

WHEN REPLYING
PLEASE QUOTE

OUR REF: PGD/990659

YOUR REF: C2007/84

FILE No:
MARS/PRISM:

McCALLUM
DONOVAN
SWEENEY

BARRISTERS AND
SOLICITORS

SECOND FLOOR
IRWIN CHAMBERS
16 IRWIN STREET
PERTH 6000
WESTERN AUSTRALIA

TELEPHONE: (08) 9325 9353
FACSIMILE: (08) 9221 2220
EMAIL: mds@mdslaw.com.au
INTERNET: www.mdslaw.com.au

27 July 2007

Mr Liam Stewart
The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DIXON ACT 2602

Dear Sir

**Real Estate Institute of Western Australia (Inc) ("REIWA")
Application for Minor Variation of Non-Merger Authorisation – Submissions**

We advise that we act for the Real Estate Institute of Western Australia.

Please find with this letter an application for A Minor Variation of a Non-Merger Authorisation pursuant to section 91A(1) of the *Trade Practices Act, 1974*. Please find enclosed with this letter a completed Form FA. The submissions set out in this accompanying letter are referred to in the Form FA.

The application for a minor variation relates to clause 5.4 of the REIWA Auction Code of Conduct.

The Auction Code formed part of the subject matter of authorisation number A91026 and the determination with respect to that authorisation dated 18 April 2007.

The terms of the Auction Code of Conduct authorised by the Commission included the following clause 5.4:

"If a property is to be sold at an auction without reserve no bid shall be made by or on behalf of the Seller and no Real Estate Agent or Auctioneer may in any way encourage or be a party to such a bid at the auction."

DIRECTORS:
ROSS J. McCALLUM B.JURIS., LLB
PAUL G. DONOVAN B.JURIS., LLB
CAMERON J. SWEENEY B.JURIS. (HONS.), LLB
FIONA A. STANTON B.JURIS., LLB
ASHLEY T. MACKNAY LLB.

ASSOCIATES:
ANTHONY M. PRIME B.JURIS. (HONS.), LLB
SYLVIA M. SIMMONS LLB. (HONS.)

mdslaw Pty Ltd (ACN: 123 775 755) trading as
McCallum Donovan Sweeney



The above clause was included in the Auction Code for the purpose of avoiding any misleading or deceptive conduct that might arise should bids be made by Sellers at real estate auctions when there is no reserve price.

However, an anomaly has recently been identified as a consequence of proceedings reported to REIWA in the Family Court of Western Australia. On occasions, in proceedings before the Courts, parties to those proceedings are given leave to bid at Court ordered auctions. Those auctions are ordered on the basis that the parties to the Court proceedings hold a property as either joint tenants or tenants in common, the parties are in dispute as to the disposition of the property and the Court is prepared to enable the property to be purchased by one of the parties on occasions the Court order that the auctions take place without any reserve being set.

For example, in Family Court proceedings, Courts will on occasions order that a property owned by a husband and wife as joint tenants be sold at auction without reserve and the husband and the wife have liberty to bid at the auction.

The inadvertent effect of clause 5.4, as authorised by the Commission, is that a real estate agent who is a member of REIWA would not be able to act with respect to such an auction.

The inability of a member of the public, in those circumstances, to engage a real estate agent who is a member of REIWA to conduct such an auction would amount to a detriment to the public.

As mentioned above, the prohibition contained in clause 5.4 has been designed to prevent misleading or deceptive conduct with respect to auctions where identified sellers are bidding who may not have a legitimate intention to “purchase” the property. Other provisions in the Auction Code require the identity of sellers who are making bids to be specifically identified both at the beginning of the auction and when each bid is made. Further consumer protection is provided in the Auction Code by the prohibition upon sellers who are lodging bids making any bid over the reserve price or (in accordance with clause 5.4) where there is no reserve set. Where a reserve has been set and bids are made by sellers below that reserve there is not the same risk that a non-seller bidder may make a bid that might ultimately succeed at the auction that has been motivated by some mistaken belief that the seller is a legitimate buyer. This is because any bids made below the reserve price will not be successful in any event.

