

The Bye-Law 28(B) Regulations 2001

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1 APPLICATION

- 1.1 These Regulations shall apply where, in respect of any Member or Student, it comes to the notice of the Institute that either of the events described in Bye-Law 28(B) has or might have occurred.

2 DEFINITIONS AND INTERPRETATION

- 2.1 In these Regulations, unless the context otherwise requires, the following expressions shall have the following meanings:

“Appeal Committee” means the Committee established for the purposes set out in Regulation 3.4.2;

“Bye-Laws” means the Bye-Laws of the Institute as amended from time to time;

“Charter” means the Supplemental Charter of the Institute as amended from time to time;

“Competency Committee” means the Committee established for the purposes set out in Regulation 3.3.3;

“Cost Order” means an award as to costs to be paid by either a Member or Student or the Institute so as wholly or partially to reimburse the Institute or a Member or Student such reasonable costs and expenses as that party has incurred in connection with the investigation and determination of a case under these Regulations including any appeal;

“Disciplinary Regulations” means the Disciplinary Regulations of the Institute under Bye-Laws 23 and 25 as amended from time to time;

“Independent Member” means a Member of the Investigations Committee, the Competency Committee or the Appeal Committee appointed in accordance with regulation 12.5 of the Disciplinary Regulations;

“Investigations Committee”	means the Committee established for the purposes set out in Regulation 3.2;
“Investigations Unit”	means the division of the Institute whose task is to investigate matters arising under Bye-Law 28(B) or such external contractors, agents or representatives as the Institute may appoint;
“Legal Assessor”	means a person appointed to provide legal advice to the Investigations Committee, the Competency Committee or the Appeal Committee and who shall be independent from the Investigations Unit;
“Member”	means for the purposes of these Regulations only, a corporate or non-corporate Member of the Institute elected in accordance with Bye-Law 4, 5, 6, 18 or 19;
“Student”	means a student registered by the Institute in accordance with Bye-Laws 20 and 21 and Section 2 of the Education and Training Regulations of the Institute as in force from time to time.

2.2 Unless the context otherwise so requires, other words and expressions shall have the meanings assigned to them by the Charter and Bye-Laws. Words importing the masculine gender shall include the feminine, and words in the singular shall import the plural; and vice versa.

3 CONSTITUTIONAL STRUCTURE

3.1 In those circumstances where it shall come to the notice of the Institute that the provisions of Bye-Law 28(B) may apply:

- (a) the Investigations Committee shall consider any case which may require referral to the Competency Committee under Bye-Law 28(B);
- (b) the Competency Committee shall consider each case referred to it by the Investigations Committee and, where appropriate, make a ruling in respect of the Member or Student; and
- (c) the Appeal Committee shall hear certain appeals from decisions of the Competency Committee or as to the nature or extent of any ruling of the

Competency Committee, in each case in accordance with the Appeal Committee's terms of reference, and where it considers it to be appropriate, confirm rescind or vary any ruling of the Competency Committee.

3.2 Investigations Committee

3.2.1 Composition of the Investigations Committee

- (a) the Investigations Committee shall consist of at least ten Members drawn from the same pool as the Investigations Committee established under the Disciplinary Regulations;
- (b) at least forty per cent of the Members of the Investigations Committee shall be Independent Members;
- (c) the Investigations Committee shall have a quorum of three, of whom at least one must be an Independent Member;
- (d) the Chair of the Investigations Committee shall be an Independent Member. In the absence of the Chair, meetings shall be Chaired by one of the Independent Members present;
- (e) the Chair of the Investigations Committee shall have the power to appoint panels of the Investigations Committee to investigate and reach a determination on particular disciplinary matters. If a panel is appointed in relation to a particular case under Bye-Law 28(B) those Members of the Investigations Committee not appointed to such a panel shall play no part in the investigation and determination of that case. These Regulations shall apply to a panel as they apply to the Investigations Committee as a whole save that references to the Investigations Committee and the Chair of the Investigations Committee shall be read as references to the panel and the Chair of the panel.

