



FAQs ON THE INSTITUTE'S DISCIPLINARY PROCESS

Information for members

1 Why do you investigate complaints which are without basis?

When the Institute first receives information about a member's conduct, the first thing we do is assess whether there may be grounds for a complaint under the Institute's bye-laws. This means there is information which, if it can be supported by evidence, indicates the member may have to be disciplined. If we don't think there are grounds for a complaint, staff in the assessment team take great care to explain to the complainant why they have come to this view. However, they don't have the final say in turning a matter away; complainants can ask for their case to be considered by the Investigation Committee. Once the Investigation Committee has decided there are no grounds for a complaint, the case can be closed down because there is no right of appeal. This procedure helps us to close complaints without merit and turn away complainants who do not have grounds; but we do have to go through a proper process.

2 Why are you looking at something which is not related to my professional work?

All members of the Institute are expected to uphold and observe the highest professional standards. The Institute will consider any behaviour which may harm the reputation of the member, the Institute or the profession of accountancy. For this reason, if there is evidence of a significant and serious departure from the standards of behaviour expected of a chartered accountant or one of its firms, the Institute, as a responsible self-regulating professional body, will become involved.

3 Why don't you collect all the information you need at the outset?

We do try to ask for everything at the outset. However, once we receive this information, or it has been seen by the other party to the complaint, we may need to ask for additional information. We appreciate this can be inconvenient but we do need to do this to make sure that our investigation is fair and thorough.

4 Why do you need so much detail?

When we investigate a complaint we always aim to be thorough. As a result, we may need quite detailed information; after all, an investigation may result in disciplinary action against a member. We therefore have to make sure that we have sufficient information to allow the Investigation Committee to decide whether there is a case to answer.

5 Are you biased towards one party?

We are impartial. We are not there to represent members of the Institute or complainants but to look independently and objectively at the complaint.

6 The complaints process treats large firms more favourably than small firms.

All complaints are treated in the same way, whether against a small practitioner or a large firm.

7 Why have I been charged costs when you all work for the Institute?

During the investigation, we will keep a record of the time spent on the case. However, you will only be required to contribute to some or all of the costs of the investigation if a case is found against you. If an adverse finding is made, it would not be fair if members of the Institute who have no involvement with the disciplinary process were to subsidise those that do.

8 If the complaint against me is dismissed will I be reimbursed for the time and money I have spent dealing with the case?

The Investigation Committee can't make the Institute pay any money to you. A Disciplinary Committee tribunal can't make the Institute pay for the time you have spent. If you have spent money on representation since the Investigation Committee decided to send the complaint to the Disciplinary Committee, it is possible for the tribunal to order that some or all of those costs be paid. However, only in particular circumstances will such an order be made. The tribunal will consider how both you and the Institute have behaved in the proceedings and, generally, will only make the Institute pay if it is satisfied there has been a lack of good faith.

9 Why do you act on anonymous information?

Any complaint received by the Institute (whether made anonymously or not) may indicate potential misconduct by a member or firm and must be considered.

10 Why can't the case manager tell me the likely outcome?

Staff do not decide the outcome of a case. Therefore they are unable to tell you what the outcome will be. The case is considered by the Investigation Committee which is independent of the staff. The [Guidance on Sentencing](#) provides guidance for the committee when it considers what penalty to impose.

11 Can I meet the case manager?

Please contact the case manager if you would like to meet at the Institute's offices in Milton Keynes or London to discuss the case.

12 How long will the whole process take?

For an investigation to be fair, it needs to be thorough. This means that we need to research all the facts and give the member or firm enough time to answer the allegation. This can take some time. Although we always aim to finalise cases as quickly as possible, it can take

anything between three months for straightforward cases and a year (or possibly more), depending on how complicated and strongly contested a case is.

13 Where can I get help and support?

The Institute has a volunteer team of [support members](#) who are on hand to listen and offer non-judgmental advice. Support members have a strict policy of confidentiality and are exempt from the duty to report misconduct. We encourage members to discuss matters related to complaints with a support member. Please email support.members@icaew.com for more information.

14 Why do I have to prove that I am innocent?

We do not ask members to prove they are innocent. We ask the complainant to provide evidence to support their complaint and the member has an opportunity to comment and provide any further evidence which is relevant to the complaint.

15 Do you publicise adverse findings against members?

Yes, we do. If the Investigation Committee reprimands or fines a member or a firm, we send details to a number of accountancy publications. If a Disciplinary Committee tribunal excludes a member or withdraws their practising certificate, we inform the press in their local area. In all cases, a copy of the adverse finding is put on the Institute's website for 12 months.

16 Can I (the member) appeal against the committee's decision?

If the Investigation Committee finds a case against you and asks you to consent to a disciplinary order, you can choose whether or not to accept the committee's decision, including the financial penalties. You can make representations to the Investigation Committee, for example on your financial circumstances. If you choose not to accept the committee's decision, or if you don't manage to persuade it to change its decision, the Investigation Committee will refer the complaint to the Disciplinary Committee.

17 Can I attend the meeting when the Investigation Committee considers the complaint against me?

Members and complainants do not have the right to attend the Investigation Committee meeting. If the Investigation Committee believes it would find it helpful to meet you and to ask you questions before it makes its decision, it may invite you to the meeting. Members have the right to appear in person at hearings by a Disciplinary Committee tribunal. Hearings are normally open to the public so complainants can attend. A hearing will only be held in private in exceptional circumstances.