However, where a Court has ordered that an auction takes place without reserve and where the parties are at liberty to bid (for example, as a consequence of a family law dispute) it is likely that the seller who is bidding is also a genuine buyer. There is therefore not the same risk that a non-seller bidder will be misled into thinking that a person he or she is bidding against is a buyer when that is not the case. The seller will be a legitimate buyer in this instance and, in any event, will still be identified as a seller as a consequence of other obligations contained in the Auction Code.

REIWA therefore proposes that clause 5.4 of the Auction Code of Conduct be amended so as to read as follows (with the amendments identified by underlining):

5.4 if a property is to be sold at an auction without reserve no bid shall be made by or on behalf of the Seller and no Real Estate Agent or Auctioneer may in any way encourage or be a party to such a bid at the auction provided that this clause

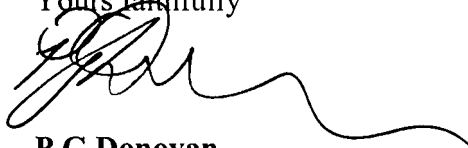
shall not apply to any auction where a Court has ordered to the effect that the particular auction shall take place without reserve.

It is submitted that the proposed amendment referred to above increases the benefit to the public caused by the authorisation in that the unintended anomaly referred to above is prevented. Significantly, the amendment made to clause 5.4 is limited to specifically addressing the particular problem that arises when a Court orders that an auction take place without reserve as detailed above. Otherwise, the prohibition contained in clause 5.4 remains.

A copy of the complete Auction Code, including the amended clause 5.4, is attached.

Should you have any queries or require any further information, please do not hesitate to contact me.

Yours faithfully



P G Donovan
McCALLUM DONOVAN SWEENEY

Encs Form FA Application
 Auction Code (amended clause 5.4)

Form FA

Commonwealth of Australia

Trade Practices Act 1974 — subsection 91A (1)

APPLICATION FOR MINOR VARIATION OF A NON-MERGER AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91A (1) of the *Trade Practices Act 1974* for the a minor variation of an authorisation.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

(a) Name of applicant:

(Refer to direction 2)

The Real Estate Institute of Western Australia (Inc) ("REIWA")

(b) Description of business carried on by applicant:

(Refer to direction 3)

An association of real estate and business agents who provide real estate and business agency services in Western Australia.

(c) Address in Australia for service of documents on the applicant:

c/- McCallum Donovan Sweeney, 2nd Floor, 16 Irwin Street Perth WA 6000.

2. Minor variation of authorisation

(a) Description of the contract, arrangement or understanding, or the relevant conduct, for which authorisation was granted, including, but not limited to, the registration number assigned to that authorisation (the original authorisation):

REIWA's Auction Code of Conduct for which authorisation was provided on 18 April 2007, being authorisation number A91026.

(b) Provide a description of the goods or services that relate to the authorisation for which variation is sought:

The delivery by real estate agents in Western Australia of real estate agency services relating to auctions.

(c) Provide details of the variation for which authorisation is sought, including but not limited to identification of differences between the contract, arrangement or understanding, or the relevant conduct, that was originally authorised and the contract, arrangement or understanding, or the relevant conduct, for which a minor variation of authorisation is sought:

(Refer to direction 4)

It is proposed that clause 5.4 of the Auction Code of Conduct be amended by the addition of the words identified below that are underlined:

5.4 If a property is to be sold at an auction without reserve no bid shall be made by or on behalf of the Seller, and no Real Estate Agent or Auctioneer may in any way encourage or be a party to such a bid at the auction provided that this clause shall not apply to any auction where a Court has ordered to the effect that the particular auction shall take place without reserve.

- (d) Facts and evidence relied upon in support of the claim that the variation is a minor variation:

The Auction Code of Conduct is a document that is approximately 5 pages in length and contains approximately 23 clauses and sub-clauses. The proposed variation to the Auction Code of Conduct merely relates to the introduction of a limited exception to one of those provisions. The reasons and purpose behind the amendment are set out in the accompanying letter from McCallum Donovan Sweeney dated 22 July 2007. There will be no impact upon competition arising out of the variation and public benefit will be enhanced in that the anomaly described in the accompanying McCallum Donovan Sweeney letter will be avoided.