3.2.2 Reaching a determination

- (a) the Investigations Committee shall conduct its business at private meetings and/or through the use of voice, video or electronic mail communication or any other form of communication provided that every Member of the Investigations Committee participating in the determination is able to receive understand and respond to all
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comments views and opinions expressed by other participating Members and the Legal Assessor before any determination or decision composing part of a determination is reached;

- (b) if the Investigations Committee conducts its business other than at private meetings, and at any time before the determination is reached any participating Member is not satisfied that the form of communication complies with Regulation 3.2.2(a), that Member may require the Investigations Committee to hold a meeting prior to any determination being made.
- (c) if the Investigations Committee conducts its business other than at private meetings, it shall put in place such additional confidentiality and security arrangements as it considers necessary to preserve the confidentiality of proceedings.

3.3 The Competency Committee

3.3.1 The Competency Committee is empowered to make a ruling in respect of a Member or Student.

3.3.2 Composition

3.3.2.1 The Competency Committee shall consist of at least twenty Members drawn from the same pool as the Disciplinary Committee established under the Disciplinary Regulations;

3.3.2.2 At least forty per cent of the Members of the Competency Committee shall be Independent Members;

3.3.2.3 The Competency Committee shall have a quorum of at least five Members of whom at least two shall be Independent Members;

3.3.2.4 The Chair of the Competency Committee shall be an Independent Member. In the absence of the Chair, the meeting shall be Chaired by one of the Independent Members present;

3.3.2.5 The Competency Committee may delegate to the Chair of the Competency Committee the power to determine any preliminary or

procedural issues which arise prior to a hearing;

3.3.2.6 The Chair of the Competency Committee shall have the power to appoint panels to the Competency Committee to investigate and reach a determination on a particular case under Bye-Law 28. If a panel is appointed in relation to a particular case, those Members of the Competency Committee not appointed to such a panel shall play no part in the investigation and determination of that case. These Regulations shall apply to a panel as they apply to the Competency Committee as a whole save that references to the Competency Committee and the Chair of the Competency Committee shall be read as references to the panel and the Chair of the panel respectively;

3.3.2.7 It shall not invalidate any decision or other determination of the Competency Committee if at any time:

- (a) during the holding of a hearing or adjourned hearing of that Committee any Member of the Committee shall leave the hearing having taken part therein; and
- (b) upon an adjournment of a hearing, at the adjourned hearing any Member of the Committee present at the initial meeting shall not be present;

provided in both cases that the quorum is maintained at all times.

3.3.3 Terms of reference

The terms of reference of the Competency Committee shall be:

- (a) to consider each case under Bye-Law 28(B) referred to it by the Investigations Committee;
- (b) as appropriate to make a ruling in respect of the Member or Student;
- (c) to inform the Member or Student concerned of any decision of the Competency Committee and of his right to appeal;
- (d) to publish the decision of the Competency Committee in each such case the Competency Committee may consider appropriate.

3.4 The Appeal Committee

3.4.1 Composition

- (a) the Appeal Committee shall consist of at least five Members drawn from the same pool as the Appeal Committee established under the Disciplinary Regulations;
- (b) at least sixty per cent of the Members of the Appeal Committee shall be Independent Members;
- (c) the Appeal Committee shall act under a quorum of at least three Members of whom at least two shall be Independent Members;
- (d) the Chair of the Appeal Committee shall be an Independent Member. In the absence of the Chair the meeting shall be Chaired by one of the Independent Members present;
- (e) the Appeal Committee may delegate to the Chair of the Committee the power to determine any preliminary or procedural issue that arises prior to the hearing.

3.4.2 Terms of reference

The terms of reference of the Appeal Committee shall be:

- (a) to consider any appeal made in accordance with the provisions of these Regulations by a Member or Student against the ruling of the Competency Committee in any case brought in relation to the Member or Student under Bye-Law 28(B);
- (b) to confirm rescind or vary the ruling of the Competency Committee;
- (c) to inform the appellant Member or Student and the Institute of the result of the appeal and to inform such other interested persons or bodies who in the opinion of the Appeal Committee have a proper interest in being so informed;
- (d) to publish the decision in each such case as may be considered appropriate.

