



jersey**construction**council

COMPLAINTS POLICY

Jersey Construction Council Complaints Procedure

Is your complaint against a member of the JeCC

Yes

Have you submitted your complaint in writing using the JeCC complaint form

Yes

Has your complaint been acknowledged in writing by the JeCC

Yes

Has your complaint been categorised by the JeCC

Yes

Has your complaint been resolved to your satisfaction by the JeCC.

Yes

Complaint resolved and closed

No

No

No

No

No

Where complaints are against non members, the JeCC can only offer advice

Complete the attached form giving all details as requested

Formal written complaints will be acknowledged within 14 days

Complaints shall be categorized as –

- No further action – the complaint is unwarranted.
- Disciplinary – Standards and Conduct Committee will respond within 60 days of acknowledging complaint. Section B
- Dispute - Standards and Conduct Committee will respond within 60 days of acknowledging complaint. Section C
- Principle – Chairman/CEO will respond within 14 days of acknowledging complaint. Section D

If you do not accept the decision of the JeCC, there are further options available. These however, **do not** involve the JeCC. These options involve mediation and arbitration. These options must be requested in writing within 14 days of the JeCC's final decision.

Complaint follows Section C 3.0 Mediation

Has your complaint been resolved to your satisfaction with the Mediator

Yes

Complaint resolved and closed

No

The Mediation process involves meeting with an independent person, appointed by the Channel Islands Branch of the Chartered Institute of Arbitrators. He will review the complaint or dispute and help both parties to reach an agreement. There will be a charge for this process which you may be liable for.

You now have 14 days to make a written request for arbitration.

Complaint follows Section C4.0 Arbitration

Arbitrator makes a decision which is legally binding

Like Mediation, the Arbitration process involves a meeting with an independent person, appointed by the Channel Islands Branch of the Chartered Institute of Arbitrators. **He will review the complaint or dispute and he will make a decision which is legally binding.** There will be a charge for this process which you may be liable for.

**POLICY DOCUMENT FOR COMPLAINTS AND DISPUTES FOR THE
JERSEY CONSTRUCTION COUNCIL**

- POLICY STATEMENT -

SECTION A

1.0 STATEMENT OF PURPOSE

- 1.1 The Jersey Construction Council (JeCC) is dedicated to ensuring and maintaining high standards and quality of service provided within the Construction Industry on Jersey. To this end, it recognises the value of information provided not only by its members but also non-members in determining whether it is achieving and maintaining this high quality and standard of service.
- 1.2 The Council's interest is also in ensuring that members and member institutions maintain appropriate complaint procedures and standards of procedural fairness and that the procedures are applied appropriately and consistently.

2.0 SCOPE OF POLICY STATEMENT

- 2.1 The rules in this Policy have been adopted by the Members of the Jersey Construction Council (The Council) for the resolution of complaints and disputes as defined in Article 64 (b). The Policy extends only to such complaints or disputes brought against members of the Council by other members or by members' customers, clients etc. The Policy does not cover complaints or disputes against non-members by members or between non-members.
- 2.2 Complaints against the Council are covered in Section D.
- 2.3 A complaint or dispute shall constitute any expression of dissatisfaction or alleged breach of duty between members and/or between members and non-members as defined in Clause 2.1. Such expression of dissatisfaction or alleged breach to include possible violations of the Councils Procedures, Policies, Codes of Practice and Core Requirements.
- 2.4 The role of the Council is not to act as mediator or arbitrator in disputes between members and their clients and customers but to reach a conclusion as to whether the member has contravened the Rules of Conduct of the Council and, if so, to decide the action to be taken.
- 2.5 To the extent that the complaint relates to matters concerning contract or civil law the role of the Council will be limited to forming an initial view of the merits of the complaint and advising that view to the member and the complainant. In such cases the Council will offer guidance and recommendations on available procedures for the resolution of disputes through mediation, arbitration or litigation.

