary to assist in its consideration of the complaint. An adviser (if appointed) shall not be a member of the Disciplinary Panel and shall have no vote on any decision.

7.1.8 Administrative support to the Disciplinary Panel shall be organised by the Head of Certification.

7.1.9 The Chairman of a Disciplinary Panel shall have a casting vote which shall be used in the event of a Disciplinary Panel having an even number of members and being equally divided on any matter requiring a decision to be made.

7.1.10 The Disciplinary Panel shall make its decision in respect of a Complaint on the balance of probabilities on the basis of its assessment of all the documentary evidence that it has received and all the oral evidence that it has heard.

7.2 Powers and Responsibilities

7.2.1 The Disciplinary Panel shall terminate membership of the Scheme if it considers that an Approved Certifier has acted in breach of section 11(4) of the Building Scotland Act 2003 (See Appendix 2).

7.2.2 The Disciplinary Panel may impose sanctions if it finds that an Approved Certifier or Approved Body has not acted within other rules, limitations, or conditions of the Scheme. The sanctions available to the Panel are:

- i) Reprimand
- ii) Reprimand with an extraordinary audit within a specified time; or
- iii) Severe reprimand with an extraordinary audit within a specified time; or
- iv) Suspension from the Scheme for a specified period of time which shall be for a period of not less than 3 months and not more than 2 years; or
- v) Termination of membership; or

(See also 9.1 to 9.4)

7.2.3 The Disciplinary Panel may order in addition to the sanctions specified in section 7.2.2 (ii) to (v) that the Member shall (at their own expense) carry out specified training and/or be monitored as shall be determined to be suitable by the Panel.

7.2.4 The Disciplinary Panel shall be entitled to accept suitable undertakings offered by a Member and to take them into account when deciding whether to impose a sanction or make an order and, if so, which sanction or order.

7.2.5 The Disciplinary Panel shall have no power to impose financial penalties, and/or order the payment of compensation or the reimbursement of any legal costs or disbursements, loss of earnings or other costs incurred by the Member, the Complainant, any witness or any other person.

7.3 Procedures

7.3.1 Within 15 working days of the decision of the Conduct Panel that a Complaint shall be considered by a Disciplinary Panel the Head of Certification (or a named deputy) shall arrange for the appointment of a Disciplinary Panel to consider and determine the Complaint.

7.3.2 The Disciplinary Panel shall normally convene a substantive hearing to commence within 60 working days of its date of appointment.

7.3.3 A minimum of 20 working days' notice of the proposed date and location of any directions hearing or the substantive hearing shall be given to the Member and the Complainant. The Member shall normally be required to attend for interview in person by the Disciplinary Panel and may, at their own cost, be legally or otherwise represented

- 7.3.4 The Head of Certification shall provide the Disciplinary Panel, the Member and the Complainant with copies of the documents that were before the Conduct Panel, including any documents provided in respect of a review of a decision by the Conduct Panel in accordance with section 6.3.15.
- 7.3.5 The Disciplinary Panel or the Chairman of the Disciplinary Panel may at any time following its appointment make such directions for the hearing and determination of the Complaint as shall appear to it to be just and expedient. This may include but shall not be limited to:
- i) convening a directions hearing being in advance of the substantive hearing and normally to commence within 30 days of its date of appointment, in respect of the Complaint; and
 - ii) within 20 working days of its date of appointment, direct that the Member attend a substantive hearing in respect of the Complaint to give evidence at that hearing on which they may be questioned in accordance with the procedure of the hearing as set out in section 7.3.5.
 - iii) within 20 working days of its date of appointment, invite the Complainant to attend a substantive hearing in respect of the Complaint to give evidence at that hearing on which they may be questioned in accordance with the procedure of the hearing as set out in section 7.3.5.
- 7.3.6 Notwithstanding 7.3.5(ii) and 7.3.5(iii), the Member and the Complainant shall each be entitled to appear before the Disciplinary Panel, the Member and the Complainant may each, at their own cost, be legally or otherwise represented.
- 7.3.7 The Disciplinary Panel hearing shall be inquisitorial and, subject to section 7.3.6 the procedure shall ordinarily be as set out below:
- i) The Chairman shall open the hearing and invite those present to identify themselves and their role (if any) in the proceedings.
 - ii) The Chairman shall state that the hearing is being recorded.
 - iii) The Chairman shall read out the complaint against the Member.
 - iv) The Chairman shall ask whether the Member admits or does not admit the complaint
 - v) The Member shall state whether or not the complaint is admitted or not admitted.
 - vi) The Chairman shall then call upon the Complainant (if present) to make a brief opening statement summarising the allegations against the Member and identifying the principal evidence which supports such allegations.
 - vii) If the Member admits all of the allegations in the Complaint, the Chairman shall invite the member or the Member's representative (if any) to make a closing statement to the Disciplinary Panel, which statement shall include any submissions with regard to mitigation.