4 INVESTIGATIONS COMMITTEE: PROCEDURE

- 4.1 The Investigations Committee shall consider all representations and complaints made to the Institute and all information which comes to the attention of the Institute where it appears that the provisions of Regulation 1 may apply to a Member or Student.
- 4.2 If after initial consideration the Investigations Committee remains of the opinion that there is or may be a basis for proceeding under Regulation 1 it shall instruct the Investigations Unit to investigate the matter further;
- 4.3 Upon being instructed by the Investigations Committee to proceed, the Investigations Unit shall:
- (a) notify the Member or Student of the consideration by the Investigations Committee of a possible case under Bye-Law 28(B) and such facts or circumstances as shall then be within the knowledge or belief of the Investigations Unit and as the Investigations Unit thinks appropriate so as fairly to inform the Member of the substance of the issue or issues raised;
 - (b) as soon as practicable, carry out such preliminary enquiries and investigations into the facts and circumstances including (but without prejudice to the generality of the foregoing) correspondence or discussion with the Member or Student and any other persons or bodies who may, in the opinion of the Investigations Unit, be able to assist the Investigations Committee in deciding whether or not the competency of the Member or Students should be referred to the Competency Committee.
- 4.4 If, on the conclusion of the preliminary enquiries and investigations, the Investigations Unit believes there is no or no sufficient evidence that the provisions of Bye Law 28(B) apply in relation to the Member or Student, it shall report to the Investigations Committee accordingly.
- 4.5 If on completion of its preliminary enquiries and investigations the Investigations Unit is of the opinion that sufficient evidence exists or may exist to suggest that the competency of the Member or Student should be
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considered by the Competency Committee, it shall:

- (a) notify the Member or Student of its intention to refer his circumstances to the Investigations Committee and such further facts and circumstances as shall then be within the knowledge or belief of the Investigations Unit and as the Investigations Unit thinks appropriate so as fairly to inform the Member or Student of the substance of the issue or issues raised and request the Member or Student (or in either case, legal representative) to reply within 21 days as the Member or Student may see fit;
- (b) upon receiving the Member or Student's reply or upon expiry of the 21 days (or such longer period as the Investigations Unit may determine) submit its report and all relevant evidence in its possession including any submissions from the Member or Student to the Investigations Committee.

5 INVESTIGATIONS COMMITTEE: DETERMINATIONS

5.1 The Investigations Committee shall consider any report submitted to it by the Investigations Unit and may:

- (a) ask the Investigations Unit to carry out such further enquiries and investigations as the Investigations Committee sees fit; or
- (b) conclude that Bye Law 28(B) does not apply and notify the Member or Student and any other interested persons or bodies (including the Institute) who or which in the opinion of the Investigations Committee have a proper interest in being so informed; or
- (c) where the Investigations Committee is of the opinion that prima facie evidence exists or may exist to suggest that the competency of the Member or Student should be considered by the Competency Committee it shall refer the matter to the Competency Committee.

6 COMPETENCY COMMITTEE: PROCEDURE

6.1 Procedure prior to the hearing

- 6.1.1 The procedures set out in this Regulation shall apply to all hearings conducted by the Competency Committee.
- 6.1.2 The Committee shall give written notice to the Member or Student of the proposed date, time and place of the hearing. This notice shall be sent to the Member or Student by recorded postal delivery or other certified means not less than forty-two days (or such longer period as the Committee considers is necessary in the interests of fairness) prior to the date of the hearing.
- 6.1.3 The notice of hearing which is sent to the Member or Student shall be accompanied by copies of all the documents upon which the Investigations Unit intends to rely at the hearing and shall be accompanied by the names of all the witnesses the Investigations Unit intends to call and any witness statements taken from those witnesses or if such documents and details of witnesses do not accompany the notice of hearing, they shall be sent by recorded postal delivery or other certified means to the Member or Student by the Investigations Unit not less than forty-two days (or such longer period as the Committee considers is necessary in the interests of fairness) prior to the date of the hearing.
- 6.1.4 The Member or Student shall be invited to attend the hearing accompanied (if he so wishes) by a representative or adviser of his choice or to send a representative or adviser of his choice instead of attending in person.
- 6.1.5 The Member or Student shall at least twenty-one days before the date of the hearing provide the Competency Committee with:
- (a) copies of all the documents or other evidence upon which he or she intends to rely;
 - (b) the name, address and professional qualifications (if any) of any representative or adviser who will be attending;
 - (c) the name, address and occupation of any witnesses who will be attending on behalf of the Member or Student; and
 - (d) confirmation of whether or not the Member or Student wishes the hearing to be open to the general public.
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6.1.6 The Member or Student may notify the Chair of the Committee at any time prior to the hearing that he or she wishes but is unable to attend or wishes to call a witness who is unable to attend a hearing on the set date, time or place, and the reason(s) for his or her unavailability. After consideration of the reasons for the defendant's or witness' unavailability, the amount of time left before the hearing, any delay in sending notification on the part of the Member or Student and any other relevant factor, the Chair of the Committee shall decide whether fairness requires that the date, time or place of the meeting be rearranged and if so shall endeavour to make such rearrangement. If the date, time or place of the hearing is rearranged the Member or Student shall be notified in writing and this Regulation 6.1.6 shall apply again in relation to the new hearing.

