

FPS: COMPLAINTS AND APPEALS PROCEDURE

1. INTRODUCTION TO THE COMPLAINTS PROCEDURE AND CONFIDENTIALITY

- 1.1 This Complaints and Appeals Procedure ("**the Procedure**") has been established to consider complaints against any member ("**Member**") of the Federation of Piling Specialists ("**the Federation**"). The Procedure is open to any Member, individual over the age of 18, corporate body or trade association who wishes to bring a complaint against a Member. The party making a complaint ("**the Complaint**") under the Procedure is referred to as "**the Complainant**" and the party against whom the complaint is made is referred to as "**the Respondent**". Any Communications concerning matters relating to the Procedure should be addressed to the Secretary of the Federation ("**the Secretary**"). The Secretary's contact details are:

The Secretary, Federation of Piling Specialists, Forum Court, 83 Copers Cope Road, Beckenham Kent BR3 1NR.

Tel: 020 8663 0947

Fax: 020 8663 0949

Email: fps@fps.org.uk

- 1.2 The Procedure has been established following full consultation with, and approval of all Members.
- 1.3 The hearing of complaints and appeals under the Procedure is based on using written, rather than oral, submissions. The strict rules of evidence do not apply to the Procedure at any stage. It is not necessary for parties using the Procedure to engage the services of lawyers.
- 1.4 Complaints accepted as falling within the scope of the Procedure shall be submitted in accordance with the Procedure and reviewed and dealt with by a body known as "**the Complaints Panel**". The Complaints Panel is presided over by a chairman ("**the CP Chairman**"). The CP Chairman is given wide powers in relation to the conduct of the complaints process and has a specific role in relation to the initial filtering process to which all complaints are subject (see clauses 4.5 – 4.14). In the interests of fairness to complainants, the CP Chairman's decision at the filtering stage can itself be appealed to the Federation's Registration Board ("**the FRB**") by the Complainant. There is a right to appeal the substantive decisions of the Complaints Panel to another panel called "**the Appeals Panel**". The procedure for making and determining complaints and appeals are set out in the Procedure at clauses 2 - 7. The composition of the Complaints and Appeals Panels and the rules governing how they are appointed are set out in Schedules 1 and 2 which form an integral part of the Procedure. (The definitions adopted in the Procedure also apply to the Schedules).
- 1.5 In the Procedure, references to the phrase "**the Adjudicating Panel**" are references, where the context admits, to the relevant body or bodies defined in paragraph 1.4.
- 1.6 Parties who make use of the Procedure must recognise that their right to have complaints dealt with needs to be balanced with the rights of Respondents not to suffer from adverse publicity which may be generated by complaints. This is especially important prior to the final disposal of any complaint since the complaint may end up being dismissed. Therefore, it is especially important that once a complaint has been lodged under the

Procedure, all aspects of it should be treated as being confidential by the parties concerned (and, if appropriate, their legal advisers), as well as by Members in general. No statements to the press or other deliberate attempts to publicise complaints should be made by any party, without the express permission of the Executive Committee of the Federation ("**the Executive Committee**"). Neither the fact that a complaint has been made, nor any details of it should be made public or reported to the press, except by way of an official press release approved by the Executive Committee. In the event that it comes to the attention of the Adjudicating Panel that a party to the Procedure has been publicising the making of a complaint or associated matters contrary to the spirit of this clause this factor may be taken into account by the Adjudicating Panel when reaching a decision on any matters arising under the Procedure. Similar considerations apply in cases where a party has behaved in a manner which the Adjudicating Panel considers is oppressive or unreasonable.

- 1.7 The decision of the Complaints Panel when it has dealt with a complaint is final unless it is overturned or varied on an appeal made under the Procedure.

2. THE SCOPE OF THE PROCEDURE AND THE NATURE OF THE COMPLAINTS COVERED BY IT:

- 2.1 The Procedure is not designed to provide a forum for every kind of dispute involving Members. Nor is it intended to operate in cases where a party is able to seek redress under a contract or through legal proceedings. Rather, the Procedure is intended to offer a convenient, non-adversarial and relatively cost-effective means of enabling complaints against Members to be made, in situations where there are no other remedies available to the Complainant.

