



The Society for Education and Training (SET) Actions Against Members Policy

This document sets out the procedures that SET will follow when it receives information that may call into question a member's suitability

Updated: September 2020

1. Introduction

- 1.1. All of the documents mentioned in this procedure can be accessed on the SET website.
- 1.2. SET is committed to ensuring that its membership procedures and decisions about membership are fair, transparent and timely, and that the procedures are administered in a sensitive manner that reflects the serious nature of the issues.
- 1.3. In accordance with its data protection policy and GDPR, SET will not publish decisions made under its membership procedures in any way that identifies the individual(s) involved, and oral hearings will take place in private. To ensure transparency and maintain confidence in its membership procedures, SET may publish statistics about matters dealt with under those procedures and may also publish anonymised case studies of matters dealt with under its membership procedures. Please refer to Appendix A for more information.

2. Receipt and review

- 2.1. SET may receive information about a member's suitability for membership from different sources, for instance:
 - SET members. Under the Code of Practice and terms and conditions of membership, SET members are required to notify SET of information that may call into question their suitability to remain a member;
 - Employers or ex-employers of SET members;
 - Third party organisations, such as the police or the Disclosure and Barring Service (DBS);
 - Members of the public, including students and colleagues.
- 2.2. Information regarding a member's suitability for membership will be given to the SET Operations Manager (the "Manager"), who will acknowledge receipt of the information within 2 working days. Where the information is received from someone other than the member, the Manager will ask that person (who is described in these procedures as "the referrer") if they wish to be kept informed about what SET does next. If they reply saying that they do wish to be kept informed, the Manager will provide them with information as described throughout this procedure.

3. Actions on receipt of information about suitability

- 3.1. The Manager will identify whether the information relates to a SET member. If it does not, or if it is not possible to identify the person to whom the information relates, SET will take no further action and will inform the referrer (if they have asked to be kept informed).

- 3.2. If the information relates to a person who is a SET member, the Manager will consider whether the information may call into question the member's suitability. The Manager will assess the information with reference to the Code of Practice and in accordance with the SET Conditions of Membership.
- 3.3. Where the Manager is satisfied that the information does not call into question the member's suitability, no further action will be taken and the referrer (if they have asked to be kept informed) will be informed of the reasons for reaching this conclusion.

4. Investigation

- 4.1. Where the information provided to SET may call into question the member's suitability, the Manager will seek further information from some or all of the following:
 - 4.1.1 The member. SET may ask the member to provide information in their possession in writing within 10 working days of the request. Alternatively, SET may ask the member to consent to SET requesting the disclosure of information about them by a third party (e.g. an employer) within the same time period such consent must be given in writing.
 - 4.1.2 Any third party who may be able to provide relevant further information, including the referrer.
- 4.2. The member should, within 10 working days of being asked, state whether they accept or dispute the accuracy of any information giving rise to the referral.
 - 4.2.1 Where they accept the accuracy of any information giving rise to the decision, they may nonetheless explain why they are suitable for continued membership notwithstanding that information;
 - 4.2.1 Where they dispute the accuracy of any information, they should state why and provide evidence to support their account. They may also explain why they are suitable for continued membership.
- 4.3. If the member is unable to provide their information in writing within the timescale required because of any disability or otherwise, they should inform SET by telephone in order that reasonable adjustments may be made. If, for instance, the member seeks an extension on health grounds, this should be supported by medical evidence.
- 4.4. If, having obtained further information, the Manager is satisfied that the matter does not call into question the member's suitability, it will inform:
 - 4.4.1. The member;
 - 4.4.2. The referrer (if they have asked to be kept informed).