SECTION A

2.0 SCOPE OF POLICY STATEMENT (Cont'd)

- 2.6 The procedures are not intended to be used to involve the Council in disputes between individuals and members or cause the Council to intervene in finally deciding individual matters of contractual rights or obligations arising out of individual appointments or contracts. Nor will the Council express a view on entitlements in respect of employee's rights and/or obligations; dishonesty or fraud or physical injury, illness, nervous shock or their consequences. Further, the Council will not serve as a grievance panel where the outcome of any dispute resolution is unsatisfactory to the complainant nor will it consider any complaints, which are considered to be malicious or mischievous.
- 2.7 The Council expects individuals to attempt to resolve any personal or contractual issues that they may have before considering or submitting a complaint to the Council. It is general practice for the Council not to consider any complaint that is currently the subject of any alternative dispute resolution procedure or litigation. However, it is the Council's wish that, subject to any confidentiality agreement that may exist between the parties, it be informed of the outcome of any such alternative dispute resolution procedure or litigation.

3.0 PROCEDURES FOR FILING A COMPLAINT AGAINST A MEMBER OR MEMBER INSTITUTION

- 3.1 An individual may make an inquiry regarding complaint procedures or about issues and concerns that could be considered complaints; however, the Council's response and obligations to meet the specific timetables outlined in these procedures will begin only after the complainant submits a formal complaint.
- 3.2 In order to be considered formal, complaints must be submitted in writing using the Council's "COMPLAINT FORM" signed and sent to the "CHAIRMAN". The Council will not normally entertain complaints that are not in writing, or that are submitted anonymously, nor will it consider complaints submitted electronically or on behalf of other individuals.
- 3.3 A formal complaint is one that is: -
1. Submitted in writing using the "COMPLAINT FORM".
 2. Signed.
 3. Sent to the "CHAIRMAN".

SECTION A

3.0 PROCEDURES FOR FILING A COMPLAINT AGAINST A MEMBER OR MEMBER INSITUATION (Cont'd)

3.4 The "COMPLAINT FORM" includes all of the following: -

- a) The Complainant's details.
- b) Details of the named party against whom the complaint is directed [the Complainee].
- c) A clear and concise written summary of the complaint.
- d) Full details of any other channels the complainant is pursuing or has pursued, including legal action.
- e) Agreement to the declarations contained on the Form.

3.5 Any complaint received by the Council will be categorised into one of the following types: -

1. Disciplinary: complaints under this heading comprise a breach of duty in regard to matters affecting the Council's Procedures, Policies, Codes of Practice and Core Requirements as defined within the Articles of the Council. The Council may review such complaints and, under its Code of Procedure contained herein as Section B, undertake disciplinary action against its member.
2. Dispute: complaints under this heading comprise disputes arising from contractual arrangements between parties under contract, civil law or other outside the procedures or practice as defined within the Articles of the Council. The Council may review such complaints in accordance with its Code of Procedure contained herein as Section C. Within this Code of Procedure the Council may offer guidance or recommendations in regard to the resolution of these complaints but it is not the intention of the Council that its Code of Procedure shall replace existing methods of dispute resolution previously agreed between the parties.
3. Principle: complaints under this heading comprise disputes against the Council itself. Such complaints will be dealt with in accordance with its Code of Procedure contained herein as Section D.
4. No Further Action: such complaints are considered to be outside the brief of the JeCC or have no substance to warrant further action.

3.6 The Members of the Jersey Construction Council shall abide by the rules of this procedure in respect of any complaint raised, of whatever category.

SECTION A

4.0 PROCESSING THE COMPLAINT

- 4.1 Once the formal written complaint is submitted, the Council, Complainant and Complainee are responsible for the following: -
1. Within 7 working days of receipt of the formal complaint the Council shall acknowledge receipt of the complaint.
 2. Within 15 working days of receipt of the formal complaint the Council shall review the complaint and shall categorise the complaint as “Disciplinary”, “Dispute”, “Principle” or “No further Action”.
 3. If No Further Action is to be taken in regard to the complaint the complainant shall be notified and reasons shall be given for that decision.
 4. If the complaint is to be investigated/processed further, once categorised, the Council shall issue a copy of the formal complaint together with all documentation to the complainee and shall notify in writing both the complainant and the complainee of the procedure that the Council intends to adopt in processing the complaint, whether “Disciplinary” as defined under Section B or “Dispute” as defined under Section C or “Principle” as defined under Section D, and any further information required.
 5. The complainee shall respond to the Council within 15 days of receipt of the notification and documentation from the Council.
 6. Both the complainant and the complainee shall comply with all instructions of the Council.
- 4.2 Should the complaint be progressed the Council shall commence processing of the complaint as defined in Section B, Section C or Section D.
- 4.3 The Council shall process complaints under the Category of “Disciplinary” as defined in Section B.
- 4.4 The Council shall process complaints under the Category of “Dispute” as defined in Section C.
- 4.5 The Council shall process complaints under the category of “Principle” as defined in Section D.