- 2.2 Many disputes will be outside the scope of the Procedure. The following is a non-exhaustive list of the type of matters which fall outside the scope and purpose of the Procedure and where it would not be appropriate to invoke it:

2.2.1 complaints involving disputes arising out of a contractual relationship between the Complainant and Respondent and which can be resolved under the terms of that contract, through the Courts or via some other means of dispute resolution;

2.2.2 complaints which are in the nature of general comment and opinion where such general comment or opinion is unsupported by any factual evidence;

2.2.3 complaints relating to allegations of breaches by the Respondent of competition law, infringement of intellectual property rights, breach of employment law, disputes involving real property or allegations of defamation;

2.2.4 complaints which relate to matters which have already been the subject of decision by a Complaints Panel (and, if applicable, by an Appeals Panel) under the Procedure. The exception to this is where the date of the previous decision of the Complaints Panel (or, if later, the Appeals Panel) was more than 6 months prior to the submission of the new complaint and where the new complaint is based on new material (i.e. facts which have arisen after the date on which the original complaint was first raised under the Procedure).

2.2.5 complaints made for malicious or improper purposes;

- 2.3 No charge is made to those who submit complaints under the Procedure save that a fee is payable by a party who wishes to appeal against the decision of the Complaints Panel. In order to facilitate the efficient administration of complaints made under the Procedure in the most cost-effective manner, it is necessary for certain formalities to be observed in respect of the complaints process. These include matters relating to the details to be provided with the Complaint, the declaration that must be made, and the provision of adequate numbers of copy documents to the Secretary. The attention of complainants and Members is particularly drawn to these provisions. A failure to comply with these formalities may result in the rejection of a complaint.
- 2.4 It is also important that the resources of the Federation are not unnecessarily expended in dealing with inappropriate complaints which are clearly outside the scope of the Procedure. For this reason, all complaints are subjected to an initial filtering process to ensure, as far as possible, that they are appropriate to be dealt with under the Procedure. A right for the Complainant to appeal against the outcome of this filtering process is also provided for. The filtering stage is not designed to constitute a review of the merits of a particular complaint. In the interests of facilitating the process of administering the Procedure, the Respondent is not entitled to participate in the filtering process, which is a matter for the CP Chairman (or, on appeal, the FRB). However, the Respondent is given the opportunity to ask the Complaints Panel to consider whether the Complaint does in fact fall within the scope of the Procedure when it comes to determine the Complaint.

3. GENERAL RULES GOVERNING THE PROCEDURE

- 3.1 As stated in paragraph 1.1, all communications to the Federation or the Adjudicating Panel concerning matters governed by the Procedure must be addressed to the Secretary. No party to the Procedure, other than the Secretary (and the Secretary's staff), may enter into any direct correspondence with the Adjudicating Panel in relation to a complaint, save in response to a specific request from the Adjudicating Panel.
- 3.2 Correspondence and documents submitted under the Procedure may be sent to the Secretary by first or second class post, by fax, by leaving the document(s) at the registered office of the Federation or by email..
- 3.3 For the purpose of the Procedure the following provisions relating to the service of documents shall apply.
- 3.3.1 In the case of items sent by first class post, they will be deemed to have been received by the recipient on the second day after the date of posting.
- 3.3.2 Items sent by second class post will be deemed to have been received on the fourth day after the date of posting.
- 3.3.3 Items left at the Federation's registered office before 5pm will be deemed to be received on the date on which they were left there. Items left after 5pm will be deemed to be received on the next day.
- 3.3.4 Items sent by fax will be deemed to have been received on the day of transmission provided that transmission is made prior to 5pm on that day. In respect of transmissions made after 5pm, the item in question will be deemed to be received on the next day.
- 3.3.5 Items sent by email will be deemed to be received on the day following their transmission. When items are sent by email, they should be followed up by means of a "hard copy" of the email.