3. Parties to the contract, arrangement or understanding (whether proposed or actual), or conduct, for which variation of authorisation is sought

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding, or the relevant conduct:

REIWA and its members, present and future, of REIWA, PO Box 8099, Subiaco East, WA 6008.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

(Refer to direction 5)

REIWA and its members, present and future, of REIWA, PO Box 8099, Subiaco East, WA 6008.

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

Not applicable.

4. Public benefit claims

- (a) Provide submissions regarding the effect of the minor variation upon the public benefits resulting or likely to result from the original authorisation:

(See Direction 6 of this Form)

The effect of the minor variation will be to avoid an anomaly that has arisen out of the existing clause 5.4 of the Auction Code of Conduct. In

particular, without the exception proposed by the variation, clause 5.4 of the Auction Code prevents members of REIWA acting in relation to auctions that have been ordered by the Courts where the parties have been given leave to bid at the auction and the Court has ordered that no reserve be set. Further details regarding the public benefit that will be achieved by the making of the variation are set out in the accompanying McCallum Donovan Sweeney letter.

- (b) Facts and evidence relied upon in support of these claims:

See the accompanying McCallum Donovan Sweeney letter.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(See Direction 7 of this Form)

The relevant markets are the provision of real estate services in Western Australia, the provision of real estate services in localised regions in Western Australia and the provision of specialist auctioneering real estate services. (Further discussion regarding this issue was set out in the written submissions dated 22 December 2006 lodged by REIWA with respect to authorisation A91026.)

6. Public detriments

- (a) Provide submissions regarding the effect of the minor variation upon the detriments to the public resulting or likely to result from the original authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 2 (b) above and the prices of goods or services in other affected markets:

(See Direction 8 of this Form)

It is submitted that no public detriment will be caused by the minor variation and, for the reasons set out in the accompanying McCallum Donovan Sweeney letter, an unintended detriment caused as a consequence of the existing provisions of clause 5.4 of the Auction Code of Conduct will be avoided.

- (b) Facts and evidence relied upon in support of these claims:

See the accompanying McCallum Donovan Sweeney letter.


7. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the applicant to provide additional information in relation to this application:

Paul Donovan. McCallum Donovan Sweeney, 2nd Floor, 16 Irwin Street, Perth WA 6000. Telephone: 08 9325 9353. E-mail: pdonovan@mdslaw.com.au.

Dated..... 27 July 2007.....

Signed by/on behalf of the applicant


.....
(Signature)

Paul Gerard Donovan.....
(Full Name)

Solicitors for the Applicant.....
(Organisation)

Director.....
(Position in Organisation)

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which the authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which minor variation of authorisation is sought.

In providing these details:

- (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing - provide a true copy of the writing; and
 - (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing - provide a full and correct description of the particulars that have not been reduced to writing; and
 - (c) If minor variation of authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision - provide details of that provision.
5. Where minor variation of an authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of the likely effect of the minor variation upon those public benefits considered to result or to be likely to result from the original authorisation, including quantification of those effects where possible.
 7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
 8. Provide details of the likely effect of the minor variation upon those detriments to the public, including those resulting from the lessening of competition, which may result from the original authorisation. Provide quantification of these effects where possible.



Auctioneering Chapter

Auction Code of Conduct

OBJECT OF CODE

- 1.1 The objects of this Code are to:
- (a) Regulate and standardise the procedures of members of REIWA when conducting auctions.
 - (b) Provide consumer protection for both sellers and buyers in the auction process.
- 1.2 The objects of this Code set out in clause 1.1 above shall be achieved by:
- (a) Real Estate Agents, Real Estate Sales Representatives and Auctioneers adhering to the terms of this Code of Conduct.
 - (b) REIWA enforcing this Code of Conduct with respect to the actions of its members.
 - (c) REIWA providing education to its members regarding this Code of Conduct and, in particular, compliance with its terms.
 - (d) REIWA promoting to the public the existence of this Code of Conduct, its terms and the method by which consumers may lodge complaints with REIWA regarding any breaches of the Code by members of REIWA.
 - (e) REIWA reviewing on a regular basis the efficacy of this Code of Conduct in providing consumer protection in the auction process and, where necessary, amending the terms of the Code to enhance the effectiveness by which the Code meets its stipulated objects.