SECTION B

PROCESSING A COMPLAINT – DISCIPLINARY

1.0 INTRODUCTION

- 1.1 This section outlines the responsibilities of the Council, Complainant and Complainee in regard to complaints categorised as “Disciplinary” under Section A Clause 3.5.1.

2.0 PROCEDURE

- 2.1 Within 60 working days of acknowledgement of receipt of the complaint, the Council shall review the complaint and its documentation and inform both the complainant and the complainee regarding the status of the complaint to include one of the following: -
- a. The complaint has no substance and will not be actioned further.
 - b. Further information or documentation is required before a full review can be completed.
 - c. A resolution or alternative course of action may be suggested to the complainant and/or the complainee.
 - d. The complaint may be upheld and disciplinary action may be taken.
 - e. The complaint has sufficient substance to warrant further review and may be revised or further considered under the category of a “Dispute”.
- 2.2 Should the complaint warrant a change of Category to a “Dispute”, the Disputes Procedure as defined in Section C will commence.
- 2.3 If the complaint is upheld the member named in the complaint shall be notified and appropriate action decided within the Council Committee, or at the next Council Meeting as appropriate.
- 2.4 The Council’s decision is final.
- 2.5 Individual complaints shall be retained within the Council’s files for record purposes.

SECTION C

PROCESSING A COMPLAINT – DISPUTE

1.0 INTRODUCTION

- 1.2 This section outlines the responsibilities of the Council, Complainant and Complainee in regard to complaints categorised as “Dispute” under Section A Clause 3.5.2.

2.0 PROCEDURE

- 2.1 Within 60 working days of acknowledgement of receipt of the complaint, the Council shall review the complaint and its documentation and shall inform both the complainant and the complainee regarding the status of the complaint to include one of the following: -
- a. The complaint has been wrongly categorised and is to be reviewed under the category of “Disciplinary” complaint according to the procedure defined in Section B or “Principle”, according to the procedure defined in Section D.
 - b. Further information or documentation is required before a full review can be completed.
 - c. The Council’s impartial advice and guidance to the parties concerning the resolution of the Dispute.
 - d. The Council’s non-binding recommendation for resolution of the Dispute.
- 2.2 Should the complaint warrant a review under the Category of a “Disciplinary” complaint, the Disputes Procedure as defined in Section B will commence.
- 2.3 Subject to the right of the complainant and complainee to agree any matter the Council shall have full authority to: -
- a) Decide all procedural and evidential matters.
 - b) Instruct each party to provide within a specified timescale, with a copy to the other party, further statements of the nature of the matters in dispute and the remedies sought.
 - c) Instruct the parties to attend at any specified date and time to answer in front of the other party any queries that the Council may have in respect of the submissions received.
 - d) Take the initiative in ascertaining the facts and the law, provided that the rules of natural justice are preserved and
 - e) In the event of any party declining to participate, to proceed with the review on the basis of such information as has been properly provided and draw such adverse inferences from such non-participation as the circumstance justify.
- 2.4 Both the complainant and the complainee shall do all things necessary for the proper and speedy conduct of the review and shall comply without delay with any instruction issued by the Council.

