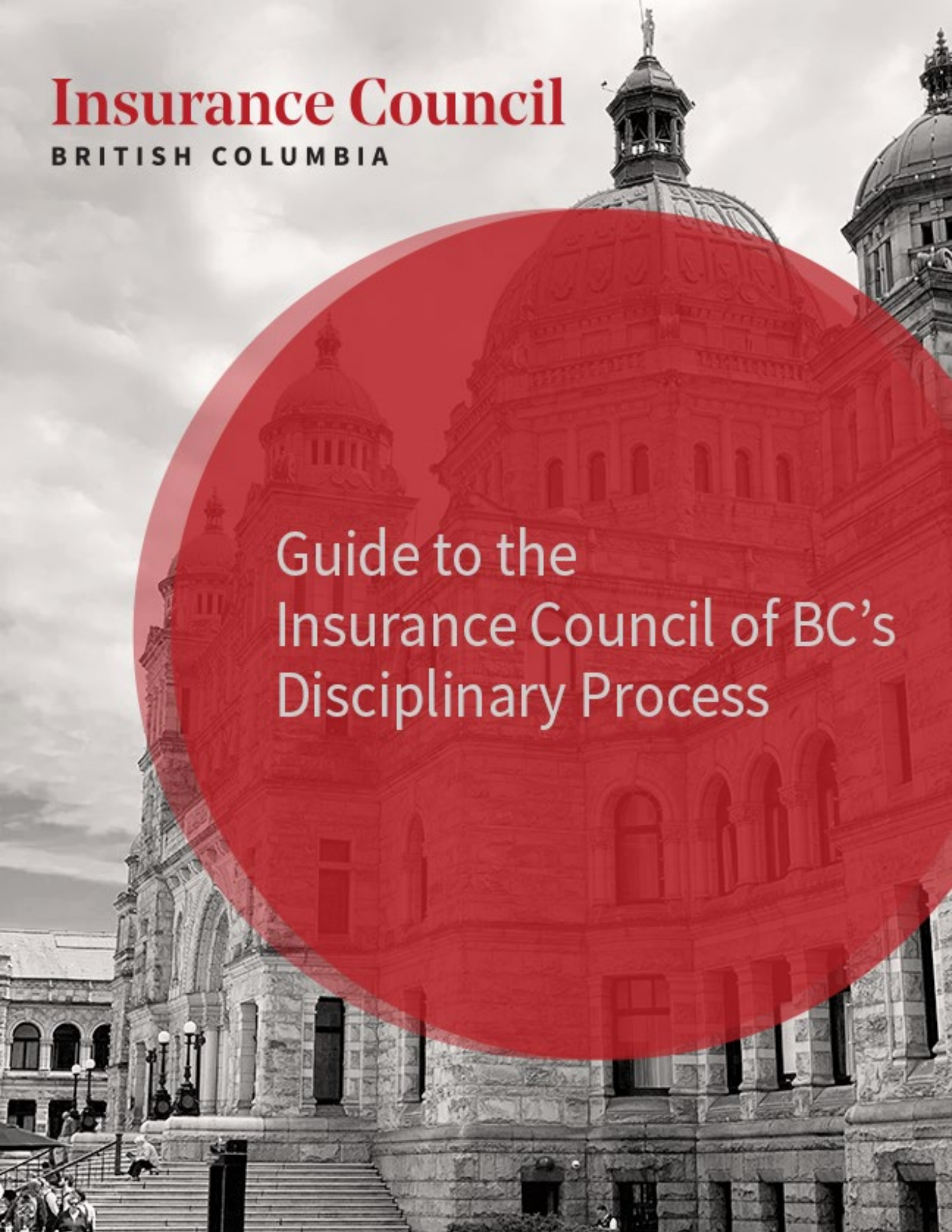

Insurance Council
BRITISH COLUMBIA

Guide to the Insurance Council of BC's Disciplinary Process

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OTHER IMPORTANT INFORMATION

INSURANCE COUNCIL OF BRITISH COLUMBIA DISCIPLINARY PROCESS

COMPLAINT REVIEW

The Insurance Council reviews complaints received in writing against insurance licensees *(insurance salespersons, agents, agencies, adjusters and travel agents)*.