- 3.4 In calculating the time periods referred to in the Procedure, Saturdays, Sundays and Bank Holidays are to be disregarded and references to "days" should be treated accordingly.
- 3.5 It is the responsibility of every party to the Procedure to ensure that they meet the formal requirements of the Procedure. The Secretary or, as the case may be the Adjudicating Panel reserve the right to reject communications or documents governed by the Procedure which do not comply with the requirements of the Procedure.
- 3.6 Notwithstanding the provisions of the Procedure concerning time limits, the CP Chairman shall have the sole right to extend or abridge any time limit provided for in the Procedure whether of his own motion or in response to a request from any party to the Procedure or from the Secretary. This power will be exercised sparingly and only in cases where the CP Chairman is satisfied that there are good reasons for exercising it. There shall be no right of appeal against the exercise or refusal to exercise this power.
- 3.7 At any time prior to the hearing of the Complaint by the Complaints Panel, the Secretary shall have the right to request the CP Chairman to make a ruling or give such directions as he may think fit concerning any matters raised under the Procedure.

4. THE COMPLAINT

Submission of a Complaint Summary

- 4.1 The Complainant who wishes to submit a complaint under the Procedure must send to the Secretary a properly completed, signed and dated Form C1. A sample Form C1 is annexed at Schedule 3. (Further copies of blank Form C1s are available on request from the Secretary). The completed Form C1 is known as a "**Complaint Summary**".
- 4.2 Form C1 requires the Complainant to give certain information including contact details, a concise summary of the nature of the Complaint and his reasons for making it. It also requires the Complainant to make a declaration in the following form:

"The Complainant certifies that the information contained in this Complaint is accurate to the best of the Complainant's knowledge and belief.

In initiating and pursuing this Complaint under the Procedure, the Complainant accepts that neither the Federation, nor any person serving on any of the committees, panels or boards referred to in the Procedure (whether any of the foregoing are acting individually, jointly or collectively) shall be liable for anything done or omitted to be done in the discharge or purported discharge of their functions under the Procedure, and that any officer, employee, employer or agent of any of the foregoing persons or entities is similarly protected from liability."

- 4.3 The submission of a properly completed, signed and dated Complaint Summary is mandatory and the Secretary shall be entitled to reject any complaints that do not comply with paragraphs 4.1 – 4.2. If the Complaint Summary is rejected by the Secretary, the Complainant will be notified of the rejection within 5 days of receipt by the Secretary of the defective Complaint Summary.
- 4.4 Within 5 days of receiving the Complaint Summary and assuming that it is not rejected under paragraph 4.3 (but not otherwise), the Secretary shall do the following:

- 4.4.1 notify the Complainant that the Complaint Summary has been accepted for initial consideration under the Procedure;
- 4.4.2 notify the Respondent that the Complaint Summary has been accepted for initial consideration under the Procedure and provide the Respondent with a copy of it;
- 4.4.3 send a copy of the Complaint Summary to the CP Chairman.

Preliminary Review

- 4.5 Upon receipt of the Complaint Summary, the CP Chairman will assess whether or not he has, or is likely to have, a conflict of interest or other difficulty in dealing with the Complaint. If he concludes that he is unable to deal with the Complaint he will promptly notify the Secretary of that fact together with the reason for his decision. A new CP Chairman will then be appointed as provided for in Schedule 1.
- 4.6 Within 10 days of him receiving a copy of the Complaint Summary (or, where a new CP Chairman has had to be appointed, within 10 days of that appointment whichever is the later), the CP Chairman will assess whether or not the Complaint falls within any of the criteria set out in clause 2.2 or is otherwise outside the scope of the Procedure ("**the Preliminary Review**") and will notify his decision to the Secretary.
- 4.7 Within 5 days of receipt of this notification, the Secretary will notify the Complainant of the result of the Preliminary Review and state the name of the CP Chairman who conducted it. A copy of this notification will be sent to the Respondent at the same time. If the result of the Preliminary Review is that the Complaint can proceed to be dealt with under the Procedure, the date on which the Secretary sends notification of this to the Complainant shall be deemed to be "**the Complaint Acceptance Date**".
- 4.8 If the decision on the Preliminary Review is against the Complainant, the Secretary will, in notifying him of the result of the Preliminary Review, also inform the Complainant of the reasons given by the CP Chairman for disallowing the Complaint to proceed. A copy of this notification will be sent to the Respondent at the same time.

