



COMPLAINT INVESTIGATION AND DISCIPLINARY PROCESS

Receiving notice from the Insurance Council of Manitoba that a person is the subject of a complaint can be an unfamiliar and unsettling experience. The following is an overview of the process to assist individuals in focusing on the allegations and responses rather than the process itself.

Authority

The Council has obtained its authority through delegation by the Superintendent of Insurance in the province. The establishment of the Insurance Council of Manitoba is outlined in Regulation 227/91. Council may investigate a complaint that involves an insurance agent, broker or adjuster or the distribution of insurance by an intermediary, and has the authority to take disciplinary action with respect to a licence holder or a former licence holder. Council may also make application to the Court of Queens' Bench for a compliance order for violation of a provision of the Insurance Act of Manitoba or its regulations which involves issues within its delegated authority. The majority of complaints investigated involve current licence holders ("licensees").

Complaint Process

Complaints can be generated from different sources including a member of the public, another licence holder, or an external regulator (e.g. Superintendent of Insurance). Council can initiate an investigation (e.g. misrepresentation on an application or renewal, holding out, failure to maintain errors and omissions insurance, unlicensed activity) and complaints from anonymous sources may be considered. Complaints from outside sources must be made in writing and should be on the complaint form located on the Council website.

Investigation Process

Upon receipt of a complaint, the first step is to determine whether or not the issues fall within the mandate of the Council. The allegations are considered with respect to whether they could constitute a violation of *The Insurance Act of Manitoba, its Regulations, Licensing Rules and/or the applicable Code of Conduct.*

When it has been determined that the complaint is within the Council's mandate, the investigator will commence investigation of the complaint.

The investigator will contact the licensee to outline the issues of concern and request a written response to the allegations from the licensee within a specified timeframe. The Insurance Council of Manitoba is not obligated to provide a copy of the complaint or disclose the source of the complaint at this time.

While no two investigations are the same, the investigator might obtain written statements, conduct interviews, conduct on-site inspections, and obtain documentary evidence.

The investigation may also include contact with:

- the complaining party for additional information or documentation,
- insurers for policy and documentary evidence,
- the licensee's employer or sponsor
- other regulatory bodies, and
- any others who may have information relevant to the complaint.

Obligations of the Licensee

The response to the allegations should be considered seriously by the licensee, keeping in mind that disciplinary action is a potential outcome of the process. Complete co-operation is required and is in the best interest of the licensee. Written responses should be sent directly to the investigator, not through another party, such as an insurance company or sponsor. The licensee should provide a full and complete written response to the investigator including all information and documentation to support why the allegations are unfounded, or if the allegations are true, to provide any mitigating factors. Copies of emails, letters, meeting notes, recorded phone conversations, or policies are examples of items that may be useful supporting documents.

The response to Council should provide an explanation to all questions relating to the allegations or any other issue that has arisen during the course of the investigation. A complete response avoids delays in the process and ensures that the licensee has a fair opportunity to present his position before the industry Council deliberates on the investigation findings.

As Council has the authority to request full participation of the licensee through *The Insurance Act* and the applicable Code of Conduct, failing to respond to Council within the specified timeframe can by itself be reason for disciplinary action, regardless of other violations. Where there are extenuating circumstances, extensions may be granted to ensure that the written response is full and complete.

Council Review

Upon completion of the investigation, the investigator submits a written report and evidence to the appropriate Council (i.e. Life, General, and Insurance Adjuster) for its review in determining whether regulatory violations have occurred. Council also considers the history of the licensee, aggravating circumstances and mitigating circumstances in its review.

Council consists of individuals with industry experience and members of the public. Council members are appointed by the Minister and serve term positions.

If Council determines that there was no substantiated evidence of violation of *The Act, its Regulations*, Licensing Rules, or the applicable Code of Conduct, the complaint is closed. The party making the complaint and the licensee are informed in writing of the result of the review.

Where Council determines that minor infractions have occurred but formal disciplinary action is not warranted, a letter of caution may be issued to the licensee. This letter may include recommendations to improve the licensee's practices in order to avoid future complaints. Letters of caution are retained on file, and may be considered if future complaints of a similar nature are received. The party making the complaint is advised in writing that a letter of caution has been issued.

Where Council determines that the complaint was unsubstantiated or sends a letter of caution, public disclosure is not required. Information concerning the investigation does not appear on Council's website or in the Council Report.

