



Summary of Decision

The purpose of this summary sheet is to provide a high level and accessible overview of the Legal Services Board's ("LSB") decision. Readers are recommended to read the formal decision notice below for further details. **This summary is not and should not be taken as a formal part of the LSB's decision notice under the Legal Services Act 2007 ("the Act").**

The LSB's decision is to grant in full the application from the Institute of Chartered Accountants in England and Wales ("ICAEW") for approval of alterations to its regulatory arrangements relating to its Disciplinary Framework.

The changes include:

- A redrafting of ICAEW's Disciplinary Bye-laws (DBLs) to reduce them to a set of core DBLs with procedural matters moved into separate regulatory arrangements.
- The creation of a new five-part regulation handbook. Three parts of which were submitted for LSB approval:
 - Investigation and Disciplinary Regulations (IDRs)
 - Fitness to Practice Regulations (FTP Regulations)
 - Regulatory Review and Appeal Regulations (RRARs)
- Consequential amendments to ICAEW's Probate Regulations and Probate Compensation Scheme Rules.

The key policy changes include:

- amendments to the duty to report misconduct
- changes to the liability test used by ICAEW's Investigation Committee
- the addition of new types of orders that can be made by ICAEW's Disciplinary Tribunals
- expansion of the circumstances when interim suspension orders can be used
- the introduction of a new process to allow certain disciplinary allegations to 'lie on file'
- alterations to ICAEW's reviewer of complaints process
- additional transparency measures for review/appeal hearings and decisions.

Following assessment of ICAEW's application, the LSB has concluded that the changes do not meet the conditions for refusal under paragraph 25(3) of Schedule 4 to the Act.

Decision notice

The Institute of Chartered Accountants in England and Wales application for approval of changes to regulatory arrangements to its Disciplinary Framework

1. The Legal Services Board (“**LSB**”) has granted an application from the Institute of Chartered Accountants in England and Wales (“**ICAEW**”) for approval of amendments to its Disciplinary Framework.
2. The LSB is required by Part 3 of Schedule 4 to the Legal Services Act 2007 (the “**Act**”) to review and grant or refuse applications by approved regulators to make alterations to their regulatory arrangements. The ICAEW is an approved regulator.
3. This decision notice sets out the decision taken, including a brief description of the changes. The statutory framework for applications to the LSB for approval of changes to regulatory arrangements can be found on the LSB website¹.

Chronology

- The LSB confirmed receipt of an application from the ICAEW on 22 July 2022.
- The 28-day initial decision period for considering the application ended on 18 August 2022.
- An extension notice was issued on 11 August 2022 extending the decision period to 19 October 2022.
- This decision notice is effective from 27 September 2022.
- The decision notice will be published on our website on 29 September 2022.

Background

4. The ICAEW regulates more than 152,000 chartered accountant members in over 160 countries. It is designated as an Approved Regulator and Licensing Authority for probate and the administration of oaths under the Act, and currently accredits approximately 340 firms to undertake this reserved legal activity.
5. The ICAEW’s Disciplinary Bye-laws (DBLs) have been updated incrementally over a number of years. The ICAEW concluded that this approach had led to the DBLs becoming overly complex and difficult to navigate with overly legalistic language throughout. In addition to this, the governance process to update the DBLs under the ICAEW’s constitution meant that procedural changes could not be implemented swiftly.
6. To address this the ICAEW is proposing to introduce redrafted ‘core’ DBLs that retain all essential content but are intended to be easier to navigate. In addition to this, the ICAEW is proposing a new five-part regulatory handbook containing all of its disciplinary procedural regulatory arrangements. The ICAEW’s application at paragraphs 5-8 set out its objectives in detail.

¹ <https://legalservicesboard.org.uk/our-work/statutory-decision-making/alterations-to-regulatory-arrangements/statutory-framework-for-applications-to-the-lsb-for-approval-of-changes-to-regulatory-arrangements>

7. The ICAEW's intention in proposing these changes is to simplify and to update its disciplinary and fitness to practice frameworks alongside the introduction of several key policy alterations.
8. Three parts of the handbook have been included in the ICAEW's application to the LSB. The ICAEW has confirmed to the LSB that the other two parts do not relate to probate practitioners. We note that these regulations apply to ICAEW membership and to ICAEW Foundation Qualification Holder status.
9. The three parts to the handbook that we considered as part of our assessment are the new:
 - a. Investigation and Disciplinary Regulations (IDRs)
 - b. Fitness to Practice Regulations (FTP Regulations)
 - c. Regulatory Review and Appeal Regulations (RRARs)
10. The ICAEW is also proposing consequential amendments to its Probate Regulations and Probate Compensation Scheme Rules.

Summary of proposed changes

Key changes

11. The DBLs have been completely redrafted and the IDRs, FTP Regulations and RRARs are all newly drafted Regulations. The key policy changes are as follows.

Duty to report potential misconduct - DBLs

12. The ICAEW is proposing to alter the current duty to report potential misconduct. The current test is limited to ICAEW members and requires reporting where it is in the public interest to do so. The proposal is to remove the requirement for reporting only where it is in the public interest and to require all matters which indicate a potential liability to disciplinary action to be reported. The ICAEW states that this removes what is considered to be a subjective test. The ICAEW also intends to amend the duty so that it applies to all individuals and firms who are subject to the DBLs (not just ICAEW members).

Liability test - DBLs

13. The current liability test used by the ICAEW's Investigation Committee is whether there is a 'prima facie' case of liability to disciplinary action. The ICAEW is proposing to replace this test within the DBL's (Core DBL 5.1) with a requirement for its Conduct Committee to determine whether there is a 'realistic prospect, if the allegations were referred to a Tribunal for hearing, the allegation or allegations would be found proved'. The ICAEW considers this change will make the test clearer and more comprehensible to all users.

New orders – DBLs

14. The ICAEW is proposing to empower its Disciplinary Tribunals to order that accredited probate firms and others must carry out specified training of staff. It has also standardised the types of orders that may be made across its arrangements. The ICAEW considers that the changes enable the ICAEW's tribunals to determine the most appropriate and proportionate sanction in each case. The introduction of orders for specified training is considered an important tool in protecting consumers from poor service.

Interim orders – DBLs and IDRs

15. The ICAEW's current DBLs provide for interim orders to be made where an individual subject to the DBLs is charged with an indictable offence, excluded from another professional body or has abandoned their practice. The proposal is to allow the Conduct Department to apply for an interim order where it considers there is risk of significant harm to the public if interim measures are not put in place.
16. In addition, the ICAEW is proposing to make changes to the procedure for review and appeal of interim orders.

Lie on File Process - IDRs

17. The ICAEW is proposing to introduce a new process that will enable certain allegations to lie on file in circumstances where the relevant individual has already been excluded. This will mean that, for certain allegations there will be no action pursued, but the information will remain on file in case the allegations need to be dealt with at a later date. This change is intended to allow for the efficient disposal of matters.
18. The ICAEW is proposing that it would be at the discretion of the Conduct Committee or Tribunal Chair to decide whether such matters should lie on file or be investigated/heard in full.
19. The ICAEW is also proposing safeguards be built into the readmission process to ensure that any matters remaining on file are dealt with before a readmission application is processed.

Reviewer of complaints process - IDRs

20. The ICAEW's current reviewer of complaints process was intended as a safeguard to ensure a complainant could request a full review of the investigation and any decisions made to reject complaints.
21. The ICAEW is proposing amendments to focus the role of the reviewer on:
 - a. whether there was a failure to investigate any of the events referred to in the complaint or a failure to follow up on relevant lines of enquiry
 - b. whether there was a failure to provide all relevant information or evidence obtained to the Conduct Committee

- c. whether there was a failure to follow the procedure specified in the regulations.

22. It is proposed that where the reviewer identifies any failure there will be further investigative work and/or a supplemental conduct report required to remedy any failures identified before a final decision is made.

Public Hearings / Publications - RRARs

23. Currently hearings of appeals of ICAEW regulatory decisions are held in private unless a successful application is made for a hearing to be held in public.

24. The ICAEW is proposing that all regulatory and appeal hearings should be held in public unless exceptional circumstances indicate otherwise. It considers that public hearings being the default is an important measure of transparency around its processes for scrutinising allegations against members and firms.

25. For the purposes of this application, the proposed changes here are only relevant to hearings of the Review Committee at the initial stage. This is because Legal Services Regulations appeals in regulatory cases are to the First-tier Tribunal.

26. The ICAEW is also proposing that all orders made by a Review Panel be published, including a note that the matter may be subject to appeal. The ICAEW's application explains that this change will provide consistency for its approach to the publication of its disciplinary decisions.

27. Additional detail on the core policy alterations proposed are set out in the ICAEW's application at Paragraphs 9 to 36.

Key issues considered in the assessment of the application

28. In carrying out our assessment, the LSB has considered the following issues and taken account of feedback provided by the ICAEW.

Impact on the Probate Community

29. We noted that the application provided limited information about the impact of the changes on those firms and individuals regulated for non-contentious probate. We asked the ICAEW to provide additional information.

30. The ICAEW explained that in its view the impact of the changes on probate firms and practitioners will not be significantly different to the overall impact on firms as the key elements of its disciplinary framework are not proposed to be altered. The ICAEW also noted the small number of complaints about probate services. Its Head of Investigation can only identify one complaint relating to the performance of probate work and only 92 complaints relating to firms accredited for probate in relation to conduct since 2015 until the end of 2021. This contrasts with 791 complaints relating to audit work and a total of complaints of 7,085 overall.

31. For the purposes of considering the ICAEW's application, it is very important to the LSB that ICAEW evaluates the impact on probate firms and practitioners who interact with the ICAEW's disciplinary processes. Approved regulators should always provide such data when seeking authorisations (of any kind) under the Act. For future applications it will be important to ICAEW to include focus on the specific impact of proposals on probate firms and practitioners.

Guidance

32. We asked the ICAEW to set out any guidance that would require consequential amendments prior to implementation of the new regulatory framework.
33. The ICAEW confirmed that updates would be made to its:
 - a. Guidance on duty to report misconduct;
 - b. Guidance on resignation of members; and
 - c. Guidance on sanctions.
34. The ICAEW also confirmed that it would update other documents such as its Code of Conduct for Complainants.
35. We also questioned which guidance documents would be either updated substantively or newly issued following implementation of the new framework. In response, the ICAEW confirmed that there are currently no plans or timelines for the creation and issuing of further guidance. While the regulations provide for guidance to be issued, it will only be issued where it is considered necessary.
36. The ICAEW also explained that Guidance Notes are anticipated to focus only on setting out non-exhaustive lists of factors which should be considered by a disciplinary committee when exercising its discretion.
37. We expect the ICAEW to ensure it publishes any Guidance as that is critical to understanding and following the new regulatory arrangements.

Reviewer of complaints

38. Our initial assessment of the application identified a concern that the proposal was to diminish the safeguard of having a 'reviewer of complaints'. We asked the ICAEW to set out the number of complaints which have been subject to a request for review in the last five years. The ICAEW confirmed that from 2017 to 2021 there were 74 requests for review, with only one request resulting in the matter requiring to be reconsidered by the Investigation Committee. The ICAEW also explained that there have been a further 12 requests in 2022 with the 9 concluded reviews resulting in no further referrals back to the Investigation Committee.
39. We queried why the ICAEW considered there is a need to limit the scope of the role of the reviewer. The ICAEW explained that the reviewer will still have access to the whole file and will be able to consider whether the matter has been fully and properly

investigated. However, the ICAEW did not consider it was necessary for the reviewer to consider whether the finding was “not one which could reasonably have been arrived at by the Investigation Committee upon due consideration of the complaint(s) before it”. The ICAEW set out that this was because:

- a. since 2015 the Investigation Committee has operated with a parity of lay and chartered accountant members and has a lay Chair with a casting vote. This contrasts with earlier committees, which were comprised mainly of chartered accountants, which gave rise to a perceived risk of bias. The ICAEW considers that the current mix of Committee member expertise reduces the need for further assurance due to the reduced risk of bias in committee decision making.
- b. it also considers that the current role of the reviewer creates an anomaly whereby one single individual can call into question the reasonableness of a decision already considered and determined by a committee, which now include both lay and non-lay members.
- c. The ICAEW reviewed the outcomes of the requests for review and noted no questions had been raised regarding the reasonableness of decision making.
- d. The ICAEW also considered it appropriate to manage the expectations of complainants who consider the existing process of review to be akin to a full appeal.

40. We consider it important that the ICAEW carefully review the impact of the change to the role of the reviewer of complaints. If there are any adverse outcomes identified, then we would expect the ICAEW to take steps to mitigate those outcomes. We will follow up on this through our regular relationship management meetings with the ICAEW.

Lie on file process

41. We asked the ICAEW about the criteria that would be considered when assessing whether outstanding allegations should be investigated and heard or allowed to lie on file. We posed this question because we wanted to understand any consideration that the ICAEW had given to the potential impact on public interest in not pursuing certain allegations.
42. We also asked the ICAEW whether any consideration had been given to the risk of degradation of evidence if allegations lie on file but are later investigated upon an application for readmission.
43. The ICAEW explained that the Conduct Committee and Tribunals Committee would both be expected to take public interest into account. They are required to have regard to the objectives of the DBLs (proposed DBL 3.1) which directly references the public interest. The ICAEW also explained that it expects the following to be taken into account:
 - a. the seriousness of any complaint
 - b. the number of complaints proposed to lie on file
 - c. the likelihood of an application being made for readmission

- d. the potential evidential difficulties which might be encountered in the future if an application for readmission is made.
44. The ICAEW stressed that all the relevant factors for determination of an application will be set out by the Conduct Department in any application made for allegations to lie on file.
45. The ICAEW also noted that exclusion from ICAEW membership does not stop individuals from offering to provide services to the public as terms such as accountant and tax adviser are not protected titles.
46. In relation to readmission, the ICAEW set out that between zero and two applications are made for readmission per year, and in the last 8 years only 1 member has been readmitted following an exclusion order.
47. The ICAEW also confirmed that training is planned for its committees prior to implementation of the new processes, and it will, after a period of implementation, consider whether guidance notes should be issued.

Evaluation and monitoring.

48. Paragraph 61 of the application sets out the ICAEW's plans for evaluation and monitoring which included evaluation on an annual basis. During the course of our assessment, we asked the ICAEW to confirm that its annual review of the changes would include a review of the key policy changes.
49. The ICAEW confirmed that it would be reviewing the efficacy and effectiveness of the proposed changes, and the first review of the impact of changes would be carried out during its 2024 QA programme.
50. The ICAEW confirmed that it was content to share the conclusions of its review with the LSB. We welcome that offer and expect this to be followed up through the ongoing relationship management process, noting that the ICAEW should also consider publishing the findings so that other stakeholders will be able to consider them. We also expect the ICAEW to use its review to assess any need for Guidance Notes to be issued.

Privy Council

51. The ICAEW's application (Paragraph 40) explained that the new framework will only take effect generally for ICAEW-regulated individuals and firms once the new DBLs are approved by the Privy Council. The application also requested that the LSB approve the framework prior to approval being obtained from the Privy Council.
52. Previously, when the DBLs have been amended, the ICAEW has sought approval from the Privy Council and then applied to the LSB in order that alterations can take effect in relation to ICAEW-accredited probate firms. This change in the order of applications means that, should the Privy Council require any amendments to the

DBLs, the ICAEW will need to make a further application or request to the LSB to ensure the same DBLs apply generally and to ICAEW-accredited probate firms.

53. We expect the ICAEW to inform us of any changes made during the course of obtaining Privy Council approval and to make any necessary application or request as soon as practicable.

Decision

54. The LSB has considered the ICAEW's application against the criteria in paragraph 25(3) of Schedule 4 to the Act. It considers that there is no reason to refuse this application, and accordingly, the application is granted.

55. Annex A to this decision notice contains the amendments to the regulatory arrangements approved by the LSB.

Matthew Hill, Chief Executive
Acting under delegated authority granted by the Board of the Legal Services Board
27 September 2022

Appendix 1

Draft ICAEW Disciplinary Bye-laws

PRELIMINARY

Citation and commencement

- 1.1 These **bye-laws** may be cited as the **Disciplinary Bye-laws** of the Institute of Chartered Accountants in England and Wales.
- 1.2 These **Disciplinary Bye-laws** shall come into force on [TBC] and, subject to **Disciplinary Bye-law** 3.3, the **Disciplinary Bye-laws** dated 14 October 2019 shall be repealed.

Definitions and interpretation

- 2.1 In these **Disciplinary Bye-laws**, defined terms are indicated in **bold and italics**. Unless the context otherwise requires, defined terms shall have the following meanings:

ACA means the qualification offered by *ICAEW* to allow a person to become an Associate of the Institute of Chartered Accountants in England and Wales.

Accountancy Scheme means the scheme, as amended from time to time, in which *ICAEW* participates pursuant to an agreement with the Financial Reporting Council and other professional bodies (including their relevant successors) being an investigation and discipline scheme for the purposes of clause 1(b)(viiiA) of *ICAEW's* Supplemental Charter of 21 December 1948.

affiliate means a person to whom affiliate status has been granted in accordance with clause 12A of *ICAEW's* Supplemental Charter of 21 December 1948.

allegation means an allegation arising out of a *conduct matter* which is reported to the *Conduct Committee* in accordance with these *Disciplinary Bye-laws* and the *IDRs*, and which specifies the basis for potential liability to disciplinary action under the *Disciplinary Bye-laws*. Where alternative bases are specified in respect of the same *event* or *events*, each of them constitutes a separate *allegation* for the purposes of these *Disciplinary Bye-laws*.

appeal means an appeal:

- a. against one or more *orders* of a *Tribunal* which is brought in accordance with the *IDRs*; or
- b. against one or more *orders* of a *Fitness to Practise Panel* which is brought in accordance with the *Fitness to Practise Regulations*.

Appeal Committee means the Appeal Committee of *ICAEW* whose members are convened into *Appeal Panels* to consider *appeals* of *orders* made by a *Tribunal* or a *Fitness to Practise Panel*.

Appeal Panel means a panel of the *Appeal Committee* which is convened to hear an *appeal* brought in accordance with the *IDRs* or the *Fitness to Practise Regulations*.

assessment means the process undertaken by the *Conduct Department* in respect of a *complaint* to determine whether there is a potential liability to disciplinary action under the *Disciplinary Bye-laws* and whether the matter should be the subject of an *investigation*.

bye-laws means all the bye-laws of *ICAEW* in force at the relevant time.

CFAB student means a person who is registered to study for the *ICAEW* Certificate in Finance, Accounting and Business (CFAB) and no more than three years have elapsed since the date of the last attempt at a CFAB examination.

Charter means *ICAEW's* Royal Charter of 1880 and Supplemental Charter of 1948.

complainant means a person or body (other than an officer or employee of *ICAEW* acting in such capacity) who brings a *complaint* to the attention of the *Conduct Department*.

complaint means a matter which is reported to, or comes to the attention of, the *Conduct Department* concerning the conduct or performance of a *member, firm, affiliate* or *relevant person*.

Conduct Committee means the Conduct Committee of *ICAEW* which considers *allegations* reported to it by the *Conduct Department* and which reviews decisions and / or actions taken by the *Conduct Department* in assessing *complaints*, and which prosecutes certain *formal allegations* before *Tribunals*.

Conduct Department means the department within *ICAEW's* Professional Standards Department (or relevant predecessor or successor body identified as such in the *IDRs* and/or *regulations*) which is responsible for assessing *complaints*, investigating *conduct matters*, reporting *allegations* to the *Conduct Committee* or *serious conviction allegations* to the *Tribunals Committee*, prosecuting *formal allegations* before *Tribunals* (except those prosecuted by the *Conduct Committee*) and for making or responding to *appeals* to the *Appeal Committee*.

conduct matter means one or more *events* which have been assessed by the *Conduct Department* as having the potential to give rise to disciplinary action and which are being investigated by the *Conduct Department*.

consent order means an *order* of the *Conduct Committee* made with the agreement of the *member, firm, affiliate* or *relevant person* in accordance with *Disciplinary Bye-law* 10.1(b) which specifies:

- a. the *sanction* or *sanctions* to be applied in respect of the *allegation* or *allegations* against the *member, firm, affiliate* or *relevant person*; or

- b. an *order* for no further action; and

any *costs order* against the *member, firm, affiliate* or *relevant person*.

contracted firm means a sole practice, partnership, limited liability partnership or a body corporate which is not a *member firm* but which has contracted with ICAEW to be subject to the *Disciplinary Bye-laws* and the ICAEW Code of Ethics.

costs order means:

- a. in relation to any *disciplinary proceedings*, an *order* against one *party* for payment of all or part of the costs incurred by the other *party* in connection with the *disciplinary proceedings* (and, in the case of ICAEW, the costs incurred during the *investigation* as well as the *disciplinary proceedings*);
- b. in relation to any proceedings concerning an application for an *interim order* or an existing *interim order*, an *order* against one *party* for payment of all or part of the costs incurred by the other *party* in connection with the proceedings;
- c. in relation to any *fitness to practise proceedings*, an *order* against one *party* for payment of all or part of the costs incurred by the other *party* in connection with the proceedings.

director means a director of a body corporate.

Disciplinary Bye-laws means the *Disciplinary Bye-laws* of ICAEW.

disciplinary committee means any of:

- a. the *Conduct Committee*;
- b. the *Tribunals Committee* and any *Tribunals*;
- c. the *Appeal Committee* and any *Appeal Panels*,

and any predecessor or successor to any such body, and ‘*disciplinary committees*’ means all of them.

disciplinary proceedings means the process by which:

- a. the *Conduct Committee* considers one or more *allegations* against a *member, firm, affiliate* or *relevant person*;
- b. a *Tribunal* is convened to hear one or more *formal allegations* against a *member, firm, affiliate* or *relevant person*;
- c. an *Appeal Panel* is convened to determine an *appeal* against one or more *orders* of a *Tribunal* in respect of such *formal allegation(s)*,

and ‘*disciplinary proceedings*’ includes all or any of the above processes under these *Disciplinary Bye-laws* and the *IDRs*.

effective date means the date on which these *Disciplinary Bye-laws* take effect being [TBC]

event means an act, omission, fact, matter or circumstance.

finding means:

- a. in relation to the *Conduct Committee*, a finding that the test set out in *Disciplinary Bye-law 5.1* is, or is not, met in relation to an *allegation*;
- b. in relation to a *Tribunal* or an *Appeal Panel* in *disciplinary proceedings*:
 - i. a finding that the test for an *interim order* set out in *IDR 30.2* is, or is not, met (including on any review or *appeal*); or
 - ii. a finding that the test set out in *Disciplinary Bye-law 5.2* is, or is not, met in relation to a *formal allegation*;
- c. in relation to a *Fitness to Practise Panel* or an *Appeal Panel* in *fitness to practise proceedings*, a finding that the test for one or more *orders* under *Disciplinary Bye-law 13.1* is, or is not, met (including on any review or *appeal*);

and, for the purposes of paragraphs (b)(ii) and (c) above, a 'finding' shall include any factual findings which form the basis of that finding.

firm means:

- a. a *member firm*;
- b. a *regulated firm*;
- c. a *contracted firm*; or
- d. a *licensed practice*.

fitness to practise application means an application to the *Fitness to Practise Committee* to consider:

- a. the fitness to respond to an *investigation* and/or to participate in *disciplinary proceedings* and/or *regulatory proceedings*; and/or
- b. the fitness to practise,

of a *member*, *affiliate* or *relevant person* which can be made by either the *PSD Chief Officer* (on behalf of *ICAEW*) or by a *member*, *affiliate* or *relevant person* themselves in accordance with the *Disciplinary Bye-laws* and the *Fitness to Practise Regulations*.

Fitness to Practise Committee means the *Fitness to Practise Committee* of *ICAEW* whose members are convened into *Fitness to Practise Panels* to:

- a. consider *fitness to practise applications* in relation to *members, affiliates and relevant persons* under the *Fitness to Practise Regulations*; and
- b. review any existing *orders* made in accordance with *Disciplinary Bye-law 13.1* in respect of such *members, affiliates or relevant persons*.

Fitness to Practise Committee Chair means the person appointed from time to time as Chair of *ICAEW's Fitness to Practise Committee* by the *RACAC* (or relevant predecessor or successor body).

fitness to practise consent order means a consent order entered into between the *member, affiliate or relevant person*, and *ICAEW*, in accordance with the *Fitness to Practise Regulations*, which includes one or more of the *orders* specified in *Disciplinary Bye-law 13.2*.

fitness to practise interim review hearing means a *hearing* to review an *order or orders* of a *Fitness to Practise Panel* made in accordance with *Disciplinary Bye-laws 13.1 and 13.2* (including any orders made by way of a ***fitness to practise consent order***) which is held at the request of the *member, affiliate or relevant person* in accordance with the *Fitness to Practise Regulations* (prior to the next *fitness to practise review hearing*).

fitness to practise hearing means a *hearing* of a *Fitness to Practise Panel* to determine a *fitness to practise application* made under the *Fitness to Practise Regulations*.

Fitness to Practise Panel means a panel of the *Fitness to Practise Committee* which is convened to consider any matter falling to be determined by the *Fitness to Practise Committee* under *Disciplinary Bye-law 13* and in accordance with the *Fitness to Practise Regulations*.

Fitness to Practise Panel Chair means a member of the *Fitness to Practise Committee* who has been approved by the *RACAC* (or relevant predecessor or successor body) to chair *Fitness to Practise Panels* and who has been appointed by the *Fitness to Practise Committee Chair* to chair a *Fitness to Practise Panel*.

fitness to practise proceedings means the proceedings under the *Disciplinary Bye-laws* and the *Fitness to Practise Regulations* following a *fitness to practise application* made by either the *PSD Chief Officer* or by a *member, affiliate or relevant person*.

Fitness to Practise Regulations means the *regulations* setting out the process by which *Fitness to Practise Panels* will consider:

- a. the fitness to respond to an *investigation* and/or to participate in *disciplinary proceedings* and/or *regulatory proceedings*; and/or
- b. the fitness to practise,

of members, affiliates and relevant persons, as amended from time to time by the ICAEW Regulatory Board in accordance with *Disciplinary Bye-law* 16.3.

fitness to practise review hearing means a *hearing* to review an order or orders made by a *Fitness to Practise Panel* under *Disciplinary Bye-laws* 13.1 and 13.2 (including any orders made by way of a **fitness to practise consent order**) which is held in accordance with the *Fitness to Practise Regulations* (not being a *fitness to practise interim review hearing*).

formal allegation means an *allegation* which:

- a. has been referred by the *Conduct Committee* for hearing by a *Tribunal*;
- b. has been referred by the *Conduct Department* for hearing by a *Tribunal* (in the case of a *serious conviction allegation*);
- c. may subsequently be considered on *appeal* by an *Appeal Panel*;
- d. may be remitted by an *Appeal Panel* for re-hearing by a *Tribunal*; and

which specifies the basis for potential liability to disciplinary action under the *Disciplinary Bye-laws*. Where alternative bases are specified in respect of the same event or events, each of them constitutes a separate *formal allegation* for the purposes of the *Disciplinary Bye-laws*.

Foundation Qualification Holder means a person who holds the ICAEW Foundation Qualification and is registered to use the relevant designatory letters.

Guidance means guidance issued by the ICAEW Regulatory Board in accordance with *Disciplinary Bye-law* 16.

Guidance on sanctions means the guidance issued by the ICAEW Regulatory Board for the *disciplinary committees* in accordance with *Disciplinary Bye-law* 16, which specifies ICAEW's policy and framework for applying *sanctions*.

hearing means a *hearing* of a *Tribunal*, an *Appeal Panel* or a *Fitness to Practise Panel*, whether conducted in person or through video or audio-conferencing facilities, and references to a *hearing* in these *Disciplinary Bye-laws* includes a re-hearing.

ICAEW means the Institute of Chartered Accountants in England and Wales.

ICAEW Council means the Council of the Institute of Chartered Accountants in England and Wales.

ICAEW Regulatory Board means the board delegated by ICAEW Council to have responsibility for the supervision of ICAEW's regulatory and disciplinary functions, and which oversees the appointment of members of the *disciplinary committees* and the *regulatory committees* by the RACAC.

IDRs means the Investigation and Disciplinary Regulations of *ICAEW* as may be made and amended from time to time by the *ICAEW Regulatory Board* in accordance with *Disciplinary Bye-law 16*.

interim order means an *order* of a *Tribunal* made in accordance with *Disciplinary Bye-law 11.5*, pending the final determination of *allegations* or *formal allegations* under the *Disciplinary Bye-laws*, which may include one or more of the following:

- a. suspension of a person's membership of *ICAEW*;
- b. suspension of a person's *ICAEW affiliate* status;
- c. suspension of a person's registration as a *provisional member, Foundation Qualification Holder, Provisional Foundation Qualification Holder* or *CFAB student of ICAEW*;
- d. suspension of any *practising certificate, certificate, licence* or registration issued to a *member, affiliate* or *relevant person* by *ICAEW*;
- e. the imposition of conditions on any *practising certificate, certificate, licence* or registration held by a *member, affiliate* or *relevant person*;
- f. such ancillary *orders* as the *Tribunal* thinks fit including, without limitation, that the *member, affiliate* or *relevant person* appoint an alternate for the period of the suspension and notify the *Conduct Department*, their clients and / or other persons or bodies of the identity and contact details of the alternate.

investigation means the process by which the *Conduct Department* investigates a *conduct matter* to determine whether a *member, firm, affiliate* or *relevant person* may be liable to disciplinary action under the *Disciplinary Bye-laws*.

licensed practice means a firm licensed by *ICAEW* under the *ICAEW Licensed Practice Handbook*.

member means a member of *ICAEW* and 'membership' shall be construed accordingly.

member firm means:

- a. a *member* engaged in *public practice* as a sole practitioner; or
- b. a partnership engaged in *public practice* of which more than 50 per cent of the rights to vote on all, or substantially all, matters of substance at meetings of the partnership are held by *members*; or
- c. a limited liability partnership engaged in *public practice* of which more than 50 per cent of the rights to vote on all, or substantially all, matters of substance at meetings of the partnership are held by *members*; or
- d. any body corporate (other than a limited liability partnership) engaged in *public practice* of which:
 - i. 50 per cent or more of the *directors* are *members*; and
 - ii. more than 50 per cent of the nominal value of the voting shares is held by *members*; and
 - iii. more than 50 per cent of the aggregate in nominal value of the voting and non-voting shares is held by *members*.

notice means a notice in writing, which may include an electronic communication.

order means an order of the *Conduct Committee*, a *Tribunal*, an *Appeal Panel* or a *Fitness to Practise Panel* under the *Disciplinary Bye-laws*.

parties means:

- a. in relation to any *disciplinary proceedings*, the *Conduct Department* and the *member, firm, affiliate* or *relevant person* who or which is the subject of the *allegation(s)* or *formal allegation(s)* (save in the case where, in accordance with the *IDRs*, the *Conduct Committee* has conduct of the proceedings before a *Tribunal* or an *Appeal Panel* where it shall be a party rather than the *Conduct Department*);
- b. in relation to any *fitness to practise proceedings*, *ICAEW* and the *member, affiliate* or *relevant person* who is the subject of any *fitness to practise application*;

and 'party' means any one of them.

physical or mental health includes bodily or mental ill health, disability and any mental or behavioural disorder included in the International Classification of Diseases (ICD-10 Classification of Mental and Behavioural disorders) produced by the World Health Organisation and includes an episodic or relapsing condition which is in remission.

practising certificate means a certificate issued to a *member* by *ICAEW* authorising them to engage in *public practice*.

principal means sole practitioner, a partner in a partnership, a member of a limited liability partnership or a *director* of a body corporate.

Provisional Foundation Qualification Holder means a person who is registered to study for the *ICAEW* Foundation Qualification.

provisional member means for the purposes of these *Disciplinary Bye-laws* a person who, at the time a matter is determined to be a *conduct matter* for the purposes of the *Disciplinary Bye-laws*, has not been admitted to full membership of *ICAEW* and:

- a. is registered with *ICAEW* as an *ACA* student; or
- b. is registered with *ICAEW* under a *training agreement* with an Authorised Training Employer or an Authorised Training Principal; or
- c. has attempted an *ACA* examination and no more than three years have elapsed since the date of the last attempt at an *ACA* examination; or
- d. was registered with *ICAEW* under a *training agreement* with an Authorised Training Employer or an Authorised Training Principal and no more than three

- years have elapsed since the *training agreement* was completed or cancelled;
or
- e. has applied for *ICAEW* membership outside the period allowed under the *regulations* and the application has not been finally determined.

PSD Chief Officer means the person appointed to the role of Chief Officer of *ICAEW*'s Professional Standards Department.

public practice means practice as a public accountant in any part of the world otherwise than as an employee, subject to any *regulations* made pursuant to Principal Bye-law 51(b) and to the *ICAEW* Statement on Engaging in Public Practice as may be amended from time to time by the *ICAEW Council*.

RACAC means the Regulatory and Conduct Appointments Committee which is responsible for the appointment and reappointment of members of the *disciplinary committees*, the *regulatory committees* and the *Fitness to Practise Committee*, and which is accountable to the *ICAEW Regulatory Board*.

regulated activities means:

- a. audit activities for which authorisation by a Recognised Supervisory Body is required under the Companies Act 2006 or the Local Audit & Accountability Act 2014, or by a Recognised Accountancy Body under the Irish Companies Act 2014;
- b. accountancy activities for which authorisation by a Prescribed Accountancy Body is required under the Irish Companies Act 2014;
- c. activities for which an individual is authorised to act as an insolvency practitioner by a Recognised Professional Body under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989;
- d. activities for which authorisation by the Financial Conduct Authority is required under the Financial Services and Markets Act 2000;
- e. exempt regulated activities for which authorisation by a Designated Professional Body is required under the Financial Services and Markets Act 2000; or
- f. reserved legal activities for which authorisation by an Approved Regulator or Licensing Authority is required under the Legal Services Act 2007.

regulated firm means a *firm* regulated by *ICAEW* in its capacity as:

- a. a Recognised Supervisory Body under the Companies Act 2006 or the Local Audit and Accountability Act 2014;
- b. a Designated Professional Body under the Financial Services and Markets Act 2000; or
- c. an Approved Regulator and Licensing Authority under the Legal Services Act 2007;

or in any comparable capacity under any legislation, wherever in force, for the time being designated in regulations.

regulations means regulations made by the *ICAEW Council* or any committee or sub-committee under clause 16 of the Supplemental Charter and Principal Bye-law 49 (power to make regulations) but does not include the *IDRs* or *statutory regulations*.

regulatory committee means:

- a. Audit Registration Committee;
- b. Insolvency Licensing Committee;
- c. Investment Business Committee;
- d. Legal Services Committee;
- e. Practice Assurance Committee;
- f. Professional Indemnity Insurance Committee,

and any predecessor or successor to any such committee and ‘*regulatory committee*’ means any of them.

regulatory proceedings means proceedings initiated by *ICAEW* against a *member*, *affiliate* or *relevant person* before any *regulatory committee*, and any application for review to the Review Committee and/or appeal to the *Appeal Committee* in relation to such proceedings, and ‘*regulatory proceedings*’ includes all or any of these processes.

relevant persons means the following persons who are subject to the *Disciplinary Bye-laws*:

- a. *provisional members*;
- b. *Foundation Qualification Holders*;
- c. *Provisional Foundation Qualification Holders*;
- d. *CFAB students*.

relevant time means the time relevant to any *events* which have been reported to, or have come to the attention of, the *Conduct Department* as indicating a possible liability to disciplinary action.

sanction means any of the financial or non-financial sanctions set out in *Disciplinary Bye-law* 11.1.

serious conviction means a criminal conviction which has been designated by the *ICAEW Regulatory Board* as suitable to be reported directly by the *Conduct Department* to the *Tribunals Committee*, without prior consideration by the *Conduct Committee*, in accordance with the process set out in the *IDRs*.

serious conviction allegation means an *allegation* relating to a *serious conviction*.

settlement agreement means an agreement between the *Conduct Department* and the *member*, *firm*, *affiliate* or *relevant person* to dispose of the *formal allegation* (where there is only one) or all *formal allegations* (where there is more than one)

against that *member, firm, affiliate or relevant person* which sets out:

- a. the *formal allegation(s)* and those that are admitted by the *member, firm, affiliate or relevant person*;
- b. the proposed *sanction(s)* and any *costs order*; and
- c. any conditions of settlement,

and which has appended to it a draft *settlement order*.

Settlement Chair means any member of the *Tribunals Committee* who has been approved by the *RACAC* to act as Chair of a *Tribunal* and who has been appointed to consider a proposed *settlement agreement*.

settlement order is an *order* which may be made by a *Settlement Chair* on behalf of the *Tribunals Committee* in accordance with *Disciplinary Bye-law* 11.8 in relation to one or more *formal allegations* referred to the *Tribunals Committee* by the *Conduct Committee* or the *Conduct Department*, and which specifies one or more of the *orders* (including any *costs order*) available to the *Tribunals Committee* in respect of the *member, firm, affiliate or relevant person* under *Disciplinary Bye-laws* 11.1 and 11.3(a).

statutory regulations means:

- a. any regulations made by *ICAEW* in its capacity as:
 - i. a Recognised Supervisory Body under the Companies Act 2006;
 - ii. a Recognised Supervisory Body under the Local Audit & Accountability Act 2014;
 - iii. a Recognised Professional Body under the Insolvency Act 1986;
 - iv. a Designated Professional Body under the Financial Services and Markets Act 2000; and
 - v. an Approved Regulator and Licensing Authority under the Legal Services Act 2007;
- b. the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, including any amendments thereto or replacement legislation.

training agreement means an agreement of approved training registered with *ICAEW* and in such form and containing such provisions as may be prescribed in *regulations*, made between a candidate for membership and the person or firm or organisation at or from whose office the approved training is to be given.

Tribunal means a Tribunal convened from members of the *Tribunals Committee* in accordance with the *IDRs* to consider any matter falling to be determined by the *Tribunals Committee*.

Tribunals Committee means the Tribunals Committee of *ICAEW* whose members are convened into *Tribunals* to consider:

- a. *formal allegations* referred to it by the *Conduct Committee*;
- b. *serious conviction allegations* referred to it by the *Conduct Department*;
- c. *formal allegations* referred back to it for re-hearing by an *Appeal Panel*); and
- d. applications for *interim orders* made to it by the *Conduct Department*,

and whose members (if so authorised by the *RACAC*) can approve *settlement orders* in relation to *formal allegations* in accordance with the processes set out in the *IDRs*.

United Kingdom includes the Channel Islands and the Isle of Man.

2.2 The Interpretation Act 1978 applies to these ***Disciplinary Bye-laws*** in the same way as it applies to an enactment.

2.3 In these ***Disciplinary Bye-laws***:

- a. unless the context otherwise requires:
 - i. words denoting any gender include all genders and words denoting the singular include the plural and vice versa;
 - ii. any headings are inserted for convenience only and shall not affect the construction of these ***Disciplinary Bye-Laws***;
 - iii. any reference to a numbered ***Disciplinary Bye-law*** is a reference to the ***Disciplinary Bye-law*** so numbered among these ***Disciplinary Bye-laws***; and
 - iv. 'in writing' or any similar expression includes transmission by email;
- b. any references to legislation include any amendments thereto or replacement legislation.

2.4 ***Regulations*** may change, supplement or dis-apply any part of these ***Disciplinary Bye-laws*** in specified cases or classes of case in pursuance of any provision of, or made under, any Act.

The objective and application of these Disciplinary Bye-laws

3.1 The objectives of these ***Disciplinary Bye-laws*** are:

- a. to promote and maintain, in the public interest and for the protection of the reputation of *ICAEW*, its ***members*** and the profession, high standards of conduct and professional practice by ***members, firms, affiliates*** and ***relevant persons***; and
- b. to provide a fair, effective, efficient and transparent system for:

- i. assessing **complaints** and investigating **conduct matters** relating to **members, firms, affiliates** and **relevant persons** and, where necessary, taking **disciplinary proceedings** and applying **sanctions** as appropriate in respect of **allegations** and **formal allegations** arising out of such **conduct matters**; and
- ii. assessing whether the fitness to respond to an **investigation** and / or to participate in **disciplinary proceedings** and/or **regulatory proceedings**, and / or the fitness to practise, of a **member, affiliate** or **relevant person** is seriously impaired through their **physical or mental health**.

3.2 These **Disciplinary Bye-laws** apply to the following persons and bodies:

- a. **members**;
- b. **firms**
- c. **affiliates**; and
- d. **relevant persons**.

3.3 For the purposes of these **Disciplinary Bye-laws**, the liability to disciplinary action of a **member, firm, affiliate** or **relevant person** under the **Disciplinary Bye-laws** on a **conduct matter, allegation** or **formal allegation**, whether the **conduct matter, allegation** or **formal allegation** came to the attention of the **Conduct Department** before or after the **effective date**, is to be determined in accordance with the provisions of the **Disciplinary Bye-laws** and regulations and **IDRs** in force at the time the **event(s)** giving rise to the **conduct matter, allegation** or **formal allegation** occurred; but

- a. all **assessments** of **complaints** and **investigations** of **conduct matters** under the **Disciplinary Bye-laws** are to be conducted in accordance with the provisions of the **Disciplinary Bye-laws** and regulations or **IDRs** in force at the time of the **assessment** or **investigation**, save that the **Disciplinary Bye-laws** dated 14 October 2019 shall continue to apply to:
 - i. any application for a review of a decision taken prior to the **effective date** by the Investigation Committee to dismiss a complaint, and
 - ii. any reconsideration of a decision made prior to the **effective date** by the Investigation Committee to refer a complaint to the Disciplinary Committee for hearing (“Investigation Committee”, “Disciplinary Committee” and “complaint” being defined in the **Disciplinary Bye-laws** dated 14 October 2019);
- b. all proceedings before a **Tribunal** under the **Disciplinary Bye-laws** are to be conducted in accordance with the provisions of the **Disciplinary Bye-laws** and regulations or **IDRs** in force at the time of the referral of the matter to the **Tribunal** by the **Conduct Committee** or the **Conduct Department**; and

- c. all proceedings before an **Appeal Panel** under the **Disciplinary Bye-laws** are to be conducted in accordance with the provisions of the **Disciplinary Bye-laws** and regulations or **IDRs** in force at the time the application for permission to appeal is filed (other than where the period for filing the notice of appeal commences before, and expires on or after, the **effective date** and the notice of appeal is filed within that period).

LIABILITY TO DISCIPLINARY ACTION

Liability of members, affiliates and relevant persons

- 4.1 A **member, affiliate or relevant person** shall be liable to disciplinary action under these **Disciplinary Bye-laws** in any of the following cases, regardless of whether they were a **member, affiliate or relevant person** at the time of the **event(s)** giving rise to that liability:
 - a. if they have committed misconduct; by committing any act or omitting to do any act, whether in the course of carrying out professional work or otherwise, likely to bring discredit on themselves, **ICAEW** or the profession of accountancy, or so as to fall significantly short of the standards reasonably expected of a **member, affiliate or relevant person**;
 - b. if they have demonstrated professional incompetence; by performing professional work, whether as a **principal, director**, employee or as an individual, incompetently, to such an extent, or on such a number of occasions, as to fall significantly short of the standards reasonably expected of an equivalent **member, affiliate or relevant person**;
 - c. if they have committed a breach of the **bye-laws**, or of any **regulations, statutory regulations** or the **IDRs** or have failed to comply with any order, direction or requirement made, given or imposed under them;
 - d. if they have failed to comply with any **order** of a **disciplinary committee**, otherwise than by failing to pay any fine or costs;
 - e. if they have, in a court of competent jurisdiction, been convicted of an indictable offence (or have, before such a court outside England and Wales, been convicted of an offence corresponding to one which is indictable in England and Wales);
 - f. if they have had a disqualification order made against them or have given a disqualification undertaking which has been accepted by the Secretary of State under the Company Directors Disqualification Act 1986 (or if they have had orders made against them or have given undertakings under legislation of equivalent effect in jurisdictions outside England and Wales where the courts are of competent jurisdiction);

- g. if, at any time, they have carried on any **regulated activities** when not duly authorised;
- h. if they have failed to comply with a **notice** to supply any information, evidence or other documentation, in whatever form it exists, served in accordance with **Disciplinary Bye-law 8** and the **IDRs** within the time allowed by or under those **IDRs**;
- i. if any of the following circumstances apply in respect of the **member, affiliate** or **relevant person**:
 - i. that the **member, affiliate** or **relevant person** has failed in a personal capacity to satisfy a judgment debt, or is a **principal** of a firm that has failed to satisfy a judgment debt;
 - ii. that the **member, affiliate** or **relevant person** has made, in a personal capacity or as a **principal** of a firm, an assignment by reason of insolvency of some or all of their assets for the benefit of their or the firm's creditors;
 - iii. that the **member, affiliate** or **relevant person** has made any arrangement or entered into a composition with their creditors to satisfy their debts, whether by resolution of their creditors or court order or under any deed or other document by reason of insolvency;
 - iv. that the **member, affiliate** or **relevant person** has made a proposal to enter into a voluntary arrangement on grounds of insolvency, or has entered into such a voluntary arrangement;
 - v. the **member, affiliate** or **relevant person** is a **principal** in a firm, or has been a **principal** in a firm at any time during the 6 months prior to the event specified in paragraphs (1) – (5) below:
 - 1. which has had a winding-up order made against it on grounds of insolvency; or
 - 2. which, in the case of a body corporate, has been the subject of an effective resolution passed by the shareholders or the members for it to be wound up on grounds of insolvency; or
 - 3. which has made a proposal to enter into a voluntary arrangement on grounds of insolvency, or has entered into such a voluntary arrangement; or
 - 4. in respect of which an administrator has been appointed on grounds of insolvency; or
 - 5. in respect of which a receiver has been appointed by a creditor or by a court on the application of a creditor.

Liability of firms

- 4.2 A **firm** shall be liable to disciplinary action under these **Disciplinary Bye-laws** in any of the following cases:
- a. if it has committed misconduct; by committing any act or omitting to do any act, whether in the course of carrying out professional work or otherwise, likely to bring discredit on itself, **ICAEW** or the profession of accountancy, or so as to fall significantly short of the standards reasonably expected of a **firm**;
 - b. if it has demonstrated professional incompetence; by performing professional work incompetently to such an extent, or on such a number of occasions, as to fall significantly short of the standards reasonably expected of a **firm**;
 - c. if it has committed a breach of the **bye-laws**, or of any **regulations, statutory regulations** or the **IDRs**, or has failed to comply with any order, direction or requirement made, given or imposed under them;
 - d. if it has failed to comply with any **order** of a **disciplinary committee** otherwise than by failing to pay any fine or costs;
 - e. if it is a **firm** to which any of paragraphs (1) to (5) of **Disciplinary Bye-law 4.1(i)(v)** apply;
 - f. if it has, in a court of competent jurisdiction, been convicted of an indictable offence (or has, before such a court outside England and Wales, been convicted of an offence corresponding to one which is indictable in England and Wales);
 - g. if, at any time, it has carried on any **regulated activities** when not duly authorised;
 - h. if it has failed to comply with a **notice** to supply any information, evidence or other documentation, in whatever form it exists, served in accordance with **Disciplinary Bye-law 8** and the **IDRs** within the time allowed by or under those **IDRs**.

