

Professional Conduct Regulations

INVESTIGATION COMMITTEE REGULATIONS

1 These regulations were made by the Investigation Committee ('the Committee') on 6 October 1998¹.

2 In these regulations unless the context otherwise requires or express reference is made in these regulations, words and phrases used in these regulations have the same meaning as in the Disciplinary Bye-laws. Furthermore:

'Director' means the person for the time being holding the office of the Director of the Professional Conduct Directorate of the Institute or any member of his department authorised by him to act in his name;

'Institute' means the Institute of Chartered Accountants in England and Wales.

3 The Committee may in its absolute discretion appoint one or more of its members or co-opt other persons to assist it to perform its functions. Such appointments may include the appointment of a monitor or team to assist the Director to investigate complaints.

4 If the Chairman considers that the appointment of one or more of its number is required on an urgent basis then he may make such appointment or appointments as he considers necessary and report back to the Committee at the next available meeting.

5 Where a member who has been the subject of a complaint dealt with in accordance with the Disciplinary Bye-laws makes a complaint about the handling of the case by the staff and remains dissatisfied notwithstanding an explanation, the Committee shall appoint one or more of its members (Investigation Committee Reviewer(s)) to review the member's complaint. The Reviewer shall consider written representations from the member and the staff and all documents he or she considers relevant. The Reviewer may, if he thinks fit, give the member and/or the staff an opportunity to make oral representations. The Reviewer(s) shall report back to the Committee and the Committee will notify both parties to the complaint of its conclusions in writing.

6 No objections shall be upheld to any technical fault in the procedure of the Committee nor in any decision by the Committee nor the terms of any

¹Last amended on 7 February 2006 by the Investigation Committee

order issued by it provided that the proceedings are fair and the relevant Bye-laws and regulations have been observed.

7 The rules of judicial evidence will not apply. The Committee may at its discretion treat as evidence any testimony whether in written, oral or other forms.

8 If a dispute is referred to the Committee in accordance with Disciplinary Bye-law 9(4), the Secretary shall lay before the Committee a summary of the material facts and matters to which any relevant documentation may be appended.

9 The Committee shall consider the submission received under regulation 8 and decide whether or not any of the facts and matters could make the subject of the complaint liable to disciplinary action.

10 If the Committee is of the opinion that a submission under regulation 8 discloses that a member, firm or provisional member may have become liable to disciplinary action it shall instruct the staff to proceed in accordance with the Disciplinary Bye-laws.

11 If the Committee is of the opinion that the submission under regulation 8 does not disclose that a member, firm or provisional member may have become liable to disciplinary action it shall instruct the staff to dismiss the matter.

12 The Director or any member of the staff authorised by him, may exercise the Committee's power under Disciplinary Bye-law 13 in the following circumstances:

- (i) if the member, member firm, regulated firm or provisional member has failed to satisfy a previous written request made by the staff when carrying out its function under the Disciplinary Bye-laws or
- (ii) if in the opinion of the Director to make a written request prior to serving notice under Disciplinary Bye-law 14 would cause unreasonable delay.

13 'Representative' for the purpose of Disciplinary Bye-law 15(4)(b) or Disciplinary Bye-law 30(8)(b) (intervention orders) means a barrister or solicitor or any other member of the Institute or, with the agreement of the Committee, any person. Provided that the firm, provisional member or member being considered by the Committee shall supply to it the name and occupation and on request any other details of any proposed representative.

14 If the Committee prefers a formal complaint to the Disciplinary Committee under Disciplinary Bye-law 15(2)(a), the summary that is referred to in Disciplinary Bye-law 15(6) shall be prepared by the Director and the Director shall appoint a member, solicitor, barrister or member of the Institute's staff to represent the Committee at any tribunal of the Disciplinary Committee.

15 If the Committee considers that a complaint should be deferred to monitor developments in accordance with Disciplinary Bye-law 15(2)(c)(ii) it shall instruct the Director to report at prescribed intervals the progress of those circumstances. Such monitoring may include enquiries of third parties as well as the subject of the complaint.

16 For the purpose of Disciplinary Bye-law 16(1)(b) and 16A(1)(b) 'disciplinary record' means any previous (adverse) disciplinary findings or orders whether made by the Investigation Committee, the Disciplinary Committee, the Appeal Committee, or by a Joint Disciplinary Tribunal or Appeal Committee of the Joint Disciplinary Scheme or the Accountancy Investigation and Discipline Scheme or any regulatory penalty as defined in the Audit Regulations, Designated Professional Body Handbook or the Insolvency Licensing Regulations but shall not include a finding of prima facie case coupled with an order of the Investigation Committee under Disciplinary Bye-law 15(2)(d) that no further action be taken on the complaint or on any specified part of it.