Reviews of complaints typically take less than 90 days.

Outcomes:
Reviews of complaints commonly result in the following outcomes:

- The matter is referred for investigation.
- A letter is issued to the licensee on appropriate conduct or procedures requiring correction ("Reminder letter") or providing advice regarding best practices to be followed ("Best Practices letter").
- A breach is not established.
- The complaint falls outside the Insurance Council's area of regulatory responsibility.

INVESTIGATION

If the Insurance Council has reason to believe that a breach of the *Financial Institutions Act*, Council Rules or Code of Conduct may have occurred, an investigation is initiated.

Investigations are usually completed within 450 days.

Outcomes:
The most common outcomes of investigations are:

- The matter is referred to a Review Committee.
- A Reminder letter or a Best Practices letter is issued.
- The matter is closed if disciplinary sanctions are not warranted.

REVIEW COMMITTEE

If the Insurance Council determines that the matter needs to be reviewed further, the licensee under investigation is invited to attend a Review Committee meeting.

At the meeting, the licensee has the opportunity to explain their position, respond to the investigation report and provide further information with the aid of their own legal counsel.

Outcomes:
The most common outcomes at the conclusion of a Review Committee meeting are as follows:

- Disciplinary sanctions are recommended.
- Licensees may be assessed investigative costs.
- The matter is referred to Insurance Council staff for further investigation.
- A Reminder letter or a Best Practices letter is issued.
- The investigation is closed with no action if no discipline is warranted.

COUNCIL DECISION

After the Review Committee meeting, a summary of the file is presented to the Insurance Council's voting members for a decision regarding discipline.

The voting members may issue a written intended decision if disciplinary sanctions against the licensee are warranted.

At that time, if the licensee accepts the intended decision, the Insurance Council issues an order.

HEARINGS

After receiving an Intended Decision, a licensee has 14 days from receipt to request a hearing. If unsuccessful, licensees are usually assessed the cost to hold a hearing.

A hearing is similar to a court proceeding.

The Hearing Committee will weigh the evidence as though it is hearing and seeing the evidence for the first time.

Licensees are entitled to their own legal counsel.

Disciplinary action imposed by the Hearing Committee may be more or less severe than what was set out in the intended decision.

The licensee may appeal the final decision issued following a hearing with the Financial Services Tribunal.

Insurance Council
BRITISH COLUMBIA

1. OUR MANDATE

The Insurance Council of British Columbia ("Insurance Council") is appointed by the Province of British Columbia to license and regulate the activities of life and general insurance agents, general insurance salespersons, and independent insurance adjusters in British Columbia ("Licensee"). Under the *Financial Institutions Act* (the "Act"), the Insurance Council has a mandate to protect the public with respect to the sale of insurance products and services in British Columbia.

The Insurance Council has a Code of Conduct and Rules that establish a professional framework that promotes ethical conduct, integrity, and competence in the industry. The Insurance Council is required to ensure Licensees comply with the Act, the Code of Conduct and the Rules. To meet these responsibilities, the Insurance Council responds to complaints about persons or agencies who hold, or who formerly held, a licence issued by the Insurance Council.

In addition to reviewing matters arising from public complaints, the Insurance Council is authorized to conduct audits or investigations of its Licensees' insurance practices. If, during an audit investigation, a breach of the Act, Rules and/or Code of Conduct is found, the Insurance Council may pursue disciplinary action against a Licensee or group of Licensees.

2. THE DISCIPLINARY PROCESS

COMPLIANCE REVIEW

2.1.1. THE INSURANCE COUNCIL RECEIVES A COMPLAINT

Complaints from the public about a Licensee's conduct should contain as much information as possible, including but not limited to:

- specific details about a particular transaction or interaction;
- a timeline of events; or
- copies of the related policies, transactional documents or other records relating to the conduct at issue.

