



**INSULATED RENDER AND CLADDING ASSOCIATION LIMITED:  
COMPLAINTS PROCEDURE**

**INSULATED RENDER AND CLADDING ASSOCIATION LIMITED  
("INCA")**

**COMPLAINTS PROCEDURE**

**1. Objective**

The objective of this Complaints Procedure ("**Procedure**") is to ensure that each Complaint is fully and fairly investigated and resolved on behalf of all affected parties, thus upholding the objectives of the Articles to (*inter alia*) maintain high standards of technical competence and ethical conduct within the Industry.

**2. Scope of Complaints Procedure**

2.1 Complaints concerning the professional or technical conduct, performance, competence and/or compliance with any of the requirements and recommendations contained in the Articles, Rules and/or Codes of the Association against (a) (subject to section 2.2) any Member or (b) any officer or other representative of the Association acting on its behalf in an official capacity (together "**Complaints**") may be made to the Association in accordance with the Procedure.

2.2 Where the Complainant is the customer of a Member and its Complaint relates to that Member, the Complaint may not be made to the Association until or unless (a) the subject matter of the Complaint has been notified to the Member by or on behalf of the Complainant, and (b) the Member has been given a reasonable opportunity to investigate the same, and (c) the Complainant has reason to be dissatisfied with the outcome of the said notification.

**3. Making a Complaint**

3.1 Any person (other than a Member) ("**Complainant**") may originate a Complaint.

3.2 Subject to sections 2.2 and 3.1, no restriction is placed by the Association on the source of any Complaint.

3.3 Each Complaint shall be made to the Association in writing (which for the avoidance of doubt does not include electronic format), shall be accompanied by the full name, address and contact details of the Complainant (and, if the Complainant is not a natural person, of the natural person making the Complaint

on its behalf), shall be dated, and shall be signed by or on behalf of the Complainant.

- 3.4 No Complaint shall purport to impose restrictions on its circulation within the Association.
- 3.5 Each Complaint shall contain a summary of the alleged facts on which it is based, and (to the extent that the circumstances referred to in section 2.2 apply) a summary of the points referred to in section 2.2(a) – (c).
- 3.6 Each Complaint shall be accompanied by a copy of all (if any) documentary evidence adduced in its support.
- 3.7 Once a Complaint has been made, additional evidence from the Complainant will not be accepted unless specifically requested by the Secretariat.

#### **4. Initiation Procedure**

- 4.1 Each Complaint shall be made to the Secretary of the Association (who, and whose staff, are together referred to herein as "the **Secretariat**").
- 4.2 Following notification of a Complaint to it, the Secretariat shall write to the Complainant acknowledging its receipt within 5 working days of the date of receipt of the complaint, allocating to it a unique reference number, and enclosing a copy of this Procedure.
- 4.3 At all material times the Secretariat shall be the exclusive point of contact between (a) the Association and the Complainant and (b) the Association and the person about whom the Complaint has been made ("**Respondent**").

#### **5. Action to be taken by the Secretariat following receipt of a Complaint**

- 5.1 Following the said acknowledgment, and subject to section 5.2, the Secretary and the consultant appointed by the Association from time to time to provide it with technical support services ("the **Consultant**") shall jointly decide, by reference to section 5.3, whether the Complaint requires investigation.
- 5.2 If the Secretariat and/or the Consultant has a conflict of interest (as set out in the Annex) with the Complainant and/or the Respondent (together "the **Parties**") *in re* the Complaint ("**Conflict**") then the decision whether the Complaint requires investigation shall be made by a member of the Board who has no Conflict.
- 5.3 A Complaint shall not require to be investigated to the extent that:
  - 5.3.1 it falls outside the scope specified in section 2;
  - 5.3.2 it fails to comply with any applicable requirement in the Procedure;
  - 5.3.3 it relates to a matter that the Secretariat reasonably considers to be frivolous, repetitious or manifestly unreasonable;
  - 5.3.4 as at the date of the Complaint and/or of the occurrence of the act or omission about which the Complaint was made, the Respondent was not (as the case may be) a Member or an Officer or other representative of the Association acting on its behalf in an official capacity;