- 4.5. If, having obtained further information, the Manager remains satisfied that the information may call into question the member's suitability, an Investigations Panel will be convened.
- 4.6. The Investigations Panel will establish to the best of its ability the matters of fact relating to the case and recommend to SET a course of action.
- 4.7. The Investigations Panel will consist of the SET Registrar, the SET Director and a member of the ETF Senior Management Team. It will be chaired by the SET Registrar.
- 4.8. The Investigations Panel will assess the matter with regard to the Code of Practice and in accordance with the Conditions of Membership.
- 4.9. The Investigations Panel may, but need not, meet in person to discuss its decision. Alternatively, it may deliberate via electronic communication (which may include telephone conferencing, email, video link or other means).
- 4.10. Where, having reviewed the material at its disposal, the Investigations Panel is of the view that the issue of suitability depends on a disputed issue of fact, the Panel may instigate the Oral Hearing Process. The Oral Hearing will occur within 50 working days of the Investigation Panel being convened.
 - 4.10.1. Generally, an Oral Hearing will only be required where each party relies on contradictory accounts from witnesses who are willing and able to give evidence in person and be cross-examined.
 - 4.10.2. In deciding whether an Oral Hearing is required, the Investigations Panel may take account of any factual finding made by a third party (e.g. in civil or disciplinary proceedings). Where that factual finding is disputed by the member, the Investigations Panel may take account of whether the member exercised any right of appeal against that finding – generally, the Investigations Panel will expect a member to take reasonable steps to challenge factual findings made by third parties in the third party proceedings.
- 4.11. Not every disputed issue of fact will require an Oral Hearing. Some issues can be resolved by documentary evidence. The requirement to hold an Oral Hearing is at the sole discretion of the Investigations Panel.
- 4.12. An Oral Hearing will be conducted according to the process outlined in Appendix B.
- 4.13. After reviewing all the evidence, the Investigations Panel will recommend a decision to the Manager no later than 20 working days after the Investigation panel is convened. The decision, which will be made by simple majority vote,

and once made, be the collective decision of the panel and must be one of the following:

- To take no further action against the member;
- To remove the member from membership according to the process outlined in section 5.

4.14. Following a decision by the Investigations Panel to take no further action against the member, the Manager will inform:

4.4.1. The member;

4.4.2. The referrer (if they have asked to be kept informed).

5. Removal of membership

5.1. Following a decision by the Investigations Panel to remove a member from membership, the Manager will notify the member in writing (the “notification of removal”). The notification of removal will:

- Provide the member with the reasons for removal;
- Notify the member that they may appeal the decision within 10 working days and of the criteria for appeal as set out in clause 7.1.

5.2. The Manager will send the notification of removal to the member:

- By first class post to the postal address provided by the member within 2 working days; and
- By email to any email address provided by the member within 1 working day of the decision being made.

5.3. Removal will not take full effect:

5.3.1. Until 11 working days after the date on which the notice of removal was sent, where the member has not sought an appeal.

5.3.2. Until after any appeal requested within 10 working days has concluded with a decision by the Appeals Panel (see Clause 7) to confirm the removal.

5.4. If the member responds to the decision to remove their membership, and can demonstrate that they were unable to respond to the initial request(s) for further information beyond their reasonable control, SET will refer the case back to the Investigations Panel.

5.5. Where a notice of removal has been issued, SET will notify the referrer (if they asked to be kept informed).

6. Restrictions on reapplying after removal

- 6.1. When removing a person from membership, a minimum period of 12 months from the date of the final notification of removal within which the person concerned may not make a further application for membership may be specified by the Investigations Panel. The actual final length of the restriction will be determined by the SET Director, taking into consideration the reason for the removal.
- 6.2. The SET Director may, in their absolute discretion, waive the periods specified in accordance with paragraphs 6.1 above in the event that the person concerned is able to provide material new evidence which was not available at the time of the decision.

7. Permanent exclusion from membership

- 7.1 If, during the suspension period or upon re-joining, a new investigation brought about by this policy again finds the member is unsuitable, SET may permanently exclude that member.

