



# HOW WE INVESTIGATE COMPLAINTS



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This booklet gives general guidance only. It does not explain ICAEW's powers and duties.

## WHO IS THIS BOOKLET FOR?

This booklet explains how we investigate a complaint and gives general guidance. It is for anyone involved in a complaint against a member or firm that ICAEW is investigating, particularly:

- the person who made the complaint; and
- the member or firm the complaint is about.

We have a number of other booklets that give more detailed information; for example, about conciliation, the reviewer of complaints and the Disciplinary Committee (DC).

## WHAT IS A COMPLAINT?

We open a complaint file when information comes to ICAEW's attention showing that a member or firm may have to be disciplined because they may have done something wrong; for example by:

- breaching a regulation;
- departing from guidance; or
- bringing discredit to ICAEW, the profession or themselves.

Not all complaints, however, lead to the accountant being disciplined; for example, if the accountant has made a simple mistake.

## WHO CAN MAKE A COMPLAINT?

Anyone can make a complaint: clients, other accountants, other regulators, members of the public and ICAEW itself.

If it is a very serious matter that raises important issues affecting the public interest, the Investigation Committee (IC) may refer it to the Accountancy & Actuarial Discipline Board (AADB) ([frc.org.uk/aadb](http://frc.org.uk/aadb)).

## HOW DOES ICAEW INVESTIGATE COMPLAINTS?

First we allocate the complaint to an investigation case manager who writes to the person who has made the complaint (the complainant). Complainants must make clear, in writing, what has happened and what they think should be investigated. The case manager may need to clarify certain issues and ask for further evidence. They will determine and set out in writing those aspects of the complaint ICAEW can investigate. There may, however, be aspects of a complaint we are not able to deal with, such as a fee dispute.

The case manager then puts these issues to the member or firm and asks relevant questions. Under our bye-laws, when we are investigating a complaint, members must answer questions and provide any information we ask for.

In order to process complaints as quickly as possible, we aim to respond to all correspondence within five working days and ask both parties to reply to letters within 14 days. If you need more time, please contact the case manager when you receive their letter and tell them

when you will be able to reply. If you tell us about any difficulties, we can make sure everyone knows how things are progressing.

The complainant is entitled to be kept informed about the progress of the complaint. We will normally send any information we believe they need to see. The member who is the subject of the complaint will see any material relevant to the complaint against them. The more both parties are able to help, the more quickly we can investigate the matter. All the correspondence between the member, the complainant and ICAEW is private and confidential until a decision has been made on the complaint.

It's in the best interests of both parties to reply to letters from ICAEW promptly and fully. A detailed answer may help the case manager to bring the matter to a conclusion; insufficient evidence to support the complaint will slow progress.

If members do not reply to letters from ICAEW, we have the power to require them to answer questions and produce books or papers. If members fail to respond, they will be in breach of a bye-law and can be disciplined for this.

You can discuss the case with a case manager over the phone. Case managers may express their views to you, either by phone or in writing, but only committees can decide what should happen. Bear in

## HOW DOES ICAEW HANDLE COMPLAINTS?

We **assess** the complaint.

Some complaints are resolved through **conciliation**.

Some complaints are referred for **investigation**.

If there appears to be a case to answer, we refer the complaint to the **Investigation Committee (IC)**.

If the IC finds there is no case to answer, the complainant can ask a **reviewer of complaints** to review the IC's decision.

The **Disciplinary Committee (DC)** considers complaints referred by the IC.

The **Appeal Committee (AC)** considers appeals against decisions of the DC.

This table sets out the different stages in the process and the committees involved, depending on what happens to the complaint.

The IC, DC and Appeal Committee (AC) consider cases where the member or firm appears to be in breach of one or more ICAEW bye-laws or regulations, or has not followed the Code of Ethics. If the complainant insists that the case be considered, the IC will consider it, even if the case manager thinks the member has done nothing seriously wrong.

The IC's powers and authorities are set out in the Disciplinary Bye-laws at [icaew.com/regulations](http://icaew.com/regulations).