INTERPRETATION

In this Code:

"agent" means a person representing another and/or acting on that other person's behalf.

"auction" means the selling of any property of any kind or description whatsoever by any mode whereby the highest, lowest, or any bidder is the purchaser, or whereby the first who claims the property submitted for sale at a certain price named by the person acting as Auctioneer is the purchaser, or whereby there is a competition for the purchase of any property in any way commonly known and understood to be by way of auction.

"Auctioneer" means any person who:

- (a) sells or attempts to sell or offers for sale or resale any property, whether the property of the Auctioneer or of any other person, by way of auction; and
- (b) is licensed as an Auctioneer pursuant to section 6 of the *Auction Sales Act, 1973*.



"Person" includes a public body, company or association or body of persons, corporate or unincorporate.

"the public" means the general community considered as a whole including, but not limited to, buyers and sellers of property at auctions.

"Real Estate Agent" means a person licensed as a Real Estate Agent pursuant to the terms of the *Real Estate and Business Agents Act, 1978* and who has been appointed by a seller to sell a particular property at auction.

"Real Estate Sales Representative" means a person registered as a Real Estate Sales Representative pursuant to the terms of the *Real Estate and Business Agents Act, 1978*.

"Seller" is the person who is selling a property the subject of an auction.

3. GENERAL CONDUCT OF REAL ESTATE AGENTS, REAL ESTATE SALES REPRESENTATIVES AND AUCTIONEERS

3. In addition to the obligations placed upon Real Estate Agents, Real Estate Sales Representatives and Auctioneers pursuant to the provisions of the REIWA Members' Codes of Practice, as set out in clause 7 below:

3.1 Real Estate Agents, Real Estate Sales Representatives and Auctioneers acting in relation to auctions must at all times act with honesty and fairness when dealing with members of the public.

3.2 Real Estate Agents, Real Estate Sales Representatives and Auctioneers acting in relation to auctions must at no time:

- (a) act in an unconscionable manner;
- (b) unduly harass or coerce any member of the Public; or
- (c) apply sales pressure to any member of the Public that, in all the circumstances, is unfair.¹

4. BEFORE THE AUCTION

4.1 Real Estate Agents shall not advertise a property as being for sale by auction unless there is intended to be a genuine auction and unless a legally valid written authority to auction form has been duly executed by or on behalf of the Seller.

¹ Examples of where the provisions of clause 3.2 may be breached would include:

- (a) where bids are accepted from persons who are known to be suffering from dementia, intoxicated or confused as to the nature of the auction process.
- (b) where unreasonable pressure is placed on a seller to set a reserve price that is well below the known market price, particularly where the seller is known to be suffering from a disability.
- (c) the canvassing of potential buyers to attend an auction or to make a bid at an auction, by telephoning the buyers at an unreasonable hour or with unreasonable frequency.
- (d) belittling, berating or embarrassing a bidder during the conducting of an auction.
- (e) disguising onerous terms in contracts by the use of fine print or complex language.
- (f) providing advice as to the terms of a contract of sale to a potential bidder/buyer or advice as to the terms of an authority to auction to a seller without mentioning or adequately describing the obligations placed upon the consumer by the contracts concerned.



- 4.2 Prior to any auction the Real Estate Agent appointed by a Seller to sell the particular property by auction shall make available for inspection to any person who so requests the terms and conditions under which the sale of the property by auction will be undertaken.
- 4.3 If applicable, the Real Estate Agent shall specify in the terms and conditions of sale referred to in clause 4.2 above that the Seller reserves the right to bid for the property either personally or through an agent and shall identify the number of those reserved bids.
- 4.4 The Real Estate Agent shall make this Code of Conduct available for inspection prior to the auction by providing copies of this Code to any person to whom the Real Estate Agent gives a copy of the terms and conditions of the auction.
- 4.5 If the seller so instructs, the Real Estate Agent must inform the Public in all advertising devised by the Real Estate Agent with respect to the property that offers for the property may be considered prior to the Auction.