17 The notice to be served under Disciplinary Bye-law 16(3) shall be in the form as set out in Schedule I to these regulations.

18 If the person or body served notice under Disciplinary Bye-law 16(3) has agreed to the terms of the order under Disciplinary Bye-law 16(2), the Investigation Committee Secretary may make the order on behalf of the Committee.

19 The notice to be served under Disciplinary Bye-law 16A(2) shall be in the form set out in Schedule II to these regulations.

20 Unless the subject of the complaint, served notice under Disciplinary Bye-law 16A(2), serves written notice on the Secretary of the Investigation Committee, within 28 days of service of such notice, that he is unwilling to accept the finding of a prima facie case exists, the Secretary of the Investigation Committee shall make the order on behalf of the Investigation Committee.

21 The fixed sum referred to in Disciplinary Bye-law 16A(3) shall be determined by the Committee from time to time and shall be, in each case, the fixed sum or where less, the actual costs incurred.

22 Any notice or document required to be served by the Committee in accordance with the Disciplinary Bye-laws and these regulations may be served personally or by first class post to the member, provisional member or firm at the last known place of business appearing in the Institute's register or his last known home address. Where documents are served by post, service is deemed to have been effected 48 hours after posting for the purposes of this regulation and regulation 19.

2.2

BYE-LAWS, REGULATIONS AND GUIDANCE

23 If the Committee is asked for directions in the event of a dispute as to the fees under Disciplinary Bye-law 24(4) the Committee may:

- (a) determine the amount payable; or
- (b) order the issue to be referred to the Institute’s Fee Arbitration Scheme.

24 If a member’s conduct is, at any time, subject to consideration by the Secretary, Investigation Committee, Disciplinary Committee, Appeal Committee, Joint Disciplinary Scheme or Accountancy Investigation and Discipline Scheme, the Director may request the Members Registrar to defer demand for due payment of annual subscription until the conclusion of such consideration or disciplinary process whichever is the later.

SCHEDULE I

Notice served under Disciplinary Bye-law 16(3)

Dear Mr/Mrs/Ms [.....]

[INSERT BRIEF REFERENCE TO COMPLAINT QUOTING FILE REFERENCE]

On [INSERT DATE OF MEETING], the Investigation Committee considered this complaint including your representations. It concluded that there was a prima facie case in relation to heads [NUMBERS] and no prima facie case in relation to heads [NUMBERS]

Heads [NUMBERS]

Having considered all the relevant options, the Committee decided to deal with heads [NUMBERS] under Disciplinary Bye-law 16 and offer you the opportunity to accept a Consent Order. It is therefore proposing, subject to your agreement, to order that:

[INSERT ORDER LISTED IN DISCIPLINARY BYE-LAWS16(2) AND DETAILED HEADS OF COMPLAINT]

The reasons for this decision are:

.....

Heads [NUMBERS]

The Committee concluded that there was no prima facie case in relation to heads [NUMBERS]

[INSERT DETAILED HEADS OF COMPLAINT]

The reasons for this decision are:

Your option in relation to heads [numbers] prima facie case

You are required to respond to this offer of a Consent Order within 21 days letting me know which of the following four options you wish to adopt:

1. If you [your firm] wish(es) to accept the proposed order, please sign the enclosed copy order and return it to me.

This will be appropriate in circumstances where you [your firm] do(es) not wish to dispute the complaint. The advantage of taking this option is that with your [your firm's] agreement the matter is concluded. However, it is important that you are aware that the order will be recorded as a disciplinary record against you [your firm]. A copy of the order will be sent to the national and financial press and will be made available to any enquirers on request.

2. If [you] [your firm] do(es) not accept that there is a prima facie case to answer and you consider that there is further information that the Committee should consider, please write to me detailing this information and I will put the complaint back to the Committee for reconsideration under Disciplinary Bye-law 16(5).
3. If [you] [your firm] accept(s) that there is a prima facie case but you wish to make representations as to the penalty the Committee proposes to impose, please let me have your [your firm's] representations in writing and I will put them to the Committee. If you wish to make representations on the amount of the financial penalty, you will need to complete a financial circumstances form. Please ring the Committee administrator on [NUMBER] for a form. Alternatively email [NAME]@icaew.co.uk.
4. If you [your firm] do(es) not wish to accept the proposed order, please let me know. The Investigation Committee will be informed and may then prefer a Formal Complaint to the Disciplinary Committee. The wording of the Formal Complaint may not necessarily be in identical terms to the complaint above.
5. If you [your firm] decide(s) not to accept the proposed order and a Formal Complaint is preferred, you will have the opportunity to attend a hearing before a disciplinary tribunal when you can deal with the matter yourself or be represented.