Appeal against the outcome of the Preliminary Review

- 4.9 If the Complaint is disallowed following a Preliminary Review, the Complainant shall have the right to appeal against such a decision by sending a written request to the Secretary requesting the Federation's Registration Board ("**the FRB**") to reverse the decision ("**an Appeal Request**"). An Appeal Request must be received by the Secretary within 5 days of the Complainant being notified of the rejection of the Complaint. No appeal under this clause will be allowed if the Appeal Request is received outside the deadlines provided for in this clause.
- 4.10 If an Appeal Request is received in accordance with clause 4.9 the Secretary shall send a copy to the Respondent. As soon as reasonably practicable following receipt of an Appeal Request, the FRB will review the decision made by the CP Chairman at the Preliminary Review. In conducting its review, the FRB shall not have regard to any material other than the Complaint Summary and the decision of the CP Chairman made at the Preliminary Review.
- 4.11 In the event that any member of the FRB is unable to participate in the review due to a conflict of interest or for any other reason, the remaining member(s) of the FRB shall be entitled to make a decision without the involvement of that member(s). In the event that

only an even number of members of the FRB are able to deal with the review and reach a split decision, the result of the review will be deemed to be in favour of the Complainant.

- 4.12 The FRB shall promptly notify the Secretary of its decision and the result will be notified to the Complainant and the Respondent within 5 days of a decision being made.
- 4.13 If the FRB refuses to allow the appeal after it has reviewed the matter or if the Appeal Request is not received by the Secretary within the time period specified in clause 4.11, the Complaint will be treated as rejected by the Federation and that result is final. The Secretary will, in that event, send notification to both the Complainant and the Respondent that the Complaint has been rejected on this ground.
- 4.14 In the event that the appeal to the FRB is successful, the Complaint shall proceed in accordance with the remaining paragraphs of the Procedure. In that event, the date on which the Secretary notifies the Complainant and the Respondent of the result of the successful appeal shall be treated, as regards the Complaint in question, as being the Complaint Acceptance Date.

Actions by the Secretary following the Complaint Acceptance Date

- 4.15 As soon as possible following the Complaint Acceptance Date, the Secretary shall contact the members of the Complaints Panel and ascertain whether any of them are conflicted out or otherwise unavailable to hear the Complaint. The Complaints Panel will then be formed as provided for in Schedule 1.
- 4.16 On the Complaint Acceptance Date or within 5 days of it, the Secretary shall notify all Members that a Complaint has been made and that it has passed the Preliminary Review and appeals stage. A copy of the Complaint Summary shall be provided to each Member.
- 4.17 At the same time as it sends the notifications in clause 4.16 above, or, within not more than 10 days of it doing so, the Federation shall notify the Complainant and the Respondent of the identities of the members of the Complaints Panel who will determine the Complaint.

Actions by the Complainant following the Complaint Acceptance Date

- 4.18 Within 15 days of the Complaint Acceptance Date, the Complainant must provide to the Secretary 7 (seven) copies of the full version of his complaint, complete with all supporting documentation ("**the Full Complaint**"). The Full Complaint must be in writing. It must be based on the matters raised in the Complaint Summary and must include the following matters set out in the following order:
- 4.18.1 the full name, address, telephone and fax number and email of the person, firm, company or organisation making the Complaint;
- 4.18.2 the full name, address and contact information of the person to whom all correspondence concerning the Complaint should be directed;
- 4.18.3 the full name of the Member against whom the Complaint is made

- 4.18.4 a concise summary of the nature of the complaint and the facts on which it is based as set out in the Complaint Summary;
- 4.18.5 the full details of the Complaint suitably cross-referenced to any documentary or other evidence relied upon in support of it.

The following provisions must also be observed in the Complaint:

- 4.18.6 it must conclude with the following statement:

"The Complainant certifies that the information contained in this Complaint is accurate to the best of the Complainant's knowledge and belief."

- 4.18.7 it must be signed by the Complainant or by its authorised representative and dated.
- 4.18.8 any documents relied upon in support of the Complaint must be attached to the Full Complaint in an annex.
- 4.18.9 it must not raise new complaints which were not referred to in the Complaint Summary

- 4.19 If the Full Complaint is not received within the requisite time or does not meet the requirements of paragraph 4.18 or if no Full Complaint is served, the Adjudicating Panel may take the Complainant's default into account when reaching a decision in relation to the Complaint. Alternatively, depending upon the degree of default by the Complainant, it may in its discretion reject the whole Complaint or proceed with the Complaint on the basis of the Complaint Summary alone.

