



# ***Publication of disciplinary and regulatory orders policy***

**This document provides an explanation of ICAEW's policy on the publication of disciplinary findings and regulatory penalties; the length of time they will appear on the Disciplinary and Regulatory Database and the processes by which an individual may make representations on publication.**

## **DISCIPLINARY AND REGULATORY DATABASE (THE DATABASE)**

### **Purpose**

ICAEW's regulatory and disciplinary processes are designed to protect the public, maintain the reputation of the profession and uphold proper standards within the profession. ICAEW is committed to promoting public confidence in the accountancy profession. It is in both the public and profession's interest that the disciplinary and regulatory orders made by ICAEW are transparent.

To achieve these principles, the ICAEW Regulatory Board (IRB) considers it essential that a disciplinary and regulatory record be available to the public for a specified time period, dependent on the category of disciplinary or regulatory matter and the sanction imposed.

### **Where can it be found?**

The Database is publicly accessible via [icaew.com/disciplinarydatabase](https://www.icaew.com/disciplinarydatabase) and through [icaew.com/regulation](https://www.icaew.com/regulation). A disciplinary or regulatory record can be obtained by searching for an individual and/or firm, ICAEW membership number, general location or by a relevant time period. This is to ensure that any search yields an accurate result.

### **What determines an entry and length of publication on the Database?**

Disciplinary and regulatory findings and penalties are determined by ICAEW's disciplinary and regulatory committees, which are independent to ICAEW<sup>1</sup>. Publication on the Database is dependent on the committee's overall decision in the matter before them. Each committee has a set of regulations, as well as the ICAEW Disciplinary Bye-laws (DBLs) and this policy document, which contain the relevant provisions to assist in their consideration of any substantive matter and subsequently with regards to publication of the record on the Database.

ICAEW has taken a considered and proportionate approach when determining how long a record should be on the Database. The length of time that a disciplinary or regulatory decision will remain there is determined at the point at which the sanction or order is imposed and in accordance with the term specified in the relevant disclosure table (see below). The term specified in the disclosure table has been set by taking into account the category of matter and the sanction given.

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<sup>1</sup> Some committee members hold membership with ICAEW.

Where a matter is not found proved it will not appear on the Database but may be published elsewhere if requested by the relevant individual or firm.

Where a Notice of Appeal, in respect of the decision, is served, the entry on the Database will indicate that the matter is subject to appeal, until such time that the appeal is determined, following which the record may be amended to reflect the appeal decision.

Any order made by the Fitness Committee, pursuant to DBL 40.3, or by the Disciplinary Committee pursuant to DBL 30.14 (interim order) will be published on the Database for as long as any conditions or suspension is in force.

The Database will return name and location results based on the current records held by ICAEW. If a subject changes their name or location, the disciplinary or regulatory order may show their previous name or location. The search functionality does not extend to previous names or locations.

The information contained within the Database is correct to within 48 hours. Any changes may take 48 hours to display.

### **Legislative duties**

ICAEW complies with its obligations under the Human Rights Act 1998 and data protection legislation. As such, ICAEW will not publish any details of an individual's health matters.

This is particularly relevant to matters considered by the Fitness Committee, but decisions made by other committees can involve a consideration of both disciplinary or regulatory and health matters. In these circumstances, ICAEW will ensure that all committee decisions and/or summaries do not include details of an individual respondent's health matters and consequently such detail will not appear on the Database.

Similarly, the detail of any order arising out of a decision by the Fitness Committee, that a respondent's fitness to participate in disciplinary proceedings and/or professional competence is seriously impaired through their physical or mental health, is strictly limited to only those conditions which can be imposed under DBL 40.3.

## **REPRESENTATIONS REGARDING PUBLICATION ON THE DATABASE**

There is a presumption that all matters will be published on the Database, for the prescribed time period, unless the decision-making committee is persuaded that there are exceptional circumstances which outweigh the public interest which is served by the publication of a record on the Database. Exceptional circumstances may include, but are not limited to, instances where publication will cause disproportionate damage to an individual or any institution involved in the proceedings, jeopardise the stability of financial markets or jeopardise a criminal investigation.

Representations may be made by the respondent and ICAEW at the point at which the sanction or order is made or offered, as applicable. The basis on which representations may be made are summarised below, along with any relevant regulations and bye-laws affecting these.

### **Investigation Committee**

The detail and terms of a consent order will be published in line with the relevant disclosure table unless there are exceptional circumstances which justify no publicity.

### **Fitness Committee**

Any order made by the Fitness Committee under DBL 40.3 will be published unless there are exceptional circumstances which justify no publicity (DBL 40.7).

### **Audit Registration Committee (and any audit matter considered by any other committee)**

The Audit Registration Committee will publish details of a matter in line with the relevant disclosure table, if the committee makes any of the following decisions, and when accepted by the firm:

- to withdraw or suspend registration;
- that a person should cease a particular action;
- that an audit report does not satisfy the reporting requirements of the Act;
- proposes a regulatory penalty.