Complaints may be submitted to practice@insurancecouncilofbc.com or mailed to:

Insurance Council of British Columbia
c/o Practice and Quality Assurance Department
1400-745 Thurlow Street
Vancouver, BC
V6E 0C5

If requiring help filing a complaint, complainants may contact Council at 604-688-0321 (Metro Vancouver) or 1-877-688-0321 (toll-free within Canada).

Accessibility for complainants with disabilities: If a complainant has a disability which requires accommodation, the Insurance Council will consider alternate methods of receiving the complaint.

2.1.2. INSURANCE COUNCIL STAFF REVIEWS COMPLAINT

Within 3 business days after receiving a complaint or as soon as possible thereafter, a Compliance Officer will review the complaint to determine whether the matter is within the Insurance Council's jurisdiction. If the matter is outside of the Insurance Council's jurisdiction, the Compliance Officer will conclude the complaint and advise the complainant of the outcome. In some cases, the Insurance Council may refer the complaint to another regulatory body.

If the complaint is within the Insurance Council's jurisdiction, the Compliance Officer will complete a review of the matter. During the review, the Compliance Officer will consider whether potential breaches of the Act, Rules, or Code of Conduct exist and, in most cases, will inform the Licensee of the complaint and potential breaches. The Compliance Officer may request information and documents from the complainant and/or Licensee as necessary.

2.1.3. CONCLUDING THE COMPLIANCE REVIEW

After completing the review, the Compliance Officer may:

1. conclude the compliance review if the matters arising are outside of the Insurance Council's jurisdiction;
2. conclude the compliance review with no action because:
    a. the conduct complained of does not constitute a breach of the Act, Rules or Code of Conduct;

   b. there is insufficient evidence to support the complainant's allegations against the Licensee; or,
   c. for any other reason permitted by the Act;
3. issue a letter to the Licensee setting out expectations concerning appropriate conduct or procedures, and potential consequences of similar conduct in future, and close the file (i.e., a "Reminder letter");
4. provide advice to the Licensee concerning best practices and close the file (i.e. a "Best practices letter");
5. refer the matter to the Insurance Council's Investigations Department for further investigation; or
6. take other reasonable action.

If a compliance review is concluded and the file is closed with no action, the complaint and finding are recorded on the Licensee's file. At this stage the Licensee and the complainant are typically advised no further action will be taken. If the complainant or an interested party has concerns about the manner in which the complaint was addressed, they may request the matter be reviewed by a manager.

In all cases, the Licensee will be advised if a complaint is referred to the Insurance Council's Investigations Department (see 2.2. Investigations), a Review Committee (see 2.3. The Review Committee Process) or the Insurance Council's voting members.

INVESTIGATIONS

2.2.1. COOPERATION

Licensees are required to cooperate with the Insurance Council's investigations. During an investigation, the Insurance Council will take necessary steps to ensure all relevant information is gathered, which may include but is not limited to:

1. summoning and enforcing the attendance of Licensees or witnesses at interviews;
2. compelling Licensees or witnesses to produce records and documents;
3. entering any place of business of a Licensee or any officer, director, controlling shareholder, partner or nominee of a Licensee;
4. entering any place the investigator reasonably believes to contain evidence relevant to the purposes of the investigation;
5. requesting a justice to issue a warrant to enter premises that are occupied as a residence in order to exercise the powers of investigations conferred to the Insurance Council under the Act, and,
6. taking other reasonable action.

Where a Licensee refuses or neglects to promptly reply to an inquiry, the Insurance Council can impose sanctions or take other disciplinary action against the Licensee.

2.2.2. LENGTH OF INVESTIGATIONS

Each investigation is unique and investigation timelines vary; however, the Insurance Council is committed to resolving complaints in a timely manner. Council will update complainants and Licensees every 60 days on the progress of an investigation or as often as reasonably possible.

Licensees are required to promptly and fully reply to Council's inquires. If a Licensee fails to provide a prompt and/or full reply to the Insurance Council's inquiries, the Insurance Council may be entitled to recover costs associated with any delays caused by the Licensee's failure to cooperate.