At the end of the statement (if any), the Disciplinary Panel shall withdraw to consider the sanction to be imposed.

- viii) If the Member does not admit all of the allegations in the Complaint or admits only certain of the allegations, the Disciplinary Panel shall proceed in accordance with rules ix to xvi.
 - ix) The Chairman shall invite the Member or the Member's representative (if any) to make a brief opening statement to the Disciplinary Panel summarising the Member's case in response to the Complaint and identifying the principal evidence on which the Member relies.
 - x) The Member or the Member's representative (if any) may then put questions to the Complainant (if present) relevant to the Complaint.
 - xi) The Complainant (if present) may then put questions to the Member relevant to the Complaint.
 - xii) The Complainant (if present) may put questions to the Member on matters arising out of the responses provided by the Member or the Member's representative (if any).
 - xiii) The Member may put questions to the Complainant (if present) on matters arising out of the responses provided by the Complainant.
 - xiv) The members of the Disciplinary Board shall be entitled to ask the Member and the Complainant (if present) any question relevant to the case at any time during the course of the hearing.
 - xv) After hearing the evidence, the Chairman shall permit the Complainant (if present) to make a closing statement summarising the case against the Member.
 - xvi) The Chairman shall then permit the Member or the Member's representative (if any) to make a closing statement to the Disciplinary Panel summarising the Member's case in response to the Complaint.
- 7.3.8 If the particular circumstances of the case reasonably require, the Chairman, after consulting with the other members of the Disciplinary Board, shall be entitled to determine and/or vary the procedure of the Disciplinary Board including, but not limited to, adjourning the hearing at any time.
- 7.3.9 The Disciplinary hearing shall be audio-recorded or transcribed.
- 7.3.10 A hearing of the Disciplinary Panel may be adjourned and reconvened at a later time and/or date by the Chairman of the Panel. The decision of the Chairman of the Disciplinary Panel in respect of requests for an adjournment from any party to the hearing shall not be subject to appeal.
- 7.3.11 If the Member fails to attend a substantive hearing in person or otherwise by representation, the Disciplinary Panel shall be entitled to proceed in any manner it considers appropriate, including but not limited to, drawing such inferences as it deems appropriate in the circumstances and making a decision on the complaint.

- 7.3.12 Decisions of the Disciplinary Panel are, subject to appeal, binding on the Member.
- 7.3.13 As soon as is reasonably practicable, and normally within 5 working days of the decision of the Disciplinary Panel, the Member and SER respectively shall be informed of that decision.
- 7.3.14 After the time period for the lodging of an appeal has elapsed without an appeal being lodged or after all appeals lodged within that time period have been withdrawn, or after all appeals lodged within the time period and not withdrawn have been wholly dismissed by the Appeals Panel
- i) The Complainant; and
 - ii) BSD; and,
 - iii) in the event of a breach of section 11(4) of the Building (Scotland) Act 2003, the relevant Local Authority.

shall be informed, in writing of the decision reached by the Disciplinary Panel.