Submission of relevant information by Members following the Complaint Acceptance Date

- 4.20 Once the Members have been notified of the Complaint in accordance with clause 4.16, they will have a period of 15 days from receipt of that notification within which to notify the Secretary in writing, of any facts or material which they consider is relevant to the subject matter of the Complaint ("**Member Submissions**"). After the 15 day period has expired, no further Member Submissions will be accepted by the Federation in relation to the Complaint.
- 4.21 In respect of Member Submissions received within the 15 day period, the Complaints Panel shall have the right to take these into account as it thinks fit in reaching its decision concerning the Complaint.

Further Actions by the Secretary upon receipt of the Complaint and Member Submissions

- 4.22 Once the 15 day period has expired for the filing of the Full Complaint and Member Submissions, the Federation shall send to the Respondent copies of the Full Complaint and all Member Submissions received within the 15 day period. If no Full Complaint or Member Submissions are received by the Secretary within the requisite time, the Respondent will be notified of that fact.

5. THE RESPONSE

- 5.1 The Respondent shall have 20 days from the date of receipt of the Full Complaint and any Member Submissions (or receipt of a notification that there are no such documents) by which to file its response to the Complaint ("**the Response**").

- 5.2 The Response must be in writing and must include the following matters in the following order:
- 5.2.1 the full name, address, telephone, fax number and email address of the Member making the Response;
 - 5.2.2 the full name, address and contact information of the person to whom all correspondence concerning the Response should be directed;
 - 5.2.3 the name of the Complainant;
 - 5.2.4 a concise summary of the nature of the Response; followed by
 - 5.2.5 details of the Respondent's comments and/ or objections and/ or answers to the matters cited in the Full Complaint (or if there is no Full Complaint, the matters cited in the Complaint Summary) including references to any documentary or other evidence relied upon in support of the Response; followed by
 - 5.2.6 answers to any matters raised in Member Submissions;
- The Response must also meet the following requirements:
- 5.2.7 it must conclude with the following statement:

"The Respondent certifies that the information contained in this Response is accurate to the best of the Respondent's knowledge and belief.

In filing this Response and opposing the Complaint under the Procedure, the Respondent accepts that neither the Federation, nor any person serving on any of the committees, panels or boards referred to in the Procedure (whether any of the foregoing are acting individually, jointly or collectively) shall be liable for anything done or omitted to be done in the discharge or purported discharge of their functions under the Procedure, and that any officer, employee, employer or agent of any of the foregoing persons or entities is similarly protected from liability."
 - 5.2.8 it must be signed by the Respondent or its authorised representative and dated.
 - 5.2.9 any documents relied upon in support of the Response must be attached to the Response in an annex.
- 5.3 The Respondent must send 7 (seven) copies of the Response to the Secretary to arrive within the time period specified in paragraph 5.1.
- 5.4 If the Response is not received within the requisite time or does not meet the requirements of paragraph 5.2, the Adjudicating Panel may take the Respondent's default into account when reaching a decision in relation to the Complaint. If the Response is not received within the requisite time periods but is received outside of those periods, the Adjudicating Panel will not be obliged to have regard to the Response when deciding the Complaint but may nevertheless, in its complete discretion choose to do so.

- 5.5 If no Response is forthcoming prior to the date on which the Complaint is determined by the Complaints Panel, the Complaints Panel shall be entitled to determine the Complaint in accordance with clause 6.1 on the basis of the Complaint Summary, the Full Complaint and any Member Submissions received within the requisite time period.

Actions by the Secretary following receipt of the Response

- 5.6 Within 5 days of receipt of the Response, the Secretary shall do the following:
- 5.6.1 notify the Complainant that the Response has been received and provide a copy of the Response to the Complainant.
 - 5.6.2 notify all Members that the Response has been received;
 - 5.6.3 request that the Complaints Panel meets to determine the Complaint.