The details to be published following any decision relating to an audit matter (by any committee) will be published in line with the relevant disclosure table and will always include the identity of the person unless:

- the person is an individual and the committee considers that publication of personal data would be disproportionate;
- publication would jeopardise;
  - the stability of financial markets; or
  - an ongoing criminal investigation; or
- publication would cause disproportionate damage to any institution or individual involved.

### **Practice Assurance Committee**

The detail of any regulatory penalty will be published in line with the relevant disclosure table unless there are exceptional circumstances which justify no publicity.

### **Insolvency Licensing Committee**

The detail of any regulatory penalty will be published in line with the relevant disclosure table unless there are exceptional circumstances which justify no publicity.

### **Probate Committee**

The detail of any Regulatory Penalty will be published in line with the relevant disclosure table unless there are exceptional circumstances which justify no publicity.

### **Investment Business Committee**

The detail of any Regulatory Penalty will be published in line with the relevant disclosure table unless there are exceptional circumstances which justify no publicity.

### **Disciplinary and Appeal Committee**

The detail of any disciplinary decision will be published in line with the relevant disclosure table unless there are exceptional circumstances which justify no publicity.

An interim order, by virtue of DBL 30.18, will be published as soon as practicable, for the duration of the order (see DBLs 29 and 30), unless the tribunal of its own volition, or upon the application of either party at the time of the hearing, considers that there are reasonable grounds for believing that to publish the order would:

- prejudice any current proceedings or investigation;
- prevent a party from having a fair hearing before a tribunal; or
- be not otherwise in the public interest.

### **Settlement agreements**

The detail of any settlement agreement will be published in line with the relevant disclosure table unless there are exceptional circumstances which justify no publicity.

Within 7 days, from the date of service of the order, a party or other person on whom a copy of the Settlement Order was served, may file written representations on the timing of the publication of the Settlement Order, or provide notice of their intention to make verbal representations on the same.

In determining whether a delay in publication is necessary in the public interest for the purposes of Disciplinary Committee (Settlement Order) Regulations, regulation 24, the settlement agreement chair shall have regard, among other matters, to:

- the potential impact of publication on disciplinary and/or regulatory proceedings concerning any other person, not being the respondent/respondent firm;
- the potential impact on any criminal investigation or proceedings concerning the facts or matters giving rise to the formal complaint(s); and
- the public interest in ensuring the swift publication of disciplinary sanctions for:
  - the protection of the respondent/respondent firm's clients and the wider public; and
  - the protection of ICAEW's reputation as a statutory and non-statutory regulator.

## **APPLICATION TO THE FITNESS COMMITTEE TO REMOVE A RECORD FROM THE DATABASE**

An application may be made by the respondent to the Fitness Committee, to have a record removed from the Database. It should be noted that such applications should not be made routinely and may only be made on very limited grounds, as set out below.

Such application may only be made in writing and on the grounds that there are new facts, which give rise to exceptional circumstances, which would justify a decision of not to publish on the Database.

ICAEW envisages that such circumstances may include, but are not limited to:

- in respect of a sanction against a firm, the complaint leading to the sanction related solely to the actions of one principal who had since left the firm with there being no criticism of the firm's internal control processes for allowing/not identifying the poor conduct in the first place; and/or
- in the case of an individual, there is a change in personal circumstances where, for instance, the conduct leading to a sanction arose out of a medical condition (e.g., an addiction) and there

is now medical evidence available to show that the person has been free of that addiction for a significant period of time.

The Head of Committees and Tribunals will determine, within 28 days of receipt of a written application, whether there are arguable grounds for the application to be made to the Fitness Committee. If there are, the application will be referred to the Fitness Committee to be listed for a hearing of the application before a panel of the Fitness Committee. The decision of the Head of Committees and Tribunals will be final. Written reasons will be provided in the event of refusal to refer the application to the Fitness Committee.

If the matter goes before the Fitness Committee, ICAEW will be invited to consider whether they wish to provide any written response and/or attend the hearing. Any written response by ICAEW will be provided to the respondent 28 days prior to any hearing date. The Fitness Committee can consider submissions from both the respondent and ICAEW on the matter.

In the event of a successful application for re-admission, following exclusion, the Fitness Committee has the discretion to have any detail on the Database relating to that exclusion removed, if it considers that it is no longer in the public interest.

## DISCLOSURE TABLES

Disciplinary/regulatory sanctions	Period of disclosure
Regulatory penalty – fine only*	3 years
Reprimand	5 years
Severe reprimand	7 years
Withdrawal of practising certificate	The period of withdrawal plus 3 years or readmission/pc date plus 3 years
An order that a member is ineligible for a practising certificate	10 years
Exclusion from membership	The period of exclusion plus 5 years If open ended, 10 years
Order prohibiting a firm from describing itself as “Chartered Accountants”	The period of the prohibition
Any order made by the Fitness Committee under DBL 40.3 or the Disciplinary Committee under DBL 30.14 (see DBL 29 &30)	The period of any suspension or conditions imposed on a (practising certificate or licence)

\*The period of disclosure will be a minimum of five years if the regulatory penalty has been imposed for an audit matter pursuant to the provisions of SATCAR.

If there are any questions about decisions that are listed or not listed on the Database, please call +44 (0)1908 546 293.