You can also view the bye-laws and regulations that apply to members, the IC, DC and AC at [icaew.com/regulations](http://icaew.com/regulations)

If the complaint is about work in one of the areas regulated by statute – audit, insolvency or investment business – we will tell the appropriate regulatory committee about it. The regulatory committee may also take action such as withdrawing the firm's audit registration, withdrawing an individual's insolvency licence or asking for a monitoring visit to take place.

The *Guidance on Sentencing* gives guidance to all committees that can impose penalties and is available at [icaew.com](http://icaew.com) (search for 'guidance on sentencing').



mind that a committee may not always take the same view as the case manager.

If you would like to meet at ICAEW's offices in Milton Keynes or London to discuss the case, please contact the case manager.

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 and a year or more, depending on how complicated and strongly contested a case is.

At the end of the investigation, the case manager decides whether there appears to be a case to answer and whether the complaint should be reported to the IC. The head of investigation always reviews the case file. Sometimes we have to report a matter to the IC even though the member considers they have answered the complaint. Complainants cannot insist on how a complaint should be worded or what documents should go to the IC; nevertheless, we always try to work with both parties to make sure all concerns are considered.

We check any report to the IC and make sure the committee knows which documents the complainant has seen and has commented on. Although complainants have the right to require the complaint to be considered by the IC, they do not have the right to appear before it in person.

Please remember that ICAEW staff have to remain as objective as possible; they do not make any final decisions. It is only the relevant committee that has the authority to make the final decision.

If you think you have reason to make a civil claim against the member or firm, don't wait until our investigation process has reached a conclusion. You should seek your own legal advice straight away.

### HOW DOES THE IC WORK?

The IC considers complaints against members and firms on a wide range of matters. It consists of at least 14 people of whom at least 25% are not chartered accountants. It decides whether there is a valid complaint; in other words, whether there is a case to answer.

If the member or firm agrees the complaint is valid, the IC can impose one of a range of penalties that are set out in the bye-laws. These include reprimands and fines. The IC can require the member or firm to pay costs or it may decide to refer the case to the DC. Members do not have the right to appear before the IC.

If the IC decides there is no case to answer, the matter is closed, unless the person who has made the complaint asks for the case to be referred to an independent reviewer of complaints.

We will tell you what the IC has decided shortly after the meeting.

Although the IC does not normally deal with complaints about fees, ICAEW does offer a fee arbitration service on a

voluntary basis. For further information, ask the fee arbitration scheme administrator (+44 (0)1908 546 229) for our leaflet, *Fee arbitration*, or visit [icaew.com/arbitration](http://icaew.com/arbitration)

### WHAT HAPPENS IF THE IC FINDS THAT THERE IS A CASE TO ANSWER?

It can:

- take no further action;
- impose an unpublicised caution;
- offer a consent order; or
- refer the complaint to the DC.

These alternatives are explained below.

If the IC decides to **take no action**, we will record that decision. It is not part of the member or firm's disciplinary record. Nevertheless, the IC may take the same complaint into account if it finds there is a case to answer in a subsequent similar complaint.

If the IC makes an **order of a caution**, there will be no publicity and no fine, although the caution will be included on a member's record. Also, the member or firm may have to pay costs. If the member or firm does not agree there is a case to answer, the DC may consider the case.

If the IC decides there is a case to answer but the matter is not serious enough to lead to exclusion from membership, it may offer a **consent order**. If the member or firm is prepared to accept the IC's decision, including financial penalties, the IC will make the order without referring the case to the DC. The member

or firm will be able to give their views on the terms of a proposed order. Once a consent order has been made, we will publish the details (see page 7).

The IC will **refer the complaint to the DC** if it thinks the case is so serious that it may lead to exclusion from membership, or if the member or firm is not prepared to accept the IC's decision.

ICAEW has no powers to make a member or firm pay compensation.

### **WHAT HAPPENS IF THE IC FINDS THERE IS NO CASE TO ANSWER?**

The matter will be closed unless the person who made the complaint is not satisfied with the IC's decision. They can ask a reviewer of complaints to review it, providing they do so within six months of the decision.