6. THE HEARING OF THE COMPLAINT

- 6.1. The Complaint will be determined by the Complaints Panel on the basis of the Complaint Summary, the Full Complaint (if one is served) and the Response (if one is served) plus such additional documents and information as the Complaints Panel in its discretion decides to accept (including Member Submissions). If there is a failure on the part of a party to comply with any paragraph of the Procedure in relation to the filing of documents, the Complaints Panel may take this into account and shall have the right to disregard the defaulting party's document.
- 6.2 In the interests of ascertaining facts and adjudicating fairly on the Complaint the Complaints Panel may, if it thinks fit do all or any of the following:
- 6.2.1 request further information from either of the parties to the Procedure or from a third party;
 - 6.2.2 request any party to supply such further documents as the Complaints Panel may reasonably require;
 - 6.2.3 subject to the consent of any third party or parties, make such site visits and inspections as it considers necessary;
- 6.3 In exercising its powers under clauses 6.1 and 6.2, the Complaints Panel shall keep the Complainant and the Respondent equally informed of any approaches made to one or the other of them or to any third party. In the case of written approaches, copies of the correspondence in question will be provided by the Complaints Panel. Where the approach was oral only, a summary of the conversation will be provided.
- 6.4 The failure of the Complainant or Respondent to co-operate with the Complaints Panel in the exercise of its functions may be taken into account by the Complaints Panel in reaching its decision as well as in relation to any sanctions which it may seek to impose. The same applies in respect of any breaches of the spirit of paragraph 1.6.
- 6.5 In making its decision, the Complaints Panel shall be entitled to consider afresh whether or not the Complaint falls within the scope of the Procedure. In doing so, it is not bound to follow the result of any prior Preliminary Review decision or appeal against such a decision.

- 6.6 The Complaints Panel shall make its decision ("**the Decision**") concerning the Complaint and shall notify the Secretary of the Decision within 30 days of the date on which the Response is received by the Secretary.. The Decision will be in writing and will:
- 6.6.1 state whether the Complaint meets the formal requirements of the Procedure and whether or not it falls within the scope of the Procedure;
 - 6.6.2 state whether a Response was received and if so whether or not it meets the requirements of the Procedure and if not whether and to what extent such default was taken into consideration by the Complaints Panel in reaching its decision and if so, why
 - 6.6.3 identify the other documents received and considered by the Complaints Panel in dealing with the Complaint (including any Member Submissions);
 - 6.6.4 give the decision reached by the Complaints Panel concerning the Complaint;
 - 6.6.5 give the Complaints Panels' reasons for arriving at its decision;
 - 6.6.6 set out the sanctions (if any) which the Complaints Panel considers it appropriate to impose as a result of its decision.
- 6.7. The Federation will send a copy of the Decision to the Complainant and to the Respondent within 5 days of receiving it from the Complaints Panel.
- 6.8 The Decision is final and binding on the parties to the Complaint unless successfully appealed against by either party in accordance with the provisions of clause 7.
- 6.9. Members will be notified of Decision at the next Quarterly Meeting of the Federation.

7. APPEALS AGAINST THE DECISION OF THE COMPLAINTS PANEL

- 7.1 Either party to the dispute shall have the right to appeal against the Decision or any part of it.
- 7.2. A party who wishes to appeal against the Decision must lodge with the Federation a notice ("**Appeal Notice**") in the correct form within 10 days of the date on which the Decision was notified to the party making the appeal. The Appeal Notice must be accompanied by payment of the appeal fee of £1,000. The whole or a part of this fee may be refundable to the party who paid it, at the discretion of the Appeals Panel.
- 7.3. An Appeal Notice must contain the following matters:
- 7.3.1 it must identify the Decision being appealed against;
 - 7.3.2 it must identify which elements of the Decision are being appealed against
 - 7.3.3 it must set out the grounds and reasoning on which the appeal is based
 - 7.3.4 it must be signed by the appealing party or by its representative
- 7.4 Within 5 days of receiving the Appeal Notice and fee, the Secretary will send a copy of the Appeal Notice to the other party.