Disciplinary Process

If Council decides, after reviewing the evidence developed during the investigation that a violation of *The Act, its Regulations*, Licensing Rules and/or Code of Conduct has occurred, it makes an "intended" disciplinary decision. The person subject to discipline is advised in writing, and a copy of the intended decision is provided. The intended decision summarizes the allegations, facts in evidence, and provides itemized regulatory/code violations upon which Council based its intended decision. Council will also specify the disciplinary action, such as a fine and costs, suspension or cancellation of licence, licence conditions or completion of an educational component. A copy of the evidence reviewed by Council in making its determination is available to the licensee at this time.

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The person subject to discipline can accept the disciplinary decision and waive their right to a "Show Cause" and/or Appeal hearing and must fulfill the disciplinary action set forth.

Once the disciplinary action has been satisfied, the complaining party is advised of the outcome of the complaint and the file is closed. The disciplinary action is subject to public disclosure and must be published i.e. website, Council Report.

Show Cause Hearing

If the person subject to discipline does not agree with the intended decision, a request can be made for a Show Cause Hearing before Council. This Hearing is an opportunity for the person subject to discipline to "show cause" as to why the intended decision of Council should not proceed. While all relevant information should have been provided by the person subject to discipline during the investigation, this is an opportunity to provide additional information for Council's consideration.

A written notice of the Hearing is provided to the person subject to discipline with the time, date and place of the Hearing. The evidence upon which Council relied to make its intended decision is also provided.

This Hearing is the opportunity for the person subject to discipline to address Council and prove his or her case. Council does not make a presentation or introduce additional evidence.

Hearings are held in camera, and are conducted under sworn or affirmed testimony. A court reporter is present and the proceedings are recorded. Outside legal counsel will be present on behalf of ICM. The person subject to discipline may be represented by legal counsel and have witnesses or other supporters attend the Hearing.

The Council Chairperson will open the Hearing by providing a description of how the Hearing will be conducted. The Hearing will be conducted on an informal basis, and the rules of evidence do not apply. The intended decision will be entered in to the record.

The person subject to discipline presents his or her case including introduction of witnesses who provide sworn or affirmed testimony, and any additional evidence or documents outlining why Council should not proceed with its intended decision. Any witnesses who are giving evidence or testimony may not be present until they have completed their testimony.

Council members and legal counsel may ask questions of the person subject to discipline and his/her witnesses. ICM staff members do not typically participate in the Hearing other than as observers.

When all relevant matters have been discussed, the Chairperson will adjourn the formal Hearing and dismiss the person subject to discipline. Council deliberates on the evidence and testimony, and makes a final decision. Council determines whether to enforce, revise or reverse its intended disciplinary decision. Additional costs arising from the Hearing may be assessed.

The licensee will be advised in writing and provided with Council's final decision which outlines the issues, facts and evidence, legislation, analysis and disciplinary action if applicable.

Where the decision is for disciplinary action, the licensee can accept the decision and waive the right to an Appeal.

Similar to the acceptance of disciplinary action by the licensee upon receipt of the intended decision by Council, when the licensee accepts the decision following the Hearing process and waives his right to an Appeal, the complainant will be advised of the disciplinary decision. The file is closed and the disciplinary action is published.

Appeal Process

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Alternatively, the person subject to discipline may request an Appeal before the Insurance Agents' and Adjusters' Licensing Appeal Board ("Appeal Board"). This is a body consisting of members appointed by the Lieutenant Governor in Council, and is entirely separate from the Insurance Council of Manitoba.

Requests for an Appeal Hearing must be sent in writing directly to the Appeal Board. All evidence which is to be presented by either the Insurance Council of Manitoba or the person subject to discipline must be provided to the Appeal Board at least two weeks in advance of the Hearing, along with the names of the witnesses that are to appear.

An Appeal is a *trial de novo* or a new hearing. Sworn or affirmed testimony is presented to the Board by both parties.

The ICM is represented by outside legal counsel, and the appellant may also have legal representation.

In this Appeal process, opening statements are provided by both parties. The Council representative then presents its case to the Board members including the alleged violations and the evidence to support that conclusion. Council representatives answer questions from the Board members and from the person subject to discipline or his/her legal Counsel.

The person subject to discipline has an opportunity to present his position including documentary evidence and witnesses, and may be questioned by Board members or Council's lawyer.

Closing statements are requested by the Board from both parties.

Upon completion of the Hearing, the Board reviews the evidence and deliberates. The Appeal Board can uphold or overturn the decision of Council, or make an alternate order including an increase in the disciplinary action and cost assessment.

The person subject to discipline and the Insurance Council of Manitoba are informed in writing of the result by the Insurance Agents' and Adjusters' Licensing Appeal Board. The complainant is advised of the Appeal Board's decision and must fulfill any requirements ordered. Failure to do so will result in the cancellation of the licence and/or additional disciplinary action. The final disciplinary action is subject to public disclosure, including publication.