6.2 Procedure at the hearing

6.2.1 The Competency Committee shall determine its own procedure at hearings in accordance with these Regulations and the overriding requirement of fairness.

6.2.2 The hearings shall be held in private, subject always to the Member or Student's right to request that the hearing be open to the public. If the hearing is held in public the Competency Committee may deny entry to the hearing to any person, or expel any person from the hearing if that person is disrupting or is likely to disrupt the hearing, or where fairness otherwise requires. Where a hearing is open to the public the Competency Committee may exclude the public for any part of the hearing where this is appropriate and fairness allows or requires.

6.2.3 The Investigations Unit or its representative shall be given a reasonable opportunity to present the facts giving rise to the reference under Bye-Law 28(B).

6.2.4 The Member or Student shall be given a reasonable opportunity in person or through his or her representative to make submissions why Bye-Law 28(B) does not apply or respond to any submissions made by the Investigations Unit.

6.2.5 At hearings of the Competency Committee both the Member or Student and the Investigations Unit may call any witnesses in support of their submissions and cross-examine any witnesses called by the other. Either party may only

call a witness not previously notified to the other party in accordance with Regulation 6.1.3 and 6.1.5 at the discretion of the Competency Committee.

6.2.6 The Committee may put questions to any witnesses, the Member or Student and the Investigations Unit.

7 COMPETENCY COMMITTEE: DETERMINATIONS

7.1 At the conclusion of the hearing (or any adjournment) and any further deliberations the Competency Committee may:

(a) conclude that Bye-Law 28(B) does not apply in relation to the Member or Student; or

(b) conclude that Bye-Law 28(B) does apply in relation to the Member or Student and;

(i) either for a limited or unlimited period of time, suspend the Member or Student; or

(ii) rule that the Member or Student shall cease to be a Member or Student of the Institute; or

(iii) rule that no action be taken in relation to the Member or Student's membership of the Institute.

7.2 When making a ruling under Regulation 7.1(a) the Competency Committee may make a Cost Order against the Institute.

7.3 When making a ruling under Regulation 7.1(b)(i) or 7.1(b)(ii) the Competency Committee may make a Cost Order against the Member or Student.

7.4 When making a ruling under Regulation 7.1(b)(iii) the Competency Committee may make a Cost Order against either the Member or Student or the Institute.

7.5 When making a ruling under Regulation 7.1(b)(i) or 7.1(b)(ii) in relation to a Member or Student to whom Bye-Law 28(B)(a) applies, the Competency Committee may make a ruling as to the minimum period of time which shall pass before the Member or Student is eligible to make an application under Regulation 10.1

7.6 The Competency Committee shall inform the Member or Student and any other interested persons or bodies who or which in the opinion of the Competency Committee have a proper interest in being so informed of its determination under Regulation 7.1 as soon as practicable and in any event within twenty-one days. The Competency Committee shall provide the Member or Student with reasons for its determination and the Member or Student shall be informed of his or her right to appeal to the Appeal Committee.

7.7 The Member or Student may appeal against any determination of the Competency Committee under Regulation 7.1 to 7.5. An appeal by the Member or Student must be lodged with the Institute within twenty-one days of receipt of notice of the Competency Committee determination. The notice of appeal must be in writing and state the facts or matters relied on in support of the appeal.

8 THE APPEAL COMMITTEE: PROCEDURE

8.1 Grounds of Appeal

The grounds upon which an appeal may be made are that:

- (a) the Competency Committee has wrongly determined that the Member or Student is bankrupt or has made an arrangement or composition with his creditors generally;
- (b) the Competency Committee has wrongly determined that the Member or Student lacks capacity within the meaning of the Mental Capacity Act 2005 or is or may be suffering from mental disorder and either has been or is admitted to hospital in pursuance of an application for treatment under the Mental Health Act 1983 or in respect of whom an order is made by a court having jurisdiction (whether in the United Kingdom or elsewhere) in matters concerning mental disorder for his detention or for the appointment of a deputy or other person to exercise powers with respect to his property or affairs;
- (c) the Competency Committee has wrongly determined that the Member or Student shall be suspended;

- (d) the Competency Committee has wrongly determined that the Member or Student shall cease to be a Member or Student of the Institute;
- (e) the Competency Committee has erred in determining under Regulation 7.5 that there shall be a minimum period of time which shall pass before the Member or Student is eligible to make an application under Regulation 10.1 or in determining the length of that period.