- 7.5 The other party shall be entitled (but not obliged) to submit written comments restricted to the matters contained in the Appeal Notice, for consideration by the Appeals Panel. Any such comments must be sent to the Secretary and received by him within 10 days of the date on which the copy Appeal Notice was received by that party. No material from the other party will be accepted if received by the Secretary after that date.
- 7.6 Upon receipt of an Appeal Notice and fee, the Federation will arrange for an Appeals Panel to be appointed in accordance with Schedule 2 and the Appeals Panel will hear the appeal within 30 days from receipt by the Secretary of the Appeal Notice.
- 7.7 The appeal will take the form of a review of the matter based on the material which was available to the Complaints Panel. No new material will be accepted for consideration by the Appeals Panel unless such material is submitted in response to an express request by the Appeals Panel.
- 7.8 In dealing with the appeal, the Appeals Panel shall nevertheless be entitled to interview or seek further information from, as it considers appropriate, any member of the Complaints Panel, any representatives of the Complainant or Respondent or from any other source.
- 7.9 In exercising its powers under clauses 7.7 and 7.8, the Appeals Panel shall keep the Complainant and the Respondent equally informed of any approaches made to one or the other of them or to any third party. In the case of written approaches, copies of the correspondence in question will be provided by the Complaints Panel. Where the approach was oral only, a summary of the conversation will be provided.
- 7.10 The failure of the Complainant or Respondent to co-operate with the Appeals Panel in the exercise of its functions may be taken into account by the Appeals Panel in reaching its decision as well as in relation to any sanctions which it may seek to impose. The same applies in respect of any breaches of the spirit of paragraph 1.6.
- 7.11 The Appeals Panel shall be entitled, at its discretion, to dismiss an appeal on the grounds that the appealing party has failed to comply with the requirements of clause 7.3.
- 7.12 When determining an appeal under the Procedure, the Appeals Panel shall be entitled to overturn the decision of the Complaints Panel or any part of it and substitute its own decision. It shall also have the same powers as the Complaints Panel in relation to imposing sanctions on Members including, without limitation, the right to modify, overturn or affirm any sanctions imposed by the Complaints Panel.
- 7.13 The decision of the Appeals Panel ("**the Appeal Decision**") shall be notified to the Secretary. The Appeal Decision shall be in writing and will set out:
- 7.13.1 the result of the appeal;
 - 7.13.2 the conclusions reached by the Appeals Panel and the reasons for reaching those conclusions;
 - 7.13.3 details of any material considered by the Appeals Panel over and above the material available to the Complaints Panel when it made its original decision.

- 7.14 The Appeals Panel shall also be entitled in its discretion to direct how the costs associated with the appeal should be borne including whether, and to what extent, that cost should be borne by the Complainant or the Respondent.
- 7.15 In the event that, during the appeal process and prior to the hearing of the appeal, any query arises which cannot be resolved from reviewing the Procedure, then the Secretary shall be entitled to ask the Appeals Panel (or any member of the Appeals Panel) to make a ruling or give directions as it thinks fit.
- 7.16 The Appeal Decision is final and no further appeals may be made against it under the Procedure.
- 7.17 If no Appeal Notice and fee are received by the Secretary within the time limit set out in clause 7.2, the decision of the Complaints Panel shall automatically become final and binding.

8. SANCTIONS

- 8.1 Under the Articles of Association of the Federation, the Complaints and Appeals Panels have the power to impose sanctions on any Member on the determination of a complaint or appeal under the Procedure. The sanctions include, but are not limited to, the right to do all or any of the following (whether alone or in combination):
- 8.1.1 issue a direction that the Member in question must do something by a specified date in order to address matters identified by the Complaints Panel as needing to be addressed by the Member ("**a Compliance Notice**").
 - 8.1.2 suspend a Member (whether for a fixed period of time or until such time as the Member in question has complied with a Compliance Notice)
 - 8.2.3 expel a Member from the Federation;
 - 8.2.4 impose a fine on a Member;
 - 8.2.5 order the Member to compensate the Complainant
- 8.2 Where the Complaints Panel directs the expulsion of a Member, that Member shall be suspended from the Federation from the date of the Decision and the expulsion shall only come into effect:
- 8.2.1 if no appeal is made, on the day after the deadline for filing an Appeal Notice and appeal fee expires; or
 - 8.2.2 if an appeal is made, on the day following the date on which the appeal is disposed of (whether through the issue of an Appeal Decision or otherwise)
- whichever is the later.
- 8.3 When determining an appeal under the Procedure, the Appeals Panel shall have the same powers as the Complaints Panel in relation to imposing sanctions on Members but including, without limitation, the right to modify, overturn or affirm any sanctions imposed by the Complaints Panel.

