

PROFESSIONAL STANDARDS

Who is this helpsheet for?

This helpsheet is for members who will be appearing before the Disciplinary Committee (DC). It explains the Institute's disciplinary process and tells you what will happen at the hearing. You will also find out about your rights, your rights of appeal and what to do if you need more information.

What is the DC?

The DC deals with complaints which have been referred by the Investigation Committee (IC). It has the power to exclude members from membership.

The DC works through tribunals (three people – two chartered accountants and one person who is not an accountant) to hear the case. Hearings of complaints are normally open to the public. The IC presents the case and is usually represented by a solicitor or barrister who works for the Professional Conduct Department.

A legal assessor gives the tribunal advice on law and procedure but is not involved in taking decisions. The legal assessor is an independent solicitor or barrister.

Before the hearing

We will write to you at least six weeks before the hearing, unless you have failed to provide information to the IC, when you will only get three weeks' notice of the hearing.

We will send you a copy of the complaint, a summary of the evidence against you, copies of relevant correspondence and papers, and copies of the regulations which apply to the DC. We will send the same information to the members of the tribunal and the legal assessor.

We normally publish:

- your name
- the terms of the complaint
- the date, time and place of the hearing

on the Institute's website seven days before the hearing.

You can ask for the hearing (or part of it) to be in private but you must have a good reason. If you think a private hearing is necessary, write to the tribunal chairman. Your request must arrive no more than 14 days after you received details of the hearing.

At the hearing before the tribunal

When the tribunal of the DC hears the case, the process is similar to that of a court of law, but the atmosphere is less formal. The tribunal usually hears the case at Chartered Accountants' Hall in London.

You may attend and represent yourself or you may ask a solicitor, barrister or another member of the Institute to represent you.

The chairman of the tribunal will introduce the other members and the legal assessor at the start of the hearing. We send the case papers to members of the tribunal well before the hearing and ask anyone who has any conflicting interest to contact us so that we can find someone else to sit.

The parties do not give evidence under oath. Both sides can call and question witnesses but neither side is allowed to produce documents or witnesses at the last minute. We produce a transcript of the proceedings and give you a copy if you decide to appeal.

Sentencing orders

If the tribunal finds the complaint proved, it will consider what sentencing order, if any, to make against you. Disciplinary Bye-law 22 in the *Members' Handbook* sets out the range of sentencing orders available to the tribunal. The tribunal will also refer to the Institute's *Guidance on Sentencing* and will take into account any mitigating circumstances and your financial situation. It may, for example:

- reprimand you
- fine you
- take away your practising certificate
- exclude you from membership of the Institute or
- make no sentencing order.

The tribunal may order you to waive, reduce or return your fee.

The tribunal may insist that you seek advice from a particular source and ask you to pay for this service.

Costs

The tribunal may order you to pay the IC's costs, including the costs of the investigation and the hearing. If you do not pay on time – normally within 30 days – you will cease to be member of the Institute. Even if this happens, you will still have to pay the fine and costs, and outstanding payments will be pursued.

If the tribunal does not find the complaint proved, it may – in exceptional circumstances – order the Institute to pay you some of the costs you have incurred since the complaint was referred to the DC.

Publicity

If the tribunal finds the complaint proved, it will give details to the press, even if it makes no sentencing order. If it excludes you from membership of the Institute or takes away your practising certificate, it will give details to your local press and to your district society. We will also publish details on the Institute's website.

These reports will usually mention your name.

We only publish these reports once the appeal period has expired or once your appeal has been determined, whichever is later.

The chairman of the IC is also allowed to make public announcements about a complaint if it involves a matter of public concern.

Appeals

You can appeal against a finding or a sentencing order of the tribunal but you must do so in writing within 28 days of the hearing. If the tribunal excludes you from membership, your appeal will only be accepted if you have paid the costs ordered by the DC.