SECTION C, 2.0 Procedure (continued)

- 2.5 For the avoidance of doubt both the complainant and the complaine e shall bear their own costs of participating in the review and preparing any reports and information requested by the Council.
- 2.6 The Council may not be called to give evidence, nor may its written recommendation be used, in any subsequent legal or arbitral proceedings arising from, or in connection with, the matters in issue except that the written recommendation may be used by either the complainant or the complaine e to assist in any subsequent Mediation.
- 2.7 The complainant and the complaine e expressly acknowledge that the Council shall not be liable for any act or omission whatsoever in, or in relation to, the review, unless such act or omission shall have been shown to have been in bad faith.
- 2.8 The review by the Council is private and confidential. The complainant, the complaine e and the Council will keep the matter entirely confidential except as required by law and any disciplinary procedures of the Council.
- 2.9 Individual complaints shall be retained within the Council's files for record purposes.
- 2.10 If no settlement has been reached within 15 days of completion of the review by the Council then, even with an objection from a member complaine e, a non member complainant may apply to the Chairman or Vice Chairman, of the Channel Islands Branch of the Chartered Institute of Arbitrators, for the appointment of a Mediator to assist the complainant and the complaine e to reach a settlement. Such application to be copied to the Chairman of the Jersey Construction Council.
- 2.11 By mutual consent the complainant and the complaine e may at any time jointly apply to the Chairman or Vice Chairman of the Channel Islands Branch of the Chartered Institute of Arbitrators for the appointment of a Mediator to assist them to reach a settlement. Such application to be copied to the Chairman of the Jersey Construction Council.

3.0 Mediation

- 3.1 On receipt of such an application accompanied by the relevant fee the Chairman or Vice Chairman of the Channel Islands Branch of the Chartered Institute of Arbitrators will appoint a Mediator.
- 3.2 The Mediator appointed by the Chairman or Vice Chairman of the Channel Islands Branch of the Chartered Institute of Arbitrators shall have full authority to conduct the Mediation in accordance with the Model Mediation Procedure published by the Centre for Effective Dispute Resolution [CEDR], or any other

SECTION C, 3.0 Mediation (continued)

- recognised mediation procedure agreed between the complainant and the complaine, and to vary that procedure with the agreement of the Parties.
- 3.3 Every person involved in the Mediation will keep confidential any information arising out of, or in connection with, the Mediation, including the facts of any settlement and its terms.
 - 3.4 All information arising out of, or in connection with, the mediation will be without prejudice, privileged and not admissible as evidence, nor able to be disclosed in any current or subsequent litigation or other proceeding whatsoever, except that this does not apply to any information which would in any event have been admissible, or able to be disclosed, in such proceedings.
 - 3.5 Any settlement reached in the Mediation will be legally binding once it has been written up in the form of an agreement and signed by, or on behalf of, the Parties.
 - 3.6 The Mediator may not be called to give evidence, nor act as a Consultant, Arbitrator or Expert in any litigation or other proceedings whatsoever arising from, or in connection with, the matters in issue in the Mediation.
 - 3.7 Unless the parties agree otherwise the Mediator's fees and other expenses of the Mediation shall be borne equally by the Parties. Payment of these fees and expenses shall be made in accordance with the terms and conditions of the Mediation Agreement.
 - 3.8 For the avoidance of doubt both the complainant and the complaine shall bear their own costs and expenses of participation in the Mediation.
 - 3.9 Any Party may withdraw from the Mediation at any time and shall immediately notify the Mediator and all other Parties in writing and the Mediation shall terminate upon the receipt by the Mediator of such notification.
 - 3.10 In the event of no settlement agreement being concluded, or in the event of withdrawal by any Party and consequential termination of the Mediation, then, even with an objection from a member complaine, a non-member complainant may apply to the Chairman or Vice Chairman of the Channel Islands Branch of the Chartered Institute of Arbitrators for a final and binding resolution of the dispute to be determined by Arbitration.
 - 3.11 By mutual consent the complainant and the complaine may at any time jointly apply to the Chairman or Vice Chairman of the Channel Islands Branch of the Chartered Institute of Arbitrators for a final and binding resolution of the dispute to be determined by Arbitration.
 - 3.12 Both the complainant and the complaine expressly acknowledge that neither the Council, the Chartered Institute of Arbitrators, nor the Mediator shall be liable to the complainant or the complaine for any act or omission in connection with the services provided by them, their servants or agents, in relation to the Mediation, unless such act or omission shall have been shown to have been in bad faith.