Liability of former members, firms, affiliates and relevant persons

- 4.3 A person or body who, while they were a **member, firm, affiliate** or **relevant person** became liable to disciplinary action under these **Disciplinary Bye-laws**, or the **Accountancy Scheme**, shall continue to be subject to these **Disciplinary Bye-laws** after they have ceased to be a **member, firm, affiliate** or **relevant person** as the case may be, as if they had not so ceased; and references in these **Disciplinary Bye-laws** to **members, firms, affiliates** or **relevant persons** shall be construed accordingly so far as may be necessary to give effect to this paragraph.
- 4.4 **Disciplinary Bye-law 8** (duty to co-operate) shall extend to any former **member, former firm, former affiliate** or former **relevant person**, and a breach of

Disciplinary Bye-law 8 shall render the former **member**, former **firm**, former **affiliate** or former **relevant person** liable to disciplinary action by virtue of this **Disciplinary Bye-law**.

- 4.5 For the purposes of **Disciplinary Bye-laws 4.3** and **4.4**, liability to disciplinary action or other action shall, subject to **Disciplinary Bye-law 4.4**, extend only to **events** which occurred while the person or body concerned was actually a **member, firm, affiliate** or **relevant person**, as the case may be.

Liability for failure to disclose prior acts or omissions

- 4.6 A **member, affiliate** or **relevant person** may be liable to disciplinary action for a failure to disclose acts and / or omissions which may have rendered them liable to disciplinary action in accordance with **Disciplinary Bye-law 4.1(a), (e), (f), (g) and/or (i)**, or the equivalent provisions of any predecessor **Disciplinary Bye-laws** to these **Disciplinary Bye-laws** which were in force at the relevant time of any act(s) and/or omissions, if asked to make such disclosure upon their application for membership or registration with **ICAEW**.

TESTS FOR THE DISCIPLINARY COMMITTEES AND EVIDENCE

- 5.1 The test to be applied by the **Conduct Committee** in considering an **allegation** and what (if any) action should be taken in respect of it, shall be whether there is a realistic prospect that, if the **allegation** were to be referred to a **Tribunal** for **hearing**, such **allegation** would be found proved.
- 5.2 The test of liability to be applied by a **Tribunal** or an **Appeal Panel** in considering a **formal allegation** against a **member, firm, affiliate** or **relevant person** shall be whether the **formal allegation** has been proved on the balance of probabilities.
- 5.3 The fact that a **member, firm, affiliate** or **relevant person** has been the subject of an adverse finding (not set aside on appeal or otherwise) in respect of their conduct, being a finding in proceedings before:
- a. The Institute of Chartered Accountants of Scotland; or
 - b. The Institute of Chartered Accountants in Ireland; or
 - c. The Association of Chartered Certified Accountants; or
 - d. The Chartered Institute of Management Accountants; or
 - e. The Chartered Institute of Public Finance and Accountancy; or

before a regulatory body performing its functions under the Financial Services and Markets Act 2000, the Insolvency Act 1986, the Companies Act 2006, the Irish Companies Act 2014, the Local Audit & Accountability Act 2014 or the Legal Services Act 2007 shall, for the purposes of these **Disciplinary Bye-laws**, be conclusive evidence of the commission by the **member, firm, affiliate** or **relevant person** of such an act or omission as is mentioned in **Disciplinary Bye-law 4.1(a)** or

Disciplinary Bye-law 4.2(a), as the case may be.

- 5.4 The following shall be rebuttable evidence of any facts found or unfit behaviour, as the case may be, for the purposes of these **Disciplinary Bye-laws**:
- a. a finding of fact in any report of an inspector appointed under the Companies Act 2006 or the Irish Companies Act 2014;
 - b. a finding of fact in any civil proceedings before a court of competent jurisdiction in the **United Kingdom** or elsewhere, where the **member, affiliate or relevant person** against whom the finding is made either gave evidence before the court or was a party to those proceedings;
 - c. save where **Disciplinary Bye-law** 5.3 applies, a finding of fact in any proceedings before, or report by, any professional or regulatory body (whether in the **United Kingdom** or elsewhere provided that, if the body is outside the **United Kingdom**, the jurisdiction in which the body is based has courts of competent jurisdiction);
 - d. a finding of fact in any proceedings which result in an accountant being notified by the Solicitors Regulation Authority that they are not qualified to give an accountant's report within the meaning of section 34 of the Solicitors Regulation Authority Rules or are unfit to be involved in a legal practice under section 43 of the Solicitors Act 1974; or
 - e. the details set out in a conduct notice issued under Schedule 38 of the Finance Act 2012 (not set aside on appeal or otherwise) that specify the grounds on which the determination of HM Revenue and Customs is made.
- 5.5 Nothing in **Disciplinary Bye-law** 5.4 shall affect the evidential status of any report or other document not falling within that **Disciplinary Bye-law**.
- 5.6 In discharging their functions under these **Disciplinary Bye-laws**, the **Conduct Department** and **disciplinary committees** may have regard to all relevant matters, including any code of practice (whether relating to the ethical, the technical or any other aspect of **public practice**), and any regulations or guidance affecting the **member, firm, affiliate or relevant person**.

DUTY TO REPORT

- 6.1 Subject to any **Guidance** that may be issued from time to time in accordance with **Disciplinary Bye-law** 16.1, it is the duty of every **member, firm, affiliate or relevant person** to report to the **Conduct Department** any **event(s)** which may indicate that:
- a. they may be liable to disciplinary action in accordance with the **Disciplinary Bye-laws** or the **Accountancy Scheme**; and/or

- b. another **member, firm, affiliate** or **relevant person** may be liable to disciplinary action in accordance with **Disciplinary Bye-laws** or the **Accountancy Scheme**.

DUTY TO INVESTIGATE COMPLAINTS INTERNALLY

- 7.1 Every **firm** shall have in place an internal process for the investigation and resolution of complaints raised by clients and former clients.
- 7.2. The fact that a complaint is being investigated internally by a **firm** in accordance with **Disciplinary Bye-law 7.1** shall not affect the duty of those persons and **firms** specified in **Disciplinary Bye-law 6** to report any such **event** to the **Conduct Department**.

DUTY TO CO-OPERATE

- 8.1 It shall be the duty of every **member, firm, affiliate** and **relevant person** (including such **members, firms, affiliates** or **relevant persons** who are not involved in, or the subject of, an **assessment** or an **investigation**, or **disciplinary proceedings**) to co-operate with:
 - a. the **Conduct Department** in its **assessment** of **complaints** and **investigation** of **conduct matters**; and
 - b. the **disciplinary committees** during the course of any **disciplinary proceedings**.

For the avoidance of doubt, such duty of cooperation shall override the duty of confidentiality owed to clients and third parties.

- 8.2 For the purposes of **Disciplinary Bye-law 8.1**, such co-operation may include, but shall not be limited to, providing such information, explanations, documents and computer and other electronic records as the **Conduct Department** or a **disciplinary committee** considers necessary to enable them to carry out their duties or functions.

TRANSFER OF CASES TO OR FROM THE ACCOUNTANCY SCHEME

- 9.1 The **Accountancy Scheme** shall apply to all **members, firms, affiliates** and **relevant persons**, to the extent that the scheme applies by virtue of the scheme rules, in accordance with the terms of that scheme and these **Disciplinary Bye-laws**.

- 9.2 The **Conduct Department** shall refer a **complaint, conduct matter** or **allegation** to the Financial Reporting Council (or relevant successor body) for investigation under the terms of the **Accountancy Scheme** where:
- a. it is required to do so under the provisions of that scheme; or
 - b. it is considered appropriate by the **Conduct Committee**, based on the test set out in the **Accountancy Scheme**, for the **complaint, conduct matter** or **allegation** to be dealt with under it.
- 9.3 If the Financial Reporting Council (or relevant successor body) declines a referral under **Disciplinary Bye-law** 9.2, the **Conduct Department** will deal with the **complaint, conduct matter** or **allegation** in accordance with these **Disciplinary Bye-laws**.
- 9.4 If the **Conduct Department** receives **notice** that a **complaint, conduct matter** or **allegation** is to be dealt with by the Financial Reporting Council (or relevant successor body) in accordance with the terms of the **Accountancy Scheme** then, with immediate effect, the **Conduct Department** shall suspend any **assessment, investigation** or **disciplinary proceedings** being taken by it in relation to such **complaint, conduct matter** or **allegation** until such time as:
- a. the **complaint, conduct matter** or **allegation** is referred back to the **Conduct Department** to be dealt with in accordance with these **Disciplinary Bye-laws**; or
 - b. the **complaint, conduct matter** or **allegation** has been finally determined in accordance with the terms of the **Accountancy Scheme**, following which the **Conduct Department** shall close its file.

THE OPERATION OF THE CONDUCT COMMITTEE

- 10.1 If the **Conduct Committee** finds, in respect of one or more **allegations** reported to it by the **Conduct Department**, that the test set out in **Disciplinary Bye-law** 5.1 is met in relation to a **member, firm, affiliate** or **relevant person**, the **Conduct Committee** may do one of the following:
- a. refer such **allegation** or **allegations** to the **Tribunals Committee** for **hearing** as a **formal allegation** or **formal allegations**; or
 - b. with the agreement of the **member, firm, affiliate** or **relevant person**, make any one or more of the **orders** which a **Tribunal** could make under **Disciplinary Bye-laws** 11.1 and 11.3(a) with the exception of the following:
 - i. **Disciplinary Bye-law** 11.1(a)(i), (ii) and (iii);
 - ii. **Disciplinary Bye-law** 11.1(b)(i) and (ii);
 - iii. **Disciplinary Bye-law** 11.1(c)(i), (ii) and (iii); and
 - iv. **Disciplinary Bye-law** 11.1(d)(i), (ii), (iii), (iv) and (v); or

- c. adjourn its consideration of such **allegation(s)**, on such terms and conditions as it considers appropriate, to enable further investigation or monitoring of matters relating to the **allegation(s)** or to take advice.
- 10.2 Subject to **Disciplinary Bye-law** 10.3, if the **Conduct Committee** finds that the test set out in **Disciplinary Bye-law** 5.1 has not been met in respect of any **allegation** reported to it by the **Conduct Department**, it shall dismiss any such **allegation**.
 - 10.3 The **Conduct Committee** may re-examine any **allegation** for which it has previously determined the test set down in **Disciplinary Bye-law** 5.1 not to be met if the provisions set out in the **IDRs** in respect of a **complainant's** right to request a case file review are satisfied.
 - 10.4 The **Conduct Committee** may reconsider the referral of any **allegation** that it has previously referred to the **Tribunals Committee** and may recall such **allegation** if the circumstances set out in the **IDRs** are satisfied.
 - 10.5 When considering an **allegation**, the **Conduct Committee** may direct that the **member, firm, affiliate** or **relevant person** who or which is the subject of the **allegation** (or another **member, firm, affiliate** or **relevant person**) be referred to one or more of the **regulatory committees** or the **Fitness to Practise Committee**.
 - 10.6 It shall be a function of the **Conduct Committee**, in accordance with the process set out in the **IDRs**, to make a final determination on any dispute arising out of a determination by the **Conduct Department** that a **complaint** does not give rise to a potential liability to disciplinary action.
 - 10.7 The **Conduct Committee** may, to the extent set out in the **IDRs**, delegate to any sub-committee, person or body or the **Conduct Department** the discharge of one or more of its functions or powers under these **Disciplinary Bye-laws**, save that it may not delegate to the **Conduct Department** the exercise of its functions under **Disciplinary Bye-law** 10.6.

ORDERS OF THE TRIBUNALS COMMITTEE

- 11.1 If a **Tribunal** finds that the test set out in **Disciplinary Bye-law** 5.2 is met in respect of one or more **formal allegations** against a **member, firm, affiliate** or **relevant person**, the **Tribunal** may make one or more of the following **orders**:
 - a. if the **formal allegation(s)** concern a **member**:
 - i. that the **member** be excluded from membership of **ICAEW** (which **order** may include a recommendation that no application for readmission to membership be entertained before the end of a specified period);
 - ii. that the **member** be suspended from membership of **ICAEW** for a specified period;
 - iii. that any **practising certificate** and / or licence, registration, certificate, designation or authorisation granted to the **member** by

ICAEW be withdrawn either indefinitely or for a specified period (which **order** may, if the withdrawal is for an indefinite period, include a recommendation that no application for a new **practising certificate**, licence, registration, certificate, designation or authorisation be entertained before the end of a specified period);

- iv. that the **member** be severely reprimanded;
 - v. that the **member** be reprimanded;
 - vi. that the **member** pay a financial penalty of a specified sum (part or all of which may be suspended for a specified period);
 - vii. that the **member** undertake specified training;
 - viii. that the **member** pay a specified amount in respect of costs and expenses of whatsoever nature incurred by or on behalf of **ICAEW** in investigating and bringing **disciplinary proceedings** in respect of the **formal allegation(s)**;
 - ix. that the **member** pay a specified amount to **ICAEW** in respect of expenses incurred by a **complainant** (subject to such limitations as may be stipulated in the **IDRs**) to be remitted by **ICAEW** to the **complainant**;
 - x. that the **member** repay the whole or part of any fee or commission received, waive the whole or part of any fee that is due, pay a sum assessed by the **Tribunal** as the value in whole or part of any commission to which the **member** has become entitled or repay the whole or part of any sum which has been retained in or towards payment of a fee by a client (subject to such limits as may be stipulated in the **IDRs**);
 - xi. that the **member** take such steps as may be specified (other than the payment of compensation) for the purpose of resolving the issues which gave rise to the **disciplinary proceedings**, which may include paying the reasonable fees of another person or body appointed by the **Tribunal** to complete the work that the **member** was engaged to perform (the amount of such fees to be determined by the **Tribunal** in the event of a dispute);
 - xii. that the **member** be cautioned;
 - xiii. that no further action be taken against the **member**.
- b. if the **formal allegation(s)** concern a **firm**:
- i. that the **firm** be prohibited from using the description 'Chartered Accountants' for a specified period;
 - ii. that some or all of the licences, registrations, authorisations or designations granted to the **firm** by **ICAEW** be withdrawn;
 - iii. that the **firm** be severely reprimanded;

- iv. that the **firm** be reprimanded;
 - v. that the **firm** pay a financial penalty of a specified sum (part or all of which may be suspended for a specified period);
 - vi. that the **firm** implement specified training for all persons or specified persons within the **firm**;
 - vii. that the **firm** pay a specified amount in respect of costs and expenses of whatsoever nature incurred by or on behalf of **ICAEW** in investigating and bringing **disciplinary proceedings** in respect of the **formal allegation(s)**;
 - viii. that the **firm** pay a specified amount to **ICAEW** in respect of expenses incurred by a **complainant** (subject to such limitations as may be stipulated in the **IDRs**) to be remitted by **ICAEW** to the **complainant**;
 - ix. that the **firm** repay the whole or part of any fee or commission received, waive the whole or part of any fee that is due, pay a sum assessed by the **Tribunal** as the value in whole or part of any commission to which the **firm** has become entitled or repay the whole or part of any sum which has been retained in or towards payment of a fee by a client (subject to such limits as may be stipulated in the **IDRs**);
 - x. that the **firm** take such steps as may be specified (other than the payment of compensation) for the purpose of resolving the issues which gave rise to the **disciplinary proceedings**, which may include paying the reasonable fees of another person or body appointed by the **Tribunal** to complete the work that the **firm** was engaged to perform (the amount of such fees to be determined by the **Tribunal** in the event of a dispute);
 - xi. that the **firm** be cautioned;
 - xii. that no further action be taken against the **firm**.
- c. If the **formal allegation(s)** concern an **affiliate**:
- i. that the person's **affiliate** status be withdrawn;
 - ii. that the person's **affiliate** status be suspended for a specified period;
 - iii. that some or all of the **affiliate's** licences, registrations, designations, certificates or authorisations granted by **ICAEW** be withdrawn;
 - iv. that the **affiliate** be severely reprimanded;
 - v. that the **affiliate** be reprimanded
 - vi. that the **affiliate** pay a financial penalty of a specified sum (part or all of which may be suspended for a specified period);

- vii. that the **affiliate** undertake specified training;
 - viii. that the **affiliate** pay a specified amount in respect of costs and expenses of whatsoever nature incurred by or on behalf of **ICAEW** in investigating and bringing **disciplinary proceedings** in respect of the **formal allegation(s)**;
 - ix. that the **affiliate** pay a specified amount to **ICAEW** in respect of expenses incurred by a **complainant** (subject to such limitations as may be stipulated in the **IDRs**) to be remitted by **ICAEW** to the **complainant**;
 - x. that the **affiliate** repay the whole or part of any fee or commission received, waive the whole or part of any fee that is due, pay a sum assessed by the **Tribunal** as the value in whole or part of any commission to which the **affiliate** has become entitled or repay the whole or part of any sum which has been retained in or towards payment of a fee by a client (subject to such limits as may be stipulated in the **IDRs**);
 - xi. that the **affiliate** take such steps as may be specified (other than the payment of compensation) for the purpose of resolving the issues which gave rise to the **disciplinary proceedings**, which may include paying the reasonable fees of another person or body appointed by the **Tribunal** to complete the work that the **affiliate** was engaged to perform (the amount of such fees to be determined by the **Tribunal** in the event of a dispute);
 - xii. that the **affiliate** be cautioned;
 - xiii. that no further action be taken against the **affiliate**.
- d. if the **formal allegation(s)** concern a **relevant person**:
- i. that the **relevant person's** status as a **provisional member, Foundation Qualification Holder, Provisional Foundation Qualification Holder** or **CFAB Student** cease or be withdrawn (and that they be declared ineligible to re-register for such status for a specified period not exceeding two years);
 - ii. that the **relevant person** be declared unfit to become a **member** and/or **Foundation Qualification Holder** and/or holder of the **ICAEW** **CFAB** qualification (as appropriate) for a specified period or otherwise;
 - iii. that the registration of the **relevant person's training agreement** be suspended for a period not exceeding two years;
 - iv. that, for a specified period not exceeding two years, the **relevant person** be ineligible to sit for specified examinations of **ICAEW** (or for a specified part or parts of those examinations);
 - v. that the **relevant person** be disqualified from an examination or examinations of **ICAEW**, not being an examination or examinations the result of which was duly notified to the **relevant person** by **ICAEW**

before the date of the **order**;

- vi. that the **relevant person** be severely reprimanded;
- vii. that the **relevant person** be reprimanded;
- viii. that the **relevant person** pay a financial penalty of a specified sum (part or all of which may be suspended for a specified period);
- ix. that the **relevant person** undertake specified training;
- x. that the **relevant person** pay a specified amount in respect of costs and expenses of whatsoever nature incurred by or on behalf of **ICAEW** in investigating and/or bringing **disciplinary proceedings** in respect of the **formal allegation(s)**;
- xi. that the **relevant person** pay a specified amount to **ICAEW** in respect of expenses incurred by a **complainant** (subject to such limitations as may be stipulated in the **IDRs**) to be remitted by **ICAEW** to the **complainant**;
- xii. that the **relevant person** repay the whole or part of any fee or commission received, waive the whole or part of any fee that is due, pay a sum assessed by the **Tribunal** as the value in whole or part of any commission to which the **relevant person** has become entitled or repay the whole or part of any sum which has been retained in or towards payment of a fee by a client (subject to such limits as may be stipulated in the **IDRs**);
- xiii. that the **relevant person** take such steps as may be specified (other than the payment of compensation) for the purpose of resolving the issues which gave rise to the **disciplinary proceedings**, which may include paying the reasonable fees of another person or body appointed by the **Tribunal** to complete the work that the **relevant person** was engaged to perform (the amount of such fees to be determined by the **Tribunal** in the event of a dispute);
- xiv. that the **relevant person** be cautioned;
- xv. that no further action be taken against the **relevant person**.

11.2 If a **Tribunal** finds that the test set out in **Disciplinary Bye-law** 5.2 has not been met in respect of any **formal allegation** referred to it for **hearing**, it shall dismiss that **formal allegation**.

11.3 An **order** made by a **Tribunal** under **Disciplinary Bye-law** 11.1 may:

- a. include such terms and conditions or ancillary **orders** (if any) as the **Tribunal** considers appropriate; and
- b. include a direction that the **member, firm, affiliate** or **relevant person** who or which is the subject of the **formal allegation(s)** (or another **member, firm, affiliate** or **relevant person**) be referred to one or more of the **regulatory**

committees.

- 11.4 An **order** made by a **Tribunal** suspending a **member** from membership under **Disciplinary Bye-law** 11.1(a)(ii) or a person's status as an **affiliate** under **Disciplinary Bye-law** 11.1(c)(ii) shall have the following effects:
- a. that the **member** shall not be entitled to use the description of 'Chartered Accountant' for the period of the suspension;
 - b. that the **member** or **affiliate** shall lose all rights and privileges of membership or **affiliate** status for the period of suspension;
 - c. that any **practising certificate**, licences, registrations, designations, certificates and/or authorisations granted by **ICAEW** shall also be suspended; and
 - d. that the **member** or **affiliate** shall remain bound by the professional standards of **ICAEW** including, but not limited to, the **ICAEW** Code of Ethics, the **bye-laws**, the **IDRs** and **ICAEW's** Professional Indemnity Insurance Regulations (where applicable).
- 11.5 A **Tribunal** may:
- a. make an **interim order** against a **member, affiliate** or **relevant person** if it considers that the circumstances set out in the **IDRs** are satisfied, and may continue, vary or discharge any such **interim order** upon review;
 - b. make a **costs order** against the **member, affiliate** or **relevant person** as it considers appropriate in relation to an interim order application or following an application for expedited review, in accordance with the processes set out in the **IDRs**;
 - c. make a **costs order** against **ICAEW** as it considers appropriate in relation to an interim order application in accordance with the processes, and subject to the limits, set out in the **IDRs**.
- 11.6. Where a **member, affiliate** or **relevant person** has been previously the subject of an **interim order**, a **Tribunal** may, in making an **order** in accordance with **Disciplinary Bye-law** 11.1, make a direction that the **interim order** shall remain in place until such time as the period for **appeal** has passed or, in the event of an **appeal**, until the **appeal** has been finally determined.
- 11.7 Where a **Tribunal** finds a **formal allegation** or, if there is more than one, all **formal allegations** unproved, it may order that **ICAEW** pay to the **member, firm, affiliate** or **relevant person** by way of costs such sum as the **Tribunal** may determine, subject to any limitations set out in the **IDRs**.
- 11.8 A **Settlement Chair**, acting on behalf of the **Tribunals Committee**, may make a **settlement order** to conclude the **disciplinary proceedings** against a **member, firm, affiliate** or **relevant person** in accordance with the procedure set out in the **IDRs**.

- 11.9 If, at any time while a **Tribunal** is considering one or more **formal allegations** against a **firm** authorised by **ICAEW** in its capacity as a Designated Professional Body under the Financial Services and Markets Act 2000, it is of the opinion that the continuation of all or any of the **firm's** exempt regulated activities under that Act may materially prejudice any client of the **firm**, it may serve on the **firm** a **notice** specifying the activities to which it is of that opinion and ordering the **firm** to suspend them for a specified period (not exceeding 30 days) beginning at the time of service of the **notice**.

LIABILITY OF PRINCIPALS AND FORMER PRINCIPALS

- 12.1 Where a **firm** has been ordered to pay any financial penalty or costs, or make a financial payment, under these **Disciplinary Bye-laws**, a **member, affiliate** or **relevant person** (or former **member, former affiliate** or former **relevant person**) who at, or at any time since, the **relevant time** was a **principal** in the **firm** shall be liable for the full amount of the financial penalty, financial payment or costs in question; and where two or more **members, affiliates** or **relevant persons** are so liable under this **Disciplinary Bye-law**, they shall be jointly and severally liable, and any failure to pay shall have the same consequences under the **Disciplinary Bye-laws** as if the financial penalty, financial payment or costs had been imposed on the **member, affiliate** or **relevant person** (or former **member, former affiliate** or former **relevant person**) individually.

ORDERS OF THE FITNESS TO PRACTISE COMMITTEE

- 13.1 If a **Fitness to Practise Panel** finds, after considering a **fitness to practise application** in accordance with the process set down in the **Fitness to Practise Regulations**, that:
- a. the fitness to respond to an **investigation** and/or to participate in **disciplinary proceedings** and/or **regulatory proceedings**; and/or
 - b. the fitness to practise,
- of a **member, affiliate** or **relevant person** is seriously impaired through their **physical or mental health**, a **Fitness to Practise Panel** shall, unless it considers in the circumstances that it is inappropriate to do so, make one or more of the **orders** set out in **Disciplinary Bye-law** 13.2.
- 13.2 The **orders** referred to in **Disciplinary Bye-law** 13.1 are:
- a. that the **member's** membership be suspended for a period of up to 24 months or until further **order** of the **Fitness to Practise Panel**;
 - b. that the **affiliate's** status as an **affiliate** be suspended for a period of up to 24 months or until further **order** of the **Fitness to Practise Panel**;

- c. that the **relevant person's** status as a **provisional member, Foundation Qualification Holder, provisional Foundation Qualification Holder** or **CFAB student** be suspended for a period of up to 24 months or until further **order** of the **Fitness to Practise Panel**;
- d. that any **practising certificate**, certificate, licence or registration issued to the **member, affiliate** or **relevant person** by **ICAEW** be suspended or be subject to conditions for up to a period of 24 months or until further **order** of the **Fitness to Practise Panel**;
- e. that any **investigation** and/or **disciplinary proceedings** and/or **regulatory proceedings** continue to be suspended concurrent with the period of suspension ordered under paragraphs (a), (b), (c) and/or (d) above;
- f. such ancillary orders as the **Fitness to Practise Panel** thinks fit including, without limitation, that the **member, affiliate** or **relevant person** appoint an alternate for the period of suspension and notify the **Conduct Department**, their clients and / or other persons or bodies of the identity and contact details of the alternate.

13.3 If a **Fitness to Practise Panel** finds, after considering a **fitness to practise application** in accordance with the process set down in the **Fitness to Practise Regulations**, that:

- a. the fitness to respond to an **investigation** and/or to participate in **disciplinary proceedings** and/or **regulatory proceedings**; and/or
- b. the fitness to practise,

of a **member, affiliate** or **relevant person** is not seriously impaired through their **physical or mental health**, the **Fitness to Practise Panel** shall direct that any **investigation** and/or **disciplinary proceedings** and/or **regulatory proceedings**, which were suspended for the duration of the **fitness to practise proceedings** shall be re-started.

13.4 Following any **fitness to practise hearing** or **fitness to practise interim review hearing**, a **Fitness to Practise Panel** may make a **costs order** against the **member, affiliate** or **relevant person** in the circumstances set out in the **Fitness to Practise Regulations**.

13.5 At any **fitness to practise interim review hearing** or **fitness to practise review hearing**, a **Fitness to Practise Panel** may, in accordance with the process set out in the **Fitness to Practise Regulations**:

- a. continue or vary any **order** made under **Disciplinary Bye-laws** 13.1 and 13.2 and/or make any additional **orders** as are available under **Disciplinary Bye-**

law 13.2 until the date of the next **fitness to practise interim review hearing** or **fitness to practise review hearing**, or

- b. discharge any **order** made under **Disciplinary Bye-laws** 13.1 and 13.2.
- 13.6 If an **order** is made at either a **fitness to practise interim review hearing** or a **fitness to practise review hearing** to discharge any **order** made previously in accordance with **Disciplinary Bye-laws** 13.1 and 13.2, the **Fitness to Practise Panel** shall determine whether any **investigation** and/or **disciplinary proceedings** and/or **regulatory proceedings**, which were suspended for the duration of the **fitness to practise proceedings**, shall be re-started.
- 13.7 **Fitness to practise proceedings** may be terminated in accordance with the processes set out in the **Fitness to Practise Regulations** by:
- a. the **Fitness to Practise Committee Chair** or a **Fitness to Practise Panel** where they accept the resignation of the **member, affiliate** or **relevant person** of their membership or registration with **ICAEW**;
 - b. the **Fitness to Practise Committee Chair** where they conclude, after considering medical evidence, that there are no reasonable grounds for believing that the fitness to respond to an **investigation** and/or to participate in **disciplinary proceedings** and/or **regulatory proceedings**, and/or the fitness to practise, of the **member, affiliate** or **relevant person** is seriously impaired through their **physical or mental health**;
 - c. the **Fitness to Practise Committee Chair** where the **member, affiliate** or **relevant person** fails to attend a medical examination and/or consent to their medical records being accessed by a medical expert appointed by **ICAEW**.
- 13.8 Where a resignation is accepted under **Disciplinary Bye-law** 13.7(a), the **Fitness to Practise Committee Chair** or the **Fitness to Practise Panel** may:
- a. order that any **investigation** and/or **disciplinary proceedings**, which were suspended for the duration of the **fitness to practise proceedings** be stayed; and
 - b. order that any future application by the **member, affiliate** or **relevant person** for readmission to membership of, or re-registration with, **ICAEW** be considered by a **Fitness to Practise Panel** so that it can:
 - i. make an initial determination as to whether that person's fitness to respond to an **investigation** and/or **disciplinary proceedings** and/or fitness to practise remains seriously impaired through their **physical or mental health**; and
 - ii. determine whether any **investigation** and/or **disciplinary proceedings** that were previously stayed in respect of the **member, affiliate** or **relevant person** should be re-started if the **member, affiliate** or **relevant person** is readmitted to membership of, or re-

registered with, **ICAEW** or whether such **investigation** and/or **disciplinary proceedings** should be closed; and/or

- c. impose such conditions as may be considered appropriate, including a recommendation that no application for readmission or re-registration be considered before the end of a recommended period.

13.9 At any time after a **fitness to practise application** is made, a **Fitness to Practise Panel** may, if it is satisfied that the circumstances set out in the **Fitness to Practise Regulations** are satisfied, make any of the **orders** set out in **Disciplinary Bye-law 13.2** on an expedited basis pending a full **fitness to practise hearing** in accordance with the process set out in the **Fitness to Practise Regulations**.

13.10 It shall be the duty of every **member, affiliate** and **relevant person** who is the subject of a **fitness to practise application** to cooperate with the **Fitness to Practise Committee** and the **Fitness to Practise Committee Chair** (and any **Fitness to Practise Panel** and **Fitness to Practise Panel Chair**) during the course of any **fitness to practise proceedings**.

APPEALS

Appeals against orders made by a Tribunal

14.1 A **member, firm, affiliate** or **relevant person** may appeal any **order** of a **Tribunal**, including an **interim order**, to the **Appeal Committee** if the circumstances specified in the **IDRs** are satisfied.

14.2 The **Conduct Department** may appeal any **order** of a **Tribunal**, other than an **interim order**, to the **Appeal Committee** if the circumstances specified in the **IDRs** are satisfied.

14.3 After hearing an **appeal**, an **Appeal Panel** may by **order**:

- a. vary or rescind the **finding** and / or **order** of the **Tribunal**;
- b. substitute for any **order** or **orders** such **order** or **orders** as it thinks appropriate, being in every case an **order** which the **Tribunal** might have made under the relevant **Disciplinary Bye-laws** in the first instance;
- c. direct that the matter be re-heard by a new (and differently constituted) **Tribunal**;
- d. dismiss the **appeal**,

and may make a **costs order** payable by the **member, firm, affiliate** or **relevant person**, or **ICAEW**, to the other **party** in the circumstances, and subject to the limits, set out in the **IDRs**.

Appeals against orders made by a Fitness to Practise Panel

- 14.4 A **member, affiliate** or **relevant person** may appeal any **order** of a **Fitness to Practise Panel** to the **Appeal Committee** if the circumstances specified in the **Fitness to Practise Regulations** are satisfied.
- 14.5 After hearing an **appeal**, an **Appeal Panel** may by **order**:
- a. vary or rescind the **finding** and / or **order** of the **Fitness to Practise Panel**;
 - b. substitute for any **order** or **orders** such **order** or **orders** as it thinks appropriate, being in every case an **order** which the **Fitness to Practise Panel** might have made under the relevant **Disciplinary Bye-laws** in the first instance;
 - c. direct that the matter be re-heard by a new (and differently constituted) **Fitness to Practise Panel**;
 - d. dismiss the **appeal**,

and may make a **costs order** payable by the **member, affiliate** or **relevant person**, or **ICAEW**, to the other party in the circumstances, and subject to the limits, set out in the **Fitness to Practise Regulations**.

PUBLICITY AND PUBLIC HEARINGS

- 15.1 **Hearings** of **Tribunals** and **Appeal Panels** in disciplinary cases shall be heard in public, save:
- a. in exceptional circumstances where a **Tribunal** or **Appeal Panel** may direct that the whole or part of a **hearing** may be heard in private in accordance with the **IDRs** and any **Guidance** that may be issued by the **ICAEW Regulatory Board**; and
 - b. where a **Tribunal** considers an application for an **interim order**.
- 15.2 Subject to **Disciplinary Bye-law** 15.3, where a **disciplinary committee** makes an adverse **finding** against a **member, firm, affiliate** or **relevant person** in respect of one or more **allegations** or **formal allegations**, the **order(s)** of the **disciplinary committee** (including any **settlement orders** and **consent orders**) shall be published as soon as practicable.
- 15.3 Where a caution or an order for no further action is agreed by a **member, firm, affiliate** or **relevant person** by way of **consent order**, the **Conduct Committee** may direct that such an **order** should not be published.
- 15.4 Any **order** to be published shall include the name of the **member, firm, affiliate** or **relevant person** who is the subject of the **allegation(s)** or **formal allegation(s)**,

except where a **disciplinary committee** is satisfied that exceptional circumstances apply.

POWER TO MAKE IDRS, FITNESS TO PRACTISE REGULATIONS AND ISSUE GUIDANCE

Guidance

- 16.1 The **ICAEW Regulatory Board** may, from time to time:
- a. amend or substitute the **Guidance on sanctions**; and
 - b. issue, and amend, **Guidance** to clarify the intended objective and application of these **Disciplinary Bye-laws** and the **IDRs**.

IDRs

- 16.2 The **ICAEW Regulatory Board** may, from time to time, and under powers delegated by the **ICAEW Council**, make, amend or continue in force **IDRs** governing the process whereby the conduct and professional competence of **members, firms, affiliates** and **relevant persons** may be investigated and **members, firms, affiliates** and **relevant persons** may be subject to disciplinary action, provided such **IDRs** shall not be inconsistent with the **Charter, bye-laws** and any applicable legislation. Without prejudice to the generality of the foregoing, such **IDRs** shall prescribe or provide for the following:
- a. the rights of **members, firms, affiliates** and **relevant persons** including, but not limited to, the right to:
 - i. **notice** that **allegations** are to be reported to the **Conduct Committee** and to make representations in respect of the **allegations**;
 - ii. attend and be represented at any **hearing** of a **Tribunal** or **Appeal Panel**;
 - iii. call and cross-examine witnesses at any **hearing** before a **Tribunal** or **Appeal Panel**; and
 - iv. appeal any **order** made by a **Tribunal** on specified grounds;
 - b. procedures governing the **investigation** and conduct of **disciplinary proceedings** where **members, firms, affiliates** and **relevant persons** may become subject to disciplinary action including, without limitation, procedures concerning the admissibility of evidence in **disciplinary proceedings**;
 - c. the circumstances in which a **member, firm, affiliate** or **relevant person** is required to provide information, explanation and / or evidence to the **Conduct Department** and / or to a **disciplinary committee**;

- d. the circumstances in which **appeals** may be brought by the **members, firms, affiliates** or **relevant persons**, or by the **Conduct Department**, and the procedure for hearing such **appeals**;
- e. the constitution and the conduct of business of the **disciplinary committees** including, without limitation, composition and quorum requirements, appointment of members, and their powers, duties and permissible delegations;
- f. the publication of any **findings** or **orders** made;
- g. publication of **notices** of **hearings** being held in public;
- h. procedures governing the approval of **settlement orders** by the **Tribunals Committee** and other procedures for the resolution of **conduct matters** and **allegations** by agreement with the **member, firm, affiliate** or **relevant person**.

Fitness to Practise Regulations

16.3 The **ICAEW Regulatory Board** may, from time to time, and under powers delegated by the **ICAEW Council**, make, amend or continue in force **Fitness to Practise Regulations** governing **fitness to practise proceedings**, provided such **Fitness to Practise Regulations** shall not in any way be inconsistent with the **Charter, bye-laws** and applicable legislation. Without prejudice to the generality of the foregoing, such **Fitness to Practise Regulations** shall prescribe or provide for the following:

- a. the rights of **members, affiliates** and **relevant persons** under the process, including, but not limited to, the right to:
 - i. **notice** of a **fitness to practise application** being made to the **Fitness to Practise Committee**;
 - ii. attend and be represented at a **fitness to practise hearing**;
 - iii. appeal any **order** made by a **Fitness to Practise Panel** on specified grounds.
- b. the procedures governing the business of the **Fitness to Practise Committee** (and panels thereof) including any powers and/or responsibilities which may be delegated;
- c. the circumstances in which **appeals** may be brought and the procedure for hearing such **appeals**;
- d. the procedures by which **orders** of **Fitness to Practise Panels** may be made on an expedited basis;

- e. the procedures by which **orders of Fitness to Practise Panels** may be reviewed (including on an interim basis);
- f. the constitution, appointment of members, responsibilities, powers, and quorum requirements of the **Fitness to Practise Committee** (and panels thereof);
- g. the publication of any **findings** or **orders of Fitness to Practise Panels**;
- h. the procedure for the resolution of **fitness to practise applications** by way of a **fitness to practise consent order**;
- i. the procedure for the conclusion of the **fitness to practise proceedings** by way of resignation by the **member, affiliate** or **relevant person** of their membership or registration with **ICAEW**.

[END]

PRELIMINARY

Citation, authority and commencement

- 1.1 These regulations may be cited as the Investigation and Disciplinary Regulations (*IDRs*) of the Institute of Chartered Accountants in England and Wales (*ICAEW*).
- 1.2 These *IDRs* were made by the *ICAEW Regulatory Board* on [TBC] in accordance with clause 16 of the Supplemental Charter 1948 and Principal Bye-law 49 and shall come into force on [TBC].
- 1.3 From [TBC] (the *effective date*):
 - a. the Investigation Committee Regulations dated 15 October 2018 shall cease to have effect in respect of any *assessment* of a *complaint* or *investigation* of a *conduct matter* on or after the *effective date* save as otherwise expressly provided;
 - b. the Disciplinary Committee Regulations dated 1 October 2019 shall cease to have effect in respect of any *disciplinary proceedings* where the matter is referred to a *Tribunal* by the *Conduct Committee* or the *Conduct Department* on or after the *effective date*;
 - c. the Disciplinary Committee (Settlement Order) Regulations dated 1 January 2020 shall cease to have effect in respect of any *settlement order application* made on or after the *effective date*;
 - d. the Disciplinary Committee (Interim Order) Regulations dated 1 January 2020 shall cease to have effect in respect to any *interim order application* made on or after the *effective date*; and
 - e. the Appeal Committee Regulations dated 1 January 2021 shall cease to have effect in respect of any application for permission to appeal filed on or after the *effective date* (other than where the period for filing a notice of appeal commences before, but expires on or after, the *effective date* and the notice of appeal is filed within that period).

Definitions, interpretation and service of documents

- 2.1 In these *IDRs*, defined terms are indicated in *bold and italics*. Unless the context otherwise requires, defined terms shall have the following meanings:

ACA means the qualification offered by *ICAEW* to allow a person to become an Associate of the Institute of Chartered Accountants in England and Wales.

Accountancy Scheme means the scheme, as amended from time to time, in which *ICAEW* participates pursuant to an agreement with the Financial Reporting Council and other professional bodies (including their relevant successors) being an investigation and discipline scheme for the purposes of clause 1(b)(viiiA) of *ICAEW's* Supplemental Charter of 21 December 1948.

affiliate means a person to whom affiliate status has been granted in accordance with clause 12A of *ICAEW's* Supplemental Charter of 21 December 1948.

allegation means an allegation arising out of a *conduct matter* which is reported to the *Conduct Committee* in accordance with the *Disciplinary Bye-laws* and these *IDRs*, and which specifies the basis for potential liability to disciplinary action under the *Disciplinary Bye-laws*. Where alternative bases are specified in respect of the same event or events, each of them constitutes a separate *allegation* for the purposes of the *Disciplinary Bye-laws*.

answer means an answer to an application for permission to appeal or *notice of appeal* by a responding party, which shall include any documentation appended in support of the response.

appeal means an appeal against one or more orders of a *Tribunal* which is brought in accordance with these *IDRs*.

Appeal Committee means the Appeal Committee of *ICAEW* whose members are convened into *Appeal Panels* to consider *appeals* of orders made by a *Tribunal*.

Appeal Committee Chair means the person who is appointed from time to time as Chair of *ICAEW's Appeal Committee* by the *RACAC* (or relevant predecessor or successor body).

Appeal Committee Vice-Chair means any person who is appointed from time to time as a Vice-Chair of *ICAEW's Appeal Committee* by the *RACAC* (or relevant predecessor or successor body).

appeal hearing means the substantive *hearing* of an *Appeal Panel* to determine an *appeal*.

Appeal Panel means a panel of the *Appeal Committee* which is convened to hear an *appeal* brought in accordance with these *IDRs*.

Appeal Panel Chair means the member of the *Appeal Committee* who is appointed by the *Appeal Committee Chair* as Chair of an *Appeal Panel* (and who may be the *Appeal Committee Chair* themselves) and who shall chair an *appeal hearing* and conduct any *pre-hearing review*.

application for reconsideration means an application by the *Conduct Department* in accordance with *IDR 29* for the *Conduct Committee* to reconsider its previous decision to refer one or more *allegations* as *formal allegations* to the *Tribunals Committee* and, if it considers it appropriate, to recall such *formal allegations* and dispose of them in accordance with *Disciplinary Bye-law 10.1* or *10.2*. Any *formal allegation* which is the subject of the *Conduct Department's* application for reconsideration is to be treated as an *allegation* reported to the *Conduct Committee* by the *Conduct Department* for these purposes.

assessment means the process undertaken by the *Conduct Department* in respect of a *complaint* to determine whether there is a potential liability to disciplinary action under the *Disciplinary Bye-laws* and whether the matter should be the subject of an *investigation*.

assessment report means a report prepared by the *Conduct Department* for the *Conduct Committee* in accordance with *IDR 10.5* including any relevant correspondence and/or documents from the *case file*.

assessment review means a review of a decision taken by the *Conduct Department* following an *assessment*, which is carried out by the *Conduct Committee*, pursuant to a request by a *complainant*, under *IDR 10.7*.

business day means Monday to Friday, excluding public holidays.

bye-law means all the bye-laws of *ICAEW* in force at the relevant time.

case file means the electronic file (comprising correspondence and documents) created by the *Conduct Department* during an *assessment* and/or *investigation* and any hard copy documents and/or correspondence not on the electronic file.

case file review means a review of a *case file* carried out by a *reviewer* in accordance with the processes set out in *IDR 28*.

Case Management Chair means any member of the *Tribunals Committee* who has been approved by the *RACAC* (or relevant predecessor or successor body) to chair *Tribunals* and who is appointed by the *Tribunals Committee Chair* to chair a *case management hearing*.

case management hearing means a *hearing* which takes place to decide any preliminary issues of procedure and to give *directions* for the just and expeditious determination of *formal allegations* at a *final hearing* or *sanctions hearing*.

CFAB student means a person who is registered to study for the *ICAEW* Certificate in Finance, Accounting and Business (CFAB) and no more than three years have elapsed since the date of the last attempt at a CFAB examination.

complainant means a person or body (other than an officer or employee of *ICAEW* acting in such capacity) who brings a *complaint* to the attention of the *Conduct Department*.

complaint means a matter which is reported to, or comes to the attention of, the *Conduct Department* concerning the conduct or performance of a *member, firm, affiliate* or *relevant person*.

conciliation means the informal dispute resolution process which may be attempted by the *Conduct Department* where a *complainant* indicates that they may be satisfied with a resolution of a *complaint* which does not involve disciplinary action.

Conduct Committee means the *Conduct Committee* of *ICAEW* which considers *allegations* reported to it by the *Conduct Department* and which reviews decisions and / or actions taken by the *Conduct Department* in assessing *complaints*, and which prosecutes certain *formal allegations* before *Tribunals*.

Conduct Committee Chair means the person who is appointed from time to time as Chair of ICAEW's *Conduct Committee* by the RACAC (or relevant predecessor or successor body).

Conduct Department means the department within ICAEW's Professional Standards Department (or relevant predecessor or successor body identified as such in the *IDRs* or *regulations*) which is responsible for assessing *complaints*, investigating *conduct matters*, reporting *allegations* to the *Conduct Committee* or *serious conviction allegations* to the *Tribunals Committee*, prosecuting *formal allegations* before *Tribunals* (except those prosecuted by the *Conduct Committee*) and for making or responding to *appeals* to the *Appeal Committee*.