The Appeal Committee (AC) works in panels. A panel of the AC will hear your appeal. The panel consists of a senior lawyer (the chairperson), three accountants and one person who is not an accountant. The panel will consider the evidence that went to the tribunal of the DC and may sometimes hear part of it again. You may apply to the AC chairman for permission to bring fresh evidence before the AC. The AC can increase or reduce any penalty. It may also ask you to pay further costs incurred by the Institute, even if it upholds your appeal.

The powers of the AC are set out in section 2.4 of the *Members' Handbook*. The rules governing publicity are the same as for the DC.

Regulatory Committees

If the case is against an ICAEW registered auditor or an insolvency practitioner licensed by the Institute, we tell the Audit Registration Committee or the Insolvency Licensing Committee about the decision of the DC. These committees then decide whether to take any regulatory action such as withdrawing the firm's audit registration or the individual's insolvency licence. If the case involves members of other statutory regulators, these committees send a report to the relevant organisation.

How can I find someone to represent me?

Please call +44 (0)1908 546 291 for a list of solicitors who may be willing to act on your behalf.

Do I need a solicitor or barrister to represent me?

It is usually a good idea to get a solicitor or barrister to represent you if the case against you is very serious, for example, if you might be excluded from membership of the Institute or if you might lose your practising certificate.

If the case is complicated and if you want to call a witness, you may also want to ask a solicitor or barrister to represent you.

If you are thinking of consulting a solicitor, please do so as soon as possible.

How can I find out what the sentencing order might be?

The DC considers each complaint on its own facts and merits.

We publish details of DC decisions:

- in Accountancy
- at www.icaew.com (click on 'The Institute' and 'Disciplinary orders and regulatory decisions') and
- at www.accountancymagazine.com (click on 'ICAEW disciplinaries').

These reports give a good idea of the range of penalties imposed for different types of complaint.

The *Guidance on Sentencing* gives guidance to all committees which can make a sentencing order and is available at www.icaew.com (search for 'guidance on sentencing').

Do I have to attend the hearing?

You do not have to attend the hearing but it is a good idea to be present if you want to contest a complaint or to explain to the tribunal any mitigating circumstances. You can either attend on your own or you can ask a solicitor, barrister or other member of the Institute to represent you.

If you cannot attend, please send your apologies in writing.

If the tribunal is likely to fine you, it is a good idea to attend so that you can present evidence of your financial situation. If you don't provide written proof of your financial means, the tribunal will assume that you will have no difficulty paying the fine and costs.

Can I ask for the hearing to be held on another date?

Your attendance at the tribunal must take priority over all other engagements, both professional and personal.

If you have a compelling reason why you need to ask for a change of date (for example, because you will be admitted to hospital or will be appearing in court on that date), please write to the DC administrator as soon as possible. You will need to send evidence of your conflicting commitment. You do not have the right to insist on a postponement.

If the representative of the IC can't agree another date, you may write to the director of the Professional Conduct Department and ask for the date to be changed.

If the director refuses your application, you or your representative can apply for a postponement to the full tribunal of the DC on the day of the hearing. However, you should be prepared for the hearing to go ahead if your application is refused.

If we can hold the hearing on a different date, we will let you know. If you do not hear from us, you should not assume that we are able to reschedule the date of the hearing.

What is the professional referral service and what happens if I am referred to them?

The professional referral service assists members who have been referred to it in accordance with the disciplinary bye-laws.

If the DC orders you to seek advice from the professional referral service, you must contact the person whose name you are given and pay the fees for the service. We will tell you who to contact after the hearing. If you do not contact the professional referral service, the DC may take further action against you.

The service is confidential. However, the committee that refers you to the professional referral service may ask the service for a report on the advice they have given and the action you have taken.

Any questions?

If you have any questions, please call the DC administrator on +44 (0)1908 546 291.

Where can I find out more?

If you would like more information on the Institute's disciplinary arrangements, please consult:

- the Disciplinary Bye-laws
- the Investigation Committee regulations
- the Disciplinary Committee regulations
- the Appeal Committee regulations

in the *Members' Handbook*.