SECTION C

4.0 Arbitration

- 4.1 On receipt of such application accompanied by the relevant fee the Chairman or Vice Chairman of the Channel Islands Branch of the Chartered Institute of Arbitrators shall appoint a sole Arbitrator to determine the matters in dispute in accordance with the Rules of the Chartered Institute of Arbitrators (Channel Islands Branch) Arbitration Scheme for the Resolution of Disputes in the Construction Industry/ Property Matters [The Scheme].
- 4.2 Subject to the right of the Parties to agree any matter concerning the Procedures to be adopted, the Arbitrator shall have the jurisdiction and power to direct the procedure of the Arbitration.
- 4.3 In particular and without prejudice to the jurisdiction and powers set out in The Scheme the Arbitrator shall have: -
- a) the widest discretion permitted by law to ensure the just, expeditious, economical and final determination of the dispute;
 - b) jurisdiction to rule on his own Jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement, or to his terms of reference;
 - c) the power, upon written notice to a defaulting Party, to proceed in the Arbitration if either Party fails or refuses to comply with the agreed Rules or the Arbitrator's directions;
 - d) the power to grant relief on a provisional basis;
 - e) the power to decide all procedural and evidential matters;
 - f) the power to instruct the Parties in respect of the timing and order of the exchange of submissions.
- 4.4 Unless the Parties otherwise agree, or an Award is by consent, all Awards published by the Arbitrator shall be in writing, dated and signed by the Arbitrator and shall contain sufficient reasons to show why the Arbitrator has reached the decisions.
- 4.5 The Award of the Arbitrator shall be Final and Binding in respect of the matters in dispute.
- 4.6 The Arbitrator shall determine by Award the recoverable costs of the arbitration and shall direct, to and by whom, and in what manner those costs, or any part thereof, shall be paid.
- 4.7 The Arbitrator shall determine the recoverable costs of the arbitration on the general principle that costs should follow the event except where it appears to the Arbitrator that in the circumstances this is not appropriate in relation to the whole, or the part, of the costs.
- 4.8 The recoverable costs of the Arbitration shall comprise: -

SECTION C, 4.0 Arbitration (continued)

- a) the Arbitrator's fees and expenses, the costs of hiring rooms for meetings and/or hearings and any other costs determined by the Arbitrator to be costs in the Arbitration;
 - b) the appointment fee payable to the Channel Islands Branch of the Chartered Institute of Arbitrators;
 - c) the legal or other costs of the parties.
- 4.9 The Arbitrator may not be called to give evidence in any subsequent litigation or other proceedings arising from, or in connection with, the matters in dispute.
- 4.10 The Parties expressly acknowledge that neither the Arbitrator, nor the Channel Islands Branch of the Chartered Institute of Arbitrators, nor the Council, nor any of their servants or agents, shall be liable to the Parties for any act or omission whatsoever in, or in relation to, the Arbitration, unless such act or omission shall have been shown to have been in bad faith.

SECTION D

PROCEDURES FOR FILING A COMPLAINT AGAINST THE JERSEY CONSTRUCTION COUNCIL

1.0 INTRODUCTION

- 1.1 This section outlines the responsibilities of the Council and the Complainant in regard to complaints against the Jersey Construction Council.

2.0 PROCEDURE

- 2.1 In order to be considered formal complaints must be submitted in writing using the Council's "COMPLAINT FORM" signed and sent to the "CHAIRMAN". The Council will not normally entertain complaints that are not in writing or that are submitted anonymously, nor will it consider complaints submitted electronically or on behalf of other individuals.
- 2.2 The "CHAIRMAN" shall review the complaint with the Executive Officers of the Board within 15 days of receipt of the formal complaint and advise the complainant regarding the status of the complaint, to include one of the following:-
- a) The complaint has no substance and will not be actioned.
 - b) Further information or documentation is required before a full review can be completed.
 - c) The complaint has been upheld and disciplinary action may be taken.
- 2.3 If the complainant is not satisfied with the decision of the Council then within seven days of receipt of the decision of the Council the complainant may forward the complaint together with the decision of the Council to the Appeals Committee for review and action.
- 2.4 The Appeals Committee shall be constituted in accordance with rule 2.7.1 of the Jersey Construction Council and shall comprise the Chairman for the time being of the Construction Industry Board, the President for the time being of the Law Society of Jersey and such person who shall for the time being be nominated for such purpose by the President of the Channel Islands Branch of The Chartered Institute of Arbitrators.
- 2.5 The Appeals Committee shall within due time inform the Council and the Complainant of the Procedure and timescale that it intends to adopt in reviewing the complaint.
- 2.6 The decision of the Appeals Committee shall be final and binding on the Complainant and the Council.