8. Appeal

- 8.1. A member who is dissatisfied with a decision to remove membership may seek a review of that decision within 10 working days of being informed of their removal from membership on one or more of the following grounds only:
 - Error of law (ie information presented was not taken into account, or the guidelines for Suitability were not applied correctly)
 - Serious procedural irregularity (ie the key steps in the policy were not followed);
 - The decision was one which no reasonable decision maker could have made.
- 8.2. Where an appeal is sought, the member must set out in full and in writing which of the grounds for review they are relying on, and their arguments in support of their appeal.
- 8.3. On receipt of a request for an appeal, the Manager will convene an Appeals Panel to review the appeal.
- 8.4. The members of the Appeals Panel will have had no previous involvement in the case and will consist of three members drawn from the SET Management Board and/or the SET Practitioner Advisory Group.
- 8.5. The Appeals Panel will be chaired by the SET Management Board Chair, or Vice-chair if the Chair is unavailable. Decisions will be made by simple majority vote, and once made, will be the collective decision of the panel, without dissensions or abstentions. Should a panel member become unavailable during consideration of a matter a replacement panel member may be substituted on to the panel.
- 8.6. The Appeals Panel will consider:

- 8.6.1. The original submissions to the Investigations Panel from the member and SET.
- 8.6.2. The Minutes from the meeting of the Investigations Panel and Oral Hearing if relevant, including the reason(s) for the decision made
- 8.6.3. The reasons for the appeal presented by the member.
- 8.7. The Appeals Panel may ask for further clarification from SET, which will be provided within 5 working days of the request being made.
- 8.8. The Appeals Panel may, but need not, meet in person to discuss its decision. Alternatively, it may deliberate via electronic communication (which may include telephone conferencing, email, video link or other means).
- 8.9. The Appeals Panel may receive the following support:
 - Independent legal advice;
 - Administrative support from SET.
- 8.10. The Appeals Panel will assess the matter with regard to the criteria for appeal set out in clause 7.1.
- 8.11. The Appeals Panel will make a decision within 30 working days of receiving the request for appeal from the member.
- 8.12. After assessing the matter, the Appeals Panel may:
 - Dismiss the appeal and uphold the previous decision;
 - Allow the appeal and quash the original decision.
- 8.13. The Panel will notify its decision and reasons to the parties. This notification will be known as the "notification of appeal outcome".
- 8.14. The notification of appeal outcome will:
 - Provide the member with the reasons for the panel's decision;
 - Where the panel's decision is to uphold a decision to remove a member, state that removal will take effect forthwith.
- 8.15. SET will send the notification of appeal outcome to the member:
 - By first class post to the postal address provided by the member (sent within 2 working days of the Appeal Panel's decision); and
 - By email to any email address provided by the member (within 1 working day of the appeal panel's decision).
- 8.16. SET will notify the referrer (if they have asked to be kept informed) of the outcome of the appeal.
- 8.17. The decision of the Appeals Panel is final.

- 8.18. The Appeals Panel may make recommendations to SET to ensure policies and actions of SET staff are kept in the interest of SET members.

APPENDIX A: PUBLICATIONS

- In accordance with its data protection policy and GDPR, SET will not publish decisions made under its membership procedures in any way that identifies the individual(s) involved and oral hearings will take place in private.
- However, it may supply personal data obtained through its membership procedures to third parties in accordance with its data protection policy.
- To ensure transparency and maintain confidence in its membership procedures, SET may publish annual statistics about matters dealt with under its membership procedures, including:
 - Number of applications for membership / renewal received;
 - Number of concerns about existing members dealt with under the membership procedures;
 - Number of cases resulting in provisional decisions to remove;
 - Number of cases resulting in final decisions to remove;
 - Number of reviews held, with the outcomes;
 - Number of oral hearings held.
- SET may also publish anonymised case studies of matters dealt with under its membership procedures, provided that they contain no information from which any individual(s) involved may be identified.

APPENDIX B: THE ORAL HEARING PROCESS

The parties for an oral hearing

- At an oral hearing, SET and the member will be referred to as "the parties". They may:
 - Attend the hearing;
 - Be represented by:
 - A solicitor or barrister.
 - A Trade Union representative or any person acting on behalf of a representative body.
 - A SET employee.
 - Any other person, with permission of the panel. Before giving permission, the panel may seek information about the proposed representative, including their relationship to the member and their experience of acting as a representative. The panel will usually give permission where the proposed representative is a family member or other close associate of the member.
 - Make submissions to the panel;
 - Give evidence;

- Call evidence in support of their case;
 - Rely on documentary evidence, provided that it is relevant to the issues of fact for the panel to determine.
- SET will not be liable for any costs incurred by a member in connection with an oral hearing.