- 5.3.5 to the extent that its subject matter relates to an issue covered by a warranty given by or on behalf of the Respondent, the period of the warranty expired prior to the date of the Complaint;
- 5.3.6 its subject matter relates to aesthetics on an installation that has been completed within tolerances that meet British Standards;
- 5.3.7 its subject matter has been the subject of a ruling by a judicial, arbitral, regulatory, professional or other authority of competent jurisdiction (together "**Authority**"); and/or
- 5.3.8 its subject matter is the subject of litigation or arbitration or investigation by an Authority. The Association shall stay its investigation of any Complaint in the event that litigation or arbitration relating to its subject matter is commenced after its date, and may stay its investigation of any Complaint if an investigation by an Authority relating to its subject matter is commenced after its date.
- 5.4 In the event of a decision that the Complaint does not require investigation, the Secretariat shall write to the Complainant to that effect.
- 5.5 In the event of a decision that the Complaint requires investigation, the Secretariat shall write to the Respondent stating:
- 5.5.1 that a Complaint has been made;
- 5.5.2 the identity of the Complainant;
- 5.5.3 the nature of the Complaint;
- 5.5.4 the said decision; and
- 5.5.5 providing to the Respondent copies of the Complaint and of all evidence submitted by the Complainant to the Association in support thereof.
- 5.6 In the event of a decision that the Complaint requires investigation, the Secretariat shall notify the Complainant thereof, and inform it that the costs to be incurred by the Association in investigating it (of which the Secretariat shall endeavour to provide its best estimate to the Complainant in advance) shall be reimbursable by the Complainant in the event that the Complaint is rejected.
- 5.7 In the event of a decision that the Complaint requires investigation, the Secretariat shall:
- 5.7.1 require each then member of the Board ("**Board Member**") to declare in writing to the Secretariat whether he has a Conflict, and the declaration by a Board Member of a Conflict shall disqualify him from any participation in the Procedure *in re* that Complaint; and
- 5.7.2 nominate the Association's Vice Chairman (or, if he has declared a Conflict, a Board Member who has declared in accordance with section 5.7.1 that he has no Conflict) to be the person who adjudicates any Appeal pursuant to section 9 (the "**Appointed Person**").

5.8 All subsequent references herein to the Board and to Board Members shall be deemed to exclude (a) those Board Members who are so disqualified and (b) the Appointed Person.

5.9 The Board shall delegate the task of investigating the Complaint to a committee (the "**Committee**") comprising a Board Member and two members of the Association's Technical Committee, each of whom shall have declared in writing to the Secretariat that he has no Conflict, and whose identities shall be notified to the Parties by the Secretariat.

## **6. Duties**

6.1 It shall be a duty of each Member (whether or not it is a Party) to co-operate fully (if so required by the Secretariat on behalf of the Committee) with the Committee's investigation of any Complaint unless it is prevented from so doing by a conflict of interest in connection therewith.

6.2 Without prejudice to the generality of the foregoing, it shall be the duty of each Respondent fully to comply with all obligations placed on it by the Procedure.

6.3 The full compliance with the obligations placed on the Complainant by the Procedure shall be a condition precedent to the implementation of the Procedure in respect of its Complaint.

## **7. Actions to be taken by the Secretariat and the Committee in connection with the investigation of a Complaint**

7.1 The Secretariat shall require the Respondent to submit to it by a specified date a fully-particularised written response to the Complaint ("**Response**") together with such other information as may reasonably be required for a decision to be reached by the Council on the Complaint.

7.2 The Secretariat shall send to the Complainant a copy of the Response (if any) and of such documentation (if any) that accompanied it, and notify to it a specified date by which it may submit to the Secretariat a rejoinder thereto ("**Rejoinder**").

7.3 The Secretariat shall notify to the Parties a date or dates on which they may make oral submissions (which, for the avoidance of doubt, shall exclude professional legal advocacy) to the Committee in support of their respective cases.

7.4 In order to assist it in reaching the Decision the Committee shall be at liberty to seek evidence (including expert evidence) from third parties.

7.5 As soon as reasonably practicable the Committee shall forward to the Board copies of the Complaint, copies of the Response, Rejoinder and evidence (if any) submitted by the Parties respectively, the Committee's report of any said oral submissions, copies of evidence (if any) as referred to in section 7.4, and the Committee's recommended Decision.

## **8. Decision**

8.1 At the next scheduled Board meeting following the date of its receipt from the Committee of the material referred to in section 7.5, or (at the Board's discretion)

at a meeting especially convened for the purpose, the Board shall decide pursuant to the Procedure and the Articles whether to uphold or to reject the Complaint, and shall notify to the Secretariat its decision ("**Decision**") and the reasons therefor.

- 8.2 The Secretariat shall promptly thereafter notify the Decision and the said reasons to the Parties.
- 8.3 If the Complaint is upheld and unless the Respondent files an Appeal, the Board may (in addition to its powers under paragraphs 5.10.4 and 5.12 of the Rules & Bye-Laws):-
  - 8.3.1 issue a letter of warning or reprimand to the Respondent;
  - 8.3.2 apply a period during which the performance of the Respondent is to be monitored;
  - 8.3.3 require the Respondent (if a Member) to remedy (if remediable) any defective work that was the subject of the Complaint; and/or
  - 8.3.4 impose any other penalty on the Respondent (including, if it is a Member, the suspension or termination of its Membership) that it considers appropriate to the particular circumstances.

