

ANNEX 5

INSURANCELINK OVERSIGHT COMMITTEE RULES OF PROCEDURE FOR APPEALS

1. DEFINITIONS

1.1 In these Rules:

Appellant means a person wishing to appeal against an Appealable Decision;

Appealable Decisions means those decisions of Insurance Ireland set out in Rule 2.1;

Associate Member means an entity that is an associate member of Insurance Ireland as described in the Terms and Conditions of Associate Membership of Insurance Ireland;

Case Panel means the adjudicator(s), being members of the InsuranceLink Oversight Committee, appointed under Rule 4;

Chairperson means the chairperson of the InsuranceLink Oversight Committee;

Full Member means an entity that is a member of Insurance Ireland under the Insurance Ireland Constitution and as described in the Rules relating to Full Membership of Insurance Ireland;

Insurance Ireland means Insurance Ireland (Member Association) Company Limited by Guarantee;

InsuranceLink Applicant means an entity applying to use InsuranceLink;

InsuranceLink Application Procedure means the procedure for processing applications for access to InsuranceLink set out on the Insurance Ireland website (<https://www.insuranceireland.eu/member-services/shared-services/insurance-link.eu/documents/annex04>);

InsuranceLink Application Officer means the individual(s) of a sufficient level of seniority (i.e. manager level or above) designated by Insurance Ireland to process and determine applications for access to InsuranceLink pursuant to the InsuranceLink Application Procedure;

InsuranceLink Oversight Committee means the governance body established by Insurance Ireland to oversee matters (including appeals) regarding access to, and ongoing use of, InsuranceLink in accordance with the Terms of Reference of the InsuranceLink Oversight Committee;

InsuranceLink Sub-Committee means a standing sub-committee of the Board of Insurance Ireland established in connection with the InsuranceLink Application procedure to review: (i) any decision to not permit an InsuranceLink Applicant to access InsuranceLink or any of its facilities in accordance with the InsuranceLink Criteria for Access; (ii) any decision to withdraw, restrict or *de facto* deny an InsuranceLink User's rights of access (once granted) to InsuranceLink or any of its facilities; (iii) a failure to comply with any aspect of the InsuranceLink Application Procedure resulting in a delay to the processing of applications; or (iv) a failure to calculate the fees charged to an InsuranceLink User for access to InsuranceLink in accordance with the fee structure in place for InsuranceLink;

InsuranceLink User means a user that has been granted access to InsuranceLink;

Notice of Appeal means the Notice of Appeal referred to in Rule 3;

Reply means the response of the Appellant to a Response;

Respondent means Insurance Ireland;

Response means the response by the Respondent to a Notice of Appeal;

Secretary means the secretary appointed by the Chairperson under Rule 4; and

Terms of Reference of the InsuranceLink Oversight Committee means the document setting out the terms of reference of the InsuranceLink Oversight Committee set out on the Insurance Ireland website (<https://www.insuranceireland.eu/member-services/shared-services/insurance-link.eu/documents/annex06>) and the InsuranceLink website (<http://inslink.ie/documents/annex06>).

2. COMMENCEMENT OF APPEAL AND TIME LIMITS

- 2.1 Appeals to the InsuranceLink Oversight Committee may be brought by an InsuranceLink Applicant or an InsuranceLink User in accordance with these rules of procedure against the following as set out in paragraph 2.13 of the InsuranceLink Application Procedure:
- (a) Any decision to not permit an InsuranceLink Applicant to access InsuranceLink or any of its facilities in accordance with the InsuranceLink Criteria for Access;
 - (b) Any decision to withdraw, restrict or *de facto* deny, in whole or in part, an InsuranceLink User's rights of access (once granted) to InsuranceLink or any of its facilities;
 - (c) A failure to comply with any aspect of the InsuranceLink Application Procedure resulting in a delay to the processing of an InsuranceLink Applicant's application;
 - (d) A failure to calculate the fees charged to an InsuranceLink User for access to InsuranceLink in accordance with the fee structure in place for InsuranceLink; and
 - (e) A failure to take a decision in relation to the matters in paragraph 2.1(a)-(d) above regarding applications for access and/or the terms of ongoing access to InsuranceLink.
- 2.2 The Appellant must send a Notice of Appeal to the InsuranceLink Oversight Committee within the time limits laid down in these Rules. The contact details of the InsuranceLink Oversight Committee shall be published on the Insurance Ireland website and the InsuranceLink website (<https://www.insuranceireland.eu/shared-services/insurance-link.eu/contacts> and <http://inslink.ie/contacts>).
- 2.3 A Notice of Appeal must be lodged with the InsuranceLink Oversight Committee within 20 business days of the relevant decision referred to in Rule 2.1.
- 2.4 The Notice of Appeal must be served on Insurance Ireland at the same time as it is lodged with the InsuranceLink Oversight Committee. Insurance Ireland shall be the

Respondent to the appeal. The contact details of Insurance Ireland shall be published on the Insurance Ireland website.