18 Can I appeal against the Investigation Committee decision?

You cannot appeal against a decision of the Investigation Committee. If the decision is to refer the complaint to the Disciplinary Committee, you will have full opportunity to put your defence to a tribunal of the Disciplinary Committee, to be legally represented and to call witnesses. If the tribunal makes an adverse decision against a member, the member may make an appeal against that decision to the Institute's Appeal Committee.

19 What is a formal complaint

This is the allegation against you which the Investigation Committee has decided needs to be considered by a tribunal of the Disciplinary Committee.

20 Do I have to have a solicitor to speak for me when the case is heard by a tribunal of the Disciplinary Committee?

No, but if the complaint you face is serious and there is a possibility that you will lose your membership if the complaint is found proved, it may help you and your case if you are represented. You can ask another member of the Institute to come to the hearing to speak on your behalf if you prefer. Tribunals do find it helpful to hear from members even if they are not represented, particularly if the tribunal has questions which arise on the day.

21 Do I need to come along to the hearing?

Members who are the subject of complaints referred to the Disciplinary Committee are expected to give priority to dealing with the complaint and their attendance at the hearing is strongly encouraged. The tribunal may need to ask you questions, you may be able to explain a misunderstanding or how a situation arose. A tribunal has to make a decision on the facts, the law and what, if any, sentence to impose. If you are there it will help the tribunal appreciate that you take the proceedings seriously but, most importantly, it is likely to help you.

22 What if I'm unable to attend on the day?

If you're unable to attend, you should contact the committee administrator as soon as you find you have a problem with the date and explain why. If you have a good reason, you will probably be asked to explain this in writing. Unless there have been a number of such requests, it is likely that your case will be postponed to another day.

23 Will I have a chance to question representatives of the Investigation Committee at the hearing before a tribunal of the Disciplinary Committee?

The Investigation Committee will be represented at the hearing and, if the representative calls witnesses in support of the case against you, you or your representative will be given an opportunity to ask questions about what they have said to the tribunal.

24 How can I be sure that the tribunal will treat me fairly

The tribunal is entirely independent of the staff of the Institute and the Investigation Committee. The tribunal comprises three people: two chartered accountants (one of whom is the chairman) and a lay member. The tribunal sits with an independent legal assessor who advises on any points of law. The hearing is normally open to the public and the tribunal has to give reasons for its decision. A record of its decision is eventually published. All these elements are intended to help make sure you have a fair hearing.

25 What will happen if I know someone who is sitting on the tribunal?

Once the administrator has sent the tribunal a set of papers for the hearing, those sitting are expected to check that they would be able to consider the matter impartially. If, on the day, you recognise a member of the tribunal, you should either raise the matter with the committee administrator or, if the hearing has started, with the chairman. There will then be

a discussion to establish whether it would be appropriate for that particular member to continue to sit on the tribunal and deal with your case.

26 Do I have to answer questions from the tribunal or Investigation Committee representative?

You do not have to speak at the hearing at all if you choose not to. If, however, you give evidence, you should be prepared to answer questions put by the Investigation Committee representative and, afterwards, by members of the tribunal. However, you do not have to. The whole proceedings are less formal than in court and the main objective is to establish exactly what has happened. Very often it is the questions asked and answers given that enable members of the tribunal to understand fully all that has occurred.

27 Is it true that members can be disciplined for failing to answer just one letter from the Institute?

Disciplinary Bye-law (DBL) 13 puts an obligation on members to provide specified information if asked to do so by Professional Conduct Department staff. Members can be (and are) disciplined for failing to provide a satisfactory response to a DBL 13 letter. However, the sequence of events will, almost without exception, be that we will have written to the member but will have received no response. We will then send two further reminders at approximately fortnightly intervals. If these produce no reply, only then will we consider issuing a requirement for information under DBL 13. If the member does not respond within the specified period, the member will make himself liable to disciplinary action.

28 I have heard that dissatisfied clients make complaints to the Institute just to get information which can be used later in litigation against members. Is this true?

We have no experience of members complaining that they have been the subject of litigation using information obtained during the handling of a complaint against him or her. Most claims against members are based on allegations of poor work. If we receive such a complaint, we usually allocate it to an alternative dispute resolution process which we call conciliation. If conciliation works (which it does 90% of the time), the parties agree a mutually acceptable solution and sign a document that prevents subsequent legal action on the same subject matter as the complaint.

29 Isn't there another way to deal with complaints apart from disciplining the accountant concerned?

Yes there is, and we use it whenever it is appropriate do so (in about 40-50% of all cases dealt with by the Institute). It is an alternative dispute resolution process called conciliation in which specially trained staff aim to resolve the problem. The process is non-judgemental and non-adversarial and the parties are helped to find a permanent solution to the problem rather than allocating blame. Solutions are never imposed but are mutually agreed between the parties, using staff as facilitators or brokers. If an agreement is reached, the Institute cannot take disciplinary action against the member in respect of that particular complaint. 90% of the cases we allocate to conciliation are resolved and customer satisfaction surveys indicate that the service is universally popular with both complainants and members.