5. AT THE AUCTION

- 5.1 The terms and conditions of any auction sale shall be on display and available for inspection together with this Code at the auction. Any portion of the terms and conditions relating to the description of the property shall be read aloud by the Auctioneer appointed to conduct the auction of the property at the commencement of that auction.
- 5.2 Before commencement of the bidding for a property, the Auctioneer shall announce whether the Seller is *selling with a reserve price*. It shall not be necessary for that reserve price to be disclosed to bidders.
- 5.3 If the Seller has reserved the right to bid for the property either personally or through an agent:
 - (a) the Auctioneer shall announce prior to the commencement of the bidding that the Seller has so reserved the right to bid and shall at that time specify whether the Auctioneer, the seller or some other person on behalf of the seller will be making those bids;
 - (b) where the Auctioneer has been appointed to bid on behalf of the Seller all bids made on behalf of the Seller shall be so made by the Auctioneer and notice of that fact shall be given prior to the commencement of the bidding for the property;
 - (c) where the Seller or some person other than the Auctioneer shall be bidding on behalf of the Seller the Auctioneer shall identify that person prior to the commencement of the bidding for the property;
 - (d) the Auctioneer shall announce prior to the commencement of bidding for the property the maximum number of bids which will or may be made during the auction by the Seller or by any person on behalf of the Seller;
 - (e) the Auctioneer shall announce, contemporaneously with any bid being made by or on behalf of a seller the fact that the bid has been so made by or on behalf of the seller;
 - (f) neither the Real Estate Agent nor any salesperson engaged by the Real Estate Agent shall make or assist any other person to make any bid on behalf of the Seller in contravention of any announcement by the Auctioneer under clause 5.3.

- 5.4 If a property is to be sold at an auction without reserve no bid shall be made by or on behalf of the Seller and no Real Estate Agent or Auctioneer may in any way encourage or be a party to such a bid at the auction provided that this clause shall not apply to any auction where a Court has ordered to the effect that the particular auction shall take place without reserve.
- 5.5 The Auctioneer shall ensure that the amount of any bid is clearly stated.
- 5.6 The Auctioneer shall resolve any disputed bid in accordance with the terms and conditions of sale governing the auction.
- 5.7 When any person asks the Auctioneer whether the current bid was a bid made by or on behalf of the Seller, the Auctioneer MUST respond by advising whether or not the bid was made by or on behalf of the Seller.
- 5.8 Under no circumstances may a bid made on behalf of the Seller by an Auctioneer or a Real Estate Agent be at or in excess of any Seller's reserve price.
- 5.9 The Auctioneer shall always clearly announce when the property is about to be sold under the hammer.

6. DUMMY BIDDING

- 6.1 Dummy bidding is fictitious or false bidding at an auction by non-genuine bidders in the audience with no real intention to buy the property and any Auctioneer or Real Estate Agent who encourages or is a party to such bidding is in breach of this Code PROVIDED that nothing in this clause prevents an Auctioneer or agent from encouraging or being a party to bidding by or on behalf of a Seller as provided for in this code.

7. CONSUMER/INDUSTRY AWARENESS AND REVIEW OF THE TERMS OF THIS CODE

- 7.1 REIWA shall promote the terms of this Code of Conduct to consumers and its members, and REIWA shall collect data with respect to the Code in accordance with procedures set out in its *Part IV of the Trade Practices Act and Auction Code of Conduct Compliance Programme Manual*.
- 7.2 REIWA shall review the terms of this Code of Conduct and the efficacy of its terms in providing consumer protection in accordance with the procedures set out in its *Part IV of the Trade Practices Act and Auction Code of Conduct Compliance Programme*.
- 7.3 Consumers and members of REIWA may access the *Part IV of the Trade Practices Act and Auction Code of Conduct Compliance Programme* by making written contact with the Personal Assistant to the Chief Executive Officer of REIWA or by visiting the REIWA internet site at www.reiwa.com.au.