- 2.5 The Appellant and the Respondent have a right to legal representation in respect of an Appeal.

3. NOTICE OF APPEAL

- 3.1 The Notice of Appeal shall contain:

- (a) The name and address of the Appellant and of any legal representative (if the Appellant chooses to appoint one), identifying the person and address to which communications from the InsuranceLink Oversight Committee should be sent;
- (b) A statement of the grounds of appeal including all arguments that the Appellant wishes to make stating in particular to what extent the Appellant relies on error of fact, the wrongful exercise of discretion by the InsuranceLink Application Officer or the InsuranceLink Sub-Committee, or any other ground of appeal, including non-compliance with the InsuranceLink Application Procedure;
- (c) A schedule of supporting documents, and copies of all documents relied on, and copies of all documents and materials submitted to the InsuranceLink Application Officer in connection with the appealed decision; and
- (d) A description of the decision which should, in the view of the Appellant, have been made by Insurance Ireland in respect of the matters set out in Rule 2.1 that are under review.

4. CONSTITUTION OF THE CASE PANEL HEARING THE APPEAL

- 4.1 Within 10 business days of receipt of a Notice of Appeal, the Chairperson shall appoint a Case Panel to hear the appeal from amongst the members of the InsuranceLink Oversight Committee and shall notify the parties of the decision. A new Case Panel shall be appointed in respect of each Notice of Appeal and shall have authority in relation to the matter alone.
- 4.2 The Case Panel shall be comprised of the Chairperson and two members of the InsuranceLink Oversight Committee selected by the Chairperson. To the extent possible, the composition of the Case Panel shall vary from case to case, but shall include at least one member of the InsuranceLink Oversight Committee nominated by the Chair of the Chartered Institute of Arbitrators (Ireland Branch) and one member of the InsuranceLink Oversight Committee nominated by the Department of Finance.
- 4.3 The Chairperson and the members of the InsuranceLink Oversight Committee shall be fully independent, meaning the absence of any ongoing business, personal or family links to Insurance Ireland, any Full Member or Associate Member and/or any operator appointed by Insurance Ireland to operate and manage the InsuranceLink database. Members of the InsuranceLink Oversight Committee shall not seek or receive any instructions, pressure or influence from Insurance Ireland or any other third party regarding the exercise of their functions under the Terms of Reference of the InsuranceLink Oversight Committee or these Rules of Procedure.
- 4.4 In the event that a Notice of Appeal involves, or might reasonably be expected to involve, a conflict of interest for a member of the InsuranceLink Oversight Committee, the relevant member shall recuse himself/herself from involvement in the Case Panel for the Notice of Appeal. The Appellant may object to the inclusion of a member of

the InsuranceLink Oversight Committee on a Case Panel if the Appellant believes that the Notice of Appeal involves, or might reasonably be expected to involve, a conflict of interest for that member. If such an objection is received, the Chairman shall appoint a new member of the Case Panel within two working days of the receipt of the objection.

- 4.5 The Chairperson may appoint a Secretary who shall be responsible for communication between the Case Panel and the parties and for the expeditious and economical administration of the appeal.
- 4.6 The costs of the InsuranceLink Oversight Committee in exercising its functions under these Rules of Procedure, including (to the extent relevant) the expenses of the Case Panel, shall be borne by Insurance Ireland.

5. RESPONSE TO NOTICE OF APPEAL

- 5.1 The Respondent shall lodge with the InsuranceLink Oversight Committee a Response to the Notice of Appeal, with a copy to the Appellant.
- 5.2 The Response to the Notice of Appeal shall contain:
 - (a) Details of any legal representative appointed by the Respondent;
 - (b) A response to the grounds set out in the Notice of Appeal, together with all arguments that the Respondent wishes to make; and
 - (c) A schedule of supporting documents, and copies of all documents relied on, including copies of all documents and materials considered by the Respondent in making the decision under appeal.
- 5.3 The time for lodging the response shall be 10 business days from the service of the Notice of Appeal on the Respondent.

6. REPLY

- 6.1 The Appellant shall have the right to lodge with the InsuranceLink Oversight Committee a Reply to the Response to the Notice of Appeal, with a copy to the Respondent, within 5 business days from the service of the Response to the Notice of Appeal or, where necessary, such other reasonable and proportionate deadline as set by the Chairperson.