Preparation for an oral hearing

- Any of the deadlines set out below may be extended by the Investigations Panel Chair on the application of a party.
- Within 10 working days of a matter being referred to an oral hearing, SET must send to the member:
 - A list of factual issues to be determined;
 - A list of witnesses SET intends to call to give oral evidence, which sets out whether they will give evidence by telephone, video-link or in person;
 - All documents SET intends to rely upon at the hearing;
 - Any and all documents which SET does not intend to rely upon but which either undermine SET's case or assist the case of the member. For the avoidance of doubt, the duty to provide such documents is a continuing one;
 - A time estimate for the hearing;
 - Dates to avoid for witnesses and any other relevant person.
- Within 10 working days of being served with the above, the member must send to SET:
 - Any proposed amendments to the list of factual issues to be determined;
 - A list of witnesses the member intends to call to give oral evidence and specify whether they will give evidence by telephone, video-link or in person;
 - All documents the member intends to rely upon at the hearing;
 - Any amendment to the time estimate for the hearing;
 - Dates to avoid for the member, witnesses and any other relevant person.

Notification of the oral hearing and applications to postpone or adjourn

- Where there is to be an oral hearing, 15 working days before the date set for the hearing SET must send the member a notification of hearing which:
 - Sets out the date, time, and place of the hearing;
 - Sets out the member's right to attend and to be represented;
 - Sets out the panel's power to proceed with the hearing in the member's absence;
 - Requires the member to inform SET whether they intend to attend the hearing and / or to be represented;
 - Provide the member with a paginated and indexed hearing bundle consisting of:
 - ❖ The list of factual issues to be determined by the panel or, if the list is not agreed, both parties' lists.

- ❖ A list of all witnesses who will give oral evidence at the hearing.
 - ❖ Copies of all documents relied upon by the parties.
- Either party may apply to the panel to postpone any hearing of which notification has been given under these procedures. Any such application must be made in writing if made before the first working day of the hearing and will be considered by the panel Chair.
 - A panel may postpone or adjourn at any stage, provided that:
 - No unfairness is caused to the parties;
 - Both parties have been provided with the opportunity to make representations.