Conduct Department representative means a barrister or solicitor or a legally qualified person (within ICAEW's Professional Standards Department or external to ICAEW) appointed to represent the *Conduct Department* in settlement discussions or leading up to, and at, a *hearing* before a *Tribunal* or *Appeal Panel* in relation to one or more *formal allegations* against a *member, firm, affiliate* or *relevant person*.

conduct matter means one or more *events* which have been assessed by the *Conduct Department* as having the potential to give rise to disciplinary action and which are being investigated by the *Conduct Department*.

conduct report means a report prepared by the *Conduct Department* for the *Conduct Committee* which includes:

- a. details of the *allegation(s)* being reported by the *Conduct Department*;
- b. a summary of the material facts and evidence relevant to the *allegation(s)*;
and
- c. recommendations of the *Conduct Department* in relation to the liability of the *member, firm, affiliate* or *relevant person* in respect of each allegation,

and which includes (in an appendix) copies of all documents referred to in the report.

consent order means an *order* of the *Conduct Committee* made with the agreement of the *member, firm, affiliate* or *relevant person* in accordance with *Disciplinary Bye-law* 10.1(b) which specifies:

- a. the *sanction* or *sanctions* to be applied in respect of the *allegation* or *allegations* against the *member, firm, affiliate* or *relevant person*; or
- b. an *order* for no further action; and

any *costs order* against the *member, firm, affiliate* or *relevant person*.

contracted firm means a sole practice, partnership, limited liability partnership or a body corporate which is not a *member firm* but which has contracted with ICAEW to be subject to the *Disciplinary Bye-laws* and the ICAEW Code of Ethics.

costs order means an *order* against one *party* for payment of all or part of the costs incurred by the other *party* in connection with:

- a. any *interim order application* or any *expedited review*; or
- b. the *disciplinary proceedings* (and, in the case of ICAEW, the costs incurred during the *investigation* as well as the *disciplinary proceedings*).

costs schedule means a schedule of the costs:

- a. incurred by the *Conduct Department* during the *investigation* and in preparing and presenting the *formal allegation* or *formal allegations* before a *Tribunal* or an *Appeal Panel*, or
- b. incurred by the *Conduct Department* in preparing an *interim order application* or responding to a request for an *expedited review*; and
- c. incurred in holding any *hearings* before the *Tribunal* or *Appeal Panel* (including the costs of the *Tribunal / Appeal Panel*).

designated allegation means an *allegation* that has been designated as suitable for resolution via the *fixed penalty* process set out at IDR 19 by the *ICAEW Regulatory Board*.

directions means steps or actions which the *parties* agree to take, or are ordered to take, in the course of *disciplinary proceedings*.

director means a director of a body corporate.

Disciplinary Bye-laws means the *Disciplinary Bye-laws* of ICAEW.

disciplinary committee means any of:

- a. the *Conduct Committee*;
- b. the *Tribunals Committee* and any *Tribunals*;
- c. the *Appeal Committee* and any *Appeal Panels*,

and any predecessor or successor to any such body, and ‘*disciplinary committees*’ means all of them.

disciplinary proceedings means the process by which:

- a. the *Conduct Committee* considers one or more *allegations* against a *member, firm, affiliate* or *relevant person*;
- b. a *Tribunal* is convened to hear one or more *formal allegations* against a *member, firm, affiliate* or *relevant person*;
- c. an *Appeal Panel* is convened to determine an *appeal* against one or more *orders* of a *Tribunal* in respect of such *formal allegation(s)*,

and ‘*disciplinary proceedings*’ includes all or any of the above processes under the *Disciplinary Bye-laws* and the *IDRs*.

disciplinary record means, in relation to any *member, firm, affiliate* or *relevant person*, any previous:

- a. (adverse) *disciplinary findings* or *orders* made by a *disciplinary committee* (or relevant predecessor body);

- b. (adverse) disciplinary findings or orders made by a Disciplinary Tribunal or Appeal Tribunal of the Financial Reporting Council (or relevant predecessor or successor body) or by a Joint Disciplinary Tribunal or Appeal Committee of the Joint Disciplinary Scheme;
- c. regulatory penalty for a breach or breaches of the Audit Regulations, the Local Audit Regulations, the Designated Professional Body (Consumer Credit) Handbook, the Insolvency Licensing Regulations, the Legal Services Regulations or the Licensed Practice Handbook of *ICAEW*;
- d. charge for a breach or breaches of the Designated Professional Body (Investment Business) Handbook of *ICAEW*; and
- e. Practice Assurance (PA) penalty for a breach or breaches of the Practice Assurance Regulations of *ICAEW*.

effective date means the date on which these *IDRs* take effect being [TBC]

event means an act, omission, fact, matter or circumstance.

expedited review means a review of an *interim order* which takes place prior to the date fixed for the next *review hearing*.

final hearing means the substantive *hearing* when a *Tribunal* meets to determine a *formal allegation* or *formal allegations* against a *member*, *firm*, *affiliate* or *relevant person*; it does not include a *case management hearing*.

finding means:

- a. in relation to the *Conduct Committee*, a finding that the test set out in *Disciplinary Bye-law 5.1* is, or is not, met in relation to an *allegation*;
- b. in relation to a *Tribunal* or an *Appeal Panel*:
 - i. a finding that the test for an *interim order* set out in *IDR 30.2* is, or is not, met (including on any review or *appeal*); or
 - ii. a finding that the test set out in *Disciplinary Bye-law 5.2* is, or is not, met in relation to a *formal allegation*;

and, for the purposes of paragraph (b)(ii) above, a 'finding' shall include any factual findings which form the basis of that finding.

firm means:

- a. a *member firm*;
- b. a *regulated firm*;
- c. a *contracted firm*; or
- d. a *licensed practice*.

fixed penalty means the *sanction* prescribed (and reviewed and updated from time to time) by the *ICAEW Regulatory Board* which may be proposed by the *Conduct Department*, under powers delegated from the *Conduct Committee*, in accordance with the process set out in *IDR 19*;

formal allegation means an *allegation* which:

- a. has been referred by the *Conduct Committee* for hearing by a *Tribunal*;
- b. has been referred by the *Conduct Department* for hearing by a *Tribunal* (in the case of a *serious conviction allegation*);
- c. may subsequently be considered on *appeal* by an *Appeal Panel*;
- d. may be remitted by an *Appeal Panel* for re-hearing by a *Tribunal*, and

which specifies the basis for potential liability to disciplinary action under the *Disciplinary Bye-laws*. Where alternative bases are specified in respect of the same *event* or *events*, each of them constitutes a separate *formal allegation* for the purposes of the *Disciplinary Bye-laws*.

formal allegations report means the report prepared by the *Conduct Department representative* and served by the *Head of Committees and Tribunals* on a *member, firm, affiliate* or *relevant person* pursuant to *IDR 39.1* which sets out:

- a. the *formal allegation(s)*;
- b. a summary of the material facts or matters;
- c. a summary or copy of any written representations made by the *member, firm, affiliate* or *relevant person*,

and which includes (in an appendix) all documents referred to in the report.

Foundation Qualification Holder means a person who holds the *ICAEW* Foundation Qualification and is registered to use the relevant designatory letters.

Guidance means guidance issued by the *ICAEW Regulatory Board* in accordance with *Disciplinary Bye-law 16*.

Guidance on sanctions means the guidance issued by the *ICAEW Regulatory Board* for the *disciplinary committees* in accordance with *Disciplinary Bye-law 16*, which specifies *ICAEW's* policy and framework for applying *sanctions*.

Head of Committees and Tribunals means the person within *ICAEW's* Professional Standards Department who manages the *Committees and Tribunals* team, provides advice on legal and procedural issues to the *Conduct Committee* and to whom administrative functions may be delegated by the *Tribunals Committee Chair* and the *Appeal Committee Chair*.

Head of Investigation means the person appointed from time to time to the role of Head of Investigation in the Professional Standards Department of *ICAEW*, or any employee of that department who is authorised to act in that role by the *PSD Chief Officer*.

hearing means a hearing of a *Tribunal* or an *Appeal Panel*, whether conducted in person or through video or audio-conferencing facilities, and references to a 'hearing' in these *IDRs* includes a re-hearing.

ICAEW means the Institute of Chartered Accountants in England and Wales.

ICAEW Council means the Council of the Institute of Chartered Accountants in England and Wales.

ICAEW Disciplinary Database means the database of published (adverse) *orders* against *members, firms, affiliates* and *relevant persons*, and the related *records of decision*, which can be located on the Regulatory and Conduct pages of the ICAEW website.

ICAEW Disciplinary Database policy means the policy governed by the ICAEW Regulatory Board, which is published on the ICAEW website which specifies the period during which *findings* or *orders* of the *disciplinary committees* will remain published on the ICAEW Disciplinary Database.

ICAEW Regulatory Board means the board delegated by ICAEW Council to have responsibility for the supervision of ICAEW's regulatory and disciplinary functions, and which oversees the appointment of members of the *disciplinary committees* and the *regulatory committees* by the RACAC.

interim order means an *order* of a *Tribunal* made in accordance with *Disciplinary Bye-law* 11.5, pending the final determination of *allegations* or *formal allegations* under the *Disciplinary Bye-laws*, which may include one or more of the following:

- a. suspension of a person's membership of ICAEW;
- b. suspension of a person's ICAEW affiliate status;
- c. suspension of a person's registration as a *provisional member, Foundation Qualification Holder, Provisional Foundation Qualification Holder* or *CFAB student* of ICAEW;
- d. suspension of any *practising certificate, certificate, licence* or registration issued to a *member, affiliate* or *relevant person* by ICAEW;
- e. the imposition of conditions on any *practising certificate, certificate, licence* or registration held by a *member, affiliate* or *relevant person*;
- f. such ancillary *orders* as the *Tribunal* thinks fit including, without limitation, that the *member, affiliate* or *relevant person* appoint an alternate for the period of the suspension and notify the *Conduct Department*, their clients and / or other persons or bodies of the identity and contact details of the alternate.

interim order application means an application to the *Tribunals Committee* by the *Conduct Department* in accordance with *IDR* 30.1 for an *interim order* against a *member, affiliate* or *relevant person*.

investigation means the process by which the *Conduct Department* investigates a *conduct matter* to determine whether a *member, firm, affiliate* or *relevant person* may be liable to disciplinary action under the *Disciplinary Bye-laws*.

lay member means someone who is not and never has been a *member, affiliate* or employee of ICAEW or any other accountancy body. Furthermore, solicitors and those with legal training will not be regarded as lay members for the determination of any *allegation* or *formal allegation* about *legal services work* in the *Conduct Committee, the Tribunals Committee* and the *Appeal Committee*.

legal assessor means a barrister or solicitor who is not a member of staff of *ICAEW* and who is appointed by the *Head of Committees and Tribunals* to provide advice on legal and procedural matters to:

- a. a *Case Management Chair*; or
- b. a *Tribunal*.

legal services work comprises any work that is considered under the jurisdiction of the Legal Ombudsman under the definitions set out by the ombudsman in accordance with section 164(10) of the Legal Services Act 2007.

licensed practice means a *firm* licensed by *ICAEW* under the *ICAEW* Licensed Practice Handbook.

lie on file means, where a person has been excluded from *ICAEW* membership or had their *affiliate* or *provisional member* status withdrawn, that no further steps may be taken in an *assessment* of any *complaint*, an *investigation* of any *conduct matter* or in relation to *disciplinary proceedings* in respect of one or more *formal allegations* without the prior permission of the person or body which determined the application that such *complaint*, *conduct matter* or *formal allegation* 'lie on file', and 'lying on file' shall be construed accordingly.

member means a member of *ICAEW* and 'membership' shall be construed accordingly.

member firm means:

- a. a *member* engaged in *public practice* as a sole practitioner; or
- b. a partnership engaged in *public practice* of which more than 50 per cent of the rights to vote on all, or substantially all, matters of substance at meetings of the partnership are held by *members*; or
- c. a limited liability partnership engaged in *public practice* of which more than 50 per cent of the rights to vote on all, or substantially all, matters of substance at meetings of the partnership are held by *members*; or
- d. any body corporate (other than a limited liability partnership) engaged in *public practice* of which:
 - i. 50 per cent or more of the *directors* are *members*; and
 - ii. more than 50 per cent of the nominal value of the voting shares is held by *members*; and
 - iii. more than 50 per cent of the aggregate in nominal value of the voting and non-voting shares is held by *members*.

notice means a notice in writing, which may include an electronic communication.

notice of appeal means a *notice* filed by a *member*, *affiliate* or *relevant person* in accordance with *IDR* 70.1 appealing an *interim order* made against them.

order means an *order* of the *Conduct Committee*, a *Tribunal* or an *Appeal Panel* under the *Disciplinary Bye-laws*.

parties means, in relation to any *disciplinary proceedings*, the *Conduct Department* and the *member, firm, affiliate or relevant person* who, or which, is the subject of the *allegation(s) or formal allegation(s)* (save in the case where, in accordance with these *IDRs*, the *Conduct Committee* has conduct of the proceedings before a *Tribunal* or an *Appeal Panel* where it shall be a party to the proceedings rather the *Conduct Department*) and ‘party’ shall refer to any one of them.

practising certificate means a certificate issued to a *member* by *ICAEW* authorising them to engage in *public practice*.

pre-hearing review means a *hearing* conducted in accordance with *IDR 64.1* to enable an *Appeal Panel Chair* make *directions* and/or determine any applications of the *parties* prior to an *appeal hearing*.

principal means sole practitioner, a partner in a partnership, a member of a limited liability partnership or a *director* of a body corporate.

private hearing application means an application by either *party* for all or part of a *sanctions hearing, final hearing* or an *appeal hearing* to be held in private.

Provisional Foundation Qualification Holder means a person who is registered to study for the *ICAEW* Foundation Qualification.

provisional member means for the purposes of the *Disciplinary Bye-laws* and these *IDRs* a person who, at the time a matter is determined to be a *conduct matter* for the purposes of the *Disciplinary Bye-laws*, has not been admitted to full membership of *ICAEW* and:

- a. is registered with *ICAEW* as an *ACA* student; or
- b. is registered with *ICAEW* under a *training agreement* with an Authorised Training Employer or an Authorised Training Principal; or
- c. has attempted an *ACA* examination and no more than three years have elapsed since the date of the last attempt at an *ACA* examination; or
- d. was registered with *ICAEW* under a *training agreement* with an Authorised Training Employer or an Authorised Training Principal and no more than three years have elapsed since the *training agreement* was completed or cancelled; or
- e. has applied for *ICAEW* membership outside the period allowed under the *regulations* and the application has not been finally determined.

PSD Chief Officer means the person appointed to the role of Chief Officer of *ICAEW*'s Professional Standards Department from time to time.

public practice means practice as a public accountant in any part of the world otherwise than as an employee, subject to any *regulations* made pursuant to Principal Bye-law 51(b) and to the *ICAEW* Statement on Engaging in Public Practice as may be amended from time to time by the *ICAEW Council*.

RACAC means the Regulatory and Conduct Appointments Committee which is responsible for the appointment and reappointment of members of the *disciplinary*

committees and the regulatory committees, and which is accountable to the ICAEW Regulatory Board.

readmission / re-registration application means an application for readmission to membership of, or re-registration with, *ICAEW* made in accordance with the Readmission and Re-registration Application and Appeal Regulations of *ICAEW* for the time being in force.

record means the record of proceedings before a *Tribunal* or *Appeal Panel*.

record of decision means the document approved by the *Tribunal* or the *Appeal Panel* which records a summary of the reasons for the *finding(s)* and any *orders* of the *Tribunal* or *Appeal Panel*, including any term or condition on which the *order* or *orders* were made and the reasoning of the *Tribunal* or *Appeal Panel* in respect of any *costs order* made.

registered address means:

- a. in the case of a *member* in *public practice*, an *affiliate* or a *firm*, the place of business registered by the *member*, *affiliate* or *firm* with *ICAEW* or, if more than one place of business is so registered, the one registered as the principal place of business;
- b. in the case of a *member* not in *public practice* or a *relevant person*, the address registered by them with *ICAEW*;
- c. in the case of a former *member*, former *firm*, former *affiliate* or former *relevant person* the latest address registered with or notified to *ICAEW* by the person or body in question.

registered email address means the email address registered with *ICAEW* by the *member*, *firm*, *affiliate* or *relevant person* and, if more than one email address is registered, the one registered as the principal email address.

regulated firm means a *firm* regulated by *ICAEW* in its capacity as:

- a. a Recognised Supervisory Body under the Companies Act 2006 or the Local Audit and Accountability Act 2014;
- b. a Designated Professional Body under the Financial Services and Markets Act 2000; or
- c. an Approved Regulator and Licensing Authority under the Legal Services Act 2007;

or in any comparable capacity under any legislation, wherever in force, for the time being designated in regulations.

regulations means regulations made by the *ICAEW Council* or any committee or sub-committee under clause 16 of the Supplemental Charter and Principal Bye-law 49 (power to make regulations) but does not include the *IDRs* or *statutory regulations*.

regulatory committee means:

- a. Audit Registration Committee;
- b. Insolvency Licensing Committee;
- c. Investment Business Committee;
- d. Legal Services Committee;
- e. Practice Assurance Committee;
- f. Professional Indemnity Insurance Committee,

and any predecessor or successor to any such committee and 'regulatory committee' means any of them.

relevant information means, for the purposes of *IDR 16.1*, such information, explanations, books, records and documents (in hard copy or electronic form) as are available to the *member, firm, affiliate or relevant person*, whether or not in their physical possession at the time of the request, as the *Conduct Department* considers necessary to enable it to perform its functions under the *Disciplinary Bye-laws* and these *IDRs*.

relevant persons means the following persons who are subject to the *Disciplinary Bye-laws* and these *IDRs*:

- a. *provisional members*;
- b. *Foundation Qualification Holders*;
- c. *Provisional Foundation Qualification Holders*;
- d. *CFAB students*.

repetitive complaint means a *complaint* which, in the opinion of the *Head of Investigation*, is substantially similar to a *complaint* or *complaints* that have been assessed and/or investigated and closed previously by the *Conduct Department*, or in respect of which *disciplinary proceedings* have been concluded.

representative means a solicitor or barrister or an *ICAEW member* who has been appointed by a *member, firm, affiliate or relevant person* to represent them or it at a *case management hearing* or before a *Tribunal*, or at a *pre-hearing review* or before an *Appeal Panel*, or any other person who has been approved to appear by a *Case Management Chair*, a *Tribunal Chair* or an *Appeal Panel Chair*.

required number has the meaning given to it in *IDR 5.3*.

response form means the form sent to the *member, firm, affiliate or relevant person* by the *Head of Committees and Tribunals* under *IDR 39.1* and which requires the *member, firm, affiliate or relevant person* to confirm their position in relation to the *formal allegation(s)*.

response statement means the statement served by the *member, firm, affiliate or relevant person* which contains the information set out in *IDR 39.3*.

reviewer means a person appointed out of the *reviewer pool* by the *Conduct Committee Chair* to carry out a *case file review* in accordance with *IDR 28*.

reviewer pool means persons who have been approved to carry out *case file reviews* by the *RACAC* including former *lay members* of any of the *disciplinary committees*.

review hearing means a *hearing* of a *Tribunal* conducted in accordance with the *IDRs* to review whether an *interim order* against a *member, affiliate or relevant person* should continue in force or be varied or discharged.

review report means the report prepared for the *Conduct Committee Chair* by a *reviewer* setting out the outcome of the *case file review* carried out in accordance with *IDR 28*.

sanction means any of the financial or non-financial sanctions set out in *Disciplinary Bye-law 11.1*.

sanctions hearing means a *hearing* held to determine what sanction (if any) is to be imposed in a case where all *formal allegations* have been admitted by the *member, firm, affiliate or relevant person* prior to the *final hearing*.

serious conviction means a criminal conviction which has been designated by the *ICAEW Regulatory Board* as suitable to be reported directly by the *Conduct Department* to the *Tribunals Committee*, without prior consideration by the *Conduct Committee*, in accordance with the process set out in the *IDRs*. A list of designated criminal convictions will be maintained on the disciplinary pages of the *ICAEW* website.

serious conviction allegation means an *allegation* relating to a *serious conviction*.

settlement agreement means an agreement between the *Conduct Department* and the *member, firm, affiliate or relevant person* to dispose of the *formal allegation* (where there is only one) or all *formal allegations* (where there is more than one) against that *member, firm, affiliate or relevant person* which sets out:

- a. the *formal allegation(s)* and those that are admitted by the *member, firm, affiliate or relevant person*;
- b. the proposed *sanction(s)* and any *costs order*; and
- c. any conditions of settlement,

and which has appended to it a draft *settlement order*.

Settlement Chair means any member of the *Tribunals Committee* who has been approved by the *RACAC* to act as a *Tribunal Chair* and who has been appointed to consider whether to approve a proposed *settlement agreement*.

settlement order is an *order* which may be made by a *Settlement Chair* on behalf of the *Tribunals Committee* in accordance with *Disciplinary Bye-law 11.8* in relation to one or more *formal allegations* referred to the *Tribunals Committee* by the *Conduct Committee* or the *Conduct Department*, and which specifies one or more of the *orders* (including any *costs order*) available to the *Tribunals Committee* in

respect of the *member, firm, affiliate or relevant person* under *Disciplinary Bye-laws* 11.1 and 11.3(a).

settlement order application means an application to a *Settlement Chair* to make a *settlement order* in accordance with *Disciplinary Bye-law* 11.8, which contains the information and documentation specified in *IDR* 46.3.

standard directions means the standard directions for case management which are in force at the time of the referral of the *formal allegations* to the *Tribunals Committee* for determination.

statutory regulations means:

- a. any regulations made by *ICAEW* in its capacity as:
 - i. a Recognised Supervisory Body under the Companies Act 2006;
 - ii. a Recognised Supervisory Body under the Local Audit & Accountability Act 2014;
 - iii. a Recognised Professional Body under the Insolvency Act 1986;
 - iv. a Designated Professional Body under the Financial Services and Markets Act 2000; or
 - v. an Approved Regulator and Licensing Authority under the Legal Services Act 2007;
- b. the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations

supplemental conduct report means a supplementary report prepared by the *Head of Investigation* for the *Conduct Committee* in accordance with *IDR* 28.6 following a *case file review*.

Tribunal means a *Tribunal* convened from members of the *Tribunals Committee* in accordance with the *IDRs* to consider any matter falling to be determined by the *Tribunals Committee*.

Tribunal Chair means a member of the *Tribunals Committee* who has been approved by the *RACAC* (or relevant predecessor or successor body) to chair *Tribunals* and who has been appointed by the *Tribunals Committee Chair* to chair a *Tribunal*.

Tribunals Committee means the *Tribunals Committee* of *ICAEW* whose members are convened into *Tribunals* to consider:

- a. *formal allegations* referred to it by the *Conduct Committee*;
- b. *serious conviction allegations* referred to it by the *Conduct Department*;
- c. *formal allegations* referred back to it for re-hearing by an *Appeal Panel*; and
- d. *interim order applications*,

and whose members (if so authorised by the *RACAC*) can approve *settlement orders* in relation to *formal allegations* in accordance with the processes set out in the *IDRs*.

Tribunals Committee Chair means the person who is appointed from time to time as Chair of *ICAEW's Tribunals Committee* by the *RACAC* (or relevant predecessor or successor body).

vexatious complaint means a *complaint* which, in the opinion of the *Head of Investigation*:

- a. has been made in bad faith; and/or
- b. is vindictive or retaliatory in nature with the intent to cause damage (financial or otherwise) to the *member, firm, affiliate or relevant person*); and/or
- c. forms part of a pattern of conduct by the *complainant* that amounts to an abuse of the assessment and/or investigative processes of *ICAEW*.

2.2 The Interpretation Act 1978 applies to these ***IDRs*** in the same way as it applies to an enactment.

2.3 In these ***IDRs***:

- a. unless the context otherwise requires:
 - i. words denoting any gender include all genders and words denoting the singular include the plural and vice versa;
 - ii. any headings are inserted for convenience only and shall not affect the construction of these ***IDRs***;
 - iii. any reference to a numbered ***IDR*** is a reference to the ***IDR*** so numbered among these ***IDRs***; and
 - iv. any reference to a report or document includes any appendices to such report or document;
- b. any references to legislation include any amendments thereto or replacement legislation;
- c. references to the date of an ***order*** made by the ***Conduct Committee*** under ***Disciplinary Bye-law*** 10.1(b) (***consent orders***) refer to the date on which the ***consent order*** was signed on behalf of the ***Conduct Committee*** pursuant to ***IDR*** 24.3;
- d. references to the date of an ***order*** made by a ***Tribunal*** or ***Appeal Panel*** refer to the date on which the ***order*** was made either at, or following, the ***hearing*** of the ***formal allegation(s)*** or the ***appeal*** in question;
- e. any reference to a '***notice***' or to matters being 'notified' means ***notice*** in writing, which may include an electronic communication;

- f. any reference to a decision being taken by the **Conduct Department** refers to a decision being taken by the **Head of Investigation** or by staff in that department under delegated powers.
- 2.4 Subject to **IDR 2.5**, any **notice** or other document required to be served for the purposes of the **Disciplinary Bye-laws** and/or these **IDRs** on a **member, firm, affiliate** or **relevant person** may be served in person or sent:
- a. by pre-paid post to the **member, firm, affiliate** or **relevant person** at their **registered address** or, if none, to their last known or usual place of residence or business; or
 - b. by electronic mail to the **member, firm, affiliate** or **relevant person's registered email address**.
- 2.5 If at any time the **member, firm, affiliate** or **relevant person** makes a written request to **ICAEW** that an alternative postal or email address be used to their **registered address** or **registered email address**, that alternative postal or email address shall be used for the purposes of service of **notices** or other documents under the **Disciplinary Bye-laws** and/or these **IDRs**.
- 2.6 Any **notice** or other document required to be served by a **member, firm, affiliate** or **relevant person** for the purposes of the **Disciplinary Bye-laws** and/or these **IDRs** may be served in person or sent:
- a. by pre-paid post addressed to the Head of Committees and Tribunals, ICAEW, Professional Standards Department, Metropolitan House, 321 Avebury Boulevard, Milton Keynes MK9 2FZ; or
 - b. by electronic mail to an address at which the **Head of Committees and Tribunals** has agreed to receive **notices** and documents under the **Disciplinary Bye-laws** and/or these **IDRs**.
- 2.7 Service of a document under **IDRs 2.4, 2.5** or **2.6** shall be deemed to have been effected:
- a. where served in person, on the date of service;
 - b. where sent by first class, pre-paid post, on the second **business day** after posting;
 - c. where sent by electronic mail on or before 16:00, on the day it is sent, and if sent after 16:00 on the next **business day**.

Application of these IDRs

- 3.1 These **IDRs** apply to:
- a. **members**;
 - b. **firms**;
 - c. **affiliates**; and

d. **relevant persons.**

3.2 For the purposes of these **IDRs** and in accordance with the **Disciplinary Bye-laws**, the liability to disciplinary action of a **member, firm, affiliate** or **relevant person** under the **Disciplinary Bye-laws** on a **conduct matter, allegation** or **formal allegation**, whether the **conduct matter, allegation** or **formal allegation** came to the attention of the **Conduct Department** before or after the **effective date**, is to be determined in accordance with the provisions of the **Disciplinary Bye-laws** and regulations and **IDRs** in force at the time the **event(s)** giving rise to the **conduct matter, allegation** or **formal allegation** occurred; but

- a. all **assessments** of **complaints** and **investigations** of **conduct matters** under the **Disciplinary Bye-laws** are to be conducted in accordance with the provisions of the **Disciplinary Bye-laws** and regulations or **IDRs** in force at the time of the **assessment** or **investigation**, save that the **Disciplinary Bye-laws** dated 14 October 2019 shall continue to apply to:
 - i. any application for a review of a decision taken prior to the **effective date** by the Investigation Committee to dismiss a complaint, and
 - ii. any reconsideration of a decision made prior to the **effective date** by the Investigation Committee to refer a complaint to the Disciplinary Committee for hearing (“Investigation Committee”, “Disciplinary Committee” and “complaint” being defined in the **Disciplinary Bye-laws** dated 14 October 2019);
- b. all proceedings before a **Tribunal** under the **Disciplinary Bye-laws** are to be conducted in accordance with the provisions of the **Disciplinary Bye-laws** and regulations or **IDRs** in force at the time of the referral of the matter to the **Tribunal** by the **Conduct Committee** or the **Conduct Department**; and
- c. all proceedings before an **Appeal Panel** under the **Disciplinary Bye-laws** are to be conducted in accordance with the provisions of the **Disciplinary Bye-laws** and regulations or **IDRs** in force at the time the application for permission to appeal is filed (other than where the period for filing the notice of appeal commences before, and expires on or after, the **effective date** and the notice of appeal is filed within that period).

THE DISCIPLINARY COMMITTEES

4.1 Members of the **disciplinary committees** may participate in meetings or **hearings** of the **disciplinary committees** via any audio or video conferencing facilities which allow all persons in the meeting or **hearing** to communicate with each other simultaneously. Where a member of a **disciplinary committee** participates in a meeting or **hearing** via such audio or video conferencing facilities, they shall be deemed present at that meeting or **hearing** and counted in the quorum.

The Conduct Committee

- 5.1 The **Conduct Committee** shall consist of no fewer than 10 members of whom at least the **required number** must be **lay members**.
- 5.2 Members of the **Conduct Committee** are appointed by the **RACAC** (or relevant predecessor or successor body) for an initial term of 3 years, which term may be renewed and extended at the discretion of the **RACAC** up to a maximum of 9 years.
- 5.3 The **required number** for the purpose of **IDRs** 5.1, 6.1 and 7.1 is:
- a. one half of the total number of members of the Committee; or
 - b. if the total number of members of the Committee is not divisible by two, one half of the first higher number that is so divisible.
- 5.4 The quorum for meetings of the **Conduct Committee** shall be 4 members, of whom 2 members shall be **ICAEW members** and 2 members shall be **lay members**.
- 5.5 Where **allegations** concerning **legal services work** are being considered, the **Conduct Committee** will delegate its functions and duties to a Legal Services Subcommittee whose composition meets the requirements of **IDR** 5.4.
- 5.6 The functions of the **Conduct Committee** shall include, among other matters:
- a. reviewing any decision of the **Conduct Department** not to investigate a **complaint** following **assessment**;
 - b. determining whether the test set out in **Disciplinary Bye-law** 5.1 has been met in respect of one or more **allegations** referred to it by the **Conduct Department** under **IDR** 22.1;
 - c. determining what, if any, action should be taken in accordance with **Disciplinary Bye-law** 10.1 in respect of any **allegation(s)** where it finds the test set out in **Disciplinary Bye-law** 5.1 to be met;
 - d. re-examining **allegations** which it has previously dismissed following a **case file review** carried out in accordance with **IDR** 28;
 - e. reconsidering **allegations** which it has previously referred to the **Tribunals Committee** in the circumstances, and in accordance with the processes, set out in **IDR** 29; and
 - f. extending the period within which any financial penalties or **costs orders** must be paid by a **member, firm, affiliate** or **relevant person** under powers delegated by **ICAEW Council** in accordance with Principal Bye-law 7(c).

- 5.7 The **Conduct Committee Chair** may delegate to the **Head of Committees and Tribunals** administrative functions in relation to the appointment of **reviewers** in accordance with these **IDRs**.
- 5.8 The **Conduct Committee Chair** may co-opt as temporary members of the **Conduct Committee** members of the **Tribunals Committee**, the **Appeal Committee** and/or the **regulatory committees** to deal with specific cases, provided that:
- a. no person shall be appointed to the **Conduct Committee** and consider one or more **allegations** against a **member, firm, affiliate** or **relevant person** if, while as a member of a **regulatory committee**, they took part in a decision to refer that matter to the **Conduct Department**; and
 - b. the **required number** of **lay members** is maintained.
- 5.8 No member of the **Tribunals Committee** or the **Appeal Committee** shall be appointed to a **Tribunal** or an **Appeal Panel** to consider a case which they considered previously as a co-opted member of the **Conduct Committee**.

The Tribunals Committee

- 6.1 The **Tribunals Committee** shall consist of no fewer than 10 members of whom at least the **required number** must be **lay members**.
- 6.2 Members of the **Tribunals Committee** are appointed by the **RACAC** (or relevant predecessor or successor body) for an initial term of 3 years, which term may be renewed and extended at the discretion of the **RACAC** up to a maximum of 9 years.
- 6.3 The quorum for meetings of the **Tribunals Committee** shall be 4 members, of whom 2 shall be **ICAEW members** and 2 shall be **lay members**.
- 6.4 The functions of the **Tribunals Committee** are:
- a. to determine whether the test set out in **Disciplinary Bye-law 5.2** has been met in respect of **formal allegations** referred to it for hearing in accordance with the **Disciplinary Bye-laws** and these **IDRs**;
 - b. to make such **orders** as it considers appropriate in respect of such **formal allegations** where it determines the test set out in **Disciplinary Bye-law 5.2** has been met;
 - c. to reconsider any **formal allegations** which are remitted back to it by the **Appeal Committee**;
 - d. to determine any **interim order applications** in accordance with **Disciplinary Bye-law 11.5** and the process set out at **IDRs 30 – 33** and to review whether any existing **interim orders** shall remain in place (on the same or varied terms); and

- e. to consider proposed **settlement agreements** in accordance **Disciplinary Bye-law** 11.8 and the process set out at **IDRs** 46 - 48.
- 6.5 The functions of the **Tribunals Committee** set out in **IDR** 6.4 above shall be discharged by **Tribunals** or by individual members of the **Tribunals Committee** appointed by the **Tribunals Committee Chair** to carry out its functions in accordance with these **IDRs**.
- 6.6 A **Tribunal** shall comprise 3 members of the **Tribunals Committee**, being one **ICAEW member** and 2 **lay members** (with one of the 2 **lay members** being appointed **Tribunal Chair**).
- 6.7 The **Tribunals Committee Chair** may delegate to the **Head of Committees and Tribunals** administrative functions in relation to the appointment of members of the **Tribunals Committee** to **Tribunals** and / or the appointment of **Settlement Chairs** in accordance with these **IDRs**.
- 6.8 The **Tribunals Committee Chair** may co-opt as temporary members of the **Tribunals Committee** members of the **Conduct Committee**, the **Appeal Committee** and/or the **regulatory committees** to deal with specific cases, provided that:
- a. no person shall be appointed to a **Tribunal** and consider one or more **formal allegations** against a **member, firm, affiliate** or **relevant person** if they previously considered that specific case as a member of their own committee; and
 - b. the **required number** of **lay members** is maintained.
- 6.9 No member of the **Appeal Committee** shall be appointed to an **Appeal Panel** to consider a case which they considered previously as a co-opted member of the **Tribunals Committee**.

The Appeal Committee

- 7.1 The **Appeal Committee** shall consist of no fewer than 10 members of whom at least the **required number** must be **lay members**.
- 7.2 Members of the **Appeal Committee** are appointed by the **RACAC** (or relevant predecessor or successor body) for an initial term of 3 years, which term may be renewed and extended at the discretion of the **RACAC** up to a maximum of 9 years.
- 7.3 The **Appeal Committee Chair** and any **Appeal Committee Vice-Chair** must each be either a barrister or a solicitor and neither of them shall be an accountant.
- 7.4 The quorum for meetings of the **Appeal Committee** shall be 4 members, of whom 2 shall be **ICAEW members** and 2 shall be **lay members**.

- 7.5 The functions of the **Appeal Committee** include, among other matters, determining **appeals** against **orders** (including **interim orders** and **costs orders**) of **Tribunals** in disciplinary cases under the **Disciplinary Bye-laws**.
- 7.6 **Appeal Panels** shall be convened to hear **appeals** in accordance with the **Disciplinary Bye-laws** and these **IDRs** comprising 5 members of the **Appeal Committee**, being:
- a. the **Appeal Panel Chair** who shall be either the **Appeal Committee Chair** or any **Appeal Committee Vice-Chair**;
 - b. two **ICAEW members**; and
 - c. two **lay members**.
- 7.7 Where **appeals** in relation to **legal services work** are being considered, an **Appeal Panel** shall have a majority of members who are **lay members**, although the **Appeal Panel** shall still be chaired by either the **Appeal Committee Chair** or an **Appeal Committee Vice-Chair** who shall be either a barrister or solicitor.
- 7.8 The **Appeal Committee Chair** may delegate to the **Head of Committees and Tribunals** administrative functions in relation to the appointment of members of the **Appeal Committee** to **Appeal Panels** in accordance with these **IDRs**.
- 7.9 The **Appeal Committee Chair** may co-opt as temporary members of the **Appeal Committee** members of the **Conduct Committee**, the **Tribunals Committee** and/or the **regulatory committees** to deal with specific cases, provided that:
- a. no person shall be appointed to an **Appeal Panel** and consider one or more **formal allegations** against a **member, firm, affiliate or relevant person** if they have previously considered that specific case as a member of their own committee; and
 - b. the **required number** of **lay members** is maintained.

INTERNAL INVESTIGATION OF COMPLAINTS BY FIRMS

- 8.1 In accordance with **Disciplinary Bye-law 7**, every **firm** shall have in place an internal process for investigating and resolving complaints raised by clients and former clients, and every **firm** shall ensure that all new clients are informed in writing of:
- a. the name of the person to be contacted if they wish to complain to the **firm** about its services; and
 - b. their right to complain to **ICAEW** about the **firm**.
- 8.2 If a **firm** receives a complaint about any services that it has provided, or has failed to provide, to a client or former client, it shall ensure that the complaint is investigated

promptly by a **principal** or other person of sufficient seniority within the **firm** who can carry out the investigation in an independent capacity. In the case of a sole practice, the **principal** shall ensure that the complaint is subject to an independent investigation.

- 8.3 A **firm** shall not charge a client or former client for investigating a complaint in accordance with **IDR 8.2**.
- 8.4 If, as a result of an investigation under **IDR 8.2**, the **firm** is of the opinion that the complaint is wholly or partly justified, it shall take whatever steps are appropriate to resolve the complaint, whether by way of remedial work, apology, the provision of information, the return of documents, the reduction or repayment of fees or otherwise.
- 8.5 Where the **Conduct Department** receives a **complaint** or **complaints** about a **firm** (not being a **complaint** or **complaints** that may require referral to the **Accountancy Scheme**) the **Head of Investigation** may, where they consider it appropriate to do so, refer the **complaint** or **complaints** to the **firm** for investigation in accordance with **Disciplinary Bye-law 7** and these **IDRs**, rather than deal with the matter in accordance with **IDR 9.1**.

ASSESSMENT OF COMPLAINTS

Assessment process - general

- 9.1 Any person may bring to the attention of the **Conduct Department**, by way of a **complaint**, any **event(s)** which may indicate that a **member, firm, affiliate** or **relevant person** may be liable to disciplinary action under the **Disciplinary Bye-laws** or the **Accountancy Scheme**. In addition, the **Conduct Department** may consider other matters which have come to its attention as **complaints**, including **complaints** which are referred to the **Conduct Department** by a **regulatory committee**.
- 9.2 In respect of all **complaints**, the **Conduct Department** shall assess whether the **event** or **events** could give rise to a potential liability to disciplinary action under the **Disciplinary Bye-laws** or the **Accountancy Scheme**.
- 9.3 Where a **complaint** has been made against a person who has been previously excluded or whose status as an **affiliate** or **provisional member** has been previously withdrawn, or where the exclusion or withdrawal occurs during the **assessment** of the **complaint**, the **Conduct Department** may make an application to the **Conduct Committee** in accordance with **IDR 21** for the **complaint** to **lie on file**.

Where a complaint will be closed following assessment

- 10.1 Subject to **IDR 10.10**, a **complaint** will not be treated as a **conduct matter** for the purposes of an **investigation** or **conciliation** (pursuant to **IDR 15**), if the **Conduct Department** determines, following **assessment**, that:
 - a. the **event** or **events** do not give rise to a potential liability to disciplinary action under the **Disciplinary Bye-laws** or the **Accountancy Scheme**; and/or

- b. more than 3 years have elapsed since:
 - i. the date on which the **event(s)** giving rise to the **complaint** first occurred, or, if later
 - ii. the date on which the **event(s)** giving rise to the **complaint** first came, or ought reasonably to have come, to the attention of the **complainant**,

and an **investigation** is not necessary for the protection of the public or otherwise in the public interest; and/or

- c. the **complaint** is either a **repetitive complaint** or a **vexatious complaint** and an **investigation** is not necessary for the protection of the public or otherwise in the public interest.

10.2 Where the **Conduct Department** determines that a **complaint** falls into any of the categories of **complaint** set out at **IDR 10.1**, it shall serve a **notice** on the **complainant** setting out the reasons why the **complaint** will not be treated as a **conduct matter** for the purposes of an **investigation** or **conciliation** and advising the **complainant** of their right to request an **assessment review**.

10.3 A **complainant** may request an **assessment review** by notifying the **Head of Investigation** within 28 days of the date of service of the **notice** of the **Conduct Department's** decision under **IDR 10.2**.

10.4 Where the **Head of Investigation** receives a request for an **assessment review** after the expiry of the 28 day period specified in **IDR 10.3**, the **assessment review** shall only proceed where the **Head of Investigation** is satisfied that there was a good reason why the application could not have been submitted by the **complainant** within the 28 day period.

10.5 Upon receipt of a request for an **assessment review** within the period specified in **IDR 10.3**, or any longer period permitted by the **Head of Investigation** pursuant to **IDR 10.4**, the **Conduct Department** shall produce an **assessment report** as soon as reasonably practicable setting out the reasons for the decision not to investigate and shall serve a copy of the **assessment report** on the **complainant**.

10.6 The **complainant** may submit any written representations on the **assessment report** to the **Conduct Department** within 28 days of the date of service of the **assessment report** on them.

10.7 Following the expiry of the period for response under **IDR 10.6**, or the receipt of representations from the **complainant** (if earlier), the **Conduct Department** shall provide the **assessment report** and any written representations from the **complainant** to the **Head of Committees and Tribunals** who shall arrange for the **assessment report** and any representations to be considered by the **Conduct Committee** as soon as reasonably practicable.

10.8 In determining whether to uphold the **assessment** decision taken by the **Conduct Department** in accordance with **IDR 10.1**, the **Conduct Committee** shall consider:

- a. whether, in respect of an **assessment** decision made pursuant to **IDR 10.1(a)**, there is a potential liability to disciplinary action based on the summary of facts set out in the **assessment report** and any written representations from the **complainant**;

- b. whether, in respect of an **assessment** decision made pursuant to **IDR 10.1(b)**, the **complaint** was brought to the attention of the **Conduct Department** outside of the specified time limits and, if so, whether the **Conduct Department** was right to conclude that an **investigation** is not necessary for the protection of the public or otherwise in the public interest;
- c. whether, in respect of an **assessment** decision made pursuant to **IDR 10.1(c)**, it was reasonable for the **Conduct Department** to conclude that the **complaint** was either a **repetitive complaint** or a **vexatious complaint** and that an **investigation** is not necessary for the protection of the public or otherwise in the public interest.

10.9 Where the **Conduct Committee** upholds the **Conduct Department's** decision not to investigate a **complaint**, the **Conduct Committee** shall provide a summary of its reasons to the **Head of Committees and Tribunals** who shall notify the **complainant** and the **Conduct Department** of the **Conduct Committee's** decision and provide them with a copy of the summary of reasons. The **Head of Committees and Tribunals** shall also confirm to the **complainant** that no further action will be taken in respect of the **complaint** which was the subject of the **assessment report**.

10.10 Where the **Conduct Committee** determines, after reviewing an **assessment report** and any representations of the **complainant**, that an **investigation** should be carried out into a **complaint**, the **Head of Committees and Tribunals** shall notify the **complainant** and the **Conduct Department** of the **Conduct Committee's** decision and provide them with a summary of the **Conduct Committee's** reasons, and the matter shall be dealt with in accordance with **IDR 12.1**.

Power to reopen a complaint following an assessment

- 11.1 The **Conduct Department** may reopen a **complaint** which has previously been closed following an **assessment** where the **Head of Investigation** has reason to believe that:
- a. the decision not to proceed with the **complaint** may have been materially flawed (for any reason); or
 - b. there is new information or evidence which may have led, wholly or partly, to a different decision; or
 - c. the **member, firm, affiliate or relevant person** concerned may have previously withheld relevant information; or
 - d. the **member, firm, affiliate or relevant person** concerned may have previously misled the **Conduct Department**; or
 - e. in the opinion of the **Head of Investigation**, further consideration of the **complaint** is necessary for the protection of the public or otherwise in the public interest.
- 11.2 Where the **Conduct Department** decides to reopen a **complaint** it shall, as soon as reasonably practicable, notify the reasons for its decision to the **member, firm, affiliate or relevant person** who, or which, is the subject of the **complaint**, and any **complainant**.

Where the Conduct Department concludes following an assessment that there is a potential liability to disciplinary action

- 12.1 Where, following an **assessment**, the **Conduct Department** concludes that the **complaint** may give rise to a potential liability to disciplinary action under the **Disciplinary Bye-laws** or the **Accountancy Scheme**, the **complaint** will be treated as a **conduct matter** and investigated unless the **Conduct Department**:
- a. considers that the **complaint** should be referred to the **Conduct Committee** for a possible referral under the **Accountancy Scheme** (in which case **IDR 14** applies); or
 - b. considers that the **conduct matter** is suitable for an attempted **conciliation** in accordance with **IDR 15**.
- 12.2 Where, during an **investigation**, a person who is the subject of a **conduct matter** is excluded or has their **affiliate** or **provisional member** status withdrawn, the **Conduct Department** may make an application to the **Conduct Committee** in accordance with **IDR 21** for the **conduct matter** to **lie on file**.

Serious conviction allegations

- 13.1 Where, during an **assessment** or **investigation**, the **Conduct Department** identifies one or more **serious convictions** in relation to a **member, firm, affiliate** or **relevant person**, the **Conduct Department** may make enquiries of the **member, firm, affiliate** or **relevant person** to obtain relevant information regarding such **serious convictions** and shall report the **serious conviction(s)** as one or more **serious conviction allegations** in a **formal allegations report** to the **Tribunals Committee** pursuant to **IDR 39.1**. In such circumstances, the **serious conviction allegation(s)** shall be treated for the purposes of these **IDRs** as if it, or they, had been referred formally by the **Conduct Committee** to the **Tribunals Committee** in accordance with **Disciplinary Bye-law 10.1(a)**.
- 13.2 Where the **member, firm, affiliate** or **relevant person** is at the same time the subject of:
- a. other **complaints** that are being assessed; and/or
 - b. other **conduct matters** that are being investigated; and/or
 - c. other **formal allegations** that are the subject of **disciplinary proceedings** before the **Tribunals Committee**,

the **Conduct Department** may suspend its **assessment** of those **complaints**, its **investigation** of those **conduct matters**, or the **disciplinary proceedings** in respect of the other **formal allegations**, pending the final determination of the **serious conviction allegation(s)** by a **Tribunal** or, if there is an **appeal**, by an **Appeal Panel**.

- 13.3 Where, following the final determination of the **serious conviction allegation(s)** by a **Tribunal** or an **Appeal Panel**:
- a. the **member** is excluded from membership of **ICAEW**; or
 - b. the **affiliate's** status is as an **affiliate** is withdrawn; or
 - c. the **relevant person's** status as a **provisional member** is withdrawn,

the **Conduct Department** may apply to the **Conduct Committee** or the **Tribunals Committee** for some or all of the matters referred to in **IDR 13.2** to **lie on file** in accordance with **IDRs 21** and/or **38**.

- 13.4 Where, following the final determination of the **serious conviction allegation(s)** by a **Tribunal** or **Appeal Panel**, no **order** is made excluding the person from **ICAEW** membership or withdrawing their **affiliate** or **provisional member** status (as applicable), the **Conduct Department** shall re-start its **assessment** of any **complaints**, or its **investigation** of any **conduct matters**, or the **disciplinary proceedings** which were suspended in accordance with **IDR 13.2**.