2.2.3. CONFIDENTIALITY OF INVESTIGATIONS

The Insurance Council makes every effort to protect a Licensee's privacy during investigations. However, if Council determines the Licensee's alleged conduct poses a risk to the public, Council can take immediate action against a Licensee, including by immediately suspending the Licensee's license or by imposing a supervision order, which may make the investigation public.

2.2.4. CONCLUDING THE FIRST STAGE OF INVESTIGATION PROCESS

Based on the evidence collected during the investigation, an investigator may do one of the following:

1. determine the matter does not warrant discipline, inform the Licensee of that determination, and close the investigation with no further action;
2. refer the matter to a Review Committee and invite the Licensee to attend the Review Committee meeting (see 2.3. The Review Committee Process);
3. refer the matter to the Insurance Council's voting members for further review;

4. issue a letter to the Licensee setting out expectations concerning appropriate conduct or procedures, and potential consequences of similar conduct in future and close the file (i.e. a "Reminder letter");
5. provide advice to the Licensee concerning best practices and close the file (i.e. a "Best practices letter"); or
6. take other reasonable action.

As with Compliance Reviews, if an investigation is concluded and the file is closed with no action, the complaint is recorded on the Licensee's file. Both the Licensee and the complainant are advised accordingly.

If the complainant or an interested party has concerns about the manner in which the investigation was concluded, the matter may be reviewed by a manager, or in exceptional circumstances may be directed to a Review Committee and/or the Council voting members for further review.

REVIEW COMMITTEE PROCESS

2.3.1. THE REVIEW COMMITTEE'S MANDATE

If, after an investigation, the Insurance Council determines a Review Committee should review the results of the investigation, a Review Committee will be formed to determine whether:

1. further investigation is required;
2. the file should be closed with or without further action; or
3. the Insurance Council should consider taking disciplinary action against the Licensee.

2.3.2. ATTENDING THE REVIEW COMMITTEE MEETING

A Licensee whose conduct is to be reviewed by a Review Committee will be invited to attend the Review Committee meeting to answer questions and provide information about the matters at issue in the investigation. The results of the investigation will be shared with the Licensee and the Review Committee members in advance of the meeting to facilitate the Licensee's participation at the meeting.

Licensees are encouraged to attend the meeting as it provides an early opportunity to present or explain anything the Licensee considers important in the circumstances.

Licensees are entitled to bring legal representation to a Review Committee meeting. They may also be accompanied by a company representative and, in some cases, an advocate for themselves with prior approval from the Insurance Council. However, the Committee can exclude a lay person acting as an advocate if that person:

- is not competent to advocate on behalf of the Licensee;
- is acting contrary to the Law Society of British Columbia requirements;
- is not complying with the duties and responsibilities of an advocate or advisor at the Review Committee meeting; or,
- for any other reason as determined by the Committee.

All Review Committee meetings are recorded as they are considered part of the investigation process. A transcript of the Review Committee meeting may be admissible as evidence at a discipline hearing if a hearing is requested by the Licensee.

2.3.3. CONCLUDING THE REVIEW COMMITTEE PROCESS

Based on the evidence presented at the Review Committee meeting, the Review Committee may:

1. Direct Insurance Council staff to complete further investigation;
2. Direct Insurance Council staff to conclude the investigation and close the file with no action because:
    a. the conduct complained of does not constitute a breach of the Act, Rules or Code of Conduct;
    b. the conduct complained of is outside the Insurance Council's jurisdiction; or,
    c. there is insufficient evidence to support the allegations against the Licensee.
3. Direct Insurance Council staff to issue a letter to the Licensee setting out expectations concerning appropriate conduct or procedures, and potential consequences of similar complaints in the future and close the file (i.e. a "Reminder letter");

4. Direct Insurance Council staff to issue a letter to the Licensee providing advice to the Licensee concerning best practices and close the file (i.e. a "Best practices letter");
5. Recommend to the voting Council disciplinary sanctions be imposed against the Licensee; or
6. Direct or recommend that other reasonable action be taken.