## **9. Appeals**

- 9.1 Either Party ("**the Appellant**") may file an appeal against the Decision ("**Appeal**").
- 9.2 Each Appeal shall be made to the Secretariat in writing (which for the avoidance of doubt does not include electronic format), shall be dated, and shall be signed by or on behalf of the Appellant.
- 9.3 Each Appeal (and a copy of any documentary evidence adduced by the Appellant in support of it) must be received by the Secretariat within one month after the date on which the Secretariat dispatched the notification referred to in section 8.2.
- 9.4 Each Appeal shall specify one or more grounds, which shall be limited to the following:-
  - 9.4.1 the Decision was based on erroneous information;
  - 9.4.2 since the date of the Decision information has been obtained that, had it been known to the Board at the time of the Decision, would have resulted in a different outcome;
  - 9.4.3 the Decision contravened the Articles and/or the Rules & Bye-Laws and/or the Procedure;
  - 9.4.4 there are mitigating circumstances that justify a different Decision.
- 9.5 On receipt of an Appeal the Secretariat shall forward to the Appointed Person copies of the Complaint, copies of the Response, Rejoinder and evidence (if any) submitted by the Parties respectively, the Committee's report of any said

oral submissions, copies of evidence (if any) as referred to in section 7.4, the Decision, the Appeal, and copies of evidence (if any) as referred to in section 9.3.

- 9.6 The Secretariat and the Appointed Person shall jointly decide whether the Appeal requires investigation. An Appeal shall not be investigated to the extent that any of sections 5.3.2 - 5.3.8 (*mutatis mutandis*) applies to it, and/or if it fails to comply with any one or more of sections 9.2, 9.3 and 9.4.
- 9.7 In the event that the Secretariat and the Appointed Person jointly decide that the Appeal requires investigation, the Secretariat shall:-
  - 9.7.1 notify the Board;
  - 9.7.2 notify the other Party of the Appeal;
  - 9.7.3 notify the identity of the Appointed Person to the Parties; and
  - 9.7.4 (If the Appellant is the Complainant) notify it that the costs to be incurred by the Association in investigating the Appeal (of which the Secretariat shall endeavour to provide its best estimate to the Appellant in advance) shall be reimbursable by the Appellant in the event that the Appeal is dismissed.
- 9.8 The Appointed Person shall act with promptness and discretion in order to resolve the Appeal.
- 9.9 The decision of the Appointed Person on the Appeal (which shall be final) shall be to recommend that the Board does one of the following:-
  - 9.9.1 dismiss the Appeal;
  - 9.9.2 vary the Decision;
  - 9.9.3 quash the Decision and substitutes another one in its place.
- 9.10 Unless the said recommendation is manifestly erroneous or unreasonable the Board shall promptly implement it (together (where applicable and in addition to its powers under paragraphs 5.10.4 and 5.12 of the Rules & Bye-Laws) with any step (*mutatis mutandis*) listed in section 8.3), and the Secretariat shall notify the Parties accordingly.

## **10. Publicity**

- 10.1 The Association shall be entitled to publicise, whether in its minutes or otherwise:-
  - 10.1.1 any Decision (unless it is the subject of a pending Appeal) and the reasons therefor;
  - 10.1.2 the outcome of any Appeal, and the reasons therefor; and
  - 10.1.3 any step taken by the Council under sections 8.3 and/or 9.9.
- 10.2 Each Party ("the **Recipient**") shall accord strict confidentiality to all information that it receives from the other Party or from the Association relating to the

Complaint and to its investigation and resolution pursuant to the Procedure unless (if at all) it has been publicised by the Association pursuant to section 10.1 or it has been required to be disclosed by an Authority or it has fallen into the public domain through no fault of the Recipient.

**11. Costs**

11.1 If a Complaint is upheld (at first instance and/or on Appeal) the Association may impose upon the Respondent such costs penalty as it considers reasonably appropriate in the circumstances.

11.2 If a Complaint is rejected (at first instance and/or on Appeal), the Complainant shall reimburse to the Association its costs of investigating the same promptly on demand.

**12. General**

12.1 All references herein to sections are to the sections of the Procedure, all references herein to Articles and Rules and Bye-Laws are to the Articles of Association and the Rules and Bye-Laws respectively of the Association and, unless otherwise stated herein, each defined term used in the Procedure shall be construed in accordance with the Articles and Rules & Bye-Laws.

12.2 Neither Party's statutory rights are affected by the implementation of the Procedure.

## **Annex**

### **Conflict of Interest**

A conflict of interest arises when a person has a personal or organisational interest that may influence or appear to influence their impartiality. The examples provided below are not exhaustive.

#### **1. Personal Financial Interests**

Including:

- Employment
- Paid consultancy or Directorship
- Ownership of stocks and shares
- Paid membership of advisory board
- Acting as an expert witness
- Other commercial dealings.

#### **2. Organisational Financial Interests**

Including:

- Sub-contracting of staff to or from either the Complainant or Respondent.

#### **3. Non-financial Interests**

Including:

- Personal or professional relationship with an organisation and/or individual to which or to whom the Complaint relates.

**Any questions on the INCA Complaints Procedure should be directed to:**

**INCA**

**6-8 Bonhill Street, London, EC2A 4BX**

**T: 0844 249 0040 F: 0844 249 0042 [info@inca-ltd.org.uk](mailto:info@inca-ltd.org.uk)**

**[www.inca-ltd.org.uk](http://www.inca-ltd.org.uk)**