A reviewer of complaints is an independent non-accountant appointed in accordance with ICAEW's bye-laws to see whether the IC should reconsider the matter.

Our leaflet, *The Reviewer of Complaints*, explains what happens if a case is referred to a reviewer.

### **HOW DOES THE DC WORK?**

The DC considers complaints referred by the IC. These are called formal complaints. Hearings are held in public unless the tribunal had agreed to hear the case in private.

A tribunal (three people – two chartered accountants and one person who is not an accountant) hears the case. An ICAEW member of staff or barrister presents the case on behalf of the IC.

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

If it finds the case proved, the tribunal can impose penalties (often referred to as a sentencing order) and these are set out in the bye-laws. They include reprimands, fines, the removal of a member's practising certificate and exclusion from membership of ICAEW. The tribunal can also order the member or firm to pay costs. Members and firms can appeal against a decision or order of the tribunal. If the tribunal dismisses the case, that is the end of the matter as far as ICAEW is concerned. In exceptional circumstances, a tribunal can order ICAEW to contribute to a member or firm's costs.

We will send you a formal record of the tribunal's decision, whether you attend the hearing or not.

For more information, see our leaflet, *Appearing before the Disciplinary Committee*.

### **HOW DOES THE AC WORK?**

Members and firms can appeal against a decision made by a DC tribunal providing they do so within 28 days of the meeting of the tribunal when it makes a decision and order. The AC considers these appeals.

The AC works in panels of five people: three chartered accountants, one non-accountant and a legally qualified chairman.

The AC can overturn the decision of the DC. It can also reconsider any order the tribunal has made. If an appeal is successful, the AC can still ask the

member to pay the costs of the appeal and, in certain circumstances, ask ICAEW to pay. If an appeal is unsuccessful, it may order the member to pay ICAEW's costs.

### **WILL THE PUBLIC FIND OUT ABOUT MEMBERS AND FIRMS WHO HAVE BEEN DISCIPLINED?**

We send details of consent orders made by the IC and orders of the DC and AC to the accountancy publications and publish them on ICAEW's website. If someone is excluded from membership or if their practising certificate is removed, we also send details to the press in their local area. We do not normally publish the names of third parties. The hearings before the tribunal and the appeal panel are open to the public and you will find more information on this at [icaew.com/publichearings](http://icaew.com/publichearings)

### **WHERE CAN I GET HELP AND SUPPORT?**

ICAEW has a volunteer team of support members who are there to listen and offer non-judgmental advice to ICAEW members. 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 see the list of support members with this booklet or email [support.members@icaew.com](mailto:support.members@icaew.com) for more information. Members may also contact Advisory Services on +44 (0)1908 248 025 (email [ethics@icaew.com](mailto:ethics@icaew.com) or [tech.enquiries@icaew.com](mailto:tech.enquiries@icaew.com)) if they have ethical or technical questions. Staff in Advisory Services are exempt from the duty to report misconduct.

### **HOW CAN I FIND OUT MORE?**

Please call +44 (0)1908 546 235 if you would like a copy of one of our other publications:

- *Conciliation*
- *The reviewer of complaints*
- *Appearing before the Disciplinary Committee*
- *Fee arbitration*
- *Fee disputes*
- *Independent Arbitration Scheme.*

### **USEFUL LINKS**

The Accountancy & Actuarial Discipline Board  
[frc.org.uk/aadb/](http://frc.org.uk/aadb/)

Regulations, standards, guidance and Code of Ethics  
[icaew.com/regulations](http://icaew.com/regulations)

Guidance on Sentencing (search for 'guidance on sentencing')  
[icaew.com/complaints](http://icaew.com/complaints)

CABA  
[caba.org.uk](http://caba.org.uk)

As a world-class professional accountancy body, ICAEW provides leadership and practical support to over 134,000 members in more than 160 countries, working with governments, regulators and industry to maintain the highest standards.

Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. ICAEW ensures these skills are constantly developed, recognised and valued.

**Because of us, people can do business with confidence.**

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