Referrals under the Accountancy Scheme

- 14.1 If a **complaint** is assessed by the **Conduct Department** as giving rise to a potential liability to disciplinary action under the **Disciplinary Bye-laws** or the **Accountancy Scheme** pursuant to **IDR 12.1**, and the **Conduct Department** considers that it may be appropriate for the **complaint** to be dealt with under the terms of the **Accountancy Scheme**, the **Conduct Department** shall prepare a report summarising the facts and evidence relating to the **complaint** obtained during the **assessment** and shall provide it to the **Head of Committees and Tribunals** to place before the **Conduct Committee** as soon as reasonably practicable.
- 14.2 If, after considering the report from the **Conduct Department**, the **Conduct Committee** determines that the **complaint** should be referred to the Financial Reporting Council (or relevant successor body) under the terms of the **Accountancy Scheme**, it shall request the **Head of Investigation** to make the referral.
- 14.3 If the **Conduct Committee** determines that the **complaint(s)** should not be referred under the **Accountancy Scheme**, or if the Financial Reporting Council (or relevant successor body) does not accept the referral, the **Conduct Committee** shall request the **Head of Investigation** to start an **investigation**.

Conciliation

- 15.1 If a **complaint** is assessed by the **Conduct Department** as giving rise to a potential liability to disciplinary action under the **Disciplinary Bye-laws**, and the **Head of Investigation** considers that:
- a. the **complainant** may be satisfied with a resolution which does not involve disciplinary action and the **member, firm, affiliate** or **relevant person** may consider such a resolution;
 - b. the **complaint** does not raise any wider issues regarding the conduct of the **member, firm, affiliate** or **relevant person** which require an **investigation** to be carried out, and/or **disciplinary proceedings** to be pursued, in the public interest, and
 - c. no **allegations** would be brought under **Disciplinary Bye-laws 4.1(a)** or **4.2(a)** in any event,

the **Conduct Department** may attempt to resolve the **complaint** by **conciliation**.

- 15.2 If the **conciliation** is successful, the **Conduct Department** shall take no further action with respect to the **complaint**.

- 15.3 If, at any time, the **Conduct Department** concludes that a **conciliation** will not be possible, the **Conduct Department** shall begin an **investigation** in accordance with **IDR 12.1** with a view to determining whether any **allegations** should be reported to the **Conduct Committee** or dealt with by way of **fixed penalty**.

COOPERATION WITH ASSESSMENT / INVESTIGATION

- 16.1 If, while a **complaint** is being assessed or a **conduct matter** is being investigated, a **member, firm, affiliate** or **relevant person** (whether or not the subject of the **complaint** or **conduct matter**) fails to respond to requests by the **Conduct Department** for the production of **relevant information**, the **Head of Investigation** may serve a **notice** on that **member, firm, affiliate** or **relevant person** requiring the supply of such **relevant information** within 14 days of the date of service of the **notice** (or such longer period as may be specified) in accordance with **Disciplinary Bye-law 8**.
- 16.2 If a **member, firm, affiliate** or **relevant person** fails to comply with a **notice** served by the **Conduct Department** in accordance with **IDR 16.1**, the matter may be reported as an **allegation** to the **Conduct Committee**.
- 16.3 A **member, firm, affiliate** or **relevant person** shall not charge a **complainant** for time spent, or costs incurred, in responding to the **Conduct Department's** enquiries during its **assessment** of a **complaint** or its **investigation** of a **conduct matter**.

CONCLUSION OF AN INVESTIGATION

- 17.1 Save where the matter is dealt with under **IDRs 13.1, 14.1** or **19.3**, where, at the conclusion of an **investigation**, the **Conduct Department** considers that the test set out in **Disciplinary Bye-law 5.1** has been met in respect of one or more **allegations** arising out of the **conduct matter**, it shall report those **allegations** to the **Conduct Committee** in accordance with **IDR 20**.
- 17.2 Where the **Conduct Department** considers that the test set out in **Disciplinary Bye-law 5.1** has not been met in respect of any **allegations** arising out of a **conduct matter** investigated in accordance with **IDR 12.1**, the **Conduct Department** shall notify the **complainant** of its intention not to report such **allegations** to the **Conduct Committee**.
- 17.3 Where a **complainant** considers that some or all of the **allegations** referred to in **IDR 17.2** should be considered by the **Conduct Committee**, the **complainant** shall notify the **Conduct Department** in writing within 28 days of the date of service of the **notice** under **IDR 17.2** of their request for the **Conduct Committee** to consider the rejected **allegations**. Any request must set out why, in the **complainant's** opinion, the rejected **allegation(s)** give rise to a liability to disciplinary action under the **Disciplinary Bye-laws**.
- 17.4 After receiving **notice** pursuant to **IDR 17.3**, the **Conduct Department** shall report the rejected **allegation(s)** to the **Conduct Committee** in accordance with **IDR 20** either on their own, or alongside other **allegations** where the **Conduct Department** considers the test set out in **Disciplinary Bye-law 5.1** has been met. If more than 28 days have elapsed since the date of service of the **notice** under **IDR 17.2**, the rejected

allegation(s) shall only be reported to the **Conduct Committee** if the **Head of Investigation** is satisfied that the **complainant** could not reasonably have been expected to respond to the **notice** within 28 days.

17.5 The **Conduct Department** shall notify the **member, firm, affiliate** or **relevant person** of the **allegations** that it intends to report to the **Conduct Committee**, including any rejected **allegations** which the **complainant** has asked to be considered by the **Conduct Committee** in accordance with **IDR 17.3**

Power to reopen a conduct matter after the closure of an investigation

18.1 The **Conduct Department** may reopen a **conduct matter** which has been closed following an **investigation** where the **Head of Investigation** has reason to believe that:

- a. the decision not to proceed with the **conduct matter** may have been materially flawed (for any reason); or
- b. there is new information or evidence which may have led, wholly or partly, to a different decision; or
- c. the **member, firm, affiliate** or **relevant person** concerned may have previously withheld relevant information; or
- d. the **member, firm, affiliate** or **relevant person** concerned may have previously misled the **Conduct Department**; or
- e. in the opinion of the **Head of Investigation**, further consideration of the **conduct matter** is necessary for the protection or the public or otherwise necessary in the public interest.

18.2 Where the **Conduct Department** decides to reopen a **conduct matter** pursuant to **IDR 18.1** it shall, as soon as reasonably practicable, notify the reasons for its decision to the **member, firm, affiliate** or **relevant person** who, or which, is the subject of the **conduct matter**, and any **complainant**.

When the Conduct Department may offer fixed penalties

19.1 Where, following an **investigation**, the **Conduct Department**:

- a. concludes the test set out in **Disciplinary Bye-law 5.1** is met in respect of a **designated allegation**; and
- b. does not consider the test set out in **Disciplinary Bye-law 5.1** to be met in respect of any other **allegations**,

the **Conduct Department** may, acting under powers delegated by the **Conduct Committee**, propose that the **designated allegation** be dealt with by the acceptance of a **fixed penalty** in accordance with **IDR 19.3**

19.2 Where the **Conduct Department** decides to propose a **fixed penalty** in respect of the **designated allegation**, it shall serve a **notice** on the **member, firm, affiliate** or **relevant person** specifying:

- a. the details of the **designated allegation**;
- b. the terms of the proposed **fixed penalty**;
- c. the period for compliance with the proposed **fixed penalty**; and
- d. the extent to which the proposed **fixed penalty** may be published by **ICAEW**.

- 19.3 Where, within the period stated in the **notice** served pursuant to **IDR 19.2**, the **member, firm, affiliate** or **relevant person** confirms in writing their acceptance of the **fixed penalty**, the **fixed penalty** will become a final **order** and, where applicable, will be published and remain on the **ICAEW Disciplinary Database** for the period specified in the **ICAEW Disciplinary Database policy**.
- 19.4 Where the **member, firm, affiliate** or **relevant person** receiving a **notice** pursuant to **IDR 19.2** does not agree to the terms of the proposed **fixed penalty**, or does not respond to the **notice**, the **designated allegation** will be referred to the **Conduct Committee** in accordance with **IDR 22.1**.
- 19.5 Any financial penalty agreed under **IDR 19.3** may be paid by the **member, firm, affiliate** or **relevant person** by way of instalments with the agreement of the **Head of Investigation**.

REPORTING ALLEGATIONS TO THE CONDUCT COMMITTEE

Preparation of a conduct report

- 20.1 Where, following an **investigation**, the **Conduct Department** considers that one or more **allegations** arising out of a **conduct matter** meet the test set out in **Disciplinary Bye-law 5.1**, the **Conduct Department** shall prepare a **conduct report** and shall provide a copy of such report to the **member, firm, affiliate** or **relevant person** who, or which, is the subject of the **allegation(s)** prior to the **conduct report** being considered by the **Conduct Committee**. The **Conduct Department** shall also inform the **member, firm, affiliate** or **relevant person** of the costs incurred in investigating the **conduct matter**, which costs shall be notified to the **Conduct Committee**.
- 20.2 Where the **member, firm, affiliate** or **relevant person** wishes to make written representations on the **conduct report** for consideration by the **Conduct Committee**, the **member, firm, affiliate** or **relevant person** shall provide such written representations to the **Conduct Department** within 14 days of service of the **conduct report** or such extended period as may be agreed by the **Conduct Department**.
- 20.3 Subject to **IDR 20.4**, after the expiry of 14 days, or any extended period agreed by the **Conduct Department** pursuant to **IDR 20.2**, the **Conduct Department** shall provide to the **Head of Committees and Tribunals** copies of the following documents:
- a. the **conduct report**;
 - b. any relevant written representations received in accordance with **IDR 20.2** from the **member, firm, affiliate** or **relevant person**; and
 - c. any relevant written representations received from the **complainant** (if applicable),
- and the **Head of Committees and Tribunals** shall arrange for these documents to be considered by the **Conduct Committee** as soon as reasonably practicable.
- 20.4 Where the **Conduct Department** makes any substantive revisions to the **conduct report** after receipt of any written representations, it shall provide a copy of the revised **conduct report** to the **member, firm, affiliate** or **relevant person** who shall have 14 days from the date of service of the **conduct report** (or such extended

period as may be agreed by the **Conduct Department**) to make any further representations before the revised **conduct report** is submitted to the **Head of Committees and Tribunals**.

Application to the Conduct Committee for complaints or conduct matters to lie on file

21.1 Where the **Conduct Department** identifies either:

- a. at the start of an **assessment** that a person against whom a **complaint** is made has been excluded or has had their **affiliate** or **provisional member** status withdrawn; or
- b. during the **assessment** or an **investigation** that the person who is the subject of the **complaint** or **conduct matter** has been excluded from **ICAEW** membership or has had their **affiliate** or **provisional member** status withdrawn,

the **Conduct Department** may submit an application to the **Conduct Committee** requesting the **Conduct Committee** to allow the **complaint** or **conduct matter** to **lie on file**. Such application shall confirm the current status of the **assessment** or **investigation** and shall follow the process set out in **IDRs** 21.2 and 21.3.

21.2 An application made in accordance with **IDR** 21.1 must be made in writing and a copy provided to the **member, affiliate** or **relevant person** who is the subject of the **complaint** or **conduct matter**, and any **complainant**, who shall each have 14 days from the date of service of the application to make written representations. Upon the expiry of 14 days, or the receipt of representations from all persons served with a copy of the application (whichever is the earlier), the **Head of Committees and Tribunals** shall provide all relevant documents to the **Conduct Committee** to determine whether the **complaint** or the **conduct matter** should **lie on file**.

21.3 Where the **Conduct Committee** determines that a **complaint** or a **conduct matter** should **lie on file**, its decision shall be notified to the **member, affiliate** or **relevant person**, and any **complainant**, and no step shall be taken to assess the **complaint** or investigate the **conduct matter** unless, or until, an application is made by the **Head of Investigation** to the **Conduct Committee** to review the **complaint** or **conduct matter** lying on file (following a **readmission / re-registration application** made by the former **member**, former **affiliate** or former **relevant person**).

21.4 Where an application is made by the **Head of Investigation** to the **Conduct Committee** to review **complaints** and/or **conduct matters** lying on file, a copy of the application (indicating whether the **Head of Investigation** considers that any or all of the **complaints** and/or **conduct matters** should be re-opened) and any supporting documents shall be provided by the **Head of Committees and Tribunals** to:

- a. the former **member**, former **affiliate** or former **relevant person** who is the subject of the **complaints** and/or the **conduct matters** lying on file; and
- b. any **complainant** connected to such **complaints** and/or **conduct matters**,

who shall both have 14 days from the date of service of the application to provide any representations in writing to the **Head of Committees and Tribunals** prior to the

application for review being considered by the **Conduct Committee**.

- 21.5 In considering the application for review, the **Conduct Committee** shall take into account the **Head of Investigation's** submissions and any representations made by the former **member**, former **affiliate** or former **relevant person**, and by any **complainant**, before determining whether any or all **complaints** and/or **conduct matters** should be re-opened.
- 21.6 The **Conduct Committee** shall order that all **complaints** and/or **conduct matters** lying on file shall be re-opened unless it considers that reopening any or all of the **complaint(s)** and/or **conduct matter(s)** is not in the public interest, or if it considers that there are exceptional circumstances justifying the closure of any or all of the **complaints** and/or **conduct matters** lying on file. Where an **order** is made to close any of the **complaints** and/or **conduct matters** lying on file, no further action shall be taken in respect of those matters unless they are re-opened in accordance with **IDRs 11** and/or **18**.
- 21.7 Where the **Conduct Committee** orders that the **complaints** or **conduct matters** lying on file be re-opened, they shall be dealt with in accordance with the **IDRs**.

CONSIDERATION BY THE CONDUCT COMMITTEE

- 22.1 On receipt of a **conduct report**, the **Conduct Committee** shall consider whether the test set out in **Disciplinary Bye-law 5.1** is met in respect of the **allegation(s)**. Before making any determination, the **Conduct Committee** shall satisfy itself that the **member, firm, affiliate** or **relevant person** who, or which, is the subject of the **allegation(s)**, has been given an opportunity to make written representations to the **Conduct Committee** (and, if this has not been the case, the **Conduct Committee** shall defer its consideration of the **conduct report** to allow this to happen).
- 22.2 Where the **Conduct Committee** finds that the test set out in **Disciplinary Bye-law 5.1** is met in respect of one or more of the **allegations** against the **member, firm, affiliate** or **relevant person**, it may, having had regard to the **Guidance on Sanctions** and the **disciplinary record** (if any) of the **member, firm, affiliate** or **relevant person**, do one of the following:
- a. refer such **allegation** or **allegations** to the **Tribunals Committee** for **hearing** as a **formal allegation** or **formal allegations** in accordance with **Disciplinary Bye-law 10.1(a)**; or
 - b. propose a **consent order** in accordance with **Disciplinary Bye-law 10.1(b)** in respect of all **allegations** for which it finds the test set out in **Disciplinary Bye-law 5.1** to be met; or
 - c. adjourn its consideration of the **allegation(s)** in accordance with **Disciplinary Bye-law 10.1(c)**.
- 22.3 Where the **Conduct Committee** is considering more than one **allegation** and determines to refer any one **allegation** to the **Tribunals Committee** pursuant to **IDR 22.2(a)**, it must refer all **allegations** for which it finds the test set out in **Disciplinary Bye-law 5.1** to be met.
- 22.4 Where the **Conduct Committee** finds that the test set out in **Disciplinary Bye-law 5.1** has not been met in respect of any **allegations** reported to it by the **Conduct**

Department, it shall, subject to its power to re-examine the **allegation(s)** in **Disciplinary Bye-law** 10.3, dismiss any such **allegations** in accordance with **Disciplinary Bye-law** 10.2.

- 22.5 The **Head of Committees and Tribunals** shall prepare a written record of the **Conduct Committee's** decision on the **allegation(s)** and shall provide it as soon as practicable to the **member, firm, affiliate** or **relevant person** who, or which, is the subject of the **allegation(s)**, the **Conduct Department** and any **complainant**.
- 22.6 In considering the **allegation(s)** the **Conduct Committee** may, at its discretion, treat as evidence any witness statements or written representations of the **member, firm, affiliate** or **relevant person** and the rules of judicial evidence will not apply.
- 22.7 No objections shall be upheld to any technical fault in the procedure of the **Conduct Committee**, nor in any decision by the **Conduct Committee** or terms of any **order** issued by it, provided that the proceedings are fair and the relevant **Disciplinary Bye-laws** and **IDRs** have been observed.

Referrals to the Tribunals Committee

- 23.1 Save for referrals set out in **IDR** 23.2, where the **Conduct Committee** determines in accordance with **Disciplinary Bye-law** 10.1(a) to refer one or more **allegations** as **formal allegations** to the **Tribunals Committee**, the **Conduct Department** shall have conduct of the **disciplinary proceedings** before the **Tribunals Committee** (and in any **appeal** before the **Appeal Committee**).
- 23.2 Where the **Conduct Committee** determines to refer one or more **allegations** as **formal allegations** to the **Tribunals Committee** contrary to any of the recommendations of the **Conduct Department** in the **conduct report**, the **Conduct Committee** shall have conduct of the **disciplinary proceedings** before the **Tribunals Committee** (and in any **appeal** before the **Appeal Committee**).

Consent orders

- 24.1 Where the **Conduct Committee** determines to offer a **consent order** in accordance with **Disciplinary Bye-law** 10.1(b), it shall serve on the **member, firm, affiliate** or **relevant person** who, or which, is the subject of the **allegation(s)**, a **notice** setting out the **allegations** for which the **Conduct Committee** has found the test in **Disciplinary Bye-law** 5.1 to be met, and which describes the action which it proposes to take, and the **order** it would make, in the event that the **member, firm, affiliate** or **relevant person** agrees to the proposed action.
- 24.2 A **notice** served under **IDR** 24.1 must:
- a. explain how the **consent order** would be published (if applicable); and
 - b. make clear that, if the **member, firm, affiliate** or **relevant person** does not agree in writing to the proposed action within 28 days of the date of service of that **notice**:
 - i. all **allegations** for which the **Conduct Committee** has found the test set out in **Disciplinary Bye-law** 5.1 to be met will be referred without

further consideration by the **Conduct Committee** to the **Tribunals Committee** as **formal allegations**; and

- ii. in such circumstances, the **Tribunals Committee** would have the power to make any of the applicable **orders** specified in **Disciplinary Bye-law** 11 if it were to find such **formal allegation(s)** proved.

- 24.3 Where the **member, firm, affiliate** or **relevant person** agrees in writing to the terms of the **Conduct Committee's** proposed **consent order** before the expiry of 28 days from the date of service of the **notice**, the **Head of Committees and Tribunals** shall issue the **order** on behalf of the **Conduct Committee** and the **consent order** shall take effect after 7 days from the date of the service of the **order** on the **member, firm, affiliate** or **relevant person**. The **Head of Committees and Tribunals** shall also serve a copy of the **consent order** on any **member, firm, affiliate** or **relevant person** who, or which, is the subject of a **conduct matter**, or **allegations** or **formal allegations** arising from the same **event** or **events**.
- 24.4 Where the **member, firm, affiliate** or **relevant person** accepts the **finding** made by the **Conduct Committee** but does not accept the **sanction(s)** and/or the amount of costs to be paid in the proposed **consent order**, the **member, firm, affiliate** or **relevant person** may, within 28 days of the date of service of the **notice**, make written representations to the **Head of Committees and Tribunals** as to why the **Conduct Committee** should either reduce the proposed **sanction(s)** and/or the amount of costs or make an **order** for no further action.
- 24.5 Where the **Head of Committees and Tribunals** receives written representations in accordance with **IDR** 24.4, the **Head of Committees and Tribunals** shall provide copies of such written representations to the **Conduct Department** which, if it wishes to respond to the written representations, must provide any response within 28 days to the **Head of Committees and Tribunals** and to the **member, firm, affiliate** or **relevant person**.
- 24.6 After the expiry of 28 days, or the receipt of a response from the **Conduct Department** (if earlier), the **Head of Committees and Tribunals** shall arrange for the written representations and any response from the **Conduct Department** to be considered by the **Conduct Committee** as soon as reasonably practicable. The **Conduct Committee** shall then determine its final offer of a **consent order** to the **member, firm, affiliate** or **relevant person**.
- 24.7 Where the **member, firm, affiliate** or **relevant person** either rejects the proposed **consent order** or fails to respond to the offer of a **consent order** within 28 days from the date of service of the **notice** pursuant to **IDR** 24.1, the **Conduct Committee** shall refer the **allegation(s)** as **formal allegation(s)** to the **Tribunals Committee** in accordance with **Disciplinary Bye-law** 10.1(a).
- 24.8 **IDRs** 58.1(b), 58.5 and 58.6 (time limits for the payment of financial penalties, financial payments and costs) shall apply in relation to any financial penalty, financial payment or costs imposed by a **consent order** of the **Conduct Committee** made in accordance with **Disciplinary Bye-laws** 10.1(b) as it applies in relation to a financial penalty, financial payment or costs imposed by an **order** of a **Tribunal** (save that the reference in **IDR** 58.1(b) to the date of service of the **Tribunal's record of decision** shall be taken to refer to the date of the **consent order**).

Adjournments

- 25.1 If the **Conduct Committee** adjourns its consideration of the **allegation(s)** in accordance with **Disciplinary Bye-law** 10.1(c), it shall instruct the **Conduct Department** to report to it on the progress of such matters at prescribed intervals. Such monitoring may include enquiries of third parties as well as of the **member, firm, affiliate** or **relevant person** who, or which, is the subject of the **allegation(s)**.

Remedial orders and fee disputes

- 26.1 If the **Conduct Committee** is asked for directions in the event of a dispute as to the fees payable to another person or **firm** to complete work which the **member, firm, affiliate** or **relevant person** was engaged to perform pursuant to **Disciplinary Bye-law** 11.1(a)(xi), 11.1(b)(x), 11.1(c)(xi) or 11.1(d)(xiii), the **Conduct Committee** may determine the amount payable.

Publication of consent orders of the Conduct Committee

- 27.1 Subject to **IDR** 27.2, a **consent order** of the **Conduct Committee** shall be published as soon as practicable once it has taken effect under **IDR** 24.3.
- 27.2 Where the **Conduct Committee** determines in respect of one or more **allegations** that the **member, firm, affiliate** or **relevant person** be cautioned, or that no further action be taken in respect of the **allegations**, the **consent order** shall only be published where the **Conduct Committee** so directs.
- 27.3 The **Conduct Committee** may order that publication of the **consent order** be delayed where, in the opinion of the **Conduct Committee**, delay is necessary in the public interest. In determining the timing of publication, the **Conduct Committee** may have regard to any written representations of the **member, firm, affiliate** or **relevant person**, or any other **member, firm, affiliate** or **relevant person** who, or which, has been served with a copy of the **consent order** under **IDR** 24.3, which are filed within 7 days beginning with the date of service of the **consent order**, and the **Conduct Committee** shall make a decision on publicity once the period for representations has passed.
- 27.4 Unless the **Conduct Committee** otherwise directs, the published **consent order** shall state the name of the **member, firm, affiliate** or **relevant person**, the **bye-law** and/or regulation under which the **allegation(s)** were brought, the **order(s)** made against them and a statement that the **order(s)** were made with the agreement of the **member, firm, affiliate** or **relevant person**. The published **consent order** need not include the name of any other person or body concerned in the **allegation(s)**.
- 27.5 Where published, a **consent order** of the **Conduct Committee**, or **fixed penalty** issued by the **Conduct Department** under powers delegated by the **Conduct Committee**, shall remain on the **ICAEW Disciplinary Database** for the period specified in the **ICAEW Disciplinary Database policy**.

COMPLAINANT'S RIGHT TO REQUEST A CASE FILE REVIEW

- 28.1 Where the **Conduct Committee** finds that the test set out in **Disciplinary Bye-law 5.1** is not met in respect of any **allegation** against the **member, firm, affiliate or relevant person**, a **complainant** may apply to the **Head of Committees and Tribunals** for a **case file review** in respect of the dismissed **allegation(s)** within 28 days of the date of service of **notice** of the **Conduct Committee's** decision.
- 28.2 Where an application has been made within the time specified under **IDR 28.1**, the **Head of Committees and Tribunals** shall:
- a. inform the **member, firm, affiliate or relevant person** who, or which, is the subject of the **allegation(s)** that an application has been made for a **case file review** and that the **allegation(s)** may need to be re-examined by the **Conduct Committee** depending on the outcome of the **case file review**;
 - b. request the **Conduct Committee Chair** to approve the appointment of a **reviewer** from the **reviewer pool** to carry out a **case file review** as soon as reasonably practicable; and
 - c. request the **Head of Investigation** to provide access to the relevant **case file** for a **case file review** to be carried out by the **reviewer**.
- 28.3 Where an application is made after the expiry of the period specified under **IDR 28.1**, the **Head of Committees and Tribunals** shall only permit the application to proceed if the **Head of Committees and Tribunals** is satisfied that there is a good reason why it was not reasonably practicable for the **complainant** to make the application within the specified period.
- 28.4 The **case file review** shall consider whether, in respect of any **allegations** dismissed by the **Conduct Committee**:
- a. there has been a failure by the **Conduct Department** to investigate any relevant **event** raised by a **complainant** during the **investigation**, or a failure to follow up any other relevant line of enquiry known to the case manager during the **investigation**, which is likely to have produced information or evidence supporting a finding of liability to disciplinary action; and/or
 - b. relevant information and/or evidence on the **case file** was not included with the **conduct report** which is likely to have altered the **Conduct Committee's finding(s)** in respect of the **allegation(s)** had it been included; and/or
 - c. there has been a failure by the **Conduct Department** and/or the **Conduct Committee** to follow the procedure specified in the **IDRs** for investigating the **conduct matter**, or considering the **allegations**, and the **Conduct Committee's** consideration of the **allegations** is likely to have been prejudiced by that failure,

and, after completing the **case file review**, the **reviewer** shall provide their **review report** to the **Conduct Committee Chair**, the **complainant** and the **member, firm, affiliate** or **relevant person** who, or which, is the subject of the **allegation(s)**.

28.5 Where the **review report** identifies no concerns in respect of **IDRs** 28.4(a), 28.4(b) and 28.4(c), the **Conduct Committee Chair** shall request the **Head of Committees and Tribunals** to inform the **complainant** and the **member, firm, affiliate** or **relevant person** that the **case file** will be closed.

28.6 Where the **review report** identifies one or more failures or omissions in respect of the matters set out in **IDRs** 28.4(a), 28.4(b) and 28.4(c), the **Conduct Committee Chair** shall request the **Head of Investigation** to remedy such failures or omissions (carrying out such additional **investigation** work as may be required) and to prepare a **supplemental conduct report** which shall:

- a. specify any additional **investigation** work that was carried out pursuant to **IDR** 28.4(a) and include any relevant information and/or evidence identified as a result of such additional **investigation** work; and/or
- b. include any additional information and/or evidence that was omitted from the original **conduct report** and identified pursuant to **IDR** 28.4(b); and/or
- c. confirm that any procedural failures identified pursuant to **IDR** 28.4(c) have been rectified and include any relevant information and/or evidence identified as a result of such rectification work, and

the **supplemental conduct report** shall specify the **Head of Investigation's** conclusions as to whether the test set out in **Disciplinary Bye-law** 5.1 has been met in respect of the dismissed **allegation** or **allegations** in the light of any new information and/or evidence contained in the report.

28.7 The **Head of Investigation** shall provide a copy of the **supplemental conduct report** prepared pursuant to **IDR** 28.6 to the **member, firm, affiliate** or **relevant person**, and the **complainant**, who shall each have 28 days from the date of service of the report (or such longer period as may be agreed by the **Head of Investigation**) to make written representations on the **supplemental conduct report** before it is placed before the **Conduct Committee** by the **Head of Committees and Tribunals** for re-examination.

28.8 Where, after considering the **supplemental conduct report** pursuant to **IDR** 28.7, the **Conduct Committee** determines that the test set out in **Disciplinary Bye-law** 5.1 is still not met in respect of the dismissed **allegation(s)**, the **Conduct Committee** shall request the **Head of Committees and Tribunals** to:

- a. provide a summary of the **Conduct Committee's** conclusions to the **complainant** and the **member, firm, affiliate** or **relevant person** as to why the test set out in **Disciplinary Bye-law** 5.1 has not been met; and

- b. inform the **complainant** and the **member, firm, affiliate** or **relevant person** that the **case file** will be closed.

28.9 Where, after considering the **supplemental conduct report**, the **Conduct Committee** finds that the test set out in **Disciplinary Bye-law** 5.1 has been met in respect of one or more of the dismissed **allegation(s)**, it shall deal with such **allegation(s)** in accordance with **IDR** 22.2.

28.10A **complainant** shall not be permitted to request more than one **case file review**.

RECONSIDERATION BY THE CONDUCT COMMITTEE OF ALLEGATIONS ALREADY REFERRED TO THE TRIBUNALS COMMITTEE

29.1 Following the referral of one or more **formal allegations** by the **Conduct Committee** to the **Tribunals Committee**, but prior to the first **hearing** (whether this be a **case management hearing** or a **final hearing**), the **Head of Investigation** may make an **application for reconsideration** to the **Conduct Committee** in accordance with **Disciplinary Bye-law** 10.4 in respect of any **allegation** previously referred to the **Tribunals Committee** as a **formal allegation** on the basis that:

- a. the **Conduct Committee** should reconsider whether the test set out in **Disciplinary Bye-law** 5.1 has been met in respect of the referred **allegation** or **allegations**, or should reconsider whether the referred **allegation** or **allegations** should be dealt with instead by way of a **consent order**; and/or
- b. the **Conduct Committee** should consider a request to amend the wording of one or more of the referred **allegations**; and/or
- c. the **Conduct Committee** should consider whether, based on the available evidence, an additional **allegation** or **allegations** should be included with the referred **allegations** against the **member, firm, affiliate** or **relevant person** where such **allegations** arise out of the same **event** or **events**,

and, for the purposes of this **IDR** 29.1, 'available evidence' includes any new information and/or evidence of a material nature that has been identified since the referral of the **formal allegation(s)** to the **Tribunals Committee**.

29.2 An **application for reconsideration** must be served by the **Head of Investigation** on the **Head of Committees and Tribunals** and the **member, firm, affiliate** or **relevant person** who, or which, is the subject of the **formal allegation(s)**, and the **member, firm, affiliate** or **relevant person** shall have 14 days from the date of service of the application to provide any written representations to the **Head of Investigation** and the **Head of Committees and Tribunals**.

- 29.3 After the expiry of the period specified in **IDR 29.2**, or the receipt of written representations from the **member, firm, affiliate or relevant person** (if earlier), the **Head of Committees and Tribunals** shall place the **application for reconsideration** and any representations before the **Conduct Committee** as soon as reasonably practicable.
- 29.4 After considering an **application for reconsideration**, the **Conduct Committee** shall determine whether any **allegations** previously referred to the **Tribunals Committee** as **formal allegations** should be recalled in order to:
- a. dismiss the **allegation(s)** in accordance with **Disciplinary Bye-law 10.2**;
 - b. propose a **consent order** in respect of the **allegations** (to be dealt with in accordance with **IDR 24**);
 - c. amend the wording of one or more **allegations** before re-referring the **allegations** as **formal allegation(s)** to the **Tribunals Committee**; and/or
 - d. refer an additional **allegation** or **allegations** arising out of the same **event** or **events** (which meet the test in **Disciplinary Bye-law 5.1**) for consideration at the same time by the **Tribunals Committee**.

INTERIM ORDER APPLICATIONS

- 30.1 At any time during an **investigation** of a **conduct matter**, or between the referral of one or more **formal allegations** to the **Tribunals Committee** and the **final hearing** (or **sanctions hearing**), the **Conduct Department** may make an application to the **Tribunals Committee** for an **interim order** to be imposed against a **member, affiliate or relevant person** in accordance with **Disciplinary Bye-law 11.5**.
- 30.2 A **Tribunal** may make an **interim order** against a **member, affiliate or relevant person** pursuant to **Disciplinary Bye-law 11.5** where it is satisfied that there is a risk of significant harm to the public (or a section thereof) if an **interim order** is not made pending the final determination of the **allegation(s)** or **formal allegation(s)** by a **disciplinary committee**.
- 30.3 The **Conduct Department** shall serve copies of its **interim order application** on both the **member, affiliate or relevant person**, and the **Head of Committees and Tribunals**, and the **interim order application** shall set out the basis on which the application is made and include any supporting evidence.
- 30.4 As soon as practicable after being served with an **interim order application**, the **Head of Committees and Tribunals** shall request the **Tribunals Committee Chair** to appoint a **Tribunal** and shall proceed to fix a date for the **interim order application** to be considered by the **Tribunal**.
- 30.5 Except in very urgent cases, the **Head of Committees and Tribunals** shall provide the **parties** with at least 14 days' **notice** of the date, time, location or format of the **hearing**, and the **member, affiliate or relevant person** shall have the opportunity to serve representations and evidence in response to the **interim order application** at

least 7 days prior to the date set for the **hearing**.

- 30.6 Where the **Conduct Department** requests an urgent **hearing** date, and the **member, affiliate** or **relevant person** has had less than 14 days' **notice** of the date of the **hearing**, the **Tribunal** shall, at its first **hearing** of the **interim order application**, consider whether the **hearing** should be adjourned with **directions**, or whether the **hearing** should proceed, taking into account the impact of the short **notice**, the reasons for the urgency and any prejudice that may be caused to the **member, affiliate** or **relevant person** in hearing the **interim order application** on that date.

Conduct of hearings of interim order applications

- 31.1 An **interim order application** shall be heard in private, either in person or via video conferencing, and there shall be no advance publicity of the **hearing**.
- 31.2 A **Tribunal** convened to consider an **interim order application** may proceed in the absence of the **member, affiliate** or **relevant person** provided that it is satisfied that:
- a. **notice** of the **hearing** was served on the **member, affiliate** or **relevant person** as required by these **IDRs**; and
 - b. no adequate explanation has been provided by the **member, affiliate** or **relevant person** for their non-attendance and/or it is in the public interest to proceed in any event.
- 31.3 If a **member, affiliate** or **relevant person** does not attend at the **hearing** but provides the **Tribunal** instead with written representations, the **Tribunal** may take into account those written representations in determining whether the test for an **interim order** set out in **IDR 30.2** has been met.
- 31.4 The **Tribunal** may at any time during the **hearing**:
- a. deliberate in the absence of the **parties**;
 - b. determine that the **hearing** of the **interim order application** be adjourned for such period and with such directions as it considers appropriate.
- 31.5 Unless the **Tribunal** otherwise directs, the order of proceedings shall be as follows:
- a. the **Conduct Department representative** shall explain the basis upon which the **interim order application** is made and shall refer the **Tribunal** to any relevant documents or evidence;
 - b. the **member, affiliate** or **relevant person** (or their **representative**) shall then have an opportunity to respond to the application, referring the **Tribunal** to any relevant documents or evidence;
 - c. no person shall give oral evidence unless this is permitted by the **Tribunal** (if permission is given, both **parties** and the **Tribunal** may ask questions of any witness); and
 - d. both **parties** may make closing submissions to the **Tribunal** with the **member, affiliate** or **relevant person** speaking last.

- 31.6 A **Tribunal** may not make any finding that the test set out in **Disciplinary Bye-law 5.2** is, or is not, or may be, met in relation to any **conduct matter**, or any **allegations** or **formal allegations** made against the **member, affiliate** or **relevant person**, or any finding of fact which would be capable of forming the basis for any such finding.
- 31.7 Due to the urgent nature of **interim order** proceedings, a **Tribunal** shall announce its decision at the conclusion of the **hearing** (including any period for deliberations) and shall give reasons for its decision, save where it is impossible to do so, in which case it shall announce its decision and give its reasons as soon as practically possible thereafter.

Orders by a Tribunal after considering an interim order application

- 32.1 A **Tribunal** may make an **interim order** against the **member, affiliate** or **relevant person**, in accordance with **Disciplinary Byelaw 11.5**, where it finds the test set out in **IDR 30.2** to be met.
- 32.2 The **Tribunal** shall specify in the **interim order** the intervals at which the **interim order** shall be reviewed (which shall be no longer than 6 months) and any **interim order** made in accordance with **IDR 32.1** shall remain in force until such time as:
- a. it is the subject of a successful **appeal**; or
 - b. it is discharged by a **Tribunal** following a **review hearing** or an **expedited review**; or
 - c. a final **order** is made in relation to the **member, affiliate** or **relevant person** in respect of the **allegations** or **formal allegations** to which the **interim order** relates (whether by the **Conduct Committee**, a **Tribunal** or an **Appeal Panel**).
- 32.3 An **interim order** shall have immediate effect where the **member, affiliate** or **relevant person**, or their **representative**, is present at the **hearing**. If the **member, affiliate** or **relevant person** is not present at the **hearing**, **notice** of the decision and of any **interim order** shall be provided on the day of the **hearing**, or as soon as practicable thereafter, and any **interim order** shall take effect on service of the **notice** on the **member, affiliate** or **relevant person**.
- 32.4 Where a **Tribunal** makes an **interim order**, it may make a **costs order** against the **member, affiliate** or **relevant person** in such sum as the **Tribunal** considers appropriate. Prior to making any **costs order**, the **Tribunal** shall:
- a. hear and consider submissions from both **parties** in respect of the amounts set out in any **costs schedule** which has been provided by the **Conduct Department representative** to the **Head of Committees and Tribunals** and the **member, affiliate** or **relevant person** prior to the **hearing**; and
 - b. hear submissions from both **parties** on any statement of means which has been provided in advance of the **hearing** by the **member, affiliate** or **relevant person** to the **Head of Committees and Tribunals** and the **Conduct Department representative**, and any supporting evidence (including a signed statement of truth) provided in respect of their income and

assets.

- 32.5 Where a **Tribunal** determines not to make an **interim order**, the **Tribunal** may, on the application of the **member, affiliate or relevant person**, make a **costs order** against **ICAEW** subject to **IDRs** 32.6 and 32.7.
- 32.6 In determining whether to make a **costs order** under **IDR** 32.5, a **Tribunal** shall take into account the public policy applied in the civil courts that costs awards should only be made against a regulator in exceptional circumstances to safeguard against the risk that the regulator may be fettered in exercising its disciplinary functions due to the risk of adverse costs orders.
- 32.7 If the **Tribunal** considers that it is appropriate to make a **costs order** against **ICAEW**, any **costs order** shall be limited to £10,000 unless the **Tribunal** determines that:
- a. no reasonable regulator would have made such an **interim order application**; or
 - b. that the **interim order application** was made in bad faith; or
 - c. the way in which the **Conduct Department** conducted the **interim order application** unreasonably increased the costs incurred by the **member, affiliate or relevant person** above £10,000; or
 - d. the absence of a larger **costs order** against **ICAEW** would give rise to significant hardship for the **member, affiliate or relevant person**.
- 32.8 Where the **Tribunal** determines to make a **costs order** against **ICAEW**, it shall give the **Conduct Department representative** and the **member, affiliate or relevant person** (or their **representative**) an opportunity to make representations on the amount of costs claimed by the **member, affiliate or relevant person** before determining the amount to be paid by **ICAEW** by way of costs.
- 32.9 The **Head of Committees and Tribunals** shall provide the **parties** with a copy of the **order** and the **record of decision** of the **Tribunal** as soon as reasonably practicable after the **hearing**.

Publication of interim orders

- 33.1 Any **interim order** made in accordance with **Disciplinary Bye-law** 11.5 shall be published as soon as practicable following the **hearing** unless the **Tribunal** identifies exceptional circumstances supporting non-publication.
- 33.2 Where the **interim order** is published before the expiry of the 28 days within which a **notice of appeal** may be filed pursuant to **IDR** 70.1 any publication shall make clear that the **interim order** may be subject to **appeal**.

Review hearings for interim orders

- 34.1 An **interim order** shall be the subject of a review by a **Tribunal** once every six months or at such shorter intervals as the **Tribunal** may order.
- 34.2 As soon as reasonably practicable after an **interim order** has been made by a **Tribunal**, the **Head of Committees and Tribunals** shall inform the **parties** of the date, time, location or format of the first **review hearing**.
- 34.3 At least 28 days prior to any **review hearing**, the **Head of Committees and Tribunals** shall request that the **member, affiliate** or **relevant person** confirm in writing at least 14 days before the **review hearing** whether they intend to contest the continuation of the **interim order** at the **review hearing**.
- 34.4 If the **member, affiliate** or **relevant person** indicates in their response that they do not intend to contest the continuation of the **interim order**, the **Head of Committees and Tribunals** shall cancel the **review hearing** and shall provide copies of the correspondence to the Chair of the **Tribunal** which made the **interim order** (or the **Tribunals Committee Chair** if the **Tribunal Chair** is no longer a member of the **Tribunals Committee** or is unavailable) for the **Tribunal Chair** (or the **Tribunals Committee Chair**) to make an **order** to continue the **interim order** on the same terms. The **Head of Committees and Tribunals** shall provide a copy of any **order** made to the **parties**.
- 34.5 If the **member, affiliate** or **relevant person** indicates in their response that they intend to contest the continuation of the **interim order**, or if the **Head of Committees and Tribunals** receives no response to their request in accordance with **IDR 34.3**, the **review hearing** shall take place on the date notified previously under these **IDRs**. If the **member, affiliate** or **relevant person** intends to contest the continuation of the **interim order**, they shall provide their reasons in writing to the **Conduct Department representative** and the **Head of Committees and Tribunals** at least 7 days before the date of the **review hearing**.

Conduct of a review hearing

- 35.1 A **review hearing** shall be held in public, either in person or via video-conferencing facilities, unless the **Tribunal** determines at the start of the **review hearing** that there are exceptional reasons why the whole or part of the **review hearing** should be held in private which outweigh the public interest in the **review hearing** being held in public.
- 35.2 A **review hearing** shall be conducted by the **Tribunal** that originally made the **interim order**, unless one or more of the **Tribunal** members are no longer members of the **Tribunals Committee** or are unavailable, in which case the **Tribunals Committee Chair** shall be requested to appoint replacement members.
- 35.3 A **review hearing** may proceed in the absence of the **member, affiliate** or **relevant person** where the **Tribunal** is satisfied that the **member affiliate** or **relevant person** has been notified of the date, time, location or format of the **review hearing** in accordance with these **IDRs**. A **member, affiliate** or **relevant person** may be represented by a **representative** and will be deemed present when they appear by their **representative**.

- 35.4 If the **member, affiliate** or **relevant person** (or their **representative**) does not attend the **review hearing**, the **Tribunal** may take into account any written representations provided by that **member, affiliate** or **relevant person** in determining whether the **interim order** should continue on the same or different terms.
- 35.5 The **Tribunal** may adjourn a **review hearing** of its own volition or on the application of one of the **parties**.
- 35.6 The **Tribunal** shall have a discretion to determine the order of proceedings but shall ensure that both **parties** have an opportunity to make representations (whether written or verbal) on whether the **interim order** should continue on the same or different terms.

Orders of a Tribunal at a review hearing

- 36.1 At the end of a **review hearing**, the **Tribunal** may make one of the following **orders**:
- a. that the **interim order** continue on the same terms; or
 - b. that the **interim order** be discharged; or
 - c. that the **interim order**, or any conditions imposed by it, be varied.

The **Tribunal** shall provide reasons for its decision and the **order** will take immediate effect.

- 36.2 Where the **Tribunal** determines that the **interim order** should continue in force on the same or varied terms, it shall specify the date for the next **review hearing**, which shall be within 6 months.
- 36.3 The **Tribunal** shall not make any **costs orders** in relation to **review hearings**.
- 36.4 The **Head of Committees and Tribunals** shall provide the **parties** with a copy of the **order** and the **record of decision** of the **Tribunal** as soon as reasonably practicable after the **review hearing**.

Expedited reviews of interim orders

- 37.1 Either **party** may make an application to the **Tribunals Committee** for a review of an **interim order** before the date of the next **review hearing** if there has been a material change in circumstances (including the emergence of any new material evidence) since the **interim order** was made or the date of the last review.
- 37.2 A **party** wishing to request an **expedited review** shall serve an application on the **Head of Committees and Tribunals** explaining the material change in circumstances.
- 37.3 Any application made under **IDR 37.2** shall be considered by the Chair of the **Tribunal** which made the **interim order** (or the **Tribunals Committee Chair** if the **Tribunal Chair** is no longer a member of the **Tribunals Committee** or is unavailable) who shall determine whether a **Tribunal** should be appointed to review the **interim order** before the date of the next **review hearing**. The decision of the **Tribunal Chair** (or **Tribunals Committee Chair**) will be final.

- 37.4 Where the **Tribunal Chair** (or the **Tribunals Committee Chair**) determines that an **expedited review** should be held before the date of the next **review hearing**, they shall request the **Head of Committees and Tribunals** to fix a date for the **expedited review** as soon as practicable and to notify the **parties** of the date, time, location or format of the **review hearing** and to provide the other **party** with a copy of the application considered by the **Tribunal Chair**.
- 37.5 Any **expedited review** shall be conducted in accordance with **IDR 35** and the **orders** available to the **Tribunal** on an **expedited review** shall be the same as those set out in **IDR 36**, save that the **Tribunal** may, if it orders that the **interim order** should continue on the same terms, make a **costs order** against the **member, affiliate or relevant person** in such sum as it considers appropriate (and, in such circumstances, the procedure set out in **IDR 32.4** shall apply).

DISCIPLINARY PROCEEDINGS BEFORE THE TRIBUNALS COMMITTEE

General

- 38.1 References in **IDRs 39 – 78** to actions taken by the **Conduct Department** shall be construed as being actions taken by the **Conduct Committee** if it has conduct of the **disciplinary proceedings** in accordance with **IDR 23.2**.
- 38.2 Where a **member, affiliate or relevant person**, who is the subject of one or more **formal allegations** has, at any time, after the referral of the **formal allegations** by the **Conduct Committee** and prior to a **final hearing**, been excluded from **ICAEW** membership, or had their status as an **affiliate** or **provisional member** withdrawn, the **Conduct Department** may submit an application to the **Tribunals Committee Chair** for the **formal allegation(s)** to **lie on file**. Such application shall follow the process set out in **IDRs 38.3** and **38.4** and shall be determined by the **Tribunals Committee Chair** on the papers.
- 38.3 An application made in accordance with **IDR 38.2** must be in writing and a copy provided to the **member, affiliate or relevant person** and any **complainant** who shall have 14 days from the date of service of the application to make written representations. Upon the expiry of 14 days, or the receipt of representations from all persons served with a copy of the application (whichever is earlier), the **Head of Committees and Tribunals** shall provide all relevant documents to the **Tribunals Committee Chair** to determine whether the **formal allegations** should **lie on file**.
- 38.4 Where the **Tribunals Committee Chair** determines that the **formal allegations** should **lie on file**, their decision shall be notified to the **member, affiliate or relevant person**, and any **complainant**, and no step shall be taken to progress the **disciplinary proceedings** in respect of such **formal allegations** unless, or until, an application is made by the **Head of Investigation** to the **Tribunals Committee Chair** to review the **formal allegations** lying on file (following a **readmission / re-registration application** made by the former **member, former affiliate or former relevant person**).