However, it is important that you are aware that the Disciplinary Committee has wider powers than those available to the Investigation Committee. (See Disciplinary Bye-laws 21, 22, 23 and 24). You should also be aware that this process will incur further costs by the Institute and if the Disciplinary Committee makes a finding against [you][your firm], [you][your firm] may be ordered to pay the Institute's costs.

If you do not respond within 21 days we will assume that you do not wish to accept the proposed order and the Investigation Committee may prefer the matter to the Disciplinary Committee as a Formal Complaint.

Heads [NUMBERS] – no prima facie case

In relation to these no prima facie case decisions, the complainant has the right to apply in writing to have the case reviewed by an independent Reviewer of Complaints and the Reviewer has the power to refer the matter back to the Investigation Committee for further consideration. The complainant must make his application within six months of the date of the Committee decision unless, in the opinion of the Reviewer, there is fresh evidence to justify consideration of the application for a review. I will let you know if such an application is made.

Please ring me on my direct line below if you have any queries on the process set out above.

COMPLAINT AGAINST MEMBER

I **[INSERT NAME OF MEMBER]** agree to the Investigation Committee proceeding with the proposed order stated in Notice dated **[INSERT DATE OF NOTICE]**.

SIGNED

DATE

COMPLAINT AGAINST FIRM

I **[LEAVE BLANK FOR SIGNATORY TO COMPLETE]** on behalf of **[INSERT NAME OF FIRM]** agree to the Investigation Committee proceeding with the proposed order stated in Notice dated **[INSERT DATE OF NOTICE]**

SIGNED

ON BEHALF OF **[INSERT NAME OF FIRM]**

STATUS IN FIRM

DATE

SCHEDULE II

Notice served under Disciplinary Bye-law 16A

Dear Mr [.....]

INSERT DETAILS OF THE COMPLAINT AND THE DISCIPLINARY BYE-LAW UNDER WHICH LIABILITY TO DISCIPLINARY ACTION OCCURS

The Investigation Committee has considered the above complaint under reference [.....] and the representations made. The Committee has decided that the complaint discloses a prima facie case under the Disciplinary Bye-laws.

The Committee, after considering all the relevant circumstances, is of the opinion that it is appropriate to deal with the complaint under Disciplinary Bye-law 16A (Caution). The Committee is therefore proposing to order that:

[YOU] [YOUR FIRM] BE CAUTIONED

[OR]

[YOU] [YOUR FIRM] BE CAUTIONED AND PAY THE INSTITUTE THE SUM OF [£] BY WAY OF COSTS

The Committee will make this order unless, **within 30 days of the date of this letter**, [you] [your firm] serve notice on the Secretary of the Investigation Committee that [you] [your firm] does not accept that a prima facie case exists.

If such notice is served on the Secretary then, unless on reconsideration the Committee finds that no prima facie case exists, a formal complaint will be preferred to the Disciplinary Committee. In the event of finding the formal complaint proved, the Disciplinary Committee will have available to it the orders set out in Disciplinary Bye-laws 21, 22, 23 and 24 as appropriate.

An order made under Disciplinary Bye-law 16A will form a disciplinary record against [you] [your firm] and will be referred to should [you] [your firm] be subject to disciplinary action in the future.

A copy of the order will not be sent to the national or financial press but the Institute will notify the complainant, other regulators and any person making specific enquiry of the fact that a caution has been made against you.

N.B.

1 Failure to serve notice in writing, on the Secretary of the Investigation Committee that you do not accept that a prima facie case exists will result in the Investigation Committee making the proposed order.

2.2

BYE-LAWS, REGULATIONS AND GUIDANCE

2 If [you] [your firm] serves notice, within the period specified, that [you] [your firm] do[es] not accept that a prima facie case exists, then a formal complaint may be preferred to the Disciplinary Committee. However, the wording of that referral may not necessarily be in identical terms of the complaint above. [You] [your firm] should also be aware that the Disciplinary Committee has a wider range of penalties available to it than the Investigation Committee.

3 The above proposal does not affect any actions that may be taken of a regulatory nature by the Institute's Insolvency Licensing Committee, the Investment Business Committee or the Audit Registration Committee.