8 Appeals Panel

8.1 Constitution

- 8.1.1 The Appeals Panel shall be chaired by a person independent of SER, IStructE and ICE, who shall be nominated by BSD. Two other persons, nominated by the Chairman, shall in addition form the Appeals Panel.
- 8.1.2 No member of the Appeals Panel may have an interest in SER, IStructE, ICE, the Appellant or the Complainant such as would give rise to a conflict of interest or affect their independence and impartiality
- 8.1.3 In the case of an appeal related to a Complaint no member of the Panel shall have been a member of either the Conduct Panel or the Disciplinary Panel which previously investigated or considered the Complaint.
- 8.1.4 The Appeals Panel shall sit with all its members present.
- 8.1.5 The Appeals Panel shall normally sit with a legal adviser, who shall be a practising barrister or solicitor qualified and practising in England & Wales. In any appeal against a sanction imposed by the Disciplinary Panel or in respect of termination of membership or in respect of rejection of application to membership the Appeals Panel shall always have a legal adviser.
- 8.1.6 Administrative support to the Appeals Panel shall be organised by the Head of Certification.

8.2 Powers and Responsibilities

- 8.2.1 The Appeals Panel is responsible for determining any appeal against a decision of the Disciplinary Panel or any decision regarding membership of the Scheme.
- 8.2.2 The Appeals Panel may:
- i) make directions at any time (by itself or by its Chairman) as may be just and expedient for the hearing and determination of an Appeal;
 - ii) uphold an Appeal (in whole or in part) and set aside or vary any decision of the Disciplinary Panel (in whole or in part);
 - iii) uphold an Appeal (in whole or in part) and set aside or vary any decision taken as a result of the actions of the SER Board in accordance with section 3.3.
 - iv) dismiss an Appeal (in whole or in part);
- 8.2.3 The only grounds for an Appeal against the decision of the Disciplinary Panel shall be that:

- i) the Disciplinary Panel was not constituted in accordance with the Procedures; and/or
- ii) serious and material irregularities took place in the conduct of any hearing before the Disciplinary Panel or in its deliberations; and/or
- iii) the Disciplinary Panel failed to take into account relevant evidence and/or took into account irrelevant evidence; or
- iv) the Disciplinary Panel's decision was manifestly unfair.

8.2.4 The only grounds for an Appeal against a decision in respect of membership of the scheme shall be that:

- i) the Assessors and/or the SRB and/or SER Board (whichever is the case) has incorrectly interpreted the scheme rules; and/or
- ii) serious and material irregularities took place during the consideration of an application or the outcome of an audit by the Assessors and/or the SRB and/or the SER Board (whichever is the case); and/or
- iii) the SER Board failed to take into account relevant evidence and/or took into account irrelevant evidence as provided for in section 3.2(ii); and/or
- iv) the SER Board's decision was manifestly unfair.

8.2.5 The Appeals Panel in reaching a decision on an appeal in respect of a decision by the Disciplinary Panel or a decision in respect of membership of the scheme, shall not permit the introduction of oral or written evidence that was not before the Disciplinary Panel or the SER Board (whichever is the case) save that if an application is made to it to allow further evidence to be provided, it may grant such an application if it concludes that such evidence is

- i) relevant to the issues relating to the appeal; and
- ii) could not with reasonable diligence have been provided to the Disciplinary Panel or the SER Board (whichever is the case)

8.2.6 In the event that the Appeals Panel decides to allow further evidence to be provided in accordance with section 8.2.5 it may make directions as to that evidence and it may itself appoint an adviser as in its sole discretion it deems necessary to assist in its consideration of the Appeal. An adviser (if appointed) shall not be a member of the Appeals Panel and shall have no vote on any decision.

8.2.7 In the event of the Appeals Panel allowing any further evidence to be provided in accordance with section 8.2.5 and/or 8.2.6, it shall make any findings in respect of that evidence on the balance of probabilities.

- 8.2.8 In the case of an Appeal against a decision on an application for membership or following an audit, the appeal may be rejected if the Appellant;
- i) fails to attend a hearing in person or otherwise by representation, without sufficient reason or justification as determined by the Appeals Panel ; or
 - ii) fails to demonstrate that the assessment or audit was not properly conducted or the rules, limitations, or conditions of the Scheme were not correctly applied.