9. LIABILITY OF THE FEDERATION, ITS OFFICERS AND REPRESENTATIVES

- 9.1 Under the Procedure, any party making use of it in any way hereby accepts and agrees that the following persons and entities shall not be liable for anything done or omitted to be done by them (whether acting alone, collectively or jointly) in the discharge or purported discharge of their functions under the Procedure unless the act or omission in question is in bad faith:
- 9.1.1 the Federation;
 - 9.1.2 the CP Chairman
 - 9.1.3 any member of the Complaints Panel
 - 9.1.4 any member of the FRB;
 - 9.1.5 any member of the Appeals Panel
 - 9.1.6 where the context admits: any employer, employee, officer, adviser or agent, of any of the above.
- 9.2 In the event that clause 9.1 or any part of it should be held to be void or otherwise unenforceable then the remainder of the clause shall apply with such modification as may be required to make it effective.
- 9.3 The above paragraphs are without prejudice to the right of the Federation and the persons identified in clause 9.1 to rely on any rights of immunity conferred upon them under common law.

SCHEDULE 1

Composition of the Complaints Panel

1. The CP Chairman should be the Immediate Past Chairman of the Federation ("**the IPC**").
2. In the event that the IPC is not available or is unable to act because of a conflict of interest or other similar reason, he shall be replaced by the Chairman or Senior Vice Chairman or Junior Vice Chairman of the Federation in that order. In the event that all of the preceding are unavailable or disqualified, the Executive Committee will select a CP Chairman who will command a high degree of support and respect within the industry (who may or may not be a Past Chairman of the Federation).
3. The remaining members of the Complaints Panel should be the Chairmen of the Federation's Technical Committee, Commercial Committee, and Safety and Training Committee, and one person appointed by the Chairman of the AGS.
4. The Complaints Panel (including the CP Chairman) should include no more than two members from any one company. In the event that more than two members from a company are eligible to serve on the Complaints Panel, the CP Chairman shall nominate the two members who should serve and will select any replacements in accordance with paragraph 5 below.
5. In the event that any member of the Complaints Panel is unavailable, or unable to act because of a conflict of interest, or disqualified under paragraph 4, the CP Chairman shall have sole discretion to select a replacement from the members of the Committee of which the disqualified member is a Chairman.
6. In the event that any member of the Complaints Panel becomes unable to serve before the first meeting of the Complaints Panel, a replacement shall be chosen in accordance with paragraph 5.
7. In the event that any member becomes unable to serve after the first meeting, the Complaints Panel shall continue to reach a decision with a reduced number – provided that the total number is not less than four and provided that the absent member is not the independent person appointed by the AGS. Should the AGS member become unavailable, then the AGS will be asked to provide an alternative member and the CP Chairman will take all necessary steps to ensure that the replacement member is fully briefed as soon as possible after his substitution.

Schedule 2

Composition of the Appeals Panel

1. The Executive Committee of the Federation, excluding the CP Chairman, will constitute the Appeals Panel, which shall have not less than three members.
2. If, because of a conflict of interest, or unavailability of any member of the Executive Committee, or for any other reason, there would be less than three members of the Appeals Panel able to hear the appeal, the required number shall be made up to three by appointments made from the past Chairmen of the Federation, who will be approached in descending chronological order of their Chairmanship and who must currently be employed by a Member.
3. If, for any reason, the Secretary considers that an Appeals Panel cannot be formed under paragraphs 1 or 2 of this Schedule, then the Secretary shall draw up what he considers to be a suitable shortlist of persons with standing in the Geotechnical industry having regard to the nature of the Complaint. The Secretary shall notify the parties to the appeal of the shortlist and request them to approve the appointment from that list. If the parties to the appeal cannot agree on an appointment or if they fail to notify the Secretary of their agreement to the proposed appointment within 5 days of receiving the shortlist, the Secretary shall be entitled to make the appointment.
4. If it is not possible to appoint a complete Appeals Panel in accordance with the above procedure, then the Secretary shall be entitled to put forward the names of candidates which he considers suitable for approval by Members in correspondence. In this case, approval in writing by a simple majority of Members will suffice.

Schedule 3

Form C1

WB2-107050