If, on direction from the Review Committee, the file is closed, the Licensee and complainant will be notified accordingly.

If the Review Committee finds that the information contained within the investigation supports a finding that the Act, Council Rules and/or the Code of Conduct has been breached, the Review Committee will prepare a report to the Insurance Council's voting members setting out its recommendation and the basis for the recommendation.

More information about the Review Committee process is available here.

FULL VOTING COUNCIL PROCESS

2.4.1. INSURANCE COUNCIL'S INTENDED DECISION AND FINAL DECISION

After receiving the results of an investigation and/or a report with recommendations from a Review Committee, the Insurance Council may issue a written intended decision to the Licensee.

The intended decision will include the following:

1. a finding as to whether the conduct investigated constitutes a breach of the Act, Rules or Code of Conduct; and,
2. a summary of the factors and evidence considered by the Review Committee in reaching the intended decision.

If the conduct investigated constitutes a breach of the Act, Rules or Code of Conduct, the intended decision will identify the disciplinary action the Insurance Council has determined is appropriate in the circumstances.

Under the Act, the Insurance Council may:

1. reprimand the Licensee;
2. impose a fine of up to $25,000 or an individual Licensee and $50,000 per offence for a Licensee that is an agency;
3. require a Licensee to take certain measures related to the conduct of insurance business (such as complete remedial courses or other education);
4. place conditions or restrictions on a Licensee's licence (i.e. require supervision of the Licensee or downgrade the Licensee's licence);
5. suspend or cancel a Licensee's licence; and
6. order that investigation costs be assessed against the Licensee (see the Insurance Council's policy J.21 – Assessing Investigation Costs and Hearing Costs policy).

If a Licensee is subject to disciplinary action, investigation costs are typically assessed against the Licensee. Investigation costs are not assessed as a form of punishment; rather, they are assessed on the principle that Licensees whose improper conduct engages the Insurance Council's resources ought to bear some, or all, of the costs of their disciplinary proceedings so the costs are not borne by other Licensees. Investigation costs are tracked from the time the investigation is initiated until the matter has been concluded.

Investigation costs can include but are not limited to:

1. time spent by Insurance Council staff conducting the investigation, assessed in accordance with the Insurance Council's Costs Assessment Schedule;
2. expenses incurred by the Insurance Council during the investigation; third-party costs (e.g. expert reports, witness costs, interpreter costs, and process servers); legal fees relating to the investigation; and travel expenses relating to the investigation.

Assessment of investigation costs is subject to the Insurance Council's Approved Policies, which are reviewed and updated periodically.

Licensees have 14 days from the date they receive the intended decision to request a hearing before the Insurance Council if they wish to dispute the Insurance Council's findings or proposed disciplinary

action (see 2.5 Hearings below). If no hearing is requested within the 14-day period, the intended decision becomes the Insurance Council's final decision and the order set out in the intended decision takes effect immediately. A copy of the order will be provided to the Licensee. The order will be published on the Insurance Council's website and on the Canadian Insurance Regulators Disciplinary Actions ("CIRDA") website.

2.4.2. IMMEDIATE DISCIPLINARY ACTION – SECTION 231 & 238 ORDERS

The Insurance Council may issue an order under sections 231 & 238 of the Act if Council considers the length of time required to hold a hearing would be detrimental to the due administration of the Act. A section 231 & 238 order allows the Insurance Council to take immediate disciplinary action against a Licensee, including by ordering supervision, a licence suspension or cancellation and any other action it considers necessary to protect the public.

If a Licensee disagrees with an order made pursuant to sections 231 & 238, the Licensee may, within 14 days of receiving a copy of the order, request a hearing, or file an appeal with the Financial Services Tribunal.

