

Both sides can call and question witnesses but must get permission from the tribunal chair if they want to produce documents or witnesses at the last minute. Witnesses do not give evidence under oath.

After the hearing, if you decide to appeal, we will produce a transcript of the proceedings and give you a copy.

WHAT IS A SENTENCING ORDER?

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

- reprimand you;
- fine you;
- take away your practising certificate;
- exclude you from ICAEW membership; or
- make no sentencing order.

The tribunal may order you to waive, reduce or return any fees or commission. It may also insist you take remedial action at your own expense to resolve the issues that created the complaint.

COSTS

The tribunal may order you to pay the IC's costs, including the costs of the investigation and the hearing. If you don't pay any fines and costs ordered by the tribunal on time - normally within 30 days - your membership will automatically come to an end. Even if this happens, you'll still have to pay any outstanding fines and costs.

If the tribunal does not find the complaint proved, it may - in exceptional circumstances - order ICAEW to pay you some of the costs you've incurred since the complaint was referred to the DC.

PUBLICITY

If the tribunal finds the complaint proved, we will publish details of your name, the complaint and the tribunal's decision at icaew.com/publichearings. We also send details to *economia* magazine. These reports will usually mention your name.

ICAEW connects over 147,000 chartered accountants worldwide, providing this community of professionals with the power to build and sustain strong economies.

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Appearing

before the Disciplinary Committee



Appearing before the Disciplinary Committee

WHO IS THIS LEAFLET FOR?

This leaflet is for ICAEW members, member firms and others who are subject to the Disciplinary Bye-laws who will be appearing before a tribunal of the Disciplinary Committee (DC). It explains ICAEW's disciplinary process and tells you what will happen at the hearing. You'll also find out about your rights, including your rights of appeal and what to do if you need more information.

WHAT IS THE DC?

The DC deals with complaints that have been referred to it by the Investigation Committee (IC).

A tribunal of three members of the DC are appointed to hear a case. Each tribunal is made up of three people – one chartered accountant and two lay people, one of who is the chair.

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

WHAT HAPPENS BEFORE THE HEARING?

We'll give you at least six weeks' notice of the hearing date or a minimum of three weeks' notice if the complaint is that you've failed to provide information to the IC.

When we send the letter, we'll also send you:

- a copy of the complaint;
- a summary of the case against you;
- copies of relevant correspondence and papers; and

- copies of the regulations that apply to the tribunal (the disciplinary papers).

We'll send the same information to the members of the tribunal and the legal assessor.

Seven days before the hearing we normally publish:

- your name;
- the disciplinary bye-law which it is alleged you have breached; and
- the date, time and place of the hearing at icaew.com/publichearings.

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

WHAT HAPPENS AT THE HEARING?

When the tribunal hears the case, the process is similar to that of a court, but the procedure is less formal.

Hearings take place in central London and are normally open to the public.

You may attend or you can be represented by a solicitor, barrister, another ICAEW member or (with the agreement of the tribunal) any other person.

The chair of the tribunal will introduce the tribunal members and the legal assessor at the start of the hearing.

ICAEW is represented by a member of staff who is usually a solicitor (called the legal adviser), or a barrister.

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, normally your appeal will only be accepted if you've paid the costs ordered by the tribunal.

The Appeal Committee (AC) works in panels of five; two chartered accountants, two non-accountants and a legally qualified chair.

A panel of the AC will hear your appeal. It will look at the evidence that was considered by the tribunal of the DC and may sometimes hear fresh evidence. You may apply to the AC chair for permission to rely on fresh evidence in connection with your appeal. The AC can increase or reduce any penalty. Depending upon the outcome of the appeal, it may order you to pay the costs of the appeal.

The powers of the AC are set out in the Appeal Committee Regulations at icaew.com/regulations. 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 ICAEW, 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 regulatory bodies, these committees send a report to the relevant body.

Frequently asked questions

DO I NEED A SOLICITOR OR BARRISTER TO REPRESENT ME?

It's usually a good idea to get a solicitor or barrister to represent you, particularly if the case against you is very serious; for example, if you might be excluded from ICAEW membership 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're 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 facts and merits. We publish details of DC decisions:

- at icaew.com/publichearings; and
- in *economia* magazine.

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

The Guidance on Sanctions gives guidance to all committees that can make a sentencing order and is available at icaew.com/publichearings

DO I HAVE TO ATTEND THE HEARING?

You don't have to attend the hearing but it's a good idea to be there 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 another ICAEW member to represent you.

If you can't attend, please send your apologies in writing.

If the tribunal is likely to fine you, it's 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'll have no difficulty paying any 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 and include evidence of your conflicting commitment. You don't have the right to insist on a change of date.

If we 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, on the day of the hearing you or your representative can apply for the full tribunal of the DC to be postponed. 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'll let you know.

ANY QUESTIONS?

If you have any questions, please call the DC administrator on +44 (0)1908 546 293.

WHERE CAN I FIND OUT MORE?

If you'd like more information on ICAEW's disciplinary arrangements, please consult:

- the Disciplinary Bye-laws
- the Investigation Committee Regulations
- the Disciplinary Committee Regulations
- the Appeal Committee Regulations
- Guidance on Sanctions at icaew.com/regulations