8. THE REIWA MEMBERS' CODES OF PRACTICE

The following provisions are reproduced from clause 10 of the REIWA Members' Codes of Practice:

- 8.1 In any agency relationship, a member must act in the best interests of his or her principal except where it would be unreasonable or improper to do so.
- 8.2 In any agency relationship, a member must act in accordance with the instructions of his or her principal, except where it would be unreasonable to do so.
- 8.3 A member must act fairly and honestly.



8.4 A member must not knowingly engage in any misleading or deceptive conduct.

8.5 A member must not engage in any harsh or unconscionable conduct.

8.6 A member must act so as to exercise due skill, care and diligence.

9. BREACHES OF THIS CODE

9.1 Consumers and members of the real estate industry may lodge complaints with REIWA if they believe that a member of REIWA has breached any term of this Code of Conduct or the REIWA Member's Codes of Practice. Upon receipt of such a complaint REIWA will deal with that complaint in accordance with the terms of Article 41 of REIWA's Articles.

9.2 Extracts from Article 41 of REIWA's Articles are set out below:

"EXPULSION AND SUSPENSION OF MEMBERSHIP AND DISCIPLINING OF MEMBERS

41. 41.1 *A member may be expelled or suspended from the Institute should the Council or Executive Committee determine that:*

(a) ...

(b) ...

(c)

(d) *the member has breached one or more of the rules, articles, codes, regulations or by-laws of the Institute.*

41.2 *Should:*

(a) *the Institute receive a complaint from a member of the Institute, the Chief Executive Officer of the Institute, an agent who is not a member of the Institute or a member of the public that any of the events referred to in Article 41.1 has or may have occurred; or*

(b) *the Council or the Executive Committee of their own complaint consider that any of the events referred to in Article 41.1 has or may have occurred*

the Council or the Executive Committee must refer the matter to a Professional Standards Tribunal for hearing.

41.3 41.3.1 *Professional Standards Tribunals shall be established from time to time by the Council or the Executive Committee and shall be made up of persons stipulated and selected by the Council:*

41.3.2 *Upon the hearing of a matter referred to a Professional Standards Tribunal pursuant to Article 41.2 the Tribunal shall have the power to:*

(a) *impose the penalties prescribed in any articles, rules, codes, regulations or by-laws of the Institute in respect to any breaches thereof;*

(b) *impose monetary penalties of not more than \$10,000 for any breach of any articles, rules, codes, regulations or by-laws of the Institute;*

- (c) *impose a reprimand;*
- (d) *dismiss the matter without penalty and without recommendation of further action;*
- (e) *recommend that the member be expelled or suspended from membership of the Institute; and/or*
- (f) *order the restitution of any monies held or received by the member the subject of the hearing to the persons determined to be entitled to those monies.*

4.1.3.3 ...

41.4 41.4.1 *Should a Professional Standards Tribunal recommend in accordance with Articles 41.3.2 that a member be expelled or suspended from membership of the Institute the matter shall be referred back to the Council or the Executive Committee for determination.*

41.4.2 ...

41.4.3 ...

41.5 ...

41.6 *Any member who is expelled or suspended from membership of the Institute by the Council or the Executive Committee pursuant to Article 41 or who is penalised by a Professional Standards Tribunal pursuant to Articles 41.3.2(1), (b), (c) or (f) shall have a right of appeal against that expulsion, suspension or penalty in accordance with the provisions of Article 45 PROVIDED THAT if a member has been expelled or suspended the member shall remain under suspension until the determination of the appeal.*

41.7 *Expulsion of a member pursuant to Article 41 shall be deemed to not take effect until:*

- (a) *the date upon which any time given to appeal against the decision to expel expires pursuant to Article 45; or*
- (b) *the date that notice of the determination of any such appeal is given to the member whichever is the later."*