2.5.1 REQUESTING A HEARING

A Licensee may request a hearing to dispute all or part of an intended decision or a Section 231 & 238 Order, including the Insurance Council's findings or intended disciplinary action. A request for a hearing must be delivered to the Insurance Council in writing within 14 days of the Licensee's receipt of the Insurance Council's written notice of intended decision.

If a hearing is requested, the Insurance Council's intended decision is withdrawn. After an intended decision is withdrawn, it is open to the Insurance Council to impose any disciplinary action it determines is appropriate based on evidence presented at the hearing. The Insurance Council may impose disciplinary action that is more or less severe than what was set out in the intended decision.

Licensees are responsible for their own hearing-related costs, including legal fees. Depending on the outcome of the hearing, Licensees may also be required to pay the Insurance Council's hearing costs, including legal fees incurred by the Insurance Council, disbursements, expert fees, court reporter fees, and costs incurred by the Hearing Committee. Typically, if hearing costs are imposed, the order is based on the Insurance Council's Costs Assessment Schedule, unless exceptional circumstances exist such that the Hearing Committee determines the Insurance Council's actual hearing costs should be assessed against the Licensee. More information on the hearing costs can be found in the Insurance Council's Approved Policies regarding Assessing Investigation and Hearing Costs, which is available here.

Licensees are urged to seek independent legal advice prior to disputing an intended decision.

2.5.2. HOLDING A HEARING

Once a hearing has been requested, the Insurance Council will contact the Licensee to arrange a hearing date and discuss the hearing process. The Insurance Council is required to hold a hearing within a reasonable period of time after receiving a written request for a hearing from a Licensee. A Notice of Hearing is published on the Insurance Council's website at least 14 days before the hearing. Hearings are open to the public. However, if the Hearing Committee considers that a public hearing would be unduly prejudicial to any person, the Committee may order that the public be excluded from all or part of the hearing. Hearings may be held at the Insurance Council's offices, elsewhere in the province, or virtually, at the discretion of the Insurance Council.

2.5.3. HEARING COMMITTEES

The Insurance Council will appoint a Hearing Committee for each hearing. The Hearing Committee must consist of at least three Council members. The Chair of the Committee must be a voting member of the Insurance Council and the other members may be voting or non-voting Council members. The Council members who were members of the Review Committee reviewing the matter are not eligible to be part of the Hearing Committee hearing the same matter.

2.5.4. EVIDENCE AT THE HEARING

A hearing is similar to a court proceeding. The Hearing Committee is tasked with making findings of fact and law based on evidence adduced during the proceeding. The Hearing Committee will consider and weigh evidence as though it is hearing and seeing the evidence for the first time (i.e. a hearing *de novo*).

The Insurance Council will typically enter into evidence documents gathered during the investigation. The Insurance Council may also call witnesses to give oral evidence under oath about the matters at issue. The intended decision is not entered into evidence out of fairness to the Licensee. After the Insurance Council enters its case (i.e., documents and evidence from witnesses), Licensees have an opportunity to present their evidence to the Hearing Committee about any matters at issue.

Insurance Council's Guidelines for Witnesses at a Hearing are available here.

After all the evidence has been entered, the Insurance Council and the Licensee will each be allowed to make submissions to the Hearing Committee about what they say the evidence establishes about the matters at issue.

More information about the Insurance Council's hearing process is available here.

2.5.5. LEGAL REPRESENTATION AT THE HEARING

The Insurance Council and the Hearing Committee each retain separate, independent counsel for the hearing. Neither the Insurance Council's nor the Hearing Committee's lawyers can represent the Licensee. Neither the Insurance Council's lawyer nor the Hearing Committee's lawyer can give legal advice to Licensees about their case, including about evidence the Licensee should call or the manner in which the Licensee should present their case.

Licensees are urged to seek independent legal advice about the matters at issue in their case prior to proceeding to a hearing.

2.5.6. DECISION OF THE HEARING COMMITTEE

After the hearing concludes, the Hearing Committee will review and weigh all the evidence entered at the hearing. The Hearing Committee will make findings of fact and law as required to decide whether the conduct complained of constitutes a breach of the Act, Rules or Code of Conduct and any other matters at issue arising from the Notice of Hearing.