8.3 Procedures

- 8.3.1 An appeal against the decision of the SER Board shall be lodged using the form in **Appendix 5** (also available for download from www.ser-ltd.com) marked for the attention of the Head of Certification, Structural Engineers Registration Ltd, 47-58 Bastwick Street, London EC1V 3PS, within 20 working days of receipt of the SER Board decision.
- 8.3.2 An appeal against the decision of the Disciplinary Panel shall be lodged using the form in **Appendix 6** (also available for download from www.ser-ltd.com) marked for the attention of the Head of Certification, Structural Engineers Registration Ltd, 47-58 Bastwick Street, London EC1V 3PS, within 20 working days of receipt of the Disciplinary Panel decision.
- 8.3.3 Within 5 working days of receipt of an appeal, the Head of Certification (or a named deputy) shall acknowledge receipt of the appeal to the Appellant, in writing.
- 8.3.4 Within 20 working days of receipt of an appeal, the Head of Certification (or a named deputy) shall arrange for the appointment of an Appeals Panel to consider the Appeal.
- 8.3.5. The Appeals Panel shall normally convene a hearing within 60 working days of the lodging of an appeal.
- 8.3.6 A minimum of 20 working days' written notice of the proposed date and location of the hearing shall be given to the Appellant. The Appellant shall normally be required to attend the hearing of the Appeals Panel in person and may, at their own cost, be legally or otherwise represented..
- 8.3.7 As soon as is reasonably practicable, and normally within 5 working days of the decision of the Appeals Panel:
- i) the Appellant;
 - ii) SER and
 - iii) BSD; and,
 - iv) in the case of an appeal against a decision of the Disciplinary Panel, the Complainant shall be informed, in writing, of the decision.

9 Definitions

9.1 Reprimand

A reprimand is intended for cases which are considered to be of significant gravity but not to be so serious as to justify a severe reprimand (with or without an extraordinary audit within six months) or a period of suspension from the Scheme or termination of membership.

9.2 Severe reprimand

A severe reprimand (with or without an extraordinary audit within six months) is intended for cases which are considered to be serious but not so serious as to justify a period of suspension from the Scheme or termination of membership.

9.3 Suspension

Suspension is intended for cases which are considered to be serious but not so serious as to justify termination of membership and where a reprimand or severe reprimand (with or without an extraordinary audit within a specified period) is considered to be inadequate as a sanction.

9.4 Termination of membership

Termination of membership is intended for particularly serious cases where it is considered that none of the lesser sanctions available to the Disciplinary Panel are adequate.

9.5 Extraordinary Audit

An Extraordinary Audit is any audit outside of the usual schedule of auditing, this may be imposed by the Disciplinary Panel as outlined in The Disciplinary Procedure or for any other reason for example following a concern about poor practices. Note the "Procedure for Auditing Activities of Approved Bodies and Approved Certifiers" states "SER may initiate an audit of an Approved Body or a Certifier at any time."

9.6 Directions hearing

A directions hearing will generally be intended to allow the Disciplinary Panel to deal with matters of procedure to enable or facilitate an effective and efficient substantive hearing taking place on a later occasion.

9.7 Substantive hearing

A substantive hearing will generally be intended to allow the Disciplinary Panel to determine the substance of a complaint and/or to allow the Panel to determine preliminary or specific issues between the parties.

Appendix 1 Glossary

Approved Body	A firm which is a member of the Scheme for Certification of Design (Building Structures) administered by SER
Approved Certifier	An engineer who is a member of the Scheme for Certification of Design (Building Structures) administered by SER
BSD	Scottish Government Building Standards Division
ICE	Institution of Civil Engineers
IStructE	Institution of Structural Engineers
SER	Structural Engineers Registration Ltd
SRB	SER's Scottish Registration Board

Appendix 2 Section 11(4) of the Building (Scotland) Act 2003

(4) Any approved certifier of design who-

(a) issues a certificate under subsection (1) containing a statement which the certifier knows to be false or misleading in material particular, or