38.5 Where an application is made by the **Head of Investigation** to the **Tribunals Committee Chair** to review the **formal allegations** lying on file, a copy of the application (indicating whether the **Head of Investigation** considers that the **disciplinary proceedings** in respect of such **formal allegations** should be re-started) and any supporting documents shall be provided by the **Head of Committees and Tribunals** to:

- a. the former **member**, former **affiliate** or former **relevant person** who is the subject of the **formal allegations** lying on file; and
- b. any **complainant** connected to such **formal allegations**,

who shall both have 14 days from the date of service of the application to provide any representations in writing to the **Head of Committees and Tribunals** prior to the application for review being considered by the **Tribunals Committee Chair**.

38.6 In considering the application for review, the **Tribunals Committee Chair** shall take into account the **Head of Investigation's** submissions and any representations made by the former **member**, former **affiliate** or former **relevant person**, and by any **complainant**, before determining whether the **disciplinary proceedings** should be re-started.

38.7 The **Tribunals Committee Chair** shall order that the **disciplinary proceedings** relating to all **formal allegations** lying on file be re-started unless they consider that re-starting **disciplinary proceedings** relating to any or all **formal allegations** is not in the public interest, or if they consider that there are exceptional circumstances justifying the closure of such proceedings. Where an **order** is made to close the **disciplinary proceedings** in relation to one or more **formal allegations** lying on file, no further action shall be taken in respect of those matters.

38.8 Where the **Tribunals Committee Chair** orders that the **disciplinary proceedings** relating to one or more **formal allegations** lying on file be re-started, the **formal allegations** shall be dealt with in accordance with these **IDRs**.

Pre-hearing procedure

39.1 Where one or more **formal allegations** (including any **serious conviction allegations**) are referred to the **Tribunals Committee** for determination by the **Conduct Committee** or the **Conduct Department**, the **Head of Committees and Tribunals** shall serve on the **member**, **firm**, **affiliate** or **relevant person** the following:

- a. the **formal allegations report** received from the **Conduct Department**;
- b. any **private hearing application** made by the **Conduct Department**;
- c. **notice** of the date, time and arrangements for a **case management hearing**, which shall be not less than 35 days from the date of service of the documents;
- d. a **response form** (to be completed); and

- e. a copy of the **standard directions**.

39.2 Within 21 days of service of the documents referred to in **IDR 39.1**, the **member, firm, affiliate or relevant person** shall provide to the **Head of Committees and Tribunals**:

- a. a completed **response form**;
- b. a **response statement** (unless the **formal allegation** or **formal allegations** are admitted in their entirety on the **response form**);
- c. any **private hearing application** or any response to a **private hearing application** made by the **Conduct Department**;
- d. any witness statements upon which the **member, firm, affiliate or relevant person** intends to rely;
- e. the availability of the **member, firm, affiliate or relevant person**, all witnesses and **representatives** for the following six months;
- f. a copy of the **standard directions** with any proposed amendments and deletions or any alternative **directions** proposed by the **member, firm, affiliate or relevant person**,

and the **Head of Committees and Tribunals** shall provide copies of such documents to the **Conduct Department** as soon as reasonably practicable. The **Head of Committees and Tribunals** shall have the discretion to extend the period for service of the documents required under this **IDR** where an extension is considered reasonable in the circumstances.

39.3 The **response statement** shall include the following information:

- a. the reference number of the **formal allegations report**;
- b. if there is only one **formal allegation**, whether it is admitted and, if there are two or more **formal allegations**, whether any of the **formal allegations** are admitted;
- c. for all **formal allegations** which are denied, whether the **member, firm, affiliate or relevant person** admits the factual basis of the **formal allegation** or **formal allegations**, as set out in the **formal allegations report**. If the factual basis or bases are not accepted, the **response statement** should detail which paragraphs of the report are agreed and disputed and, where paragraphs are disputed, set out any alternative factual basis;
- d. whether the **member, firm, affiliate or relevant person** accepts that, if the factual basis of the **formal allegation** or **formal allegations** is proved or admitted, they are liable to disciplinary action under the relevant **Disciplinary Bye-law**;
- e. if the **member, firm, affiliate or relevant person** does not accept that they are liable to disciplinary action, the basis on which this lack of liability is asserted;

- f. if a **formal allegation** contains an allegation of dishonesty, whether this is accepted or, if it is not, the basis on which it is denied;
 - g. if a **formal allegation** contains an allegation of a lack of integrity whether this is accepted or, if it is not, the basis on which it is denied.
- 39.4 If the **member, firm, affiliate** or **relevant person** admits the **formal allegation** (where there is only one) or all **formal allegations** (where there is more than one) in their entirety in the **response form** and does not make a **private hearing application**, then the admission(s) will be entered into the **record** and the **case management hearing** will be vacated. The **Head of Committees and Tribunals** shall then request the **Tribunals Committee Chair** to appoint a **Tribunal** for a **sanctions hearing** and shall notify all **parties** of the date, time, location or format for the **sanctions hearing**.
- 39.5 If the **member, firm, affiliate** or **relevant person** does not admit all **formal allegation(s)** but the **parties** agree **directions** and there is no **private hearing application**, the **case management hearing** scheduled pursuant to **IDR 39.1(c)** will be vacated and the **Conduct Department representative** shall provide a copy of the agreed **directions** to the **Head of Committees and Tribunals**. The **Head of Committees and Tribunals** shall then request the **Tribunals Committee Chair** to appoint a **Tribunal** for a **final hearing** and shall notify the **parties** of the date, time, location or format for the **final hearing**.
- 39.6 If the **member, firm, affiliate** or **relevant person**:
- a. does not admit the **formal allegation(s)** and the **parties** do not agree **directions**; or
 - b. makes a **private hearing application**; or
 - c. fails to file a completed **response form** and any proposed **directions** as required pursuant to **IDR 39.2**,
- the matter shall proceed to the **case management hearing** scheduled by the **Head of Committees and Tribunals** pursuant to **IDR 39.1(c)**. The **Head of Committees and Tribunals** shall also request the **Tribunals Committee Chair** to appoint a **Tribunal** for the **final hearing**.
- 39.7 At least 7 days before a **case management hearing**, the **Conduct Department representative** may file with the **Head of Committees and Tribunals**, and serve on the **member, firm, affiliate** or **relevant person**, a written response to any **private hearing application**, or any **directions** filed by the **member, firm, affiliate** or **relevant person** pursuant to **IDR 39.2**.

CASE MANAGEMENT HEARINGS

General process

- 40.1 A **case management hearing** shall either be conducted by a legally qualified **Case Management Chair** sitting alone, or by a lay **Case Management Chair** assisted by a **legal assessor**.
- 40.2 The **Case Management Chair** shall be the **Tribunal Chair** appointed for the **final hearing** but, if the **Tribunal Chair** is not available within a reasonable period, the **Tribunals Committee Chair** shall appoint an alternative **Case Management Chair**.
- 40.3 The **Case Management Chair** appointed to conduct the **case management hearing** shall decide, in their absolute discretion, whether an application for a postponement of that **case management hearing** should be granted.
- 40.4 **Case management hearings** shall be in private and shall take place as telephone or video conferences, unless the **Case Management Chair**, in their absolute discretion, directs otherwise. There shall be no advance publicity of the date of a **case management hearing**.
- 40.5 The purpose of a **case management hearing** is to:
- a. decide any preliminary issues of procedure or any applications for **directions** which are necessary or desirable for securing the just, expeditious and economic disposal of the **formal allegations**; and
 - b. set **directions** for the future management of the **disciplinary proceedings** and to timetable the **final hearing**.
- 40.6 If either **party** fails to attend the **case management hearing**, it will proceed in their absence, where the **Case Management Chair** is satisfied that each **party** has been notified of the date, time, location or format of the **case management hearing** in accordance with these **IDRs** and that proceeding is desirable for securing the just, expeditious and economic disposal of the **formal allegation(s)**. A **member, firm, affiliate** or **relevant person** may be represented by a **representative** at the **case management hearing**, and a **member, firm, affiliate** or **relevant person** will be deemed present when they appear by their **representative**.
- 40.7 The **Case Management Chair** may, at a **case management hearing**, direct a **member, firm, affiliate** or **relevant person** or the **Conduct Department representative** to provide such further information and/or documents relating to the **formal allegation(s)** as the **Case Management Chair** thinks necessary for the just, expeditious and economic disposal of the case and may adjourn the **case management hearing** for a short period to allow such further information and/or documents to be provided.
- 40.8 If, either before or during, the **case management hearing**, the **member, firm, affiliate** or **relevant person** indicates that they admit the **formal allegation(s)**

against them in their entirety, the admission(s) shall be entered into the **record** and the **Case Management Chair** shall direct that a **sanctions hearing** be listed at the earliest available date. The **Head of Committees and Tribunals** shall then request the **Tribunals Committee Chair** to appoint a **Tribunal** for the **sanctions hearing** and to notify the **parties** of the date, time, location or format of the **sanctions hearing**.

Directions

- 41.1 The **Case Management Chair** shall make **directions** after hearing representations from both **parties**. The **Case Management Chair** may make any **directions** necessary for the just, expeditious and economic disposal of the **formal allegation(s)** at the **final hearing**, including but not limited to:
- a. directing the service and timetabling by both **parties** of summary ('skeleton') arguments;
 - b. directing the number of days to be allocated to the **final hearing** and the timing of opening and closing submissions, legal arguments, witness and expert evidence;
 - c. timetabling the service of further evidence, including any expert evidence;
 - d. directing and timetabling the service of further disclosure by either **party**;
 - e. exceptionally, timetabling a further **case management hearing**;
 - f. exceptionally, deciding an application to admit a witness statement which is not accepted by the other **party** and where the witness is unable or unavailable to attend the **final hearing**, provided that the admission is in the interests of justice; and
 - g. directing the date or dates of the **final hearing**.
- 41.2 The **Case Management Chair** shall, in their absolute discretion, direct which witnesses should attend the **final hearing**. It is not expected that witnesses whose statements are agreed will attend to give evidence at the **final hearing**, but their witness statements will be admitted into evidence and may be read to the **Tribunal** as agreed statements at the **final hearing**.
- 41.3 If a **party** fails to serve any or all the documents specified in **IDR 39.1** or **IDR 39.2**, then they shall not be permitted to rely on any document not so served, unless the **Case Management Chair** at a **case management hearing** or, exceptionally, the **Tribunal** at the **final hearing**, allows for the admission of further documents. The **Case Management Chair** shall only admit further documents if:
- a. they are relevant to the issues to be determined;
 - b. they could not have been reasonably identified and adduced by the **party** seeking to rely on them at an earlier date; and

- c. the relevance and probative value of the evidence contained in the documents is such that the prejudice caused by the refusal of permission outweighs the prejudice caused by its admission.

Joinder / consolidation of formal allegations for final hearing / sanctions hearing

- 42.1 **Formal allegations** against a **member, firm, affiliate** or **relevant person** founded on the same **event** or **events** which form part of the same **conduct report** and which have been referred together by the **Conduct Committee** as **formal allegations** will be heard at the same **final hearing** unless an application is made at a **case management hearing** for the **formal allegations** to be heard separately.
- 42.2 An application to consolidate and hear at the same **final hearing** two or more **formal allegations** against a **member, firm, affiliate** or **relevant person** arising from different **events**, shall be dealt with at a **case management hearing**. The **Case Management Chair** may grant that application where they consider the consolidation to be in the interests of justice, taking into account the potential reduction of costs and delays.
- 42.3 An application to join, and hear at the same **final hearing, formal allegations** against two or more **members, firms, affiliates** or **relevant persons** which arise out of the same **event(s)** shall be dealt with at a **case management hearing**. The **Case Management Chair** may grant that application where they consider the consolidation to be in the interests of justice, taking into account the potential reduction of costs and delays.

Private hearing applications

- 43.1 Where a **private hearing application** has been made by a **party** pursuant to **IDR 39.1(b)** or **39.2(c)**, this application shall be determined at a **case management hearing** by the **Case Management Chair**.
- 43.2 **Sanctions hearings** and **final hearings** shall be held in public unless the **Case Management Chair** accedes to a **private hearing application** made by a **party**, or concludes, of their own volition, that the press and public should be excluded from the whole, or part, of a **sanctions hearing** or a **final hearing** in the interests of justice and / or due to the exceptional circumstances of the case outweighing the public interest in the **hearing** being held in public.
- 43.3 The **Case Management Chair** shall provide a summary of reasons to the **parties** for allowing or dismissing any application made under **IDR 39.1(b)** or **39.2(c)**.

Fixing date for final hearing / notifications to the parties

- 44.1 The **Case Management Chair** shall schedule the date of the **final hearing**, which shall be at least 30 days from the date of the **case management hearing**, unless a closer date is agreed by both **parties** and the **Head of Committees and Tribunals**. The **Head of Committees and Tribunals** shall notify the **parties** of the date, time,

location or format of the **final hearing** within 7 days of the **case management hearing**.

- 44.2 The **directions** from the **case management hearing**, and the summary of reasons for allowing or rejecting any **private hearing application**, shall be served on the **parties** by the **Head of Committees and Tribunals** within 7 days of the **case management hearing**.

Additional case management hearings

- 45.1 The **Case Management Chair** may, of their own volition, determine that another **case management hearing** should be held.
- 45.2 An application may be made by either **party** to the **Head of Committees and Tribunals** for a further **case management hearing** to take place to vary **directions** or for additional **directions** to be made. The **Head of Committees and Tribunals** shall arrange for any further **case management hearing** to be conducted by the **Case Management Chair** who conducted the prior **case management hearing** unless they are not available within a reasonable time, in which case the **Head of Committees and Tribunals** shall request the **Tribunals Committee Chair** to appoint an alternative **Case Management Chair**.

SETTLEMENT ORDERS

- 46.1 At any time following the referral of one or more **formal allegations** to the **Tribunals Committee**, but prior to the start of a **final hearing**, the **parties** may apply to the **Tribunals Committee** for the approval of a draft **settlement order** to conclude the **disciplinary proceedings** against the **member, firm, affiliate** or **relevant person** by agreement. Any **settlement order application** shall be served on the **Head of Committees and Tribunals** and shall contain the documents set out at **IDR 46.3**.
- 46.2 Upon receipt of a **settlement order application**, the **Head of Committees and Tribunals** shall request the **Tribunals Committee Chair** to appoint a **Settlement Chair**.
- 46.3 As soon as reasonably practicable, the **Settlement Chair** shall be provided with the **settlement order application** which shall include:
- a. the **formal allegations report**;
 - b. the proposed **settlement agreement**;
 - c. the draft **settlement order**;
 - d. any written representations from the **parties**; and

- e. any **disciplinary record** of the **member, firm, affiliate** or **relevant person**.
- 46.4 The **Settlement Chair** shall determine whether to make the proposed **settlement order** on the papers.
- 46.5 In determining whether the proposed **settlement agreement** is in the public interest and whether the draft **settlement order** should be approved, the **Settlement Chair** shall consider, amongst other matters:
- a. the **formal allegation** or **formal allegations** which have been admitted by the **member, firm, affiliate** or **relevant person** and any which have not been admitted;
 - b. the likely outcome and **sanction(s)** which would be imposed by a **Tribunal** at a **final hearing**;
 - c. the degree to which the **member, firm, affiliate** or **relevant person** has displayed insight into the conduct giving rise to the **formal allegation(s)**; and
 - d. any remedial action taken by the **member, firm, affiliate** or **relevant person** and any safeguards put in place to prevent similar issues arising in the future.
- 46.6 Where the **settlement order** is approved, the **Head of Committees and Tribunals** shall provide a copy of the signed **settlement order** to:
- a. the **parties** to the **settlement order**; and
 - b. any other **member, firm, affiliate** or **relevant person** who, or which, is the subject of any **formal allegation(s)** arising from the same **events** as the **formal allegations** which are the subject of the **settlement order**,
- and the **settlement order** shall take effect after 7 days of the date of service of the **order** on the **parties**.
- 46.7 Where the **Settlement Chair** does not approve the draft **settlement order**, the **Settlement Chair** shall give a written summary of reasons, a copy of which shall be provided by the **Head of Committees and Tribunals** to the **parties** as soon as practicable.
- 46.8 The **parties** may make further **settlement order applications** at any time prior to the start of a **final hearing**.
- 46.9 **IDRs** 58.1(b), 58.5 and 58.6 (time limits for the payment of financial penalties, financial payments and **costs orders**) shall apply in relation to any financial penalty, financial payment or costs imposed by a **settlement order** made under **IDR** 46.6 as it applies in relation to a financial penalty, financial payment or **costs order** imposed by an **order** of a **Tribunal** (save that the reference in **IDR** 58.1(b) to the date of service of the **Tribunal's record of decision** shall be taken to refer to the date of the **settlement order**).

Publication of settlement orders

- 47.1 Subject to **IDR 47.6**, an approved **settlement order** shall be published no less than 7 days from the date of service of the **settlement order** on the **parties**.
- 47.2 A **settlement order** shall not be published until a reasonable opportunity has been provided to any other **member, firm, affiliate** or **relevant person** who, or which, has been served with a copy of the **settlement order** pursuant to **IDR 46.6(b)** to make representations for delaying the publication until the final determination of the **formal allegation(s)** against that other **member, firm, affiliate** or **relevant person**.
- 47.3 Any **member, firm, affiliate** or **relevant person** who, or which, wishes to make representations to the **Settlement Chair** to delay the publication shall provide any such representations in writing to the **Head of Committees and Tribunals** within 7 days of being served with a copy of the **settlement order**.
- 47.4 Where written representations are received pursuant to **IDR 47.3**, the **Settlement Chair** shall consider such representations before determining whether there is good reason why the publication of the **settlement order** should be delayed. In making that determination, the **Settlement Chair** shall have regard to the following matters:
- a. the potential impact of the publication of the **settlement order** on the determination of the **formal allegation(s)** against the **member, firm, affiliate** or **relevant person** who has been served with a copy of the **settlement order** pursuant to **IDR 46.6(b)**; and
 - b. the public interest in ensuring swift publication of **sanctions** for the protection of clients and future clients of the **member, firm, affiliate** or **relevant person**, and the protection of **ICAEW's** reputation as a regulator.
- 47.5 Where the **Settlement Chair** refuses a request to delay the publication, written reasons for this decision shall be provided to the **parties** and any other persons served with a copy of the **settlement order** under **IDR 46.6(b)**.
- 47.6 Where the **Settlement Chair** decides that the publication of the **settlement order** should be delayed, the **Settlement Chair** shall provide directions to the **Head of Committees and Tribunals** on when the **order** should be published and the **Head of Committees and Tribunals** shall inform the **parties** and any other persons served with a copy of the **settlement order** under **IDR 46.6(b)** accordingly.

Without prejudice nature of settlement discussions

- 48.1 The content of any settlement discussions between the **Conduct Department** and the **member, firm, affiliate** or **relevant person**, any proposed **settlement agreement** or any draft **settlement order**, and the summary of reasons given by a **Settlement Chair** for refusing a proposed **settlement order**, shall be confidential and, for the avoidance of doubt, shall not be admissible in:

- a. any subsequent **disciplinary proceedings** against the **member, firm, affiliate** or **relevant person** in respect of the **formal allegation(s)**; and
- b. any **disciplinary proceedings** concerning **allegation(s)** or **formal allegation(s)** against any other **member, firm, affiliate** or **relevant person** which arise from the same **event(s)** as the **formal allegations** which were the subject of the proposed **settlement order**.

48.2 A **Settlement Chair** shall have no further involvement in the matter if a proposed **settlement order** is refused and the **formal allegation(s)** proceed to a **sanctions hearing** or a **final hearing**.

CONDUCT OF FINAL HEARINGS AND SANCTIONS HEARINGS

General

- 49.1 Subject to **IDR 49.2**, the name of the **member, firm, affiliate** or **relevant person** who, or which, is the subject to the **formal allegation(s)**, the date, time, location or format of the **hearing**, and the terms of the **bye-law** and/or regulation under which the **formal allegation** is, or **formal allegations** are, brought, shall be published on the **ICAEW** website at least 7 days prior to a **final hearing** or **sanctions hearing**.
- 49.2 **IDR 49.1** shall not apply where, prior to the **hearing**, a **party** has made a successful application for the **hearing** to be heard in private.
- 49.3 The **Head of Committees and Tribunals** may appoint a **legal assessor** to assist the **Tribunal** at the **final hearing** or **sanctions hearing**.
- 49.4 If, prior to the start of a **final hearing** or a **sanctions hearing**, any member of a **Tribunal** appointed in accordance with these **IDRs** is unable to attend the **hearing**, the **Tribunals Committee Chair** shall appoint another member of the **Tribunals Committee** to the **Tribunal**. If no suitable member of the Committee is available on the date(s) fixed for the **final hearing** or **sanctions hearing**, the **Tribunals Committee Chair** shall request the **Head of Committees and Tribunals** to fix a new date for the **final hearing** or **sanctions hearing** and to notify all **parties** of the new date.
- 49.5 If, after the start of a **final hearing** or a **sanctions hearing**, any member of the **Tribunal** is, for any reason, unable to continue to attend, the **Tribunal** will no longer be quorate and may not continue. In such circumstances, the **Head of Committees and Tribunals** shall request the **Tribunals Committee Chair** to appoint a new **Tribunal** and shall fix a date and time for the **final hearing** or the **sanctions hearing** to recommence. No members of the original **Tribunal** shall be appointed as members of the new **Tribunal** but the same **legal assessor** may be re-appointed.

- 49.6 If, at any time during a **final hearing** or a **sanctions hearing**, the **Tribunal Chair** is, for any reason, of the opinion that it is impracticable or would be contrary to the interests of justice for the **final hearing** or the **sanctions hearing** to be completed by that **Tribunal**, they shall inform the **Tribunals Committee Chair** who shall thereupon direct that the matter be re-heard by a new **Tribunal** so appointed. No members of the original **Tribunal** shall be appointed as members of the new **Tribunal** but the same **legal assessor** may be re-appointed.
- 49.7 A **Tribunal Chair** may postpone a **final hearing** or a **sanctions hearing** which has not yet commenced of their own volition or upon application by either **party**.
- 49.8 A **final hearing** or a **sanctions hearing** may proceed in the absence of the **member, firm, affiliate** or **relevant person** where the **Tribunal** is satisfied that each **party** has been notified of the date, time, location or format of the **final hearing** or the **sanctions hearing** in accordance with these **IDRs** and that proceeding is desirable for securing the just, expeditious and economic disposal of the **formal allegation(s)**. A **member, firm, affiliate** or **relevant person** may be represented by a **representative** and a **member, firm, affiliate** or **relevant person** will be deemed present when they appear by their **representative**.
- 49.9 A **Tribunal** may adjourn proceedings of its own volition or upon application by either **party** to a date fixed by the **Tribunal**. A **party** may make an application to the **Tribunal Chair** for a further adjournment before the **final hearing** or the **sanctions hearing** is resumed which must be copied to the other **party** who shall be entitled to make written representations on the application before a decision is made by the **Tribunal Chair**.
- 49.10 The **Tribunal** may, at its discretion, consider evidence which has not been provided in accordance with **IDRs** 39.1, 39.2 and 41.3. However, in considering whether to admit late evidence, the **Tribunal** shall apply the test in **IDR** 41.3.
- 49.11 A **Tribunal** may deliberate in the absence of the **parties**, and their representatives, at any time.
- 49.12 No objection shall be upheld to any technical fault or in the procedure adopted by a **Tribunal** at a **final hearing** or a **sanctions hearing**, provided that the proceedings are fair and the relevant **Disciplinary Bye-laws** and **IDRs** have been complied with.
- 49.13 A **Tribunal** may exclude from the whole or part of a **final hearing** or a **sanctions hearing**, any person or persons whose conduct has disrupted, or is likely to disrupt, the **hearing**.
- 49.14 Notwithstanding a refusal by the **Case Management Chair** at a **case management hearing**, a **Tribunal** may, at any stage of a **final hearing** or a **sanctions hearing**, consider an oral application to exclude the press and the public from the whole or any part of a **final hearing** or a **sanctions hearing**. In deciding such an application, the **Tribunal** will apply the same test and considerations outlined in **IDR** 43.2 and

will additionally require the **party** making the application to provide a good reason why the application could not reasonably have been made earlier at a **case management hearing**.

- 49.15 Where an oral application is made to a **Tribunal** to hold the whole or part of a **final hearing** or a **sanctions hearing** in private, that application will be heard in private. Where an application is successful, or where a **Tribunal** otherwise decides of its own motion to exclude the press and the public from the whole or part of a **final hearing** or a **sanctions hearing**, the reasons for holding the whole or part of a **final hearing** or a **sanctions hearing** in private will be given by the **Tribunal** in public on the day that the decision is made, provided always that such reasons as are given do not, in the opinion of the **Tribunal**, unreasonably undermine the purpose of proceeding in private. In the event of any **formal allegation** being proved at a **final hearing**, the **Tribunal's** reasons for having proceeded in private will be published, provided that such reasons as are given shall not in the opinion of the **Tribunal** undermine the purpose of having proceeded in private. If the **formal allegation(s)** are not proved, such reasons will only be published if the **member, firm, affiliate or relevant person** so requests.

Conduct of a final hearing

- 50.1 If a **member, firm, affiliate or relevant person** does not attend a **final hearing** but provides written representations, the **Tribunal** may take these representations into account when deciding whether or not the test for liability under **Disciplinary By-law 5.2** has been met in respect of the **formal allegation(s)**.
- 50.2 A **final hearing** shall be informal and the strict rules of evidence shall not apply. Subject to these **IDRs**, the **Tribunal** may adopt any method of procedure which it considers fair and which gives each **party** the opportunity to present their case. Unless a **Tribunal** directs otherwise, the order of proceedings will be as follows:
- a. the **formal allegation(s)** shall be read out or, with the consent of the **member, firm, affiliate or relevant person**, the **formal allegation(s)** may be taken as read, and the **member, firm, affiliate or relevant person** shall be invited to state whether they admit or deny the **formal allegation(s)**, and this admission or denial will be entered into the **record**;
 - b. the **Conduct Department representative** shall outline the case against the **member, firm, affiliate or relevant person** and, subject to **IDRs 39.1, 41.1 and 41.3**, may produce any document or call any witness;
 - c. the **member, firm, affiliate or relevant person**, or their **representative** shall be entitled to address the **Tribunal** and, subject to **IDRs 39.2, 41.1 and 41.3**, may give evidence and produce any document or call any witness;
 - d. a witness for one **party** (including the **member, firm, affiliate or relevant person**) may be questioned by, or on behalf of, the other **party**. A witness so questioned may be re-examined by, or on behalf of, the **party** calling them,

but such re-examination shall be limited to matters arising from cross-examination. Members of a **Tribunal** may ask questions of a witness. Evidence will not be taken on oath. A witness, other than an expert witness, shall not be permitted to observe the **final hearing** until they have given their evidence. The **Tribunal** may, on the application of either **party**, agree that the identity of a witness should not be revealed to the public;

- e. the **parties** may make closing submissions and the **member, firm, affiliate** or **relevant person**, or their **representative**, will have the final opportunity to address the **Tribunal**.

50.3 The **Tribunal** shall apply the standard of proof set out in **Disciplinary Bye-law 5.2** in considering the **formal allegation(s)** and the burden of proof is on the **Conduct Department**.

ORDERS OF A TRIBUNAL AT A FINAL HEARING

Orders which a Tribunal may make when formal allegations are found to be proved

51.1 Where a **Tribunal**, after hearing and considering the evidence and the submissions made by the **parties**, finds that one or more **formal allegations** against the **member, firm, affiliate** or **relevant person** are proved, it shall make a **finding** to that effect and shall consider:

- a. the **sanctions** (if any) to be imposed on the **member, firm, affiliate** or **relevant person** in relation to the proven **formal allegations** in accordance with **Disciplinary Bye-law 11.1** and **IDRs 51.2 – 51.4**; and
- b. whether to make a **costs order** against the **member, firm, affiliate** or **relevant person** in accordance with **Disciplinary Bye-law 11.1** and **IDR 51.4**.

51.2 Prior to determining what (if any) **sanctions** to impose on the **member, firm, affiliate** or **relevant person**, the **Tribunal** shall invite the **Conduct Department representative** to make representations to the **Tribunal** in respect of:

- a. any **disciplinary record** of the **member, firm, affiliate** or **relevant person**;
- b. any aggravating or mitigating factors which the **Conduct Department representative** considers to be relevant to sanction;
- c. any relevant guidance or details of any relevant cases which have been determined previously; and
- d. the appropriate starting point in the **Guidance on Sanctions**.

- 51.3 The **Tribunal** shall then invite the **member, firm, affiliate** or **relevant person**, or their **representative**, to address the **Tribunal** on appropriate sanction including representations relating to appropriate starting points in the **Guidance on Sanctions**, relevant mitigating factors, **disciplinary record** and character references.
- 51.4 Prior to determining sanction and whether to make a **costs order**, and the amount of any costs to be ordered against a **member, firm, affiliate** or **relevant person**, the **Tribunal** shall:
- a. hear and consider submissions from the **member, firm, affiliate** or **relevant person** (or their **representative**) and the **Conduct Department representative**, in respect of the **costs schedule** provided by the **Conduct Department** to the **Tribunal** and the **member, firm, affiliate** or **relevant person** prior to the **hearing**; and
 - b. have regard to any statement of means, supported with a signed statement of truth, and evidence of income and assets provided by the **member, firm, affiliate** or **relevant person**.

Orders for the waiver or repayment of fees or commission

- 52.1 Where a **Tribunal** makes an **order** in accordance with **Disciplinary Bye-law** 11.1(a)(x), 11.1(b)(ix), 11.1(c)(x) or 11.1(d)(xii) for:
- a. the repayment of the whole or part of any fee or commission received; and/or
 - b. the waiver of the whole or part of any fee which is due; and/or
 - c. the payment of a sum assessed by the **Tribunal** as the value in whole or part of any commission to which the **member, firm, affiliate** or **relevant person** has become entitled; and/or
 - d. the repayment of the whole or part of any sum which has been retained in or towards payment of a fee by a client,
- any sums ordered to be paid by the **member, firm, affiliate** or **relevant person**, shall be paid to **ICAEW** for remittance to the client or former client in accordance with these **IDRs**, and the total amount of any fees to be waived, or sums to be paid, in accordance with paragraphs (a) – (d) above, shall not exceed £10,000 in the aggregate.

Remedial orders

- 53.1 A **Tribunal** may, on its own or in addition to other **orders** it may make in accordance with **Disciplinary Bye-law** 11.1(a)(xi), 11.1(b)(x), 11.1(c)(xi) or 11.1(d)(xiii), appoint another **member, member firm** or **regulated firm** to undertake or complete the work

which the **member, firm, affiliate** or **relevant person** (who or which is the subject of the **formal allegations**) was engaged to perform for a client or former client; and, if it does so, the **Tribunal** shall order the **member, firm, affiliate** or **relevant person** to pay the reasonable fees of that other **member, member firm** or **regulated firm** for work done as a result of the appointment.

- 53.2 In the event of a dispute as to the fees payable by the **member, firm, affiliate** or **relevant person** in accordance with **IDR 53.1** above, the **Tribunal** may either:
- a. determine the fees payable; or
 - b. order the parties to the dispute to submit the fees to arbitration in accordance with the directions of the **Tribunal**.

Complainants' expenses

54.1 The **Tribunal** may, in accordance with **Disciplinary Bye-law 11.1(a)(ix), 11.1(b)(viii), 11.1(c)(ix)** or **11.1(d)(xi)**, order the **member, firm, affiliate** or **relevant person** to pay to **ICAEW** a sum in respect of the expenses which, in the opinion of the **Tribunal**, were reasonably and necessarily incurred by the **complainant** in:

- a. bringing the **complaint** to the attention of the **Conduct Department**; and/or
- b. making written representations to the **Conduct Department** prior to the referral of the **allegations(s)** to the **Conduct Committee**,

save that such sum shall not exceed £1,000 in the aggregate.

Where formal allegations are found not to be proved

55.1 Where a **Tribunal** finds any **formal allegation** unproved, it shall dismiss that **formal allegation** in accordance with **Disciplinary Bye-law 11.2**.

55.2 Where a **Tribunal** finds that the test set out in **Disciplinary Bye-law 5.2** has not been met in respect of all **formal allegations** against a **member, firm, affiliate** or **relevant person**, the **Tribunal** may, on the application of the **member, firm, affiliate** or **relevant person**, make a **costs order** against **ICAEW** subject to **IDRs 55.3** and **55.4**.

55.3 In determining whether to make a **costs order** under **IDR 55.2**, a **Tribunal** shall take into account the public policy applied in the civil courts that costs awards should only be made against a regulator in exceptional circumstances to safeguard against the risk that the regulator may be fettered in exercising its disciplinary functions due to the risk of adverse costs orders.

55.4 If the **Tribunal** considers it appropriate to make a **costs order** against **ICAEW**, it shall be limited to £25,000 (in the aggregate for all **formal allegations**) unless the **Tribunal**

determines that:

- a. the **formal allegation** has, or the **formal allegations** have, been brought in bad faith; or
- b. no reasonable regulator would have brought or pursued that **formal allegation** or those **formal allegations** against the **member, firm, affiliate or relevant person**; or
- c. the way in which the **Conduct Department** conducted the **disciplinary proceedings** unreasonably increased the costs incurred by the **member, firm, affiliate or relevant person** to more than £25,000; or
- d. the absence of a larger **costs order** against **ICAEW** would give rise to significant hardship for the **member, firm, affiliate or relevant person**.

55.5 Where the **Tribunal** determines to make a **costs order** against **ICAEW**, it shall give the **Conduct Department representative** and the **member, firm, affiliate or relevant person** (or their **representative**) an opportunity to make representations on the amount of costs claimed by the **member, firm, affiliate or relevant person** before determining the amount to be paid by **ICAEW** by way of costs.

55.6 Any costs payable by **ICAEW** shall be limited to the costs reasonably incurred by the **member, firm, affiliate or relevant person** since the date of the referral of the **formal allegations** to the **Tribunals Committee**.

ORDERS OF A TRIBUNAL AT A SANCTIONS HEARING

56.1 A **Tribunal** at a **sanctions hearing** shall follow the process set out in **IDRs** 51.2 - 51.4 in determining what (if any) **sanctions** from those set out in **Disciplinary Bye-law** 11.1 should be imposed on the **member, firm, affiliate or relevant person**, and whether a **costs order** should be made against a **member, firm, affiliate or relevant person** (and, if so, the amount of such costs).

56.2 **IDRs** 52 – 54 (concerning remedial orders; orders for the waiver or repayment of fees or commission, and complainants' expenses) shall apply, where relevant, to **orders** made by a **Tribunal** in accordance with **Disciplinary Bye-law** 11.1 at a **sanctions hearing**.

TRIBUNAL ORDERS: NOTIFICATION / TIMING OF ORDERS COMING INTO EFFECT / TIME FOR PAYMENT / PUBLICITY

Notification

57.1 Following a **final hearing** or a **sanctions hearing**, the **Head of Committees and Tribunals** shall send to the **parties** as soon as reasonably practicable:

- a. **notice** of the decision of the **Tribunal** and any **order(s)** made; and
- b. a copy of the **record of decision**.

Timing of orders coming into effect / time for payment

58.1 Subject to **IDRs** 58.2 – 58.6:

- a. any **order** made by a **Tribunal** at the end of a **final hearing** or **sanctions hearing** against a **member, firm, affiliate** or **relevant person** shall, unless the **Tribunal** otherwise directs, take effect at the end of the period of 28 days beginning with the date of service of the **Tribunal's record of decision** on the **member, firm, affiliate or relevant person**; and
- b. any financial penalties, financial payments or **costs orders** specified in the **order** of the **Tribunal** shall, unless a longer period for payment (whether by instalments or not) is specified in the **order**, be paid within the period of 35 days beginning with the date of service of the **record of decision** on the **parties**.

58.2 If, within the period of 28 days from the date of service of the **record of decision**, either the **member, firm, affiliate** or **relevant person**, or the **Conduct Department**, applies for permission to appeal any **order** of the **Tribunal**, the **order** shall not take effect, and no financial penalties, financial payments or costs shall be payable unless or until either the application for permission to appeal is dismissed or any subsequent **appeal** is dismissed or withdrawn. It shall not take effect at all if an **Appeal Panel** rescinds or varies the **order**.

58.3 If:

- a. a **notice** is served withdrawing the application for permission to appeal before it is determined; or
- b. a **notice** is served confirming that permission to appeal has been refused; or
- c. a **notice** is served withdrawing the **appeal**,

the **order** of the **Tribunal** shall take effect at the end of the period of 14 days beginning with the date of service of the **notice**, at which point any **order** for payment of any financial penalty, financial payment or **costs order** under **Disciplinary Bye-law** 11 shall become immediately due subject to **IDR** 58.4.

58.4 If the **order** of the **Tribunal** has permitted payment of any financial penalty, any financial payment or any **costs order** by instalments, only those instalments which would have become payable before the service of the **notice** specified in **IDR** 58.3 shall become immediately payable and any further instalments will fall due on the dates specified in the **Tribunal's order**.

58.5 Any financial penalty, financial payment or **costs order** (or instalment of a financial penalty, financial payment or **costs order**) imposed under the **Disciplinary Bye-laws** by a **Tribunal** must be received by **ICAEW** before the close of business on the last day of the period allowed by, or under, these **IDRs** for its payment (or, if that day is not a **business day**, before the close of business on the next **business day**).

58.6 Where:

- a. a financial penalty, financial payment or **costs order** is payable by instalments; and
- b. any instalment is not received by **ICAEW** as required by **IDR** 58.5,

the whole of the financial penalty, financial payment or **costs order** (or so much of it as remains unpaid) shall become immediately due for payment.

58.7 Where a **member, firm, affiliate** or **relevant person** is ordered by a **Tribunal** to make a financial payment to **ICAEW** pursuant to **Disciplinary Bye-laws** 11.1(a)(ix), 11.1(a)(x), 11.1(b)(viii), 11.1(b)(ix), 11.1(c)(ix), 11.1(c)(x), 11.1(d)(xi) or 11.1(d)(xii), **ICAEW** shall pay such sum to the client, former client or **complainant** (as the case may be) within 21 days of receiving payment.

Publication of orders

59.1 Where a **Tribunal** makes any adverse **finding** and/or **order** against a **member, firm, affiliate** or **relevant person** under the **Disciplinary Bye-laws**, the **finding** and/or **order** shall be published, as soon as practicable. If the **finding** and/or **order** of the **Tribunal** is published before the expiry of the 28 days within which an application for permission to appeal may be made pursuant to **IDR** 61.1 or 61.2 any publication shall make clear that such an **order** may be subject to **appeal**.

59.2 The **record of decision** of a **Tribunal** shall not be published until after the expiry of the period allowed for an application for permission to appeal to be made and shall be published as soon as reasonably practicable thereafter if no such an application has been made.

59.3 If an application for permission to appeal has been made against one or more **orders** made by a **Tribunal**, the **record of decision** of the **Tribunal** shall not be published unless, and until, either the application for permission to appeal is refused, the **appeal** is abandoned or the subsequent **appeal** is dismissed by an **Appeal Panel**.

59.4 Unless the **Tribunal** otherwise directs, the **record of decision** of the **Tribunal** shall state the name of the **member, firm, affiliate** or **relevant person**, the **bye-law** and/or regulation under which the **formal allegation(s)** were brought and describe the **finding(s)** and the **order(s)** (if any) made against them. The published **record of decision** need not include the name of any other person or body concerned in the **formal allegations**.

59.5 Where a **Tribunal** dismisses all **formal allegations**, the **order** and **record of decision** of the **Tribunal** shall only be published if the **member, firm, affiliate** or **relevant person** so requests.

59.6 Where published, an **order** of a **Tribunal** (including a **settlement order** or **interim order**) shall remain published on the **ICAEW Disciplinary Database** for the period specified in the **ICAEW Disciplinary Database policy**.

REVIEW OF DECISIONS / CORRECTION OF ERRORS

60.1 The **Tribunal Chair** may, of their own volition or upon application by either **party**, review any **order** made by the **Tribunal** or the **record of decision** and may, on such review, correct any accidental slip or omission in the **order** or the **record of decision** that does not accurately reflect the **findings**, reasoning and / or **orders** of the **Tribunal**.

60.2 An application made under **IDR** 60.1 above shall be made within 28 days from the date the **record of decision** of the **Tribunal** was served on the **parties**.

APPEALS

Application for permission to appeal

61.1 A **member, firm, affiliate** or **relevant person** who, or which, is the subject of an **order** made by a **Tribunal** in relation to one or more **formal allegations** may apply for permission to appeal against the **order** within 28 days beginning with the date of service on them of the **Tribunal's record of decision**.

61.2 The **Conduct Department** may apply for permission to appeal against an **order** of a **Tribunal** within 28 days beginning with the date of service on the **parties** of the **record of decision** of the **Tribunal** where, in the opinion of the **PSD Chief Officer**, there is a clear public interest in an **appeal** being brought.

61.3 A **party** making an application for permission to appeal shall serve a written application on the **Head of Committees and Tribunals** specifying:

- a. the **orders** of the **Tribunal** they wish to appeal;
- b. the ground or grounds of appeal set out in **IDR 62.1** they rely upon in support of the application; and
- c. the reasons in support of each ground of appeal,

and enclosing any documents in support of the application.

61.4 An application for permission to appeal shall only be granted (in whole or in part) if the **appeal** is determined by the **Appeal Committee Chair** (or, if they are unavailable, by an **Appeal Committee Vice Chair**) to have a reasonable prospect of success on one or more of the grounds of appeal set out in **IDR 62.1** or if there is another compelling reason for the **appeal** to be heard (and where an application for permission to appeal is determined by an **Appeal Committee Vice Chair**, references to the **Appeal Committee Chair** in **IDRs 62.1 – 63.5** shall be treated as applying to the **Appeal Committee Vice-Chair** also).

Grounds for appeal against an order by a Tribunal

62.1 An **appeal** against an **order** of a **Tribunal** may only be upheld on one or more of the following grounds:

- a. the **Tribunal** made an error in law or in its interpretation of any **bye-law**, any regulation (whether made by **ICAEW** or otherwise) or relevant technical standard or guidance which would have altered one or more of its **findings** and/or **orders**; and/or
- b. one or more of the **Tribunal's findings** and/or **orders** was or were unjust because of a serious procedural or other irregularity in the proceedings;

and/or

- c. the **Tribunal** failed to take into account relevant evidence which would have altered one or more of its **findings** and/or **orders**; and/or
- d. there is significant, new evidence that was not available at the time of the **final hearing** or **sanctions hearing**, and which the **party** could not with reasonable diligence have been expected to obtain, which would have altered one or more of the **Tribunal's findings** and/or **orders**; and/or
- e. the **Tribunal** made a material mistake of fact or a series of mistakes of fact which would have altered one or more of its **findings** and/or **orders**; and/or
- f. one or more of the **Tribunal's orders** were unreasonable and/or disproportionate in the light of the **findings** that it made.

62.2 After receiving an application for permission to appeal, the **Head of Committees and Tribunals** shall provide a copy of the application to the other **party** who, or which, shall have 21 days from the date of service of the application on them to serve an **answer**.

62.3 Upon receiving an **answer**, or following the expiry of the time period set out in **IDR 62.2** (whichever is the earlier), the **Head of Committees and Tribunals** shall:

- a. serve a copy of any **answer** on the **party** applying for permission to appeal; and
- b. provide the following documents to the **Appeal Committee Chair**:
 - i. the **order(s)** made by the **Tribunal** which is or are the subject of the application for permission to appeal and the **Tribunal's record of decision**;
 - ii. the application for permission to appeal and any documents submitted in support of the application; and
 - iii. any **answer**.

62.4 The application for permission to appeal shall be determined by the **Appeal Committee Chair** on the papers, save where the **Appeal Committee Chair** may direct that the application be determined at an oral **hearing** (and the **Appeal Committee Chair** must so direct that there be an oral **hearing** if they are of the opinion that the application cannot be fairly determined on the papers without a **hearing**). Before determining the application, the **Appeal Committee Chair** may request from the **parties** any additional documentation and/or information that was not provided pursuant to **IDR 62.3(b)** and the **Appeal Committee Chair** shall provide the **parties** with written reasons for their decision on the application.

62.5 Where the **Appeal Committee Chair** determines that permission to appeal should be granted (either in whole or in part) in relation to one or more **orders** of the **Tribunal**, the **Appeal Committee Chair** shall make an **order** to that effect and shall determine whether a **pre-hearing review** should take place.

- 62.6 Where the **Appeal Committee Chair** allows permission to appeal based on the ground of appeal set out in **IDR 62.1(d)**, the **party** making the application for permission shall be entitled to rely on that new evidence at the **appeal hearing**.
- 62.7 Upon receipt of the **order** allowing the application for permission (either in whole or in part) and written reasons from the **Appeal Committee Chair**, the **Head of Committees and Tribunals** shall as soon as reasonably practicable:
- a. provide a copy of the **order** and the written reasons to the **parties**;
 - b. request the **Appeal Committee Chair** to appoint an **Appeal Panel** in accordance with **IDR 7.6** for the **appeal hearing** and any **pre-hearing review**;
 - c. fix a date for any **pre-hearing review** requested by the **Appeal Committee Chair** pursuant to **IDR 62.5** and provide **notice** of the date, time, location or format of the **pre-hearing review** to the **parties**; and
 - d. fix a date for the **appeal hearing** and provide **notice** of the date, time, location or format of the **appeal hearing** to the **parties**.

The date for any **pre-hearing review** (or **appeal hearing** where there is no **pre-hearing review**) shall be at least 28 days after the service of **notice** on the **parties** pursuant to this **IDR**.