As set out above, if the Hearing Committee concludes the conduct investigated constitutes a breach of the Act, Rules, or Code of Conduct, the Hearing Committee may impose disciplinary action that is more or less severe than what was proposed in the intended decision. The disciplinary action imposed by the Insurance Council, if any, will be issued in writing to the Licensee in the form of an order, which constitutes the Insurance Council's final decision.

Once a decision is made, the Hearing Committee will set out its findings in writing in the form of a *Reasons for Decision of the Hearing Committee*, which will contain the reasons for the Insurance Council's decision regarding the matters at issue. The *Reasons for Decision of the Hearing Committee* and the order will be provided to the Licensee. They will also be published on the Insurance Council's website and on the CIRDA website.

2.6. SANCTIONS PRINCIPLES GUIDELINES

At both the investigation and the hearing stage, in addition to the facts relevant to the complaint, the Insurance Council will consider whether any mitigating or aggravating factors should be considered when determining what disciplinary action, if any, is appropriate in each case.

Mitigating factors may include:

1. whether the breach or misconduct is isolated in nature;
2. whether the breach or misconduct was intentional;
3. the Licensee's experience in the insurance industry;
4. whether the Licensee cooperated with the Insurance Council's investigation;
5. whether the Licensee has acknowledged the misconduct and is remorseful;
6. the degree to which the Licensee's client or the public was harmed as a result of the misconduct or breach;
7. whether the Licensee has suffered other consequences or penalties;
8. whether the Licensee has made efforts to remedy the breach or misconduct; and
9. whether the Licensee has made efforts to minimize the consequences of the breach or misconduct.

Aggravating factors may include:

1. whether the Licensee has a history of similar or other complaints and/or disciplinary action;
2. whether the breach or misconduct took place over a period of time, as opposed to an isolated event;
3. whether the breach or misconduct shows flagrant disregard for the laws governing the Licensee's conduct and/or loss to victims;
4. the Licensee's experience in the insurance industry;
5. whether the Licensee has been evasive, has made material misstatements or has lied in response to the Insurance Council's inquires and investigation;
6. whether the Licensee is likely to repeat the misconduct or breach;
7. whether the Licensee denies the breach, misconduct or any involvement in the breach or misconduct and does not show remorse;
8. whether the Licensee has derived a financial benefit as a result of the misconduct or breach with or without a corresponding detriment to the Licensee's client or the public;
9. whether there is risk of harm to the public in the conduct of the business of insurance; and
10. the degree to which the Licensee's clients or the public was harmed as a result of the Licensee's misconduct or breach.

2.7. TIME FOR MEETING CONDITIONS IN AN ORDER

After the Insurance Council makes a final decision, Licensees are generally given a set period of time to comply with any conditions and/or pay any costs orders. If conditions are not met and/or if costs orders are not paid within the specified time, the Insurance Council may suspend the Licensee's licence(s). If a Licensee ceases to hold an insurance licence and has not met conditions ordered by the Insurance Council or if there is an outstanding costs order, the Licensee will not be permitted to apply or reapply for an insurance licence until the outstanding conditions are satisfied.

The Insurance Council may take legal action against Licensees or former Licensees to enforce outstanding payments resulting from disciplinary orders.

2.8. APPEALS

If a Licensee disagrees with the Insurance Council's final decision as a result of a hearing, the Licensee can appeal to the Financial Services Tribunal. More information about the Financial Services Tribunal, including applicable timelines and processes, can be found here.

The Act also names the British Columbia Financial Services Authority ("BCFSA") as a party to the decision and affords the BCFSA the right of appeal to any order of the Insurance Council.

2.9. ROLE OF THE OMBUDSPERSON

Licensees, former licensees, applicants, or complainants have the right to file a complaint about the Insurance Council to the British Columbia Ombudsperson to have their matter reviewed.

Information about the Ombudsperson's role, including information about how to make a complaint, is available on their website: https://bcombudsperson.ca/.