***(b) recklessly issues a certificate under subsection (1) which is false or misleading in material particular,
is guilty of an offence.***

Appendix 3 Complainant's form



Complaint Form			
Complainant			
Name:			
Address:			
Telephone:		Email:	
Scheme Member(s) against whom Complaint is made			
Approved Certifier (If applicable)		Approved Body (If applicable)	
Name:		Name:	
Registration Number:	SER1-D-	Registration Number:	SER1-DB-
Project (if applicable)			
Certificate number:			
Project reference:			
Requirements of the Scheme considered to have been infringed (Please list)			

Clear and concise account of Complaint	
<i>Evidence to support your Complaint should be annexed to this Form and shall be deemed to be part of this Form. Any documents submitted should be individually numbered and identified on a separate list.</i>	
Signature of Complainant:	Date:

Appendix 4



Application to Review a decision by the Conduct Panel (6.3.13)			
Appellant's Name:			
Address:			
Telephone:		Email:	
SER Number:			
Complaint Reference Number:			
Is it alleged by the applicant that:			
(i) the Conduct Panel has incorrectly interpreted the Scheme Rules, including but not limited to the code of conduct, or the decision of the Conduct Panel was not reached in accordance with natural justice		Yes/No*	
(ii) new evidence is available which could not reasonably have been provided to the Conduct Panel at the time it reached its decision.		Yes/No*	
		[*Delete as appropriate]	
Clear and concise statement of grounds on which the application for a review is made			

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Evidence (including all relevant documentation and correspondence) to support your Application for review should be annexed to this Form and shall be deemed to be part of this Form. Any documents submitted should be individually numbered and identified on a separate list.

Signature of Appellant:	Date:
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Appendix 5



Application to Appeal Against Membership Decision (8.2.4)			
Appellant's Name:			
Address:			
Telephone:		Email:	
SER Number:			
Is it alleged by the Appellant that:			
(i) the Assessors and/or the SRB and/or SER Board (whichever is the case) has incorrectly interpreted the scheme rules; and/or		Yes/No*	
(ii) serious and material irregularities took place during the consideration of an application or the outcome of an audit by the Assessors and/or the SRB and/or the SER Board (whichever is the case); and/or		Yes/No*	
(iii) the SER Board failed to take into account relevant evidence and/or took into account irrelevant evidence as provided for in section 3.2(ii); and/or		Yes/No*	
(iv) the SER Board's decision was manifestly unfair.		Yes/No*	
		[*Delete as appropriate]	

Appendix 6



Application to Appeal Against Decision of the Disciplinary Panel (8.2.3)			
Appellant's Name:			
Address:			
Telephone:		Email:	
Complaint Reference Number:			
Is it alleged by the Appellant:			
(i) that the Disciplinary Panel was not constituted in accordance with the Procedures or		Yes/No*	
(ii) that serious [material] irregularities took place in the conduct of any hearing before the Disciplinary Panel or in its deliberations; or		Yes/No*	
(iii) the Disciplinary Panel failed to take into account relevant evidence or considerations and/or took into account irrelevant evidence or considerations; or		Yes/No*	
(iv) that the Disciplinary Panel's decision was manifestly unfair		Yes/No*	
		[*Delete as appropriate]	

Clear and concise statement of the grounds on which the decision is being appealed

Evidence (including all relevant documentation and correspondence) to support your Appeal should be annexed to this Form and shall be deemed to be part of this Form. Any documents submitted should be individually numbered and identified on a separate list.

Signature of Appellant:

Date:

Appendix 7



Application for an Extension of Time			
Applicant's Name:			
Address:			
Telephone:		Email:	
Complaint Reference Number:			
In respect of what time period under any rule, order or direction, is an extension of time required?:			
Detailed Grounds for Requesting an Extension of Time (append additional sheet(s) if necessary):			
<p><i>Evidence (including all relevant documentation and correspondence) to support your Request for an Extension of Time should be annexed to this Form and shall be deemed to be part of this Form. Any documents submitted should be individually numbered and identified on a separate list.</i></p>			

Signature of Applicant:	Date:
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