- 62.8 Where the **Appeal Committee Chair** refuses the application for permission, the **Head of Committees and Tribunals** shall provide copy of the **order** and the **Appeal Committee Chair's** written reasons for the decision to the **parties** as soon as practicable.
- 62.9 A decision by the **Appeal Committee Chair** to refuse an application for permission to appeal shall conclude the **disciplinary proceedings**, and the **order(s)** of the **Tribunal** shall come into effect and be published, as appropriate, in accordance with **IDRs 59.1 – 59.6**.
- 62.10 A **party** may only amend the grounds of appeal specified in the application with the permission of the **Appeal Committee Chair**. Before determining any such request, the **Appeal Committee Chair** shall provide both **parties** with an opportunity to make written representations on any proposed amendment(s).
- 62.11 A **party** may withdraw any application for permission to appeal, or an **appeal**, at any time, by serving a **notice** to that effect on the **Head of Committees and Tribunals**.

APPLICATION FOR PERMISSION TO APPEAL OUT OF TIME

- 63.1 A **party** may make a late application for permission to appeal after the expiry of the 28 day period specified in **IDR 61.1** by serving an application on the **Head of Committees and Tribunals** which shall include the information set out in **IDR 61.3**

and the reasons (and any evidence) as to why the application could not reasonably be expected to have been made within the period specified.

- 63.2 Upon receipt of a late application pursuant to **IDR 63.1**, the **Head of Committees and Tribunals** shall provide a copy of the application and the reasons for late service to the other **party** who, or which, shall have 14 days from the date of service of the application to make representations on the reasons for late service.
- 63.3 After the expiry of 14 days, or receipt of representations on the reasons for late service (if earlier) from the other **party**, the **Head of Committees and Tribunals** shall provide a copy of the application and any representations to the **Appeal Committee Chair** who shall determine whether the late application should be allowed on the papers and they shall provide written reasons for their determination. The **Head of Committees and Tribunals** shall then notify the **parties** of the **Appeal Committee Chair's** decision and provide them with a copy of the **Appeal Committee Chair's** reasons.
- 63.4 Where the **Appeal Committee Chair** determines that the application for permission to appeal out of time should be refused, that determination shall be final.
- 63.5 Where the **Appeal Committee Chair** determines that the application for permission to appeal out of time should be allowed, the responding **party** shall have 21 days from the date of service of the **notice** pursuant to **IDR 63.3** to provide an **answer** to the application for permission to appeal to the **Head of Committees and Tribunals** and to serve a copy of the **answer** on the other **party**. Once the **answer** is received or following the expiry of 21 days (whichever is the earlier), the **Head of Committees and Tribunals** shall request the **Appeal Committee Chair** to consider the application for permission to appeal and any **answer** in accordance with the test set out in **IDR 61.4**.

PRE-HEARING REVIEW

- 64.1 Once an **Appeal Panel** has been appointed pursuant to **IDR 62.7**, the **Appeal Panel Chair** may, of their own volition, or on application by either **party** at any stage in the **appeal** proceedings, direct that there be a **pre-hearing review**.
- 64.2 The **pre-hearing review** shall be conducted in private and shall take place as a telephone or video conference, unless the **Appeal Panel Chair**, in their absolute discretion, directs otherwise. There shall be no advance publicity of the date of the **pre-hearing review**.
- 64.3 At a **pre-hearing review**, an **Appeal Panel Chair** may consider any applications for **directions** made by the **parties** and any written representations relating to such applications and shall give such **directions** as they consider necessary for the purpose of securing the just, expeditious or economic disposal of the proceedings, which may include **directions** relating to, among other matters:

- a. whether the **Appeal Panel** should hear more than one **appeal** from the **member, firm, affiliate** or **relevant person** at the **appeal hearing**;
- b. whether the **Appeal Panel** should hear **appeals** from more than one **member, firm, affiliate** or **relevant person** arising out of the same **event** or **events** at the **appeal hearing**;
- c. the amendment of any grounds of appeal or **answer**;
- d. the admission of any facts by either **party**;
- e. the documents to be considered by the **Appeal Panel**;
- f. any application to admit new evidence in accordance with the test set out in **IDR 41.3**, other than that admitted pursuant to **IDR 62.6**;
- g. the admissibility of any new evidence served by a **party** in response to new evidence which has been admitted pursuant to **IDR 62.6**;
- h. any application for oral evidence to be given at the **appeal hearing**;
- i. whether the **appeal hearing**, or part of the **appeal hearing**, should be held in private;
- j. changing the date of the **appeal hearing**;
- k. the length of the **appeal hearing**; and
- l. the venue or platform for the **appeal hearing**.

Private hearing applications

- 65.1 If a **party** wishes to apply for the whole or part of an **appeal hearing** to be held in private, that application must be made in writing to the **Head of Committees and Tribunals** within 14 days of the **parties** being notified of the date fixed for the **appeal hearing**.
- 65.2 After receiving an application under **IDR 65.1**, the **Head of Committees and Tribunals** shall:
- a. fix a date for a **pre-hearing review** to consider the **private hearing application** (if a **pre-hearing review** has not already been arranged) and notify the **parties** of the date, time, location or format of the **pre-hearing review**; and
 - b. provide a copy of the **private hearing application** to the other **party** who, or which, may make written representations to the **Head of Committees and Tribunals** within 7 days of the service of the application on them.
- 65.3 The **private hearing application** shall be determined by the **Appeal Panel Chair** at the **pre-hearing review**.
- 65.4 **Appeal hearings** shall be held in public unless the **Appeal Panel Chair** accedes to a **private hearing application** made by a **party**, or concludes, of their own volition, that the press and public should be excluded from the whole, or part, of the **appeal hearing** in the interests of justice and / or due to the exceptional circumstances of the case outweighing the public interest in the **appeal hearing** being held in public.

65.5 The **Appeal Panel Chair** shall provide a summary of reasons to the **parties** for allowing or refusing a **private hearing application**.

APPEAL HEARINGS

General provisions

66.1 Subject to **IDR 66.2**, the name of the **member, firm, affiliate or relevant person** who or which is the subject to the **formal allegation(s)**, the date, time, location or format of the **hearing**, and the terms of the **bye-law** and/or regulation under which the **formal allegation** is, or the **formal allegations** are, brought, shall be published on the **ICAEW** website at least 7 days prior to any **hearing** of an **Appeal Panel**.

66.2 **IDR 66.1** shall not apply where, prior to the **appeal hearing**, a **party** has made a successful application for the **appeal hearing** to be heard in private or the **Appeal Panel** has determined of its own volition that the **appeal** should be heard in private.

66.3 Where, prior to the start of an **appeal hearing**, a member of an **Appeal Panel**, appointed in accordance with **IDR 62.7**, is unable to attend the **appeal hearing**, the **Appeal Committee Chair** shall appoint another member of the **Appeal Committee** to the **Appeal Panel**. If no suitable member of the **Appeal Committee** is available on the date(s) fixed for the **appeal hearing**, the **Head of Committees and Tribunals** shall fix a new date for the **appeal hearing** and shall notify the **parties** of the new date.

66.4 Where, after the start of the **appeal hearing**, any member of the **Appeal Panel** is, for any reason, unable to continue to attend, the **Appeal Panel** will no longer be quorate and may not continue. In such circumstances, the **Head of Committees and Tribunals** shall request the **Appeal Committee Chair** (or, if the **Appeal Panel Chair** is the **Appeal Committee Chair**, an **Appeal Committee Vice Chair**) to appoint a new **Appeal Panel** in accordance with **IDR 7.6** and shall fix a date and time for the **appeal hearing** to take place. No members of the original **Appeal Panel** shall be appointed as members of the new **Appeal Panel**.

66.5 If, at any time during an **appeal hearing**, the **Appeal Panel Chair** is, for any reason, of the opinion that it is impracticable or would be contrary to the interests of justice for the **appeal** to be completed by that **Appeal Panel**, they shall so inform the **Appeal Committee Chair** (or, if the **Appeal Panel Chair** is the **Appeal Committee Chair**, an **Appeal Committee Vice Chair**) who shall thereupon direct that the **appeal** be re-heard by a new **Appeal Panel** so appointed. No members of the original **Appeal Panel** shall be appointed as members of the new **Appeal Panel**.

66.6 An **appeal hearing** may proceed in the absence of the **member, firm, affiliate or relevant person** where the **Appeal Panel** is satisfied that each **party** has been notified of the date, time, location or format of the **appeal hearing** in accordance with these **IDRs** and that proceeding is desirable for securing the just, expeditious and economic disposal of the **formal allegation(s)**. A **member, firm, affiliate or relevant**

person may be represented by a **representative** and a **member, firm, affiliate** or **relevant person** will be deemed present when they appear by their **representative**.

- 66.7 An **Appeal Panel** may adjourn proceedings of its own volition or on the application of either **party**. A **party** may also make an application to the **Appeal Panel Chair** for a further adjournment before the **appeal hearing** is resumed which must be copied to the other **party** who shall be entitled to make written representations on the application before a decision is made by the **Appeal Panel Chair**.
- 66.8 A **party** may only amend the grounds on which an **appeal** is brought, or any **answer**, at an **appeal hearing** with the permission of the **Appeal Panel**.
- 66.9 An **Appeal Panel** may deliberate in private in the absence of the **parties** and their representatives at any time.
- 66.10 An **Appeal Panel** may admit new evidence (permission for which was not given at a **pre-hearing review**) but shall apply the test set out in **IDR 41.3**.
- 66.11 Unless it directs otherwise, or it is agreed between the **parties**, an **Appeal Panel** will not receive oral evidence.
- 66.12 An **appeal hearing** will be limited to a review of the decision of the **Tribunal** unless the **Appeal Panel** considers that in the circumstances of an individual **appeal** it would be in the interests of justice to hold a re-hearing.

Private hearing applications

- 67.1 Notwithstanding the refusal of a **private hearing application** at a **pre-hearing review**, an **Appeal Panel** may at any stage of the **appeal hearing** consider an oral application for the whole or part of the **appeal hearing** to be held in private.
- 67.2 Where an oral application is made to an **Appeal Panel** to hold the whole or part of the **appeal hearing** in private, that application shall be heard in private.
- 67.3 Where the application is successful, or where the **Appeal Panel** otherwise decides of its own motion to hold the whole, or part, of the **appeal hearing** in private, the reason(s) for its decision will be given by the **Appeal Panel** in public on the day that the decision is made provided always that such reasons as are given shall not, in the opinion of the **Appeal Panel**, unreasonably undermine the purpose of proceeding in private.
- 67.4 The **Appeal Panel's** reasons for having proceeded in private will be published with the **record of decision**, provided always that such reasons as are given shall not, in the opinion of the **Appeal Panel**, unreasonably undermine the purpose of having proceeded in private. In the event that an **Appeal Panel** decides that the **formal allegation(s)** have not been proved, such reasons will only be published if the **member, firm, affiliate** or **relevant person** so requests.

67.5 An **Appeal Panel** may exclude from the **appeal hearing**, or from part of the **appeal hearing**, any person or persons whose conduct has disrupted or, in the opinion of the **Appeal Panel**, is likely to disrupt the **appeal hearing**.

Order of proceedings at an appeal hearing

68.1 Where a **member, firm, affiliate** or **relevant person** does not attend an **appeal hearing** but provides written representations, the **Appeal Panel** may take these representations into account when determining the **appeal**.

68.2 An **appeal hearing** shall be informal and the strict rules of evidence shall not apply. The **Appeal Panel** may adopt any method of procedure which it considers fair and which gives each **party** the opportunity to present their case. Unless an **Appeal Panel** directs otherwise, the order of proceedings will be as follows:

- a. the **party** bringing the **appeal** (or their representative) may address the **Appeal Panel** first and adduce any new evidence which is admissible under **IDRs** 62.6, 64.3(f), 64.3(g) or 66.10;
- b. the other **party** may then address the **Appeal Panel** and adduce any new evidence permitted at any **pre-hearing review** or in accordance with **IDR** 66.10;
- c. where permission is given for a witness to be called by either **party**, the witness may, after being questioned by the **party** calling them, be questioned by the other **party**. They may then be re-examined by the **party** calling them but only in relation to the evidence given by them under cross-examination. The **Appeal Panel** may ask questions of any witness at any stage during their evidence. The **Appeal Panel** may, on the application of a **party**, agree that the identity of a witness should not be revealed to the public. Witnesses will not be required to swear an oath or affirm;
- d. the **parties** may make closing addresses to the **Appeal Panel** with the final address being made by the **party** bringing the **appeal**.

Orders available to the Appeal Panel (other than interim orders)

69.1 After hearing an **appeal** against an **order** (other than an **interim order**) of a **Tribunal**, an **Appeal Panel** shall make an **order** or **orders**, as appropriate, in accordance with **Disciplinary Bye-law** 14.3.

69.2 Where an **Appeal Panel** dismisses the **appeal** made by a **member, firm, affiliate** or **relevant person**, it may make a **costs order** against the **member, firm, affiliate** or **relevant person** in respect of **ICAEW's** costs of responding to the **appeal** in such sum as the **Appeal Panel** may in its absolute discretion determine. Prior to making any such **costs order**, the **Appeal Panel** shall:

- a. hear and consider submissions from the **member, firm, affiliate** or **relevant person** (or their **representative**) and the **Conduct Department**

representative, in respect of the **costs schedule** provided by the **Conduct Department** to the **Appeal Panel** and the **member, firm, affiliate** or **relevant person** prior to the **appeal hearing**; and

- b. have regard to any statement of means, supported with a signed statement of truth, and evidence of income and assets provided by the **member, firm, affiliate** or **relevant person**.

69.3 Any sum ordered to be paid pursuant to **IDR 69.2** shall be payable in addition to any **costs order** made against the **member, firm, affiliate** or **relevant person** by the **Tribunal**.

69.4 Where an **Appeal Panel** allows an **appeal** by a **member, firm, affiliate** or **relevant person** against all **orders** made by a **Tribunal**, the **Appeal Panel**:

- a. shall order that any **costs order** made by the **Tribunal** be rescinded; and
- b. may, on the application of the **member, firm, affiliate** or **relevant person**, make a **costs order** against **ICAEW** subject to **IDRs 69.5** and **69.6**.

69.5 In determining whether to make a **costs order** pursuant to **IDR 69.4**, an **Appeal Panel** shall take into account the public policy applied in the civil courts that costs awards should only be made against a regulator in exceptional circumstances to safeguard against the risk that the regulator may be fettered in exercising its disciplinary functions due to the risk of adverse costs orders.

69.6 If the **Appeal Panel** determines to make a **costs order** against **ICAEW**, it shall be limited to a maximum of £35,000 unless the **Appeal Panel** determines that:

- a. no reasonable regulator would have prosecuted the **formal allegation(s)**; or
- b. the **formal allegation(s)** had been brought in bad faith; or
- c. the way in which the **Conduct Department** had conducted the **disciplinary proceedings** had unreasonably increased the costs incurred by the **member, firm, affiliate** or **relevant person** so that their costs had exceeded £35,000; or
- d. the absence of a larger **costs order** against **ICAEW** would give rise to significant hardship for the **member, firm, affiliate** or **relevant person**.

69.7 Any costs payable by **ICAEW** shall be limited to the costs reasonably incurred by the **member, firm, affiliate** or **relevant person** since the date of the referral of the **formal allegations** to the **Tribunals Committee**.

69.8 If an **Appeal Panel** allows an **appeal** against one or more, but not all, **orders** made by the **Tribunal**, it may order that any **costs order** made by the **Tribunal** be rescinded or varied.

- 69.9 Where an **Appeal Panel** dismisses an **appeal** by the **Conduct Department** against one or more **orders** made by a **Tribunal**, the **Appeal Panel** may consider whether a **costs order** should be made against **ICAEW** having regard to the consideration set out at **IDR 69.5**.
- 69.10 Any **costs order** made in accordance with **IDR 69.9** against **ICAEW** shall be in respect of the costs of the **member, firm, affiliate** or **relevant person** in responding to the **appeal** and shall be limited to £10,000 unless the **Appeal Panel** determines that:
- a. no reasonable regulator would have brought the **appeal**; or
 - b. the **appeal** had been brought in bad faith; or
 - c. the way in which the **Conduct Department** had conducted the **appeal** had unreasonably increased the costs incurred by the **member, firm, affiliate** or **relevant person** so that their costs had exceeded £10,000; or
 - d. the absence of a larger **costs order** against **ICAEW** would give rise to significant hardship for the **member, firm, affiliate** or **relevant person**.
- 69.11 Where an **Appeal Panel** allows an **appeal** by the **Conduct Department**, it may make a **costs order** against a **member, firm, affiliate** or **relevant person** but any such **costs order** shall be limited to the costs reasonably incurred by the **Conduct Department** up to and including the **final hearing** (or **sanctions hearing**) only, and shall not include any costs incurred by the **Conduct Department** in bringing the **appeal**. Prior to making any **costs order**, the **Appeal Panel** shall follow the procedure set out in **IDR 69.2**.

APPEALS AGAINST INTERIM ORDERS

- 70.1 A **member, affiliate** or **relevant person** may appeal an **interim order** by serving a **notice of appeal** on the **Head of Committees and Tribunals** within 28 days of service on them of the **Tribunal's record of decision** specifying one or more of the grounds of appeal set out in **IDR 70.3**. For the avoidance of doubt, the **Conduct Department** may not appeal a refusal by a **Tribunal** of an **interim order application**.
- 70.2 Where a **member, affiliate** or **relevant person** serves a **notice of appeal** in accordance with **IDR 70.1**, the **interim order** shall remain in force pending the determination of the **appeal** by an **Appeal Panel**.
- 70.3 The grounds on which an **interim order** may be appealed are:
- a. the test for making an **interim order** set out in **IDR 30.2** has not been met; and/or
 - b. the **interim order** is excessive; and/or

- c. the **interim order** is unjust because of a serious procedural or other irregularity in the proceedings before the **Tribunal**.
- 70.4 On receiving a **notice of appeal** in relation to an **interim order**, the **Head of Committees and Tribunals** shall:
- a. serve a copy of the **notice of appeal** on the **Conduct Department representative**;
 - b. request the **Appeal Committee Chair** to appoint an **Appeal Panel**; and
 - c. notify both **parties** of the date, time, location or format of the **appeal hearing** which shall be at least 14 days from the date of service of **notice** of the **appeal hearing** on the **parties**.
- 70.5 The **Conduct Department** may serve on the **member, affiliate or relevant person**, and the **Head of Committees and Tribunals**, an **answer** to the **notice of appeal** against the **interim order** at least 7 days before the date fixed for the **appeal hearing**.

Conduct of an interim order appeal hearing

- 71.1 **IDRs** 66 - 68 shall apply to the conduct of an **appeal hearing** in relation to an **interim order** to the extent relevant.

Orders of an Appeal Panel on hearing an appeal against an interim order

- 72.1 After hearing the **appeal**, the **Appeal Panel** may make any of the **orders** set out in **Disciplinary Bye-law** 14.3.
- 72.2 Where an **Appeal Panel** dismisses an **appeal** against an **interim order**, an **Appeal Panel** may order the **member, affiliate or relevant person** to pay to **ICAEW** such a sum in respect of **ICAEW's** costs of responding to the **appeal** as the **Appeal Panel** may in its absolute discretion determine. Prior to making any such **costs order**, the **Appeal Panel** shall follow the process set down in **IDR** 69.2 and any costs ordered by the **Appeal Panel** shall be payable in addition to any **costs order** of the **Tribunal**.
- 72.3 Where an **Appeal Panel** allows an **appeal** by a **member, affiliate or relevant person** against an **interim order** made by a **Tribunal**, the **Appeal Panel**:
- a. shall order that any **costs order** made by the **Tribunal** be rescinded; and
 - b. may, on application of the **member, affiliate or relevant person**, make a **costs order** against **ICAEW**, subject to **IDRs** 72.4 and 72.5.
- 72.4 In determining whether to make a **costs order** under **IDR** 72.3, an **Appeal Panel** shall take into account the public policy applied in the civil courts that costs awards should only be made against a regulator in exceptional circumstances to safeguard against the risk that the regulator may be fettered in exercising its disciplinary functions due to the risk of adverse costs orders.

- 72.5 If the **Appeal Panel** determines to make a **costs order** against **ICAEW**, it shall be limited to a maximum of £15,000 unless the **Appeal Panel** determines that:
- a. no reasonable regulator would have made the **interim order application**; or
 - b. the **interim order application** was made in bad faith; or
 - c. the costs incurred by the **member, affiliate** or **relevant person** in responding to, and appealing, the **interim order application** were unreasonably increased above £15,000 as a result of the way in which the **interim review application** was brought and / or the **appeal** was responded to by the **Conduct Department**; or
 - d. the absence of a larger **costs order** against **ICAEW** would give rise to significant hardship for the **member, affiliate** or **relevant person**.
- 72.6 Where the **Appeal Panel** determines to make a **costs order** against **ICAEW** in accordance with **IDR 72.3**, it shall give the **Conduct Department representative** and the **member, affiliate** or **relevant person** (or their **representative**) an opportunity to make representations on the amount of costs claimed by the **member, affiliate** or **relevant person** before determining the amount to be paid by **ICAEW** by way of costs.

APPEALS: NOTIFICATION / TIMING OF ORDERS COMING INTO EFFECT / TIME FOR PAYMENT / PUBLICITY

Notification

- 73.1 Following an **appeal hearing**, the **Head of Committees and Tribunals** shall send to the **parties** as soon as reasonably practicable:
- a. **notice** of the decision of the **Appeal Panel** and any **order(s)** made; and
 - b. a copy of the **record of decision**.

Time of orders coming into effect / time for payment

- 74.1 An **order** made by an **Appeal Panel** under these **IDRs** shall take effect on the date of the **order** unless the **Appeal Panel** directs that it shall take effect as from some later date specified in the **order**.
- 74.2 A financial penalty or financial payment:
- a. which is imposed by an **order** of an **Appeal Panel** under the **Disciplinary Bye-laws**; or
 - b. which, having been imposed by a **Tribunal** under the **Disciplinary Bye-laws**, is on **appeal** affirmed or varied in amount by an **order** of an **Appeal Panel**,

shall be paid within the period of 28 days beginning with the date of the **order** unless a longer period for payment (whether by instalments or not) is allowed by the **order** of the **Appeal Panel**.

74.3 Any **costs order** of an **Appeal Panel** in accordance with **IDR** 69.2 or 72.2, together with:

- a. any unpaid **costs order** of the **Tribunal** under **IDR** 32.4 or 51.1(b); or
- b. so much (if any) of those unpaid costs as remains payable after any reduction or cancellation of the **Tribunal's costs order** by the **Appeal Panel**,

shall, unless a longer period for payment (whether by instalments or not) is allowed by **order** of the **Appeal Panel**, be paid within 28 days beginning with the date of the **order** of the **Appeal Panel**.

74.4 Any financial penalty, financial payment or **costs order** (or instalment of a financial penalty, financial payment or **costs order**) imposed by an **Appeal Panel** under the **Disciplinary Bye-laws** must be received by **ICAEW** before the close of business on the last day of the period allowed by, or under these **IDRs** for its payment (or, if that day is not a **business day**, before the close of business on the next **business day**).

74.5 Where:

- c. a financial penalty, financial payment or **costs order** is payable by instalments; and
- d. any instalment is not received by **ICAEW** as required by **IDR** 74.4,

the whole of the financial penalty, financial payment or **costs order** (or so much of it as remains unpaid) shall become immediately due for payment.

74.6 Where a **member, firm, affiliate** or **relevant person** is ordered by an **Appeal Panel** to make a financial payment to **ICAEW** pursuant to **Disciplinary Bye-laws** 11.1(a)(ix), 11.1(a)(x), 11.1(b)(viii), 11.1(b)(ix), 11.1(c)(ix), 11.1(c)(x), 11.1(d)(xi) or 11.1(d)(xii), **ICAEW** shall pay such sum to the client, former client or **complainant** (as the case may be) within 21 days of receiving payment.

Publication of orders

75.1 Where an **Appeal Panel** makes any adverse **finding** and/or **order** against a **member, firm, affiliate** or **relevant person** under the **Disciplinary Bye-laws**, the **finding** and/or **order** and the **record of decisions** of the **Tribunal** and **Appeal Panel** shall be published, as soon as practicable.

75.2 Unless the **Appeal Panel** otherwise directs, the **record of decision** of the **Appeal Panel** shall state the name of the **member, firm, affiliate** or **relevant person**, the **bye-law** and/or regulation under which the **formal allegation(s)** were brought, and describe the **finding(s)** and the **order(s)** (if any) made against them. The published **record of decision** need not include the name of any other person or body concerned in the **formal allegations**.

75.3 Where an **Appeal Panel** determines that none of the **formal allegations** should have been found by the **Tribunal** to have met the test set out in **Disciplinary Bye-law 5.2**, or that the **interim order** should not have been made, the **order** and **record of decision** of the **Appeal Panel** shall only be published if the **member, firm, affiliate** or **relevant person** so requests.

75.4 Where published, an **order** of an **Appeal Panel** shall remain published in the **ICAEW Disciplinary Database** for the period specified in the **ICAEW Disciplinary Database policy**.

REVIEW OF DECISIONS / CORRECTION OF ERRORS

76.1 The **Appeal Panel Chair** may, of their own volition or upon application by either **party**, review any **order** made by the **Appeal Panel** or the **record of decision** and may, on such review, correct any accidental slip or omission in the **order** or the **record of decision** that does not accurately reflect the **findings**, reasoning and / or **orders** of the **Appeal Panel**.

76.2 An application made under **IDR 76.1** above shall be made within 28 days from the date the **record of decision** of the **Appeal Panel** was served on the **parties**.

MISCELLANEOUS

Recording of the hearing

77.1 A shorthand or stenograph note, or an audio recording of any **hearing** of a **Tribunal** or **Appeal Panel** (including in relation to any **interim order application** or on any review) may be taken on behalf of a **Tribunal** or an **Appeal Panel**.

77.2 A **member, firm, affiliate** or **relevant person** may request the creation of a transcript from the recording by an application to the **Head of Committees and Tribunals**. Such a request will be considered by the **Tribunal Chair** or the **Appeal Panel Chair** (as appropriate), who may impose such conditions as they consider appropriate on the confidentiality, distribution, and use of that record or transcript. The cost of preparing the transcript shall be borne by the **member, firm, affiliate** or **relevant person** requesting the transcript and paid to the **Head of Committees and Tribunals** in advance of the transcript being made.

Confidentiality

78.1 All written material and information provided by either **ICAEW** or the **member, firm, affiliate** or **relevant person** in connection with any **disciplinary proceedings**, shall at all times remain confidential and no such material or information shall be disclosed by either **ICAEW** or the **member, firm, affiliate** or **relevant person** (directly or indirectly) except:

- a. to legal advisers for the purposes of the **disciplinary proceedings**;
- b. where the **member, firm, affiliate** or **relevant person** is a **principal** in, or employed by, a firm, to a **principal** in that firm;
- c. to any other person to whom disclosure is necessary for the purposes of obtaining evidence, information or assistance in connection with the **disciplinary proceedings**;
- d. to an insurer where disclosure is required under the terms of any policy or in connection with any application for insurance cover;
- e. where information is disclosed indirectly to members of the public in the course of a public **hearing**; and
- f. where the disclosure to any person or body undertaking regulatory, disciplinary or law enforcement responsibilities is for the purpose of assisting that person or body to undertake those responsibilities or as otherwise required or allowed by law.

This **IDR** does not apply to any **order, record of decision** or advance notice of a **hearing** published in accordance with these **IDRs**.

PRELIMINARY

Citation, authority and commencement

- 1.1 These regulations may be cited as the Fitness to Practise Regulations (**regulations**) of the Institute of Chartered Accountants in England and Wales (**ICAEW**).
- 1.2 These **regulations** were made by the **ICAEW Regulatory Board** on [TBC] in accordance with clause 16 of the Supplemental Charter 1948 and Principal Bye-law 49 and shall come into force on [TBC]. Subject to **regulation** 3.2, from [TBC] the Fitness Committee Regulations dated 1 January 2021 and the Appeal Committee Regulations dated 1 January 2021 are, as they apply in respect of fitness to practise and appeal cases, repealed.

Definitions, interpretation and service of documents

- 2.1 In these **regulations**, defined terms are indicated in **bold and italics** and shall, unless the context otherwise requires, have the following meanings:

access consents means the consent(s) required from the *member, affiliate or relevant person* to allow an *ICAEW appointed expert* to access their medical records.

affiliate means a person to whom affiliate status has been granted in accordance with clause 12A of *ICAEW's Supplemental Charter of 21 December 1948*.

answer means an answer to an *appeal* brought by a *member, affiliate or relevant person* in accordance with these *regulations*, which shall include any documentation appended in support of the response.

appeal means an appeal against one or more *orders* of a *Fitness to Practise Panel* brought in accordance with these *regulations*.

Appeal Committee means the Appeal Committee of *ICAEW* whose members are convened into *Appeal Panels* to consider, among other matters, *appeals of orders* made by a *Fitness to Practise Panel*.

Appeal Committee Chair means the person who is appointed from time to time as Chair of *ICAEW's Appeal Committee* by the *RACAC* (or relevant predecessor or successor body).

Appeal Committee Vice-Chair means any person who is appointed from time to time as a Vice-Chair of *ICAEW's Appeal Committee* by the *RACAC* (or relevant predecessor or successor body).

appeal hearing means the substantive hearing of an *Appeal Panel* to determine an *appeal*.

Appeal Panel means a panel of the *Appeal Committee* appointed by the *Appeal Committee Chair* to determine an *appeal* in accordance with these *regulations*.

Appeal Panel Chair means the member of the *Appeal Committee* who is appointed by the *Appeal Committee Chair* as Chair of an *Appeal Panel* (and who may be the

Appeal Committee Chair themselves) and who shall chair an *appeal hearing* and conduct any *pre-hearing review*.

appeal proceedings means the proceedings leading up to, and during, an *appeal hearing* under these *regulations*.

business day means Monday to Friday, excluding public holidays.

CFAB student means a person who is registered to study for the *ICAEW* Certificate in Finance, Accounting and Business (CFAB) and no more than three years have elapsed since the date of the last attempt at a CFAB examination.

complainant means a person or body (other than an officer or employee of *ICAEW* acting in such capacity) who brings a complaint to the attention of the *Conduct Department*.

Conduct Department means the department within *ICAEW's* Professional Standards Department (or relevant predecessor or successor body identified as such in regulations) which is responsible for assessing complaints, investigating *conduct matters* and prosecuting disciplinary matters before *ICAEW's Tribunals Committee* and *Appeal Committee*.

conduct matter means one or more events which have been assessed by the *Conduct Department* as having the potential to give rise to disciplinary action and which are being investigated by the *Conduct Department*.

costs order means an *order*, by a *Fitness to Practise Panel* or an *Appeal Panel* under these *regulations*, against one *party* for payment of all or part of the costs incurred by the other *party* in connection with the *fitness to practise proceedings* and/or *appeal proceedings*.

costs schedule means a schedule of costs incurred by *ICAEW* in responding to a *fitness to practise application* or a *fitness to practise interim review application* brought by the *member, affiliate* or *relevant person* and/or an *appeal*, and includes the costs of any *hearings* of those applications before the *Fitness to Practise Panel* or *Appeal Panel*.

directions means steps or actions which the *parties* agree to take, or are directed to take, in the course of the *fitness to practise proceedings* or *appeal proceedings*.

Disciplinary Bye-laws means the Disciplinary Bye-laws of *ICAEW*.

disciplinary committee means:

- a. the Conduct Committee;
- b. the *Tribunals Committee* and any Tribunals;
- c. the *Appeal Committee* and any Appeal Panels;

and any predecessor or successor to any such body and *disciplinary committee* means any of them.

disciplinary proceedings means the process by which:

- a. the Conduct Committee considers one or more allegations against a *member, firm, affiliate* or *relevant person*;

- b. a Tribunal is convened to hear one or more formal allegations against a *member, firm, affiliate or relevant person*;
- c. an Appeal Panel is convened to determine an appeal against one or more orders of a Tribunal in respect of such formal allegations.

effective date means the date of which these *regulations* come into force, as set out in *regulation 1.2*.

expedited fitness to practise hearing means a *hearing* of a *Fitness to Practise Panel* which is convened following an *expedited fitness to practise application* in accordance with *regulation 14*.

expedited order means an *order* of a *Fitness to Practise Panel* made in accordance with *Disciplinary Bye-law 13.9* and *regulation 14.6* which specifies one or more of the *orders* set out in *Disciplinary Bye-law 13.2*

finding means in relation to a *Fitness to Practise Panel* in *fitness to practise proceedings*, or an *Appeal Panel* in *appeal proceedings*, a finding that the test for one or more *orders* under *Disciplinary Bye-law 13.1* is, or is not, met (including on any review) and a '*finding*' shall include any factual findings which form the basis of that finding.

fitness response form means that statement served by the *member, affiliate or relevant person* in accordance with *regulation 7.5* in response to a *fitness to practise application* made by the *PSD Chief Officer*.

fitness to practise application means an application to the *Fitness to Practise Committee* to consider the fitness of a *member, affiliate or relevant person* by either the *PSD Chief Officer* or the *member, affiliate or relevant person* themselves in accordance with *regulations 7.2* or *8.1* which includes a statement of reasons for the application and any supporting documents.

fitness to practise consent order means a consent order entered into between the *member, affiliate or relevant person*, and *ICAEW*, in accordance with *regulation 10*, which includes one or more of the *orders* specified in *Disciplinary Bye-law 13.2*.

Fitness to Practise Committee means the Fitness to Practise Committee of *ICAEW* whose members are convened into *Fitness to Practise Panels* in accordance with these *regulations*.

Fitness to Practise Committee Chair means the person appointed from time to time as Chair of *ICAEW's Fitness to Practise Committee* by the *RACAC* (or relevant predecessor or successor body).

Fitness to Practise Committee Vice-Chair means the person appointed from time to time as Vice Chair of *ICAEW's Fitness to Practise Committee* by the *RACAC* (or relevant predecessor or successor body).

fitness to practise hearing means a *hearing* of a *Fitness to Practise Panel* to determine a *fitness to practise application* made under these *regulations*.

fitness to practise interim review application means an application by a *member, affiliate or relevant person* in accordance with *regulation 16.1* for an interim review of an *order or orders* made by a *Fitness to Practise Panel* under *Disciplinary Bye-laws*

13.1 and 13.2 (including any *orders* made by way of a *fitness to practise consent order*).

fitness to practise interim review hearing means a *hearing* to review on an interim basis an *order* or *orders* of a *Fitness to Practise Panel* made under *Disciplinary Bye-laws* 13.1 and 13.2 (including any *orders* made by way of a *fitness to practise consent order*), which is held as a result of a *fitness to practise interim review application* by a *member, affiliate* or *relevant person* in accordance with *regulation* 16.1.

Fitness to Practise Panel means a panel of members of the *Fitness to Practise Committee* who are convened in accordance with *regulation* 4.6 to conduct *hearings* under these *regulations*.

Fitness to Practise Panel Chair means a member of the *Fitness to Practise Committee* who has been approved by the *RACAC* (or relevant predecessor or successor body) to chair *Fitness to Practise Panels* and who has been appointed by the *Fitness to Practise Committee Chair* to chair a *Fitness to Practise Panel*.

fitness to practise proceedings means proceedings under the *Disciplinary Bye-laws* and these *regulations* following a *fitness to practise application* by either the *PSD Chief Officer* or the *member, affiliate* or *relevant person* who is the subject of the application (including any review).

fitness to practise review hearing means a *hearing* to review an *order* or *orders* made under *Disciplinary Bye-laws* 13.1 and 13.2 (including any *orders* made by way of a *fitness to practise consent order*), which is held in accordance with *regulation* 15.7.

foundation qualification holder means a person who holds the *ICAEW* Foundation Qualification and is registered to use the relevant designatory letters.

Head of Committees and Tribunals means the person within *ICAEW's* Professional Standards Department who manages the Committees and Tribunals team and to whom administrative functions may be delegated by the *Fitness to Practise Committee Chair* and the *Appeal Committee Chair*.

Head of Investigation means the person appointed from time to time to the role of Head of Investigation in the Professional Standards Department of *ICAEW*, or any employee of that department who is authorised to act in that role by the *PSD Chief Officer*.

hearing means a *hearing* of a *Fitness to Practise Panel* or an *Appeal Panel*, whether conducted in person or through video or audio-conferencing facilities.

ICAEW appointed expert means an independent medical expert appointed by *ICAEW* to examine the *member, affiliate* or *relevant person* and produce a report to be used in proceedings under these *regulations*.

ICAEW Disciplinary Database means the database of published (adverse) *orders* against *members, firms, affiliates* and *relevant persons*, and the related record of decision, which can be located on the Regulatory and Conduct pages of the *ICAEW* website.

ICAEW Disciplinary Database policy means the policy governed by the *ICAEW Regulatory Board* which is published on the *ICAEW* website and which specifies the period during which findings or orders of the *disciplinary committees* and the *Fitness to Practise Committee* will remain published on the *ICAEW Disciplinary Database*

ICAEW Regulatory Board means the board delegated by the *ICAEW Council* to have responsibility for the supervision of *ICAEW's* regulatory and disciplinary functions.

ICAEW representative means a barrister or solicitor or a legally qualified person (within *ICAEW's* Professional Standards Department or external to *ICAEW*) appointed by the *PSD Chief Officer* to have conduct of the *fitness to practise proceedings* and any *appeal proceedings*.

investigation means the process by which the *Conduct Department* investigates a *conduct matter* to determine whether a *member, firm, affiliate or relevant person* may be liable to disciplinary action under the *Disciplinary Bye-laws*.

lay member means someone who is not and never has been a *member, affiliate* or employee of *ICAEW* or any other accountancy body. Furthermore, solicitors and those with legal training will not be regarded as *lay members* for the determination of any *fitness to practise application* concerning an individual authorised to conduct reserved legal activity under the Legal Services Act 2007.

legal assessor means a barrister or solicitor who is not a member of staff of *ICAEW* who is appointed by the *Head of Committees and Tribunals* to assist a *Fitness to Practise Panel* at a *hearing* in accordance with *regulation 9.3*.

legal services work comprises any work that is considered under the jurisdiction of the Legal Ombudsman under the definitions set out by the ombudsman in accordance with section 164(10) of the Legal Services Act 2007.

member means a member of *ICAEW* and 'membership' shall be construed accordingly.

notice means a notice in writing, which may include an electronic communication.

notice of appeal means a notice filed by a *member, affiliate or relevant person* in accordance with *regulation 19.1* appealing one or more *orders* of the *Fitness to Practise Panel*.

order means an order of the *Fitness to Practise Panel* or an *Appeal Panel* made under the *Disciplinary Bye-laws* and these *regulations*.

parties means *ICAEW* and the *member, affiliate or relevant person* who is the subject of the *fitness to practise application*, and 'party' shall refer to any one of them.

physical or mental health includes bodily or mental ill health, disability and any mental or behavioural disorder included in the International Classification of Diseases (ICD-10 Classification of Mental and Behavioural Disorders) produced by the World Health Organisation and includes an episodic or relapsing condition which is in remission.

pre-hearing review means a *hearing* conducted in accordance with *regulations 11.5 or 22.1* to enable the *Fitness to Practise Panel Chair* or the *Appeal Panel Chair* (as

appropriate) to make *directions* and/or determine any applications by the *parties* prior to a *fitness to practise hearing* or an *appeal hearing*.

private hearing means a *hearing* of a *Fitness to Practise Panel* or an *Appeal Panel* from which the public and press are excluded.

proceedings means *disciplinary proceedings* and/or *regulatory proceedings* in respect of the *member, affiliate* or *relevant person*.

provisional foundation qualification holder means a person who is registered to study for the *ICAEW Foundation Qualification*.

provisional member means a person who has not been admitted to full membership of *ICAEW* and who:

- a. is registered with *ICAEW* as an ACA student; or
- b. is registered with *ICAEW* under a training agreement with an Authorised Training Employer or an Authorised Training Principal; or
- c. has attempted an ACA examination and no more than three years have elapsed since the date of the last attempt at an ACA examination; or
- d. was registered with *ICAEW* under a training agreement with an Authorised Training Employer or an Authorised Training Principal and no more than three years have elapsed since the training agreement was completed or cancelled; or
- e. has applied for *ICAEW* membership outside the period allowed under regulations and the application has not been finally determined,

and 'provisional membership' shall be construed accordingly.

PSD Chief Officer means the person appointed to the role of Chief Officer of *ICAEW's* Professional Standards Department at the time when a report is received as specified in *regulation 7.1* about a *member, affiliate* or *relevant person* and who is responsible for evaluating the available evidence and determining whether to make a *fitness to practise application*.

RACAC means the Regulatory and Conduct Appointments Committee which is responsible, among other matters, for the appointment and reappointment of members of the *Fitness to Practise Committee*, and which is accountable to the *ICAEW Regulatory Board*.

record of decision means the document approved by the *Fitness to Practise Panel* or the *Appeal Panel* which records a summary of the reasons for the *finding(s)* and any *orders* of the *Fitness to Practise Panel* or *Appeal Panel*, including any term or condition on which the *order* or *orders* were made and the reasoning of the *Fitness to Practise Panel* or *Appeal Panel* in respect of any *costs order* made.

registered address means:

- a. in the case of a *member* in public practice or an *affiliate*, the place of business registered by the *member* or *affiliate* with *ICAEW* or, if more than one place of business is so registered, the one registered as the principal place of business;

- b. in the case of a *member* not in public practice, *provisional member*, *foundation qualification holder*, *provisional foundation qualification holder* or a *CFAB student*, the address registered by them with ICAEW.

registered email address means the email address registered with ICAEW by the *member*, *affiliate* or *relevant person* and, if more than one email address is registered, the one registered as the principal email address.

regulatory committee means:

- a. Audit Registration Committee;
- b. Insolvency Licensing Committee;
- c. Investment Business Committee;
- d. Legal Services Committee;
- e. Practice Assurance Committee;
- f. Professional Indemnity Insurance Committee;

and any predecessor or successor to any such committee and *regulatory committee* means any of them.

regulatory proceedings means proceedings initiated by ICAEW against a *member*, *affiliate* or *relevant person* before any *regulatory committee*, and any application for review to the Review Committee and/or appeal to the *Appeal Committee* in relation to such proceedings, and 'regulatory proceedings' includes all or any of these processes.

relevant person means the following persons who are subject to the *Disciplinary Bye-laws* and these *regulations*:

- a. *provisional members*;
- b. *foundation qualification holders*;
- c. *provisional foundation qualification holders*;
- d. *CFAB students*.

representative means a solicitor or barrister or an ICAEW *member* who has been appointed by a *member*, *affiliate* or *relevant person* to represent them at a *hearing* before a *Fitness to Practise Panel* or an *Appeal Panel*, or any other person who has been approved to appear by a *Fitness to Practise Panel Chair* or by an *Appeal Panel Chair* (as appropriate).

required number has the meaning given to it in *regulation 4.3*.

Tribunals Committee means the Tribunals Committee of ICAEW whose members are convened into Tribunals to consider formal allegations in respect of *members*, *firms*, *affiliates* and *relevant persons* referred to it for hearing.

2.2 The Interpretation Act 1978 applies to these **regulations** in the same way as it applies to an enactment.

2.3 In these **regulations**:

- a. unless the context otherwise requires:

- i. words denoting any gender include all genders and words denoting the singular include the plural and vice versa;
 - ii. any headings are inserted for convenience only and shall not affect the construction of these **regulations**;
 - iii. any reference to a numbered **regulation** is a reference to the **regulation** so numbered among these **regulations**; and
 - iv. any reference to a report includes any appendices to such report;
 - b. any references to legislation include any amendments thereto or replacement legislation;
 - c. references to the date of an **order** made by a **Fitness to Practise Panel** or **Appeal Panel** refer to the date on which the **order** was made either at, or following, a **hearing** of the **Fitness to Practise Panel** or the **Appeal Panel**;
 - d. any reference to a '**notice**' or to matters being 'notified' means notice in writing, which may include an electronic communication;
 - e. references in these **regulations** to the **Head of Committees and Tribunals** include persons to whom the **Head of Committees and Tribunals** has delegated their functions or powers under these **regulations**;
 - f. references in these **regulations** to the **Fitness Committee Chair** and the **Appeal Committee Chair** include, respectively, the **Fitness to Practise Committee Vice-Chair** and any **Appeal Committee Vice-Chair** when acting under powers delegated by the Chair of each committee.
- 2.4 Subject to **regulation 2.5**, any **notice** or other document required to be served for the purposes of the **Disciplinary Bye-laws** and/or these **regulations** on a **member, affiliate** or **relevant person** may be served in person or sent:
- a. by pre-paid post to the **member, affiliate** or **relevant person** at their **registered address** or, if none, to their last known or usual place of residence or business; or
 - b. by electronic mail to the **member, affiliate** or **relevant person's registered email address**.
- 2.5 If at any time the **member, affiliate** or **relevant person** makes a written request to **ICAEW** that an alternative postal or email address be used to their **registered address** or **registered email address**, that alternative postal or email address shall be used for the purposes of service of **notices** or other documents under the **Disciplinary Bye-laws** and/or these **regulations**.
- 2.6 Any **notice** or other document required to be served by the **member, affiliate** or **relevant person** for the purposes of the **Disciplinary Bye-laws** and/or these **regulations** may be served in person or sent:

- a. by pre-paid post addressed to the Head of Committees and Tribunals, ICAEW, Professional Standards Department, Metropolitan House, 321 Avebury Boulevard, Milton Keynes MK9 2FZ; or
 - b. by electronic mail to an address at which the **Head of Committee and Tribunals** has agreed to receive **notices** and documents under the **Disciplinary Bye-laws** and/or these **regulations**.
- 2.7 Service of a document under **regulations** 2.4, 2.5, 2.6 shall be deemed to have been effected:
- a. where served in person, on the date of service;
 - b. where sent by first class, pre-paid post, on the second **business day** after posting;
 - c. where sent by electronic mail before 16:00, on the day it is sent, and if sent after 16:00 on the next **business day**.

Application of these Fitness to Practise Regulations

- 3.1 These **regulations** apply to:
- a. **members;**
 - b. **affiliates;** and
 - c. **relevant persons.**
- 3.2 For the purposes of these **regulations**:
- a. all processes and proceedings which follow from a referral to the **Fitness to Practise Committee** (or its predecessor body) are to be conducted in accordance with the provisions of the relevant **Disciplinary Bye-laws** and regulations in force at the time of such referral; and
 - b. all proceedings before an **Appeal Panel** are to be conducted in accordance with the provisions of the relevant **Disciplinary Bye-laws** and regulations in force at the time a notice of appeal is served (other than where the period for filing the notice of appeal commences before, and expires on or after, the **effective date** and the notice of appeal is served within that period (in which case the proceedings shall be governed by the **Disciplinary Bye-laws** and regulations in force at the commencement of such period).