7. CONDUCT OF THE APPEAL

- 7.1 The appeal will be conducted as flexibly and informally as possible (including, where appropriate, remotely by video or teleconferencing), with a view to disposing of the appeal justly, economically and expeditiously. To that end, the Case Panel, or the Chairperson acting alone, as the case may be, may make such procedural directions as he or they think fit. Such directions may include in particular directions:
 - (a) Setting, abridging, or extending any time limits where there is a clear and specific reason for doing so;
 - (b) Directing the hearing of evidence on particular issues, including directions as to the manner in which evidence is to be given or heard, the witnesses whose evidence should be given or heard and any cross-examination;
 - (c) Allowing a party to submit further documents or arguments;

- (d) As to the instruction of experts by the parties, and the manner in which expert advice is to be given;
 - (e) Determining the issues to be decided; and
 - (f) Determining the appeal, or any issues in the appeal, by consent or agreement.
- 7.2 The Case Panel will review the documents submitted by the parties and shall indicate to the parties as soon as possible any further information that it may require for the purpose of determining the appeal and whether it is able to determine the appeal by reference to the papers only, and without a hearing.
- 7.3 Where a party requests an opportunity to appear before the Case Panel for the purpose of better presenting its case, the Case Panel shall make arrangements for a hearing and shall give the other party an opportunity to attend and, if it wishes to do so, to present its own case.
- 7.4 If neither party requests a hearing, where the Case Panel considers it appropriate to do so, it shall issue its decision on the basis of the documentary evidence provided to it by the parties, without the need to convene a hearing to dispose of the appeal.
- 7.5 Any hearing may take place if convenient by way of electronic conferencing facilities or, if necessary, in the physical presence of the parties and the Case Panel.

8. HEARINGS

- 8.1 The Chairperson shall set a date for the hearing, and shall give any directions as may be necessary as to the issues to be addressed, the evidence to be called, the time limits to be observed or any other aspect of the hearing.
- 8.2 Unless the Case Panel considers there is a clear and specific reason for a later date, the hearing shall be held no later than 10 business days following:
 - (i) the date of the submission of the Reply to the Response to the Notice of Appeal; or,
 - (ii) if no Reply to the Response to the Notice of Appeal was submitted, the date of submission of the Response to the Notice of Appeal.
- 8.3 The hearing before the Case Panel, or the sole adjudicator, as the case may be, shall be conducted in a manner appropriate for ensuring the just, economical and expeditious handling of the proceedings.

9. CONFIDENTIALITY

- 9.1 Any party seeking to rely on confidential information may request that such information is dealt with on terms of confidentiality, which are to be at the discretion of the Case Panel.
- 9.2 If the confidential information is or may be material to the Case Panel decision, the Case Panel hearing the appeal, or the Chairperson as the case may be, shall seek means of ensuring the fairness of the procedure while respecting the confidentiality claimed.

10. THE CASE PANEL'S DECISION

- 10.1 The Case Panel shall take its decision by majority vote. Each Case Panel member shall have one vote.

- 10.2 In reaching its decision, the Case Panel shall have regard, as relevant, to the InsuranceLink Criteria for Access, the InsuranceLink Application Procedure and any other such rules that the InsuranceLink Application Officer and InsuranceLink Sub-Committee are required to observe.
- 10.3 The Case Panel shall issue its decision no later than 10 working days following:
- (i) the date of the hearing; or,
 - (ii) if no hearing was held, the date of submission of the Reply to the Response to the Notice of Appeal; or,
 - (iii) if no Reply to the Response to the Notice of Appeal was submitted, the date of submission of the Response to the Notice of Appeal.
- 10.4 The Case Panel shall give its decision in writing, setting out its reasons. The decision shall state whether it was unanimous or by the majority. The decision of the Case Panel is final.
- 10.5 In the case of an appeal which is upheld, the Case Panel shall direct that the Appellant be granted full access to InsuranceLink (or any of its facilities) or, if the Appellant is already an InsuranceLink User, direct that their access to InsuranceLink be restored in full. The InsuranceLink Application Officer shall, within 5 days of the Case Panel's decision, instruct the administrator of InsuranceLink to grant or restore access.
- 10.6 Unless there is a clear and specific reason for a longer period that has been agreed with the Appellant and the Respondent, the maximum period for the determination of an appeal under these Rules of Procedure shall be 35 working days from the date on which a Notice of Appeal is lodged with the InsuranceLink Oversight Committee.

11. COSTS

- 11.1 Each party shall bear its own costs in relation to the appeal.

12. SERVICE

- 12.1 Documents served on the InsuranceLink Oversight Committee or any party may be served by electronic means, unless otherwise directed.

13. GENERAL

- 13.1 Subject to the foregoing, the InsuranceLink Oversight Committee may regulate the procedure relating to Appealable Decisions.
- 13.2 The InsuranceLink Oversight Committee shall make available to Insurance Ireland and the Monitoring Trustee details as to the outcomes of appeals brought under these Rules of Procedure for the purpose of including such details in the written reports provided by the Monitoring Trustee to the European Commission regarding the implementation of the Commitments.