8.2 In all cases to which Regulation 7.7 applies the procedure governing the role of the Appeal Committee shall be as follows:

- (a) Regulations 3.3.2.6, 6.1.2, 6.1.4, 6.1.5, 6.1.6, 6.2.1, 6.2.2, 6.2.3, 6.2.4 and 6.2.6 shall apply and any reference to the Competency Committee shall be read as a reference to the Appeal Committee;
- (b) at hearings of the Appeal Committee both the Member or Student and the Investigations Unit may call witnesses and cross-examine any witnesses called by the other. Subject always to the overriding requirement of fairness, the Appeal Committee shall not receive evidence (including witnesses) which was or were not before the Competency Committee unless it otherwise orders;
- (c) if neither the Member or Student or a representative acting on behalf of the Member or Student attends the hearing, the Appeal Committee shall dismiss the appeal.

8.3 On conclusion of the hearing and any further deliberations the Appeal Committee may confirm, rescind or vary the determination of the Competency Committee.

8.4 In the event that the determination of the Competency Committee is confirmed, the Appeal Committee may make a Costs Order against the Member or Student. In the event that the determination of the Competency Committee is varied or rescinded, the Appeal Committee may make a Costs Order against the Institute.

8.5 The decision of the Appeal Committee is final and not capable of being further appealed.

9 LEGAL ADVICE

- 9.1 The Legal Assessor shall be present at all hearings of the Competency Committee or the Appeal Committee unless his or her presence is not required by the Committee.
- 9.2 The Legal Assessor shall advise the Investigations Committee, the Competency Committee and the Appeal Committee on such legal or procedural matters as he believes in his professional opinion the Committees should be advised upon or upon which the Committees ask him to advise.
- 9.3 The advice of the Legal Assessor to the Competency Committee and the Appeal Committee in relation to a particular case under Bye-Law 28(B) shall be delivered at the hearing in the presence of the Member or Student and/or his representative or if delivered in private shall be faithfully and accurately relayed to the Member or Student and/or his representative. The Member or Student or his representative shall be entitled to comment upon such advice.

10 APPLICATIONS TO LIFT RULINGS UNDER REGULATIONS 7.1(b)(i) and (ii)

- 10.1 A Member or Student who is the subject of a ruling under Regulation 7.1(b)(i) (that the membership of a Member or Student be suspended) or a ruling under Regulation 7.1(b)(ii) (that a Member or Student shall cease to be a Member or Student of the Institute) may apply to the Professional Committee for the suspension to be lifted, for the suspension to be lifted before the expiry of the suspension period set by the Competency Committee or the Appeal Committee or for re-admittance as a Member or Student, as the case may be, in the following circumstances only :
- (a) the Member or Student has evidence in relation to his or her circumstances such that he believes that if the Competency Committee or the Appeal Committee had been in possession of such evidence it would not have made the ruling; and
 - (b) (in the case of the first such application) any period specified in a ruling under Regulation 7.5 has passed or, where no such ruling was made, at least one year has passed since the date of the ruling; or

(c) (in the case of subsequent applications) at least one year has passed since the Member or Student last made an application under this Regulation.

10.2 Upon receipt of an application to lift a suspension or for re-admittance under Regulation 10.1 the Professional Committee shall refer the matter for consideration by the Chair of the Appeal Committee. If the Chair of the Appeal Committee considers that if the Competency Committee or the Appeal Committee had been in possession of the evidence regarding the Member or Student's circumstances it may not have made the ruling he or she shall convene a hearing before the Appeal Committee in accordance with Regulations 6.2 and 8. In all other circumstances the application for the suspension to be lifted or for re-admittance shall be rejected.

10.3 In reaching decisions under Regulation 10.2 the Appeal Committee and/or the Chair of the Appeal Committee shall consider all relevant factors including the circumstances of the Member or Student, the nature of any professional opportunities open to the Member or Student, the Member or Student's behaviour since suspension or expulsion and whether if released from suspension or re-admitted the Member or Student could be expected to uphold the standards expected of a Member or Student.