THE COMMITTEES

The Fitness to Practise Committee

- 4.1 The **Fitness to Practise Committee** shall consist of the same persons as the **Tribunals Committee**, of whom at least the **required number** must be **lay members**.
- 4.2 Members of the **Fitness to Practise Committee** are appointed by the **RACAC** (or relevant predecessor or successor body) for an initial term of 3 years, which term may

be renewed and extended at the discretion of the **RACAC** up to a maximum of 9 years.

- 4.3 The **required number** for the purpose of **regulations** 4.1 and 5.1 is:
- a. one half of the total number of members of the Committee; or
 - b. if the total number of members of the Committee is not divisible by two, one half of the first higher number that is so divisible.
- 4.4 The quorum for meetings of the **Fitness to Practise Committee** shall be 4 members, of whom 2 members shall be **ICAEW members** and 2 members shall be **lay members**.
- 4.5 It shall be a function of the **Fitness to Practise Committee** under these **regulations** to determine whether the fitness to respond to an **investigation** and/or to participate in **proceedings**, and/or the fitness to practise, of a **member, affiliate** or **relevant person** is seriously impaired through their **physical or mental health**.
- 4.6 **Fitness to Practise Panels** shall be convened for the purposes of **fitness to practise hearings** and shall comprise of 3 members of the **Fitness to Practise Committee**, being one **ICAEW member** and 2 **lay members**. The **Fitness to Practise Panel Chair** shall be one of the 2 **lay members**.
- 4.7 The **Fitness to Practise Committee Chair** may delegate to the **Head of Committees and Tribunals** administrative functions in relation to the appointment of members of the **Fitness to Practise Committee** to **Fitness to Practise Panels** in accordance with these **regulations**.
- 4.8 The **Fitness to Practise Committee Chair** may co-opt as temporary members of the **Fitness to Practise Committee** members of the **disciplinary committees** or the **regulatory committees** to deal with specific cases, provided that:
- a. no person shall be appointed to a **Fitness to Practise Panel** and consider an application under these **regulations** in respect of a **member, affiliate** or **relevant person** if they previously considered that specific case as a member of their own committee; and
 - b. the **required number** of **lay members** is maintained.
- 4.9 No member of a **disciplinary committee** or **regulatory committee** may consider a case as a member of their own committee which they previously considered as a co-opted member of the **Fitness to Practise Committee**.

The Appeal Committee

- 5.1 The **Appeal Committee** shall consist of no fewer than 10 members of whom at least the **required number** must be **lay members**.

- 5.2 Members of the **Appeal Committee** are appointed by the **RACAC** (or relevant predecessor or successor body) for an initial term of 3 years, which term may be renewed and extended at the discretion of the **RACAC** up to a maximum of 9 years.
- 5.3 The **Appeal Committee Chair** and any **Appeal Committee Vice-Chair** must each be either a barrister or a solicitor and neither of them shall be an accountant.
- 5.4 The quorum for meetings of the **Appeal Committee** shall be 4 members, of whom 2 shall be **ICAEW members** and 2 shall be **lay members**.
- 5.5 The functions of the **Appeal Committee** include, among other matters, determining **appeals** against **orders of Fitness to Practise Panels** under these **regulations**.
- 5.6 **Appeal Panels** shall be convened to hear **appeals** in accordance with the **Disciplinary Bye-laws** and these **regulations** comprising 5 members of the **Appeal Committee**, being:
- a. the **Appeal Panel Chair** who shall be either the **Appeal Committee Chair** or any **Appeal Committee Vice-Chair**;
 - b. two **ICAEW members**; and
 - c. two **lay members**.
- 5.7 Where **appeals** in relation to **legal services work** are being considered, an **Appeal Panel** shall have a majority of members who are **lay members**, although the **Appeal Panel** shall still be chaired by either the **Appeal Committee Chair** or an **Appeal Committee Vice-Chair** who shall be either a barrister or solicitor.
- 5.8 The **Appeal Committee Chair** may delegate to the **Head of Committees and Tribunals** administrative functions in relation to the appointment of members of the **Appeal Committee** to **Appeal Panels** in accordance with these **regulations**.
- 5.9 The **Appeal Committee Chair** may co-opt as temporary members of the **Appeal Committee** members of the **Conduct Committee**, the **Tribunals Committee** and/or the **regulatory committees** to deal with specific cases, provided that:
- a. no person shall be appointed to an **Appeal Panel** to consider an **appeal** by a **member, affiliate** or **relevant person** under these **regulations** if they have previously considered that specific case as a member of their own committee; and
 - b. the **required number** of **lay members** is maintained.

Committees – meetings and hearings

- 6.1 Members of the **Fitness to Practise Committee** and the **Appeal Committee** may participate in meetings or **hearings** via any audio or video conferencing facilities which

allow all persons in the meeting or **hearing** to communicate with each other simultaneously. Where a member of the **Fitness to Practise Committee** or the **Appeal Committee** participates in a meeting or **hearing** via such audio or video conferencing facilities they shall be deemed present at that meeting or **hearing** and counted in the quorum.

MAKING A FITNESS TO PRACTISE APPLICATION

Fitness to practise application made by the PSD Chief Officer

7.1 Where, at any time, the **PSD Chief Officer** considers, on a report from the **Conduct Department**, or from a Chair of any **disciplinary committee** or **regulatory committee**, that there are reasonable grounds to believe that:

- a. the fitness to respond to an **investigation** and/or to participate in **proceedings**; and/or
- b. the fitness to practise,

of a **member, affiliate** or **relevant person** may be seriously impaired through their **physical or mental health**, the **PSD Chief Officer** may request the **Fitness to Practise Committee** to determine whether the **member, affiliate** or **relevant person's** fitness is so impaired.

7.2 A request under **regulation** 7.1 shall be made by the **PSD Chief Officer** by serving a **fitness to practise application** on the **Head of Committees and Tribunals**.

7.3 Upon the service of a **fitness to practise application** in accordance with **regulation** 7.2, any **investigation** and/or **proceedings** in respect of the **member, affiliate** or **relevant person** will be suspended automatically until the conclusion of the **fitness to practise proceedings** and any **appeal proceedings**.

7.4 After the **Head of Committees and Tribunals** receives a **fitness to practise application** from the **PSD Chief Officer**, they shall serve a copy of the **fitness to practise application** on the **member, affiliate** or **relevant person** together with a **fitness response form**, as soon as practicable. Where the **PSD Chief Officer** has requested an **expedited fitness to practise hearing**, the process set out in **regulation** 14 shall apply instead unless the **Fitness to Practise Committee Chair** does not consider an **expedited fitness to practise hearing** to be necessary.

7.5 A **member, affiliate** or **relevant person**, served with a **fitness to practise application** in accordance with **regulation** 7.4, shall complete and return the **fitness response form** together with any representations within 14 days of the service of the **fitness to practise application**, indicating whether they:

- a. accept that their fitness is seriously impaired in either way specified in **regulation** 7.1(a) and/or 7.1(b); and/or

- b. consent to submit to a medical examination by an **ICAEW appointed expert** (at **ICAEW's** expense) and are prepared to provide the **access consents** to the **ICAEW appointed expert**.

7.6 The **Head of Committees and Tribunals** shall have discretion to extend time for service of the **fitness response form** and any representations from the **member, affiliate** or **relevant person** if they consider that an extension of time is reasonable in the circumstances.

7.7 If the **member, affiliate** or **relevant person**:

- a. accepts that their fitness is seriously impaired in either way specified in **regulation 7.1(a)** and/or **7.1(b)**; or
- b. indicates that they object to attending for a medical examination by an **ICAEW appointed expert** and/or that they will not provide **access consents** to an **ICAEW appointed expert**; or
- c. fails to submit a completed **fitness response form** within the time specified in **regulation 7.5** (or any extended period allowed in accordance with **regulation 7.6**),

the **Head of Committees and Tribunals** shall arrange for a **fitness to practise hearing** to take place.

7.8 Pursuant to **regulation 7.7**, the **Head of Committees and Tribunals** shall:

- a. provide a copy of any completed **fitness response form** to the **PSD Chief Officer** and request the **PSD Chief Officer** to appoint an **ICAEW representative** to represent **ICAEW** at the **fitness to practise hearing**;
- b. request the **Fitness to Practise Committee Chair** to appoint a **Fitness to Practise Panel** in accordance with **regulation 4.6** to consider the **fitness to practise application**; and
- c. notify the **member, affiliate** or **relevant person**, and the **ICAEW representative**, of the date, time and location or format of the **fitness to practise hearing** which shall be no earlier than 28 days from the service of the **notice**.

7.9 If a **member, affiliate** or **relevant person** agrees to submit themselves for a medical examination by an **ICAEW appointed expert**, the **Head of Committees and Tribunals** shall:

- a. request an **ICAEW appointed expert** to carry out a medical examination of the **member, affiliate** or **relevant person**; and

- b. provide the **member, affiliate or relevant person** with contact details of the **ICAEW appointed expert** to fix a date for the medical examination and so that **access consents** can be provided to the **ICAEW appointed expert**.
- 7.10 As soon as practicable after the **Head of Committees and Tribunals** receives a copy of a report from the **ICAEW appointed expert**, the **Head of Committees and Tribunals** shall serve a copy of the report on the **member, affiliate or relevant person** who shall have 14 days from the date of service of the report to submit any written representations for consideration by the **Fitness to Practise Committee Chair**. The **Head of Committees and Tribunals** shall have discretion to extend the time for receipt of any representations if they consider that an extension of time is reasonable in the circumstances.
- 7.11 Upon the expiry of 14 days (or any longer period agreed by the **Head of Committees and Tribunals**) or the receipt of representations (whichever is sooner), the **Head of Committees and Tribunals** shall provide the **fitness to practise application**, the **fitness response form**, the report from the **ICAEW appointed expert** and any representations made by the **member, affiliate or relevant person** to the **Fitness to Practise Committee Chair** who shall determine whether:
- a. in accordance with **Disciplinary Bye-law** 13.7(b), the **fitness to practise proceedings** should be terminated because, in the opinion of the **Fitness to Practise Committee Chair**, there are no reasonable grounds for believing that the fitness of the **member, affiliate or relevant person** is seriously impaired in either way specified in **regulation** 7.1(a) and/or 7.1(b); or
 - b. a **Fitness to Practise Panel** should be convened to consider the **fitness to practise application** because, in the opinion of the **Fitness to Practise Committee Chair**, there are reasonable grounds for believing that the fitness of the **member, affiliate or relevant person** may be seriously impaired in either way specified in **regulation** 7.1(a) and/or 7.1(b).
- 7.12 Prior to making a determination in accordance with **regulation** 7.11, the **Fitness to Practise Committee Chair** shall have the power, by **notice** served on the **member, affiliate or relevant person**, to call for such information and explanations as they consider necessary to enable them to reach their determination. It shall be the duty of any **member, affiliate or relevant person** on whom such a **notice** is served, to cooperate with the **Fitness to Practise Committee Chair** and to comply with the **notice** within 14 days of service or such longer period as the **Fitness to Practise Committee Chair** may allow.
- 7.13 If the **Fitness to Practise Committee Chair** determines that the **fitness to practise proceedings** should be terminated in accordance with **regulation** 7.11(a) and makes an **order** accordingly, the **Head of Committees and Tribunals** shall:
- a. inform the **parties** of the **order** made by the **Fitness to Practise Committee Chair**;

- b. inform the **Head of Investigation** of the end of the suspension of any **investigation** and/or **proceedings**.

7.14 If the **Fitness to Practise Committee Chair** determines that a **Fitness to Practise Panel** should be convened in accordance with **regulation 7.11(b)**, the **Head of Committees and Tribunals** shall:

- a. provide a copy of any completed **fitness response form**, the report from the **ICAEW appointed expert** and any representations from the **member, affiliate** or **relevant person** to the **PSD Chief Officer** and request the **PSD Chief Officer** to appoint an **ICAEW representative** to represent **ICAEW** at the **fitness to practise hearing**;
- b. request the **Fitness to Practise Committee Chair** to appoint a **Fitness to Practise Panel** in accordance with **regulation 4.6** to consider the **fitness to practise application**; and
- c. notify the **member, affiliate** or **relevant person**, and the **ICAEW representative**, of the date, time and location or format of the **fitness to practise hearing**, which shall be no earlier than 28 days from the service of the **notice**.

7.15 Where, after being served with a **fitness to practise application** in accordance with **regulation 7.4**, the **member, affiliate** or **relevant person** indicates in writing that they would be prepared to resign their membership or registration with **ICAEW**, the **Head of Committees and Tribunals** shall:

- a. provide the **Fitness to Practise Committee Chair** with a copy of the **fitness to practise application** and the written request by the **member, affiliate** or **relevant person** to resign; and
- b. request that the **Fitness to Practise Committee Chair** determine whether to accept the **member, affiliate** or **relevant person's** offer of resignation.

7.16 Where the **Fitness to Practise Committee Chair** determines that a request to resign should be accepted and the **fitness to practise proceedings** should be terminated in accordance with **Disciplinary Bye-law 13.7(a)**, the **Fitness to Practise Committee Chair** may pursuant to **Disciplinary Bye-law 13.8**:

- a. order that any **investigation** and/or **disciplinary proceedings**, which were suspended for the duration of the **fitness to practise proceedings**, be stayed; and
- b. order that any future application by the **member, affiliate** or **relevant person** for readmission to membership of, or re-registration with, **ICAEW** be considered by a **Fitness to Practise Panel** so that it can:

- i. make an initial determination as to whether that person's fitness remains seriously impaired in either way specified in **regulation 7.1(a)** and/or 7.1(b); and
 - ii. determine whether any **investigation** and/or **disciplinary proceedings** that were previously stayed in respect of the **member, affiliate** or **relevant person** should be re-started if the **member, affiliate** or **relevant person** is readmitted to membership of, or re-registered with, **ICAEW** or whether such **investigation** and/or **disciplinary proceedings** should be closed; and/or
- c. impose such conditions as may be considered appropriate, including a recommendation that no application for readmission or re-registration be considered before the end of a recommended period.

Fitness to practise application made by a member, affiliate or relevant person

- 8.1 At any time after a **member, affiliate** or **relevant person** has been notified by **ICAEW** that they are the subject of an **investigation** and/or during any **proceedings**, the **member, affiliate** or **relevant person** may make a **fitness to practise application** if they believe that their fitness to respond to an **investigation** and/or to participate in **proceedings**, and/or their fitness to practise, may be seriously impaired through their **physical or mental health**.
- 8.2 A **fitness to practise application** made by a **member, affiliate** or **relevant person** pursuant to **regulation 8.1** must be made in writing to the **Head of Committees and Tribunals** and must be accompanied by a recent medical report which identifies the impairment. This should support the assertion, including a prognosis and indication as to when, if at all, the **member, affiliate** or **relevant person** would be well enough to participate in the process or proceedings.
- 8.3 Upon the service of a **fitness to practise application** and recent medical report in accordance with **regulation 8.2**, any **investigation** and/or **proceedings** in respect of the **member, affiliate** or **relevant person** will be suspended automatically until the conclusion of the **fitness to practise proceedings** and any **appeal proceedings**.
- 8.4 As soon as reasonably practicable after receipt of a **fitness to practise application** made in accordance with **regulation 8.2**, the **Head of Committees and Tribunals** shall provide a copy of it to the **Fitness to Practise Committee Chair** who shall determine whether, after reviewing the **fitness to practise application** and the medical report, a **Fitness to Practise Panel** should be convened or whether, prior to a **Fitness to Practise Panel** being convened, the **member, affiliate** or **relevant person** should be requested to undergo a medical examination by an **ICAEW appointed expert** (at **ICAEW's** expense) and to provide **access consents** to the **ICAEW appointed expert**.
- 8.5 Prior to making a determination in accordance with **regulation 8.4**, the **Fitness to Practise Committee Chair** shall have the power, by **notice** served on the

member, affiliate or relevant person, to call for such information and explanations as they consider necessary to enable them to reach their determination. It shall be the duty of any **member, affiliate or relevant person** on whom such a **notice** is served, to cooperate with the **Fitness to Practise Committee Chair** and to comply with the **notice** within 14 days of service or such longer period as the **Fitness to Practise Committee Chair** may allow.

8.6 If the **Fitness to Practise Committee Chair** determines that a **Fitness to Practise Panel** should be convened without the need to request that the **member, affiliate or relevant person** undergo a further medical examination, the **Head of Committees and Tribunals** shall:

- a. provide to the **PSD Chief Officer** a copy of the **fitness to practise application** and the medical report supplied by the **member, affiliate or relevant person** and shall request that the **PSD Chief Officer** appoint an **ICAEW representative** to represent **ICAEW** at the **fitness to practise hearing**;
- b. request the **Fitness to Practise Committee Chair** to appoint a **Fitness to Practise Panel** in accordance with **regulation 4.6** to consider the **fitness to practise application**; and
- c. notify the **member, affiliate or relevant person**, and the **ICAEW representative**, of the date, time and location or format of the **fitness to practise hearing**, which shall be no earlier than 28 days from the service of the **notice**.

8.7 If the **Fitness to Practise Committee Chair** decides, pursuant to **regulation 8.4**, that the **member, affiliate or relevant person** should be requested to undergo a further medical examination and provide **access consents** to an **ICAEW appointed expert**, the **Head of Committees and Tribunals** shall notify the **member, affiliate or relevant person** of the request made by the **Fitness to Practise Committee Chair** and shall provide the **member, affiliate or relevant person** with contact details of the **ICAEW appointed expert** to fix a date for the medical examination and provide the **access consents**.

8.8 Subject to **regulations 8.9 and 8.10**, if a **member, affiliate or relevant person** fails to attend for a medical examination and/or fails to provide the **access consents** within 90 days of being notified of the **Fitness to Practise Committee Chair's** request under **regulation 8.7** (or such lesser period as may be specified by the **Fitness to Practise Committee Chair**), the **Fitness to Practise Committee Chair** may order that the **fitness to practise proceedings** be terminated, and that any suspension which was put in place in accordance with **regulation 8.3** be terminated.

8.9 The **Fitness to Practise Committee Chair** shall not order that the **fitness to practise proceedings** be terminated if the **Fitness to Practise Committee Chair** considers that there is a good reason why further time should be permitted for the

member, affiliate or relevant person to attend for a medical examination and to provide the **access consents**, and agrees to extend the period specified under **regulation 8.8**. In these circumstances, the **Head of Committees and Tribunals** shall notify the **member, affiliate or relevant person** of the new deadline to comply with the **Fitness to Practise Committee Chair's** request.

- 8.10 The **Fitness to Practise Committee Chair** shall not order that the **fitness to practise proceedings** be terminated if the **Fitness to Practise Committee Chair** determines that a **Fitness to Practise Panel** should be convened in any event despite the failure by the **member, affiliate or relevant person** to attend for a medical examination. In these circumstances, the **Head of Committees and Tribunals** shall proceed in accordance with **regulation 8.6(a) – (c)**.
- 8.11 As soon as reasonably practicable after the **Head of Committees and Tribunals** receives a copy of a report from the **ICAEW appointed expert** pursuant to their appointment in accordance with **regulation 8.7**, the **Head of Committees and Tribunals** shall serve a copy of the report on the **member, affiliate or relevant person** who shall have 14 days from the date of service of the report to submit any written representations. The **Head of Committees and Tribunals** shall have discretion to extend the time for receipt of any representations if they consider that an extension of time is reasonable in the circumstances.
- 8.12 Upon the expiry of 14 days (or any longer period agreed by the **Head of Committees and Tribunals**) or the receipt of representations from the **member, affiliate or relevant person** (whichever is sooner), the **Head of Committees and Tribunals** shall:
- a. provide to the **PSD Chief Officer** a copy of the **fitness to practise application**, the medical report supplied by the **member, affiliate or relevant person**, the medical report received from the **ICAEW appointed expert** and any representations from the **member, affiliate or relevant person** and shall request the **PSD Chief Officer** to appoint an **ICAEW representative** to represent **ICAEW** at the **fitness to practise hearing**;
 - b. request the **Fitness to Practise Committee Chair** to appoint a **Fitness to Practise Panel** in accordance with **regulation 4.6** to hear the **fitness to practise application**; and
 - c. notify the **member, affiliate or relevant person**, and the **ICAEW representative**, of a date, time and location or format of the **fitness to practise hearing**, which shall be no earlier than 28 days from the service of the **notice**.

CONVENING A FITNESS TO PRACTISE PANEL

- 9.1 Where the ***Fitness to Practise Committee Chair*** has convened a ***Fitness to Practise Panel*** in accordance with ***regulations 7.8, 7.14, 8.6, 8.10 or 8.12***, there shall be no publicity regarding the decision to convene a ***Fitness to Practise Panel*** or the date when the ***Fitness to Practise Panel*** shall meet to consider the matter except, where the ***member, affiliate or relevant person*** is the subject of an ***investigation or disciplinary proceedings***, the ***Head of Investigation*** shall be entitled to inform any ***complainant*** that the matter has been referred to the ***Fitness to Practise Panel*** and that any ***investigation or disciplinary proceedings*** have been suspended pending the conclusion of the ***fitness to practise proceedings*** and any ***appeal proceedings***.
- 9.2 If, at any time after the ***Fitness to Practise Committee Chair*** has appointed a ***Fitness to Practise Panel*** in accordance with these ***regulations***, but prior to the commencement of the ***fitness to practise hearing***, any member of the ***Fitness to Practise Panel*** is for any reason unable to attend the ***hearing***, the ***Fitness to Practise Committee Chair*** shall appoint a replacement member of the ***Fitness to Practise Committee*** to the ***Fitness to Practise Panel***.
- 9.3 The ***Head of Committees and Tribunals*** may appoint one, or both, of the following to assist the ***Fitness to Practise Panel***:
- a. an independent and suitably qualified medical expert (other than the ***ICAEW appointed expert*** who has provided a medical report); and/or
 - b. a ***legal assessor***.

FITNESS TO PRACTISE CONSENT ORDERS

- 10.1 At any time after a ***fitness to practise application*** is made and prior to the start of a ***fitness to practise hearing***, the ***parties*** may agree the terms of a ***fitness to practise consent order*** for consideration by the ***Fitness to Practise Panel Chair*** (if one has been appointed and, if not, by the ***Fitness to Practise Committee Chair***). The ***PSD Chief Officer*** shall appoint an ***ICAEW representative*** to represent ***ICAEW*** in this process if one has not already been appointed.
- 10.2 Upon receipt of a draft ***fitness to practise consent order*** signed by both ***parties***, the ***Head of Committees and Tribunals*** shall provide it together with the ***fitness to practise application***, any representations and any medical evidence to the ***Fitness to Practise Panel Chair*** (or, where applicable, to the ***Fitness to Practise Committee Chair***) for consideration.
- 10.3 If the ***Fitness to Practise Panel Chair*** (or, where applicable, the ***Fitness to Practise Committee Chair***) considers, taking into account the public interest, that the draft ***fitness to practise consent order*** should be approved, the ***Fitness to***

Practise Panel Chair (or the **Fitness to Practise Committee Chair**) shall sign the **fitness to practise consent order** on behalf of the **Fitness to Practise Committee** and the **order** will be final. The **Head of Committees and Tribunals** shall then provide a copy of the signed **fitness to practise consent order** to the **parties**.

- 10.4 If the **Fitness to Practise Panel Chair** (or, where applicable, the **Fitness to Practise Committee Chair**) does not approve the draft **fitness to practise consent order**, they shall provide the **Head of Committees and Tribunals** with reasons for the refusal to approve, a copy of which shall be provided to the **parties** by the **Head of Committees and Tribunals** and the **fitness to practise proceedings** shall continue in accordance with these **regulations**.
- 10.5 The **parties** may also provide a draft **fitness to practise consent order** to the **Fitness to Practise Panel** for consideration at any time during a **fitness to practise hearing** and the **Fitness to Practise Panel** may, if it considers the terms of the **fitness to practise consent order** to be satisfactory, authorise the **Fitness to Practise Panel Chair** to sign the **fitness to practise consent order** on behalf of the panel and the **order** will be final.
- 10.6 A **fitness to practise consent order** shall comply with the provisions of **regulation 13.3**.
- 10.7 The **fitness to practise consent order** shall take effect following service of the **order** on the **member, affiliate** or **relevant person**.

PRE-HEARING PROCEDURE

- 11.1 As soon as practicable after the appointment of a **Fitness to Practise Panel**, the **Head of Committees and Tribunals** shall serve on the **parties** a bundle containing all documents received by the **Head of Committees and Tribunals** in connection with the **fitness to practise application**.
- 11.2 Each **party** must provide to the **Head of Committees and Tribunals** and to the other **party**, at least 14 days before the **fitness to practise hearing**, copies of any documents on which they intend to rely at the **fitness to practise hearing**, which were not included in the bundle served by the **Head of Committees and Tribunals**. The other **party** shall have the right to provide written representations on any new documents served in accordance with these **regulations** up until 3 days prior to the **fitness to practise hearing**.
- 11.3 Either **party** may apply to the **Fitness to Practise Panel Chair** for the postponement of a **fitness to practise hearing** which has not yet commenced by notifying the **Head of Committees and Tribunals** who shall request representations from the other **party** before asking the **Fitness to Practise Panel Chair** to determine the application.

- 11.4 At any time prior to a ***fitness to practise hearing***, the ***Fitness to Practise Panel Chair*** may:
- a. require the ***member, affiliate or relevant person*** or the ***ICAEW representative*** to provide such further information and documents as may be considered necessary to assist the ***Fitness to Practise Panel*** in determining the ***fitness to practise application***; and/or
 - b. direct, on the application of either ***party*** or of their own volition, that there be a ***pre-hearing review***.
- 11.5 If a ***pre-hearing review*** is held, the ***Fitness to Practise Panel Chair*** may make such ***directions*** as they deem necessary, including ***directions*** to ensure that the ***member, affiliate or relevant person*** has access to the ***fitness to practise hearing*** including, but not limited to:
- a. a ***direction*** that the ***fitness to practise hearing*** take place in a specific location;
 - b. a ***direction*** that the ***member, affiliate or relevant person*** be permitted to attend via videolink or telephone;
 - c. a ***direction*** that an interpreter can be used;
 - d. a ***direction*** that a hearing loop be used.

CONDUCT OF A FITNESS TO PRACTISE HEARING

- 12.1 A ***fitness to practise hearing*** shall be a ***private hearing*** and there shall be no prior publicity of the ***hearing***.
- 12.2 If, at any time during a ***fitness to practise hearing***:
- a. any member of the ***Fitness to Practise Panel*** is unable for any reason to continue to participate in the ***fitness to practise hearing***; or
 - b. the ***Fitness to Practise Panel Chair*** is, for any reason, of the opinion that it is impracticable, or would be contrary to the interests of justice, for the ***fitness to practise hearing*** to be completed by that ***Fitness to Practise Panel***,
- the ***Fitness to Practise Panel Chair*** shall inform the ***Fitness to Practise Committee Chair*** or, if the latter is unavailable, the ***Fitness to Practise Committee Vice-Chair***, who shall appoint a new ***Fitness to Practise Panel*** for a re-hearing of the ***fitness to practise application***.
- 12.3 Where a new ***Fitness to Practise Panel*** is appointed pursuant to ***regulation 12.2***, no member of the previous ***Fitness to Practise Panel*** may be appointed as a member of the new ***Fitness to Practise Panel***; but persons appointed in accordance with ***regulation 9.3*** as a medical expert or as a ***legal assessor*** may continue to act at the re-hearing.

- 12.4 A **member, affiliate** or **relevant person** may appear at a **fitness to practise hearing** in person or they may appoint a **representative**. The **member, affiliate** or **relevant person** will be deemed present when they are represented by their **representative**.
- 12.5 If the **member, affiliate** or **relevant person** does not attend a **fitness to practise hearing** in person or by a **representative** then, provided the **Fitness to Practise Panel** is satisfied that **notice** of the **hearing** was served on the **member, affiliate** or **relevant person** as required by these **regulations**, the **Fitness to Practise Panel** may hear the **fitness to practise application** in their absence.
- 12.6 The **ICAEW representative** shall represent **ICAEW** at the **fitness to practise hearing**.
- 12.7 In determining a **fitness to practise application**, the **Fitness to Practise Panel** may adopt any procedure which it considers just and fair, in particular:
- a. the strict rules of evidence will not apply; and
 - b. the **fitness to practise hearing** will take place on an inquisitorial basis.
- 12.8 The **Fitness to Practise Panel** may consider any written and/or verbal representations made by the **parties**, written reports and/or written or oral evidence as it deems appropriate, including oral evidence from a medical expert engaged by the **member, affiliate** or **relevant person** or from the **ICAEW appointed expert**. The absence of a medical report or evidence shall not prevent the **Fitness to Practise Panel** from reaching a determination based on the other evidence before it.
- 12.9 Where a **fitness to practise application** has been made under **regulation 7** or **regulation 8** and the **member, affiliate** or **relevant person** has not provided **access consents** and/or attended for a medical examination by an **ICAEW appointed expert** at the request of the **Fitness to Practise Committee Chair**, the **Fitness to Practise Panel** shall take into account:
- a. the strength of any medical or other evidence which could support a **finding** that the fitness of the **member, affiliate** or **relevant person** is seriously impaired in either way specified in **regulation 7.1(a)** and/or **7.1(b)**;
 - b. whether the **member, affiliate** or **relevant person** has been given appropriate **notice** of the request to attend for a medical examination by an **ICAEW appointed expert** and an opportunity to explain why they have chosen not to comply with it;
 - c. the reasons (if any) given for the refusal by the **member, affiliate** or **relevant person** to submit to a medical examination by an **ICAEW appointed expert** and/or to provide the **access consents**; and

- d. any other relevant circumstances of the case.
- 12.10 No objection shall be upheld to any technical fault in the procedure adopted by a ***Fitness to Practise Panel*** provided that the proceedings are fair and the relevant ***Disciplinary Bye-laws*** and ***regulations*** have been complied with.
- 12.11 A ***Fitness to Practise Panel*** may deliberate in the absence of the ***parties*** and any other persons attending the ***hearing***, at any time.
- 12.12 A ***Fitness to Practise Panel*** may adjourn its proceedings from time to time as it thinks fit of its own volition or upon application by either ***party***.
- 12.13 In accordance with ***Disciplinary Bye-law*** 13.7(a), the ***Fitness to Practise Panel*** may accept an offer from a ***member, affiliate or relevant person*** to resign their membership or registration at the ***hearing*** instead of making an ***order*** under ***Disciplinary Bye-law*** 13.1 and, if so, the ***Fitness to Practise Panel*** may make any of the ***orders*** set out in ***regulation*** 7.16.
- 12.14 A shorthand or stenographic note or a recording may be taken or made of the ***fitness to practise hearing***. Any record / recording of the ***fitness to practise proceedings*** shall be confidential and shall not be put in the public domain.

ORDERS OF A FITNESS TO PRACTISE PANEL

- 13.1 If, after hearing the evidence and representations by the ***parties***, the ***Fitness to Practise Panel*** determines that:
 - a. the fitness to respond to an ***investigation*** and/or to participate in ***proceedings***; and/or
 - b. the fitness to practise,of the ***member, affiliate or relevant person*** is not seriously impaired through their ***physical or mental health***, it shall make a ***finding*** to that effect, and shall order that any ***investigation*** and/or ***proceedings*** that were suspended for the duration of the ***fitness to practise proceedings*** be re-started.
- 13.2 If, after hearing the evidence and representations by the ***parties***, the ***Fitness to Practise Panel*** determines that:
 - a. the fitness to respond to an ***investigation*** and/or to participate in ***proceedings***; and/or
 - b. the fitness to practise,of the ***member, affiliate or relevant person*** is seriously impaired through their ***physical or mental health***, it shall make a ***finding*** to that effect and shall, unless it

considers that in the circumstances it is inappropriate to do so, make one or more of the **orders** set out in **Disciplinary Bye-law** 13.2.

13.3 An **order** of the **Fitness to Practise Panel** made in accordance with **Disciplinary Bye-laws** 13.1 and 13.2, and **regulation** 13.2, must:

- a. set a date not more than 24 months from the date of the **order** for a **fitness to practise review hearing** to be convened to review the **order** or **orders**; and
- b. set out the nature of the impairment the **Fitness to Practise Panel** considers the **member, affiliate** or **relevant person** to be suffering from, and what steps the **member, affiliate** or **relevant person** would need to take, in order to be considered sufficiently recovered or rehabilitated for the **order** or **orders** to be lifted; and
- c. set a minimum period, based on all of the circumstances including the medical evidence and the steps outlined under (b), before which a **fitness to practise interim review application** cannot be made starting from the date of the **order** of the **Fitness to Practise Panel** (or the date of any **order** of an **Appeal Panel** in the case of an unsuccessful **appeal** against the **order**.)

13.4 The **Fitness to Practise Panel** may also in certain circumstances make a **costs order** against the **member, affiliate** or **relevant person** in accordance with **regulation** 18.

13.5 The **Head of Committees and Tribunals** shall send to the **member, affiliate** or **relevant person** as soon as reasonably practicable after the **fitness to practise hearing**:

- a. a copy of the **order** of the **Fitness to Practise Panel**; and
- b. a copy of the **record of decision** once it has been approved by the **Fitness to Practise Panel**.

EXPEDITED FITNESS TO PRACTISE APPLICATIONS

14.1 If the **PSD Chief Officer** considers, on the basis of the evidence known to them at the time of making a **fitness to practise application** in accordance with **regulation** 7.1, that a **Fitness to Practise Panel** should be convened urgently to consider the application because:

- a. it is necessary for the protection of the public; and/or
- b. it is otherwise in the public interest,

they shall request the **Fitness to Practise Committee Chair** to convene a **Fitness to Practise Panel** to hear the application on an expedited basis.

- 14.2 If the ***Fitness to Practise Committee Chair*** agrees that an ***expedited fitness to practise hearing*** should be arranged, the ***Fitness to Practise Committee Chair*** shall appoint a ***Fitness to Practise Panel*** and request the ***Head of Committees and Tribunals*** to serve upon the ***member, affiliate or relevant person***, and the ***ICAEW representative*** (appointed by the ***PSD Chief Officer*** to represent ***ICAEW***), a ***notice*** stating the time, date, location or format fixed for the ***expedited fitness to practise hearing*** together with a copy of the ***fitness to practise application*** served by the ***PSD Chief Officer***. The ***member, affiliate or relevant person*** shall have at least 7 days' notice of the time and date of the ***expedited fitness to practise hearing***.
- 14.3 If the ***Fitness to Practise Committee Chair*** does not agree that an ***expedited fitness to practise hearing*** is necessary, the ***fitness to practise proceedings*** shall continue in accordance with the process set out in ***regulation 7***.
- 14.4 ***Regulations 12.1 - 12.14*** shall apply to the conduct of the ***expedited fitness to practise hearing*** as appropriate.
- 14.5 If the ***member, affiliate or relevant person*** does not attend, and is not represented at, the ***expedited fitness to practise hearing*** then, provided that the ***Fitness to Practise Panel*** is satisfied that the ***notice*** required under ***regulation 14.2*** was served on the ***member, affiliate or relevant person***, the ***expedited fitness to practise hearing*** may continue in their absence.
- 14.6 Where, after considering all of the evidence at an ***expedited fitness to practise hearing***, the ***Fitness to Practise Panel*** considers that:
- a. there are reasonable grounds for believing that the fitness of the ***member, affiliate or relevant person*** may be seriously impaired in either way specified in ***regulation 7.1(a)*** and/or ***7.1(b)***; and
 - b. it is necessary for the protection of the public, and/or is otherwise in the public interest, for an ***expedited order*** to be made,
- the ***Fitness to Practise Panel*** may, in accordance with ***Disciplinary Bye-law 13.9*** make an ***expedited order*** for a period of no longer than 3 months.
- 14.7 If, at the ***expedited fitness to practise hearing***, the ***Fitness to Practise Panel*** is of the opinion that there is insufficient evidence to make an ***expedited order*** under ***Disciplinary Bye-law 13.9***, then the ***Head of Committees and Tribunals*** shall continue with the process set out in ***regulation 7***.
- 14.8 The ***Head of Committees and Tribunals*** shall convene a ***Fitness to Practise Panel*** to consider the ***fitness to practise application*** made in accordance with ***regulation 7*** before the expiry of the ***expedited order***, even if all medical evidence has not yet been obtained, to determine whether the ***Fitness to Practise Panel*** should make any of the ***orders*** available to it under ***Disciplinary Bye-laws 13.1*** and ***13.2***. Where one or more of the members of the ***Fitness to Practise Panel*** is not available to attend a full ***fitness to practise hearing*** within this period, the ***Fitness to Practise Committee***

Chair may, on application by the **Head of Committees and Tribunals**, appoint replacement members of the **Fitness to Practise Committee** to the **Fitness to Practise Panel**.

FITNESS TO PRACTISE REVIEW HEARINGS

- 15.1 At least 28 days before the date of the **fitness to practise review hearing** set in accordance with **regulations** 13.3(a) or 15.10(a) the **Head of Committees and Tribunals** must notify the **member, affiliate** or **relevant person** of the date, time and location or format of the **fitness to practise review hearing** and request that the **member, affiliate** or **relevant person** confirm whether they intend to contest the continuation of the **order(s)** made by the **Fitness to Practise Panel**.
- 15.2 If the **member, affiliate** or **relevant person** confirms, in response to the **notice** from the **Head of Committees and Tribunals**, that they do not wish to contest the continuation of the **order(s)** made by the **Fitness to Practise Panel**, the **Head of Committees and Tribunals** shall provide this response to the **ICAEW representative** and seek any representations. The **Head of Committees and Tribunals** shall then provide the response, and any representations from the **ICAEW representative**, to the **Fitness to Practise Committee Chair** for consideration.
- 15.3 If the **Fitness to Practise Committee Chair** is content to make an **order** that the original **order(s)** continue, then this **order** may be made without the need for a **fitness to practise review hearing** to take place and the **order** shall be notified by the **Head of Committees and Tribunals** to the **parties**.
- 15.4 If the **member, affiliate** or **relevant person** confirms that they intend to contest the continuation of one or more of the **orders** made by the **Fitness to Practise Panel**, or if they do not respond to the **notice** served by the **Head of Committees and Tribunals** in accordance with **regulation** 15.1, the **Head of Committees and Tribunals** shall, at least 14 days before the **fitness to practise review hearing**, serve a bundle of all documents relating to the original **fitness to practise application** (and any subsequent review) on the **parties**.
- 15.5 The **Head of Committees and Tribunals** shall also request that, where a **party** intends to rely on any other document not contained in the bundle, they provide a copy of that document to the **Head of Committees and Tribunals**, and to the other **party**, at least 7 days before the **fitness to practise review hearing**.
- 15.6 If the **member, affiliate** or **relevant person** serves new medical evidence prior to the **fitness to practise review hearing**, the **Fitness to Practise Panel Chair**, on the application of the **ICAEW representative**, may request the **member, affiliate** or **relevant person** to undergo a medical examination by an **ICAEW appointed expert** (appointed by the **Head of Committees and Tribunals**) and to provide **access consents** to the **ICAEW appointed expert**. If the **member, affiliate** or **relevant**

person consents to submit for a medical examination, the **Head of Committees and Tribunals** shall:

- a. provide details of an **ICAEW appointed expert** to the **member, affiliate or relevant person**; and
- b. postpone the **fitness to practise review hearing** if it is not possible to arrange the medical examination prior to the date fixed for the **hearing**.

15.7 **Regulations** 9.1 – 9.3, 11.1 – 11.5 and 12.1 – 12.14 shall apply to the process to be followed at a **fitness to practise review hearing**, as appropriate. In particular, if the **member, affiliate or relevant person** has refused to submit to a medical examination and/or to provide the **access consents** requested by the **Fitness to Practise Panel Chair** in accordance with **regulation** 15.6, the **Fitness to Practise Panel** shall take into account the matters set out in **regulation** 12.9 in reaching its determination.

15.8 The **Fitness to Practise Panel** should comprise, as far as possible, the same members of the **Fitness to Practise Committee** who made the **order(s)** which are the subject of the **fitness to practise review hearing** unless members of the original **Fitness to Practise Panel** have since left the **Fitness to Practise Committee** or would not be available without an unreasonable delay. In those circumstances, the **Fitness to Practise Committee Chair** shall select suitable replacement panel members.

15.9 If, at the end of a **fitness to practise review hearing**, the **Fitness to Practise Panel** is of the opinion that the fitness of the **member, affiliate or relevant person** remains seriously impaired in either way specified in **regulation** 7.1(a) and/or 7.1(b), it shall make a **finding** to that effect and it may:

- a. order that any **order** made under **Disciplinary Bye-laws** 13.1 and 13.2 continue or that any **order** be varied until the next **fitness to practise interim review hearing** or **fitness to practise review hearing**; and/or
- b. make any additional **orders** as are available under **Disciplinary Bye-law** 13.2 **orders** in respect of the **member, affiliate or relevant person**.

15.10 Where the **Fitness to Practise Panel** continues, varies and/or makes any additional **orders** in accordance with **regulation** 15.9, it shall:

- a. set a date not more than 24 months from the date of the **order** for a further **fitness to practise review hearing** to be convened to review the **order** or **orders**; and
- b. set out the nature of the impairment the **Fitness to Practise Panel** considers the **member, affiliate or relevant person** continues to suffer from, and what steps the **member, affiliate or relevant person** would need

to take, in order to be considered sufficiently recovered or rehabilitated for the **order** or **orders** to be lifted; and

- c. set a minimum period, based on all of the circumstances including the medical evidence and the steps outlined under (b), before which a **fitness to practise interim review application** cannot be made starting from the date of the **order** of the **Fitness to Practise Panel**.

15.11 If, at the end of a **fitness to practise review hearing**, the **Fitness to Practise Panel** is of the opinion that the fitness of the **member, affiliate** or **relevant person** is no longer seriously impaired in either way specified in **regulation** 7.1(a) and/or 7.1(b), it shall make a **finding** to that effect and it shall discharge any **order** made under **Disciplinary Bye-laws** 13.1 and 13.2.

15.12 If an **order** is made at a **fitness to practise review hearing** to discharge the **order**, the **Fitness to Practise Panel** shall order:

- a. that any suspension put in place pursuant to **regulations** 7.3 or 8.3 be lifted and that any **investigation** and/or **proceedings** be re-started; or
- b. that no further **investigation** should take place and/or that no further steps should be taken in any **proceedings** in relation to the **member, affiliate** or **relevant person**.

15.13 The **Head of Committees and Tribunals** shall send to the **member, affiliate** or **relevant person** as soon as reasonably practicable after the **fitness to practise review hearing**:

- a. a copy of the **order** of the **Fitness to Practise Panel**; and
- b. a copy of the **record of decision** once it has been approved by the **Fitness to Practise Panel**.

15.14 A shorthand or stenographic note or a recording may be taken or made of the **fitness to practise review hearing**. Any record / recording of the **fitness to practise review hearing** shall be confidential and shall not be put in the public domain.

FITNESS TO PRACTISE INTERIM REVIEW APPLICATIONS

Making an application

16.1 A **fitness practise interim review application** may be made by a **member, affiliate** or **relevant person** for a review of any **order** made by the **Fitness to Practise Panel** earlier than the date fixed for the initial (or any subsequent) **fitness to practise review hearing** in an **order** of the **Fitness to Practise Panel** provided:

- a. the minimum period set out in the **order** before which no **fitness to practise interim review application** may be made, has expired;
- b. no **fitness to practise interim review hearing** has taken place in the previous 6 months; and
- c. the application is accompanied by a recent medical report confirming that, in the opinion of a suitably qualified medical expert, the **member, affiliate** or **relevant person's** fitness to respond to an **investigation** and/or to participate in **proceedings**, and/or their fitness to practise, is no longer seriously impaired through their **physical or mental health**.

16.2 Where the **Head of Committees and Tribunals** receives a **fitness to practise interim review application** made in accordance with **regulation** 16.1 and is satisfied that it complies with the conditions for making such an application, they shall:

- a. request the **Fitness to Practise Committee Chair** to appoint a **Fitness to Practise Panel** in accordance with **regulation** 4.6 to consider the application;
- b. provide a copy of the application to the **ICAEW representative**; and
- c. notify the **parties** of a date, time, location or format of the **fitness to practise interim review hearing** which shall be no sooner than 28 days from the notification of the **hearing** date.

16.3 The **Fitness to Practise Panel** convened in accordance **regulation** 16.2(a) should comprise, as far as possible, the same members of the **Fitness to Practise Committee** who made the **order(s)** which are the subject of the **fitness to practise interim review application** unless members of the original **Fitness to Practise Panel** have since left the **Fitness to Practise Committee** or would not be available without an unreasonable delay. In those circumstances, the **Fitness to Practise Committee Chair** shall select suitable replacement panel members.

16.4 The **Head of Committees and Tribunals** shall serve on the **parties**, as soon as reasonably practicable after notifying the date of the **fitness to practise interim review hearing**, a bundle containing all documents relating to the original **fitness to practise application** and any subsequent review, the **fitness to practise interim review application** and the accompanying medical report.

16.5 Any **party** who wishes to rely on any document not in the bundle must provide a copy of that document to the **Head of Committees and Tribunals** and the other **party** at least 14 days prior to the **fitness to practise interim review hearing**.

16.6 After receipt of the **fitness to practise interim review application**, the **Fitness to Practise Panel Chair**, on the application of the **ICAEW representative**, may request the **member, affiliate** or **relevant person** to submit for a medical examination by an **ICAEW appointed expert** (to be appointed by the **Head of Committees and Tribunals**) and to provide **access consents** to the **ICAEW appointed expert**. If the **member, affiliate** or **relevant person** consents to submit for a medical examination,

the ***Fitness to Practise Panel Chair*** shall request the ***Head of Committees and Tribunals*** to:

- a. provide details of an ***ICAEW appointed expert*** to the ***member, affiliate or relevant person***; and
- b. postpone the ***fitness to practise interim review hearing*** if it is not possible to arrange the medical examination prior to the date fixed for the ***hearing***.

Fitness to practise interim review hearing

16.7 ***Regulations*** 9.1 – 9.3, 11.1 – 11.5 and 12.1 – 12.14 shall apply to the process to be followed at a ***fitness to practise interim review hearing***, as appropriate. In particular, if the ***member, affiliate or relevant person*** has refused to submit to a medical examination and to provide the ***access consents*** requested by the ***Fitness to Practise Panel Chair*** in accordance with ***regulation*** 16.6, the ***Fitness to Practise Panel*** shall take into account the matters set out in ***regulation*** 12.9 in reaching its determination on the ***fitness to practise interim review application***.