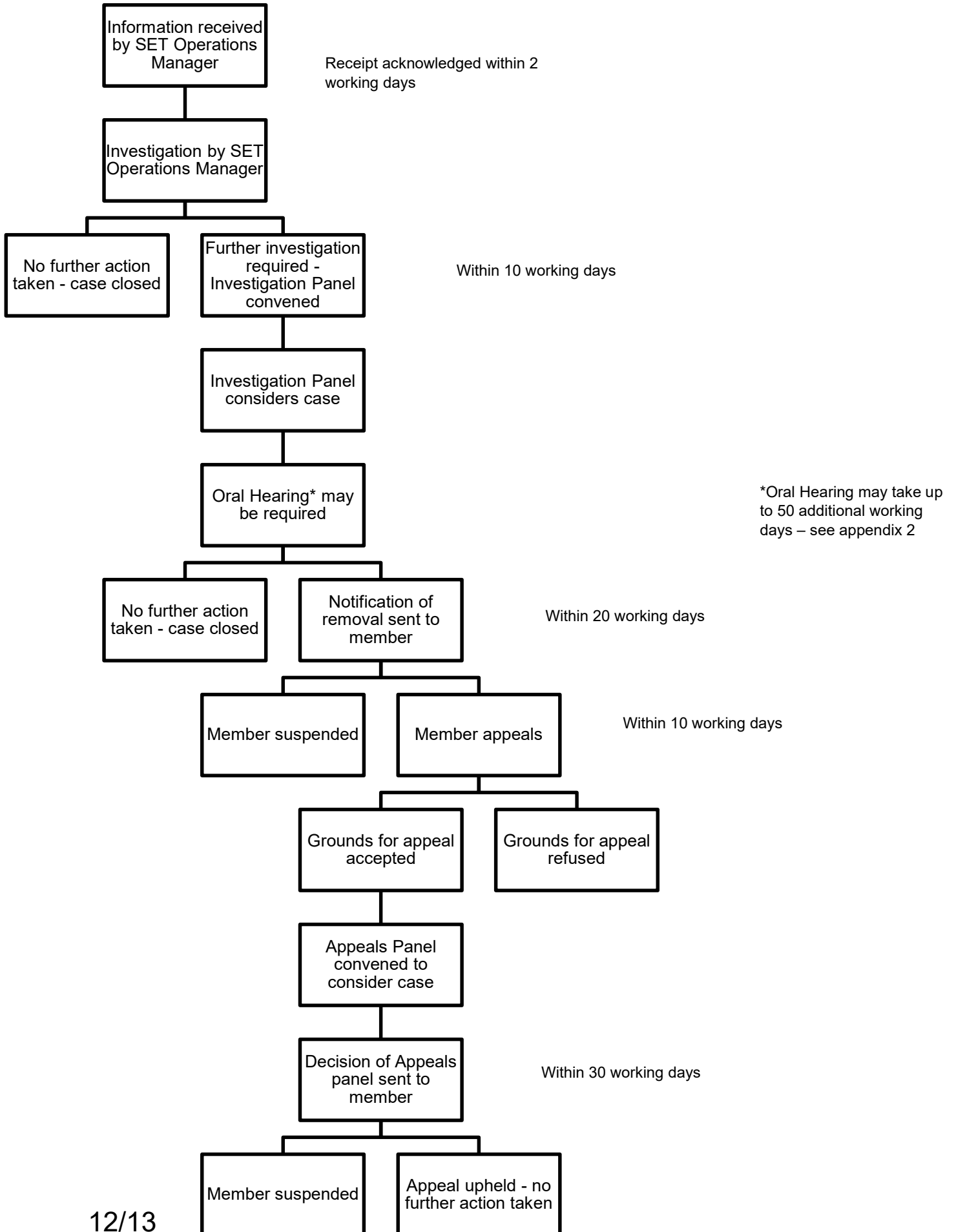
The oral hearing

- SET will arrange for the hearing to be recorded in order that, if necessary, a transcript can be prepared.
- Where the member fails to attend and is not represented at the hearing, the panel:
 - Shall require SET to present evidence that notification of the hearing has been sent to the member in accordance with these procedures;
 - May, where the panel is satisfied that the notification of the hearing has been duly sent, direct that the hearing should be heard and determined notwithstanding the absence of the member;
 - May adjourn the hearing.
- If the parties are not agreed as to the list of factual issues to be determined, the panel shall first determine what factual issues are to be determined.
- SET shall open its case and may call any evidence in support. The member or the member's representative may cross-examine any witness called by SET. It shall be open to the panel to ask questions of witnesses at any time.
- When SET has finished calling evidence, the member or the member's representative shall open the member's case and may call any evidence in support.
- Before giving evidence, all witnesses will be required to undertake to tell the truth.
- First SET and then the member may make any closing submissions to the panel on the factual issues, and on the member's suitability.
- The panel shall then retire in private to:
 - Determine the facts of the matter;
 - Determine whether the member is suitable, having regard to the Code of Practice and in accordance with the guidance on suitability for membership;
 - The panel may vary the order of proceedings set out above if it deems it fair to do so.
- At an oral hearing, the burden of proving a fact in dispute will be on the party seeking

to prove that fact. The standard of proof will be on the balance of probabilities. The burden of establishing that a member is not suitable rests with SET. The question of suitability is a matter for the panel's judgment.

- The panel will deliberate in the absence of the parties. During its deliberations, the panel may continue to receive legal and / or administrative support, provided that any legal advice received is notified to the parties thereafter.

Actions Against Members Timeline



*Oral Hearing may take up to 50 additional working days – see appendix 2

Oral Hearing Timeline