COMPLAINT AGAINST JERSEY CONSTRUCTION COUNCIL (JeCC) MEMBER INFORMATION SHEET AND FORM

- 1.0 The following is intended to provide information to persons wishing to file a complaint about a member or member institution of the Jersey Construction Council.

Before filing a complaint, please read the “POLICY DOCUMENT FOR COMPLAINTS AND DISPUTES FOR THE JERSEY CONSTRUCTION COUNCIL”

The Council reviews complaints against its members and member institutions submitted members and non-members. This information helps the Council to ensure that its members and member institutions maintain the standards required by them for accreditation to the Council. Procedures have been established therefore to provide a mechanism for the Council to consider complaints that address significant violations of the Council's standards.

All members are required by the Council to have in place adequate procedures for addressing complaints by their clients, employees and others. As outlined in the Policy Document for Complaints and Disputes for the Jersey Construction Council, it is the responsibility of the complainant first to attempt to resolve the matter with the member or member institution. The complainant is responsible for providing evidence that all available remedies have been exhausted. In order to file a complaint the complainant must describe these efforts on the Complaint Form.

2.0 HOW TO FILE A COMPLAINT

Please use the attached COMPLAINT FORM to submit a formal complaint. You must complete all applicable sections of this form before the complaint will be reviewed.

It must be submitted in hard copy only, duly signed by the complainant.

Please note that if you are requested to provide a summary of the Complaint you should do so in no more than 200 words. Should the Complaint be considered further, supporting documentation may be requested at that time.

COMPLAINT FORM

To:

FOR OFFICIAL USE:

REF:

**THE EXECUTIVE SECRETARY
Jersey Construction Council
Gemini Cottage
La Rue du Douet de Rue
St Lawrence
JE3 1GY**

1.0 COMPLAINANT

1.1 Name:

1.2 Address:

1.3 Tel: Fax: E-mail:

1.4 JeCC Member: Yes/No

2.0 COMPLAINEE

2.1 Name:

2.2 Address:

2.3 Tel: Fax: E-mail:

2.4 JeCC Member: Yes/No

COMPLAINT FORM

3.0 NATURE OF COMPLAINT (to include nature and/or amount of remedy sought)

(Attach a copy of your initial complaint letter or, if requested to do so, provide in no more than 200 words a summary of the complaint and the remedy sought)

COMPLAINT FORM

4.0 HISTORY OF PREVIOUS ACTIONS TAKEN TO REMEDY COMPLAINT

Please indicate any actions that have been taken including correspondence between the parties concerned and any external actions taken including litigation.

COMPLAINT FORM

5.0 DECLARATION

- 5.1 I understand that the Jersey Construction Council has authority to enforce only its own Policy Documents and Codes of Practice.
- 5.2 I understand that the Jersey Construction Council has no authority to enforce compliance with any recommendation made by it following its review of a dispute, except that a non-compliant member may face disciplinary measures.
- 5.3 I understand that the Jersey Construction Council will not consider complaints submitted for resolution under any other process nor review the decisions reached therein.
- 5.4 I confirm that I have not commenced any other process in respect of the resolution of this complaint.
- 5.5 I understand that in processing my complaint the Jersey Construction Council may disclose the complaint and any related information supplied to all relevant parties.
- 5.6 To the best of my knowledge all information I have given, above or attached to, this complaint is true and complete.
- 5.7 I have read the Policy Document for Complaints and Disputes for the Jersey Construction Council and agree to comply with that document and with all instructions of the Council.

6.0 **Signed:**

(In Capitals)

Dated:

COMPLAINT FORM

FOR OFFICIAL USE:

Date of Receipt of Complaint Form:

Date of Notification of receipt:

Date of response to Complaint:

Category of Complaint:

Nature of response to Complaint: -

Any further action taken: -