16.8 If, at the end of a ***fitness to practise interim review hearing***, the ***Fitness to Practise Panel*** is of the opinion that the fitness of the ***member, affiliate or relevant person*** remains seriously impaired in either way specified in ***regulation*** 7.1(a) and/or 7.1(b), it shall make a ***finding*** to that effect and may:

- a. order that any ***order*** made under ***Disciplinary Bye-laws*** 13.1 and 13.2 continue or that any ***order*** be varied until the next ***fitness to practise interim review hearing*** or ***fitness to practise review hearing***; and/or
- b. make any additional ***orders*** as are available under ***Disciplinary Bye-law*** 13.2 in respect of the ***member, affiliate or relevant person***.

16.9 Where the ***Fitness to Practise Panel*** continues, varies and/or makes any additional ***orders*** in accordance with ***regulation*** 16.8, it shall:

- a. set a date not more than 24 months from the date of the ***order*** for a ***fitness to practise review hearing*** to be convened to review the ***order*** or ***orders***; and
- b. set out the nature of the impairment the ***Fitness to Practise Panel*** considers the ***member, affiliate or relevant person*** continues to suffer from, and what steps the ***member, affiliate or relevant person*** would need to take in order to be considered sufficiently recovered or rehabilitated for the ***order*** or ***orders*** to be lifted; and
- c. set a minimum period, based on all of the circumstances including the medical evidence and the steps outlined under (b), before which a ***fitness to practise interim review application*** cannot be made starting from the date of the ***order*** of the ***Fitness to Practise Panel***,

and may also make a **costs order** against the **member, affiliate** or **relevant person** in accordance with **regulation 18**.

16.10 If, at the end of a **fitness to practise interim review hearing**, the **Fitness to Practise Panel** is of the opinion that the fitness of the **member, affiliate** or **relevant person** is no longer seriously impaired in either way specified in **regulation 7.1(a)** and/or **7.1(b)**, it shall make a **finding** to that effect and it shall discharge any **order** made under **Disciplinary Bye-laws 13.1** and **13.2**.

16.11 If an **order** is made at a **fitness to practise interim review hearing** to discharge the **order**, the **Fitness to Practise Panel** shall order:

- a. that any suspension put in place pursuant to **regulations 7.3** or **8.3** be lifted and that the **investigation** and/or **proceedings** be re-started; or
- b. that no further **investigation** should take place and/or that no further steps should be taken in any **proceedings** in relation to the **member, affiliate** or **relevant person**.

16.12 The **Head of Committees and Tribunals** shall send to the **member, affiliate** or **relevant person** as soon as reasonably practicable after the **fitness to practise interim review hearing**:

- a. a copy of the **order** of the **Fitness to Practise Panel**; and
- b. a copy of the **record of decision** once it has been approved by the **Fitness to Practise Panel**.

16.13 A shorthand or stenographic note or a recording may be taken or made of the **fitness to practise interim review hearing**. Any record / recording of the **fitness to practise interim review hearing** shall be confidential and shall not be put in the public domain.

TIME WHEN ORDERS TAKE EFFECT / PUBLICITY

17.1 An **order** of the **Fitness to Practise Panel** shall take effect 28 days after the **record of decision** is served on the **member, affiliate** or **relevant person** by the **Head of Committees and Tribunals** unless, during that 28 day period, the **member, affiliate** or **relevant person** files a **notice of appeal** against the **order(s)** in accordance with **regulation 19.1**, in which case the **order** shall only take effect (if at all) once the **appeal** is finally determined or withdrawn.

17.2 Any **order** of a **Fitness to Practise Panel** made against a **member, affiliate** or **relevant person** under these **regulations** (including at any **fitness to practise interim review hearing** or **fitness to practise review hearing**) and any **fitness to practise consent order** made under **regulation 10**, shall be published unless the **Fitness to Practise Panel** (or the **Fitness to Practise Committee Chair** or the

Fitness to Practise Panel Chair approving a ***fitness to practise consent order***) conclude that there are exceptional circumstances which outweigh the public interest in publishing such **orders**. Such publicity shall state only:

- a. the name of the ***member, affiliate*** or ***relevant person***; and
- b. the **orders** that have been made in respect of them in accordance with ***Disciplinary Bye-laws*** 13.1 and 13.2 (or, in the case of a review, the **orders** that have been continued or varied or any new **orders** that have been made),

and shall not disclose any information concerning the ***physical or mental health*** of the ***member, affiliate*** or ***relevant person***.

17.3 If an **order** of a ***Fitness to Practise Panel*** is published before the expiry of the 28 days within which a ***notice of appeal*** may be filed in accordance with ***regulation*** 19.1, any publication shall make clear that such an **order** may be subject to ***appeal*** and, if an ***appeal*** is made, the publication shall indicate this.

17.4 Where a ***Fitness to Practise Panel*** refuses a ***fitness to practise application*** or discharges any existing **orders** following a ***fitness to practise review hearing*** or ***fitness to practise interim review hearing***, the **order** shall only be published if the ***member, affiliate*** or ***relevant person*** so requests.

COSTS ORDERS

18.1 Following a ***fitness to practise hearing*** or a ***fitness to practise interim review hearing***, a ***Fitness to Practise Panel*** may not make any ***costs order*** against ***ICAEW*** and may only make a ***costs order*** against the ***member, affiliate*** or ***relevant person*** in the following circumstances:

- a. where a ***fitness to practise application*** has been made by the ***member, affiliate*** or ***relevant person*** under ***regulation*** 8 and the ***Fitness to Practise Panel*** finds that the fitness of the ***member, affiliate*** or ***relevant person*** is not seriously impaired in either way specified in ***regulation*** 7.1(a) and/or 7.1(b); or
- b. where a ***fitness to practise interim review application*** has been made by the ***member, affiliate*** or ***relevant person*** under ***regulation*** 16 and the ***Fitness to Practise Panel*** determines that the **orders** made under ***Disciplinary Bye-laws*** 13.1 and 13.2 shall continue and/or if it makes any additional orders.

18.2 Prior to making any ***costs order*** against the ***member, affiliate*** or ***relevant person***, a ***Fitness to Practise Panel*** shall, as appropriate:

- a. hear and consider submissions from the ***member, affiliate*** or ***relevant person***, or their ***representative***, and the ***ICAEW representative*** in respect of

the amounts set out in any **costs schedule** served by the **ICAEW representative** on the **member, affiliate** or **relevant person** prior to the **hearing**; and

- b. have regard to any statement of means supported with a statement of truth and evidence of income and assets provided by the **member, affiliate** or **relevant person**.

18.3 Any **costs order** made against a **member, affiliate** or **relevant person** shall, unless a longer period for payment is allowed in the **order**, be paid within the period of 35 days beginning with the date of service of the **record of decision** of the **Fitness to Practise Panel** on the **parties**.

18.4 If, within the period allowed under **regulation** 19.1, the **member, affiliate** or **relevant person** serves **notice of appeal** against the **costs order**, those costs shall not become payable until either the **appeal** has been withdrawn or the **appeal** is dismissed.

18.5 If the **member, affiliate** or **relevant person** serves a **notice** withdrawing the **appeal**, the **orders** of the **Fitness to Practise Panel** will take effect at the end of the period of 14 days beginning with the date of service of the **notice**, at which point any **costs order** shall become immediately payable (save that where the **order** of the **Fitness Panel** has permitted payment of the **costs order** by instalments, only those instalments which would have become payable before service of the **notice** shall become due, and any further instalments will become payable on the dates specified in the **Fitness to Practise Panel's order**).

18.6 If a **costs order** provides for payments to be made by instalments, any instalment of costs payable to **ICAEW** under these **regulations** must be received by **ICAEW** before the close of business on the last day of the period allowed by, or under, the **regulations** for payment (or, if that day is not a **business day**, before the close of business on the next **business day**).

18.7 Where:

- a. any **costs order** is payable by instalments; and
- b. any instalment is not received by **ICAEW** as required by **regulation** 18.6,

the whole of the **costs order** (or so much of it as remains unpaid) shall become immediately due for payment.

APPEALS

Making an appeal

- 19.1 A **member, affiliate or relevant person** may appeal an **order** of a **Fitness to Practise Panel** made in accordance with **regulations** 13.2, 14.6, 15.9, 16.8 and/or 18.1 by serving a **notice of appeal** on the **Head of Committees and Tribunals** within 28 days of service on them of the **record of decision** of the **Fitness to Practise Panel**. The **notice of appeal** must specify the ground or grounds set out in **regulation** 19.2 upon which the **appeal** is made, and enclose any documents and/or evidence (including new evidence) in support of the **appeal**.
- 19.2 An **appeal** against an **order** made by a **Fitness to Practise Panel** in accordance with **regulations** 13.2, 14.6, 15.9, 16.8 and/or 18.1 may only be made on one or more of the following grounds:
- a. the **Fitness to Practise Panel** made an error of law, or in its interpretation of any **Disciplinary Bye-law**, any regulation (whether made by **ICAEW** or otherwise), or relevant standard or guidance which would have altered one or more of its **findings** and/or **orders**;
 - b. one or more of the **Fitness to Practise Panel's findings** and/or **orders** was unjust because of a serious procedural or other irregularity in the proceedings;
 - c. the **Fitness to Practise Panel** misunderstood or misdirected themselves in respect of the medical evidence, or failed to take into account relevant evidence which would have altered one or more of its **findings** and/or **orders**;
 - d. there is significant, new evidence that was not available at the time of the **fitness to practise hearing**, and which the **party** could not with reasonable diligence have been expected to obtain, which would have altered one or more of the **Fitness to Practise Panel's findings** and/or **orders**; and/or
 - e. that one or more of the **Fitness to Practise Panel's orders** were unreasonable and/or disproportionate in light of the **findings** that it made.

Process after service of notice of appeal

- 20.1 Where the **Head of Committees and Tribunals** receives a **notice of appeal** served within the period set out in **regulation** 19.1, the **Head of Committees and Tribunals** shall as soon as reasonably practicable:
- a. provide a copy of the **notice of appeal** to the **ICAEW representative**;
 - b. request the **Appeal Committee Chair** to appoint an **Appeal Panel** in accordance with **regulation** 5.6 for the **appeal hearing**; and
 - c. fix a date for the **appeal hearing** which shall take place no earlier than 35 **business days** from the date of service of the **notice** and confirm the date,

time, location or format of the **appeal hearing** to the **parties**.

20.2 The **ICAEW representative** shall have 21 days to serve an **answer** to the **notice of appeal** on the **member, affiliate** or **relevant person** and the **Head of Committees and Tribunals**, together with any supporting evidence (including any new evidence in response to new evidence served by the **member, affiliate** or **relevant person** with the **notice of appeal**).

20.3 A **member, affiliate** or **relevant person** may, at any time, withdraw the **appeal** by serving a **notice** to that effect on the **Head of Committees and Tribunals**.

Application for permission to appeal out of time

21.1 A **member, affiliate** or **relevant person** may make an application for permission to appeal after the expiry of the 28 days specified in **regulation** 19.1 by serving on the **Head of Committees and Tribunals** a **notice of appeal** together with a statement of reasons as to why the application was not made within the period specified (and any supporting evidence).

21.2 Upon receipt of an application pursuant to **regulation** 21.1, the **Head of Committees and Tribunals** shall provide a copy of the **notice of appeal** and the statement of reasons to the **ICAEW representative** who shall have 10 **business days** from service of the application to make representations on the statement of reasons.

21.3 After the expiry of 10 **business days**, or receipt of representations from the **ICAEW representative** (if earlier), the **Head of Committees and Tribunals** shall provide a copy of the application, the statement of reasons and any representations to the **Appeal Committee Chair** who shall determine whether the application should be allowed on papers and who shall provide reasons to support their determination. The **Appeal Committee Chair** should only allow the application to proceed if there are good reasons why the **notice of appeal** could not reasonably have been served within the period specified in **regulation** 19.1.

21.4 The **Head of Committees and Tribunals** shall notify the **parties** of the **Appeal Committee Chair's** decision and provide them with a copy of the **Appeal Committee Chair's** reasons.

21.5 Where the **Appeal Committee Chair** determines that the application for permission to appeal out of time should be refused, that determination shall conclude the proceedings.

21.6 Where the **Appeal Committee Chair** determines that the application for permission to appeal out of time should be allowed, the process for hearing the **appeal** shall proceed in accordance with **regulation** 20 and **regulation** 22 and following.

Pre-hearing review

22.1 Once an **Appeal Panel** has been appointed in accordance with **regulation** 20.1, the **Appeal Panel Chair** may, of their own volition, or on application by either **party**, direct the **Head of Committees and Tribunals** to arrange for a **pre-hearing review** to take place prior to the date fixed for the **appeal hearing**.

- 22.2 At a **pre-hearing review**, an **Appeal Panel Chair** may consider any applications for **directions** made by the **parties** and any written representations relating to such applications, and shall give such **directions** as they think necessary for the purpose of securing the just, expeditious or economic disposal of the **appeal proceedings**, which may include **directions** relating to, among other matters:
- a. any proposed amendment of the **notice of appeal** (including the grounds of appeal) or the **answer**;
 - b. the admission of any facts by either **party**;
 - c. the documents to be considered by the **Appeal Panel**;
 - d. the introduction of new evidence;
 - e. any application for oral evidence to be given at the **appeal hearing**;
 - f. changing the date or the length or the venue or platform of the **appeal hearing**.

Conduct of an appeal hearing – general provisions

- 23.1 The **appeal hearing** shall be a **private hearing** and there shall be no prior publicity of the **hearing**.
- 23.2 Where, prior to the start of an **appeal hearing**, a member of an **Appeal Panel**, appointed in accordance with **regulation 20.1**, is unable to attend the **appeal hearing**, the **Appeal Committee Chair** shall appoint another member of the **Appeal Committee** to the **Appeal Panel**. If no suitable member of the **Appeal Committee** is available on the date(s) fixed for the **appeal hearing**, the **Head of Committees and Tribunals** shall fix a new date for the **appeal hearing** and shall notify the **parties** of the new date.
- 23.3 Where, after the start of the **appeal hearing**, any member of the **Appeal Panel** is, for any reason, unable to continue to attend, the **Appeal Panel** will no longer be quorate and may not continue. In such circumstances, the **Head of Committees and Tribunals** shall request the **Appeal Committee Chair** to appoint a new **Appeal Panel** and shall fix a date and time for the **appeal hearing** to take place. No members of the original **Appeal Panel** shall be appointed as members of the new **Appeal Panel**.
- 23.4 If, at any time during an **appeal hearing**, the **Appeal Panel Chair** is for any reason of the opinion that it is impracticable or would be contrary to the interests of justice for the **hearing** to be completed by that panel, they shall so inform the **Appeal Committee Chair** (or, if the **Appeal Panel Chair** is the **Appeal Committee Chair**, an **Appeal Committee Vice-Chair**) who shall thereupon direct that the **appeal** be re-heard by a new **Appeal Panel** so appointed. No members of the original **Appeal Panel** shall be appointed as members of the new **Appeal Panel**.
- 23.5 The **Head of Committees and Tribunals** may appoint an independent and suitably qualified medical expert (other than the **ICAEW appointed expert**) to assist the **Appeal Panel** at the **hearing**.

- 23.6 An **appeal hearing** may proceed in the absence of the **member, affiliate or relevant person** where the **Appeal Panel** is satisfied that the **member, affiliate or relevant person** has been notified of the date, time, location or format of the **appeal hearing** in accordance with these **regulations** and that proceeding is desirable for securing the just, expeditious and economic disposal of the **appeal**.
- 23.7 An **Appeal Panel** may adjourn proceedings of their own volition or on the application of either **party**. A **party** may also make an application to the **Appeal Panel Chair** for a further adjournment before the **appeal hearing** is resumed which must be copied to the other **party** who shall be entitled to make written representations on the application before a decision is made by the **Appeal Panel Chair**.
- 23.8 A **party** may only amend the **notice of appeal** or any **answer** at an **appeal hearing** with the permission of the **Appeal Panel**.
- 23.9 An **Appeal Panel** may deliberate in private in the absence of the **parties** and their representatives at any time.

Conduct of an appeal hearing - order of proceedings

- 24.1 At the start of the **appeal hearing**, the **Appeal Panel** shall consider as a first matter any representations from the **ICAEW representative** on whether the **appeal** falls within one or more of the grounds of appeal set out in **regulation** 19.2. If such representations are made, the **Appeal Panel** shall consider any representations made in response by the **member, affiliate or relevant person**.
- 24.2 Where the **Appeal Panel** considers, after hearing any representations, that the **appeal** does not fall within one or more of the grounds of appeal set out in **regulation** 19.2, it shall dismiss the **appeal**.
- 24.3 Where the **Appeal Panel** considers that the **appeal** falls within one or more grounds of appeal set out in **regulation** 19.2, the **Appeal Panel** shall continue to hear the **appeal** in respect of that ground or grounds only.
- 24.4 An **Appeal Panel**:
- a. shall consider the documents and evidence before it including, if relevant, the record of evidence given before, and the documents produced to, the **Fitness to Practise Panel**;
 - b. shall consider any written representations of the **parties** and shall provide the **parties** with a reasonable opportunity of being heard (either in person or via their representative);
 - c. may, if it thinks fit, re-hear any witness who gave oral evidence before the **Fitness to Practise Panel**; and
 - d. may consider any new evidence in support of an **appeal** brought on the basis of **regulation** 19.2(d) or, in exceptional circumstances (as to which the **Appeal Panel** shall be the sole judge) receive new evidence.

- 24.5 An **appeal hearing** will be limited to a review of the decision of the **Fitness to Practise Panel** unless the **Appeal Panel** considers that in the circumstances of an individual **appeal** it would be in the interests of justice to hold a re-hearing.
- 24.6 The rules as to the admissibility of evidence in a court of law shall not apply. The **Appeal Panel** may determine the conduct of the **appeal hearing** in such manner as it considers appropriate for the clarification of the issues in the **appeal** and generally for the just conduct of the proceedings. The default process shall be:
- a. the **member, affiliate or relevant person**, or their **representative**, shall address the **Appeal Panel** first on the merits of their **appeal**.
 - b. the **ICAEW representative** shall then address the **Appeal Panel** in response.
 - c. where the **Appeal Panel** allows a witness to be called by either **party** to give oral evidence, the witness may, after being questioned by the **party** calling them, be questioned by the other **party**. They may then be re-examined by the **party** calling them but only in relation to the evidence given by them under cross-examination. The **Appeal Panel** may ask questions of any witness at any stage during their evidence. The **Appeal Panel** may, on the application of a **party**, agree that the identity of a witness should not be revealed to the public. Witnesses will not be required to swear an oath or affirm.
 - d. the **parties** may make closing addresses to the **Appeal Panel** with the **member, affiliate or relevant person**, or their **representative**, being heard last.
- 24.7 A shorthand or stenographic note of the **appeal hearing** may be taken, or a recording made, on behalf of the **Appeal Panel**.

Decision of the Appeal Panel

- 25.1 After hearing an **appeal**, the **Appeal Panel** may make an **order** or **orders**, as appropriate, in accordance with **Disciplinary Bye-law** 14.5.
- 25.2 The **Appeal Panel** shall either notify the **parties** of its decision and any **orders** at the end of the **appeal hearing** or shall, as soon as reasonably practicable after the **appeal hearing**, notify the **Head of Committees and Tribunals** of its decision and any **orders** and the **Head of Committees and Tribunals** shall, in turn, provide a copy of the **order(s)** to the **parties**.
- 25.3 The **Appeal Panel** shall provide its **record of decision** as soon as reasonably practicable to the **Head of Committees and Tribunals** who shall, in turn, provide a copy of the **record of decision** to both **parties**.

Costs orders in appeal proceedings

- 26.1 Where an **Appeal Panel** dismisses the **appeal**, the **Appeal Panel** shall consider making a **costs order** against the **member, affiliate or relevant person** in an amount it considers appropriate concerning the costs of the **appeal** having had regard to:
- a. any **costs schedule** which has been served by the **ICAEW representative** on the **member, affiliate or relevant person** and the **Head of Committees and Tribunals** prior to the **appeal hearing**; and
 - b. any statement of means (supported with a statement of truth) and evidence of income and assets provided by the **member, affiliate or relevant person**.
- 26.2 Where an **Appeal Panel** allows an **appeal** against an **order** made by a **Fitness to Practise Panel** in respect of a **fitness to practise application** made by the **PSD Chief Officer** in accordance with **regulation 7**, the **Appeal Panel** may only make a **costs order** against **ICAEW** if it considers that either no reasonable regulator would have made the application and/or that the **PSD Chief Officer** acted in bad faith.
- 26.3 Any **costs order** made by the **Appeal Panel** pursuant to **regulation 26.1** shall, unless a longer period for payment (whether by instalments or not) is allowed by **order** of the **Appeal Panel**, be paid (together with any unpaid **costs order** of the **Fitness to Practise Panel**) within the period of 28 days beginning with the date of the **order**.
- 26.4 Any **costs order** or instalment of costs payable to **ICAEW** in accordance with **regulation 26.1** must be received by **ICAEW** before the close of business on the last day of the period allowed by, or under, these **regulations** for payment (or, if that day is not a **business day**, before the close of business on the next **business day**).
- 26.5 Where:
- a. any **costs order** under these **regulations** is payable by instalments; and
 - b. any instalment is not received by **ICAEW** as required by **regulation 26.4**,
- the whole of the **costs order** (or so much of it as remains unpaid) shall become immediately due for payment.

Review of decisions and correction of errors

- 27.1 The **Appeal Panel Chair** may, of their own volition or upon application by either **party**, review any **order** made by the **Appeal Panel** or the **record of decision** and may, on such review, correct any accidental slip or omission in the **order** or the **record of decision** that does not accurately reflect the **findings**, reasoning and / or **orders** of the **Appeal Panel**.
- 27.2 An application made under **regulation 27.1** shall be made within 28 days from the date the **record of decision** of the **Appeal Panel** was served on the **parties**.

Timing of orders of the Appeal Panel taking effect

28.1 An **order** made by an **Appeal Panel** shall take effect on the date of the **order** unless the **Appeal Panel** directs that it shall take effect from some later date specified in the **order**.

Publicity

29.1 Any **order** of an **Appeal Panel** made under these **regulations** against a **member, affiliate** or **relevant person** shall be published unless the **Appeal Panel** concludes that there are exceptional circumstances which outweigh the public interest in publishing such **orders**. Such publicity shall state only:

- a. the name of the **member, affiliate** or **relevant person**; and
- b. the **orders** that have been made by the **Appeal Panel**,

and shall not disclose any information concerning the **physical or mental health** of the **member, affiliate** or **relevant person**.

29.2 Where the **Appeal Panel** discharges any **orders** of the **Fitness to Practise Panel**, the **order** shall only be published if the **member, affiliate** or **relevant person** so requests.

CONFIDENTIALITY OF MATERIAL AND INFORMATION

30.1 All written material and information provided by either the **PSD Chief Officer** / the **ICAEW representative** or the **member, affiliate** or **relevant person** in connection with the **fitness to practise proceedings** or **appeal proceedings**, shall at all times remain confidential and no such material or information shall be disclosed by **ICAEW** or the **member, affiliate** or **relevant person** (directly or indirectly) except:

- a. to legal advisers for the purposes of the **fitness to practise proceedings** or **appeal proceedings**;
- b. to any other person to whom disclosure is necessary for the purposes of obtaining evidence, information or assistance in connection with the proceedings (including medical experts engaged to prepare reports);
- c. to an insurer where disclosure is required under the terms of any policy or in connection with any application for insurance cover;
- d. where the **member, affiliate** or **relevant person** is a principal in, or employed by, a firm, to a principal in that firm; or
- e. where the disclosure to any person or body undertaking regulatory, disciplinary or law enforcement responsibilities is for the purpose of assisting

that person or body to undertake those responsibilities or as otherwise required or allowed by law.

This **regulation** does not apply to any **order** published by the ***Fitness to Practise Panel*** or ***Appeal Panel*** in accordance with **regulations** 17.2 or 29.1.

30.2 Where a ***Fitness to Practise Panel*** or an ***Appeal Panel*** makes an **order** in respect of a ***fitness to practise application***, details of the **order** shall remain published on the ***ICAEW Disciplinary Database*** for the period set out in ***ICAEW's Disciplinary Database policy***.

REGULATORY REVIEW AND APPEALS REGULATIONS

Citation, authority and commencement

1. These regulations may be cited as the Regulatory Review and Appeals Regulations of the Institute of Chartered Accountants in England and Wales (ICAEW) (the '**regulations**').
2. These **regulations** were made by the **ICAEW Regulatory Board** in accordance with clause 16 of the Supplemental Charter and Principal Bye-law 49 on [TBC] and took effect on [TBC]. Subject to **regulation 8**, from [TBC] the Review Committee Regulations (dated 14 June 2017) and the Appeal Committee Regulations (dated 1 January 2021) are, as they apply in respect of regulatory review and appeal cases, repealed.

Interpretation

3. These **regulations** are made pursuant to the **principal regulations**. If there is any conflict between these **regulations** and the **principal regulations**, the **principal regulations** shall prevail. Except where express reference is made in these **regulations**, words and phrases used in these **regulations** have the same meaning as in the **principal regulations**.

answer means an answer by *ICAEW* to an *appeal* by an *applicant*, which shall include any documentation appended in support of the response.

appeal means an appeal against an *order* of a *Review Panel* brought in accordance with these *regulations*.

Appeal Committee means the Appeal Committee of *ICAEW* whose members are convened into *Appeal Panels* to consider, among other matters, *appeals* made against *orders* of *Review Panels* in *regulatory proceedings*.

Appeal Committee Chair means the person who is appointed from time to time as Chair of *ICAEW's Appeal Committee* by the *RACAC* (or relevant predecessor or successor body). The Appeal Committee Chair may delegate their administrative responsibilities under these *regulations* to the *Head of Committees and Tribunals*.

Appeal Committee Vice-Chair means any person who is appointed from time to time as a Vice-Chair of *ICAEW's Appeal Committee* by the *RACAC* (or relevant predecessor or successor body).

appeal hearing means the substantive *hearing* of the *Appeal Panel* to determine an *appeal*.

Appeal Panel means a panel of the *Appeal Committee* appointed by the *Appeal Committee Chair* from the *joint pool* to determine an *appeal*, which shall comprise three *lay members* and two *members*. One of the three *lay members* shall be either the *Appeal Committee Chair* or an *Appeal Committee Vice-Chair* and they shall be appointed as Chair of the *Appeal Panel*.

Appeal Panel Chair means the member of the *Appeal Committee* who is appointed by the *Appeal Committee Chair* as the Chair of an *Appeal Panel* (and who may be the *Appeal Committee Chair* themselves) and who shall chair an *appeal hearing* and any *pre-hearing review*.

applicant means an individual or firm who or which is the subject of a decision or order of a *regulatory committee*, and who or which, in accordance with the relevant *principal regulations* and these *regulations*:

- a. wishes to apply for a review of the decision or order of the *regulatory committee* to the *Review Committee*; and
- b. where applicable, wishes to appeal any *order* made by a *Review Panel* to the *Appeal Committee*.

Audit Registration Committee means the committee whose members are appointed by the *RACAC* (or relevant predecessor or successor body) and which discharges *ICAEW's* responsibilities and powers contained in the *Audit Regulations*, the *Local Audit Regulations* and the *Licensed Practice Handbook*.

Audit Regulations means the Audit Regulations of *ICAEW* for the time being in force.

business day means Monday to Friday excluding public holidays.

costs order means an *order* against an *applicant* for payment of all or part of the costs incurred by *ICAEW* in connection with the *regulatory proceedings*.

costs schedule means a schedule of the costs incurred by *ICAEW* during the *regulatory proceedings* and which includes the costs of any *pre-hearing reviews*, *review panel hearings* and *appeal hearings*.

directions means either:

- a. steps or actions which both *parties* agree to take in the *regulatory proceedings* prior to a *review panel hearing* or an *appeal hearing*; or
- b. actions which the *parties* are directed to take by a *Review Panel Chair* or an *Appeal Panel Chair* at a *pre-hearing review*.

DPB (Consumer Credit) Handbook means the Designated Professional Body (Consumer Credit) Handbook of *ICAEW* for the time being in force.

DPB (Investment Business) Handbook means the Designated Professional Body (Investment Business) Handbook of *ICAEW* for the time being in force.

Head of Committees and Tribunals means the person within ICAEW's Professional Standards Department who manages the Committees and Tribunals team.

hearing means a hearing of a *Review Panel* or an *Appeal Panel*, whether conducted in person or through video or audio-conferencing facilities, and references to a *hearing* in these *regulations* includes a *re-hearing*.

ICAEW means the Institute of Chartered Accountants in England and Wales.

ICAEW Disciplinary Database means the database of published (adverse) orders against *members*, firms, affiliates and relevant persons, and the related record of decision, which can be located on the Regulatory and Conduct pages of the ICAEW website.

ICAEW Disciplinary Database Policy means the policy governed by the ICAEW *Regulatory Board* which is published on the ICAEW website and which specifies the period during which findings or orders of the disciplinary committees and *regulatory committees* will remain published on the *ICAEW Disciplinary Database*.

ICAEW Regulatory Board means the board to which the ICAEW Council has delegated responsibility for oversight of regulatory matters.

ICAEW representative means a barrister or solicitor or a legally qualified person (within ICAEW's Professional Standards Department or external to ICAEW) who is appointed to have conduct of the *regulatory proceedings*.

Insolvency Licensing Committee means the committee whose members are appointed by the RACAC (or relevant predecessor or successor body) and which discharges ICAEW's responsibilities and powers contained in the *Insolvency Licensing Regulations*.

Insolvency Licensing Regulations means the Insolvency Licensing Regulations of ICAEW for the time being in force.

Investment Business Committee means the committee whose members are appointed by the RACAC (or relevant predecessor or successor body) and which discharges ICAEW's responsibilities and powers contained in the *DPB (Investment Business) Handbook* and *DPB (Consumer Credit) Handbook*.

joint pool means a pool of *members* and *lay members* who have been approved by the RACAC (or relevant predecessor or successor body) as members of the *Review Committee* and *Appeal Committee* for appointment to *Review Panels* and *Appeal Panels*.

lay member means someone who is not and never has been a *member*, affiliate or employee of ICAEW or any other accountancy body. Furthermore, solicitors and

those with legal training will not be regarded as lay members in the *Review Committee* when it determines any review of a decision of the *Legal Services Committee*.

legal assessor means a barrister or solicitor who is not a member of staff of ICAEW and who is appointed by the *Head of Committees and Tribunals* to provide advice on legal and procedural matters to:

- a. a *Review Panel Chair* at any *pre-hearing review*; or
- b. a *Review Panel* at a *review panel hearing*.

Legal Services Committee means the committee whose members are appointed by the RACAC (or relevant predecessor or successor body) and which discharges ICAEW's responsibilities and powers contained in the *Legal Services Regulations*.

Legal Services Regulations means the Legal Services Regulations of ICAEW for the time being in force.

Licensed Practice Handbook means the Licensed Practice Handbook of ICAEW for the time being in force.

Local Audit Regulations means the Local Audit Regulations of ICAEW for the time being in force.

member means a member of ICAEW.

notice means notice in writing.

notice of appeal means the *notice* filed by the *applicant* indicating their wish to appeal the decision of a *Review Panel* in *regulatory proceedings*, which shall specify the ground or grounds on which the *appeal* is brought as specified in the relevant *principal regulations*, and have appended to it any relevant documentation and/or evidence.

order means an order of a *Review Panel* or an *Appeal Panel* (as applicable) made under these *regulations*.

parties means ICAEW and the *applicant* who, or which, is the subject of a decision or order of a *regulatory committee* in *regulatory proceedings*, and 'party' shall refer to any one of them.

pre-hearing review means a *hearing* conducted in accordance with *regulations* 21 – 24 or 70 – 72 to enable, respectively, a *Review Panel Chair* or *Appeal Panel Chair* to make *directions* and/or determine any applications by the *parties* prior to a *review panel hearing* or an *appeal hearing*.

private hearing application means an application by either *party* for all or part of a

review panel hearing or an *appeal hearing* to be held in private.

principal regulations means the *Audit Regulations*, the *Local Audit Regulations*, the *DPB (Investment Business) Handbook*, the *DPB (Consumer Credit) Handbook*, the *Insolvency Licensing Regulations*, the *Legal Services Regulations*, the *Licensed Practice Handbook* and the *Professional Indemnity Insurance Regulations* as amended from time to time.

Professional Indemnity Insurance Committee means the committee whose members are appointed by the *RACAC* (or relevant predecessor or successor body) and which discharges *ICAEW's* responsibilities and powers in the *Professional Indemnity Insurance Regulations*.

Professional Indemnity Insurance Regulations means the Professional Indemnity Insurance Regulations of *ICAEW* for the time being in force.

PSD Chief Officer means the person with operational responsibility for *ICAEW's* Professional Standards Department.

RACAC means the Regulatory and Conduct Appointments Committee which is responsible, among other matters, for the appointment and reappointment of members of the *regulatory committees*, and which is accountable to the *ICAEW Regulatory Board*.

record of decision means the reasons provided by a *Review Panel* or an *Appeal Panel* to support any decision they have taken and any *order* they have made.

regulatory committees means the:

- a. the *Audit Registration Committee*;
- b. the *Insolvency Licensing Committee*;
- c. the *Investment Business Committee*;
- d. the *Legal Services Committee*; and
- e. the *Professional Indemnity Insurance Committee*,

who each have responsibility for making decisions and orders under the relevant *principal regulations* and '*regulatory committee*' means any one of them.

regulatory proceedings means proceedings leading up to, and during, a *review panel hearing* and any *appeal hearing* following a decision of a *regulatory committee*.

representative means a solicitor or barrister or an *ICAEW* member who has been appointed by an *applicant* to represent them or it at any *pre-hearing review*, *review panel hearing* or *appeal hearing* or any other person who has been approved to appear by a *Review Panel Chair*, *Review Panel*, *Appeal Panel Chair* or *Appeal Panel* (as applicable).

review application means an application to the *Review Committee* by an *applicant* for a review of a decision or order of a *regulatory committee*, which shall include a

statement of the ground or grounds on which the review is sought and have appended to it any relevant documentation and/or evidence.

Review Committee means the Review Committee of ICAEW whose members are convened into *Review Panels* to consider *review applications* made in respect of decisions or orders of the *regulatory committees*.

Review Committee Chair means the person who is appointed from time to time as Chair of ICAEW's *Review Committee* by the RACAC (or relevant predecessor or successor body). The *Review Committee Chair* may delegate their administrative responsibilities under these *regulations* to the *Head of Committees and Tribunals*.

Review Committee Vice Chair means the person who is appointed from time to time as Vice-Chair of ICAEW's *Review Committee* by the RACAC (or relevant predecessor or successor body).

Review Panel means a panel of three members of the *Review Committee* appointed by the *Review Committee Chair* from the *joint pool* to consider a *review application*, which shall comprise two *lay members* and one *member*.

Review Panel Chair means a *lay member* of the *Review Committee* who is appointed by the *Review Committee Chair* as the Chair of a *Review Panel* in *regulatory proceedings* and who shall chair a *review panel hearing* and conduct any *pre-hearing review*.

review panel hearing means the *hearing* held by a *Review Panel* to consider a *review application* in relation to a decision or order made by a *regulatory committee*.

service provisions means the provisions governing the service of notices and other documents by the *parties* under the relevant *principal regulations*.

4. The Interpretation Act 1978 applies to these **regulations** in the same way as it applies to an enactment.
5. In these **regulations**:
 - a. unless the context otherwise requires:
 - i. words denoting any gender include all genders and words denoting the singular include the plural and vice versa;
 - ii. any headings are inserted for convenience only and shall not affect the construction of these **regulations**;
 - iii. any reference to a numbered **regulation** is a reference to the **regulation** so numbered among these **regulations**; and
 - iv. any reference to a report includes any appendices to such report;
 - b. any references to legislation include any amendments thereto or replacement legislation;

- c. references to the date of an **order** made by a **Review Panel Chair**, a **Review Panel**, an **Appeal Panel Chair** or an **Appeal Panel** refer to the date on which the **order** was made either at, or following, a **pre-hearing review**, **review panel hearing** or **appeal hearing**;
- d. any reference to a '**notice**' or to matters being 'notified' means **notice** in writing, which may include an electronic communication;
- e. references to a decision or **order** made by a **Review Panel** shall be deemed to be a decision or **order** made by the **Review Committee**;
- f. any reference to a decision being taken by the **Review Committee Chair** or the **Appeal Committee Chair** includes a decision being taken by the **Head of Committees and Tribunals** when acting under powers delegated, respectively, from the **Review Committee Chair** or the **Appeal Committee Chair**.

Service of notices

- 6. Any **notice** or other document required to be served for the purposes of these **regulations** on an **applicant** or **ICAEW** shall be served in accordance with the **service provisions** in the relevant **principal regulations**.

Application of these regulations

- 7. These **regulations** apply to **applicants** who wish to seek a review of a decision or order of a **regulatory committee**, or to appeal an **order** of a **Review Panel** in relation to such decision or order, in accordance with the relevant **principal regulations** and these **regulations**.
- 8. For the purposes of these **regulations**:
 - a. all **review applications** in **regulatory proceedings** are to be conducted in accordance with the provisions of the **principal regulations** and the **ICAEW** regulations governing regulatory reviews in force at the time of the decision or order of the **regulatory committee** giving rise to the review; and
 - b. all appeals in **regulatory proceedings** are to be conducted in accordance with the provisions of the **principal regulations** and the **ICAEW** regulations governing regulatory appeals in force at the time of the order of the **Review Panel** giving rise to the appeal.

The constitution of the Review Panels and Appeal Panels

- 9. The **Review Committee** and the **Appeal Committee** have a **joint pool** of members who can be appointed to **Review Panels** and **Appeal Panels** by the **Review Committee Chair** or **Appeal Committee Chair** (as applicable).

10. No member of the **joint pool** who has been appointed to a **Review Panel** to consider a **review application** may be appointed as a member of an **Appeal Panel** appointed subsequently in respect of the same **regulatory proceedings**.
11. Where there are difficulties in appointing **Review Panels** and **Appeal Panels** with the right constitution of members, the **Review Committee Chair** or the **Appeal Committee Chair** (as applicable) may co-opt members of the Conduct Committee or the Tribunals Committee as temporary members of the **Review Committee** or **Appeal Committee** provided that the co-opted person has not had any dealings with the case previously as a member of their own committee.

APPLICATION FOR A REVIEW OF A DECISION OF A REGULATORY COMMITTEE

Process to make the application

12. Where an **applicant** wishes to apply for a review by the **Review Committee** of a decision or order of a **regulatory committee**, they must make a **review application** to the **Head of Committees and Tribunals** within the time period specified in the relevant **principal regulations**.
13. Any **review application** served pursuant to **regulation 12** shall:
 - a. state the reasons why the **applicant** considers the decision or order of the **regulatory committee** should be reviewed; and
 - b. if the **applicant** wishes to apply for a private **hearing**, include any **private hearing application**.
14. Upon receipt of a **review application**, the **Head of Committees and Tribunals** shall as soon as reasonably practicable:
 - a. provide a copy of the **review application** and any **private hearing application** to an **ICAEW representative** appointed by the **PSD Chief Officer**;
 - b. request the **Review Committee Chair** to appoint a **Review Panel** to review the decision or order of the **regulatory committee**;
 - c. fix a date for the **review panel hearing** which (unless the **applicant** and the **ICAEW representative** agree to waive or vary the requirements for **notice** and the service of documents prior to the **hearing** under these **regulations**) shall be at least 40 **business days** from the receipt of the **review application**; and

- d. provide **notice** of the date, time, location or format of the **review panel hearing** to the **parties**.
15. Within 20 **business days** of being served with a copy of the **review application**, the **ICAEW representative** shall serve on the **applicant** and the **Head of Committees and Tribunals**:
 - a. any response to the **review application**;
 - b. copies of any documents which the **ICAEW representative** wishes the **Review Panel** to consider;
 - c. copies of any witness statements which the **ICAEW representative** wishes the **Review Panel** to consider;
 - d. any **private hearing application**

and shall indicate whether they believe a **pre-hearing review** should be fixed.

16. If the **applicant** wishes to make any written representations on the **ICAEW representative's** response, or serve any further documents or witness statements for consideration by the **Review Panel**, the **applicant** shall do so within 10 **business days** of being served with the documents served by the **ICAEW representative** in accordance with **regulation 15**.

An application for permission to apply for a review outside of the time limits

17. An **applicant** may make a **review application** after the expiry of the time period specified in the relevant **principal regulations** by serving a **review application** containing the information set out in **regulation 13** on the **Head of Committees and Tribunals** together with a statement of reasons why the **review application** could not have been made within the time period specified.
18. Upon receipt of a late **review application** pursuant to **regulation 17**, the **Head of Committees and Tribunals** shall provide a copy of the **review application** and statement of reasons to the **ICAEW representative** who shall have 10 **business days** from the date of service of the late **review application** to make representations on the reasons for late service.
19. After the expiry of 10 **business days**, or the receipt of representations from the **ICAEW representative** (if earlier), the **Head of Committees and Tribunals** shall provide a copy of the late **review application** and any representations to the **Review Committee Chair** (or, in their absence, to the **Review Committee Vice-Chair**) who shall determine on the papers whether the late **review application** should be allowed to proceed and who shall provide written reasons for their decision. The **Head of Committees and Tribunals** shall notify the **parties** of the **Review Committee Chair's** decision and provide them with a copy of the **Review**

Committee Chair's reasons.

20. Where the **Review Committee Chair** determines that the late **review application** should not be allowed to proceed, that determination shall conclude the **regulatory proceedings**. Where the **Review Committee Chair** determines that the **review application** should be allowed to proceed, **regulations** 14 - 16 and 21 onwards shall apply.

Pre-hearing review

21. A **pre-hearing review** shall be arranged by the **Head of Committees and Tribunals** to take place where:
- a. either **party** has made a **private hearing application** in accordance with **regulations** 13 or 15;
 - b. the **Review Panel Chair** considers that a **pre-hearing review** should take place in order to make **directions** which are necessary or desirable for securing the just, expeditious, and economical disposal of the **review application**;
 - c. either **party** wishes to make an application for the **Review Panel** to hear at the same time two or more **review applications** made by the **applicant**;
 - d. either **party** wishes to make an application for the **Review Panel** to hear at the same time **review applications** from two or more **applicants**;
 - e. either **party** wishes the **Review Panel Chair** to make any further **directions** including permission to serve more evidence beyond that already served in accordance with **regulations** 15 and 16.

Any **pre-hearing review** shall be scheduled to take place at least 5 **business days** prior to the date fixed for the **review panel hearing** and following the expiry of the deadline for service of documents by the **parties** under **regulations** 15 and 16.

22. A **pre-hearing review** shall be conducted by the **Review Panel Chair** in private. The **Review Panel Chair** may be assisted at the **pre-hearing review** by a **legal assessor** appointed by the **Head of Committees and Tribunals**.
23. The **Review Panel Chair** shall determine how the **pre-hearing review** is conducted and shall ensure that all **parties** have a fair opportunity to make representations (either verbally or in writing) on any proposed **directions**, which may include **directions** in relation to the service of further evidence and/or the postponement of the **review panel hearing**.
24. When considering a **private hearing application**, a **Review Panel Chair** shall only make an **order** that a **review panel hearing** be held in private where the **Review Panel Chair** concludes that the press and public should be excluded from the

whole, or part, of the **review panel hearing** in the interests of justice and / or due to the exceptional circumstances of the case which outweigh the public interest in the **review panel hearing** being held in public.

Review panel hearings – general provisions

25. Where a **review panel hearing** is to be held in public, the name of the **applicant**, the nature of the **review application**, and the date, time, location or format of the **hearing** shall be published on the **ICAEW** website at least 7 days prior to the **review panel hearing**.
26. At any time prior to the commencement of a **review panel hearing**, an **applicant** or **ICAEW** may apply for a postponement of the **review panel hearing** either at a **pre-hearing review** or by sending the application to the **Head of Committees and Tribunals**. Where a **party** serves an application on the **Head of Committees and Tribunals**, they shall serve a copy of the application on the other **party** who may make representations as to whether the postponement should be granted.
27. Any such application will be determined by the **Review Panel Chair** on the papers and the **Review Panel Chair's** decision shall be final. If the **Review Panel Chair** allows a postponement, the **Head of Committees and Tribunals** shall notify the **applicant** and **ICAEW** of the new date, time, location or format of the rearranged **review panel hearing**.
28. The **Review Panel** shall consider the matter afresh and may consider any new information and/or evidence put forward by the **applicant** (or their **representative**) or the **ICAEW representative**. The **Review Panel** may be assisted at the **review panel hearing** by a **legal assessor** appointed by the **Head of Committees and Tribunals**.
29. If, prior to the start of a **review panel hearing**, a member of a **Review Panel**, appointed in accordance with **regulation 14**, is unable to attend the **review panel hearing**, the **Review Committee Chair** shall appoint another member to the **Review Panel** from the **joint pool**. If no suitable member of the **Review Committee** is available on the date(s) fixed for the **review panel hearing**, the **Head of Committees and Tribunals** shall fix a new date for the **review panel hearing** and shall notify all **parties** of the new date.
30. If, after the start of the **review panel hearing**, any member of the **Review Panel** is, for any reason, unable to continue to attend, the **Review Panel** will no longer be quorate and may not continue. In such circumstances, the **Head of Committees and Tribunals** shall request the **Review Committee Chair** to appoint a new **Review Panel** and shall fix a date and time for the **review panel hearing** to take place. No members of the original **Review Panel** shall be appointed as members of the new **Review Panel** but the **legal assessor** may be re-appointed.
31. If, at any time during a **review panel hearing**, the **Review Panel Chair** is, for any reason, of the opinion that it is impracticable, or would be contrary to the interests of

justice, for the **review panel hearing** to be completed by that **Review Panel**, they shall so inform the **Review Committee Chair** who shall thereupon direct that the **review application** be re-heard by a new **Review Panel** so appointed. (If the **Review Panel Chair** is the **Review Committee Chair**, they shall direct that the **review application** be re-heard by a new **Review Panel**, but the **legal assessor** may be re-appointed).

32. Any **review panel hearing** may proceed in the absence of the **applicant** (and their **representative**) where the **Review Panel** is satisfied that the **applicant** has been notified of the date, time, location or format of the **review panel hearing** in accordance with these **regulations** and that proceeding is desirable for securing the just, expeditious and economic disposal of the **review application**.
33. A **Review Panel** may adjourn proceedings of its own volition or on the application of either **party**.
34. A **Review Panel** may deliberate in private in the absence of the **parties** and their representatives at any time.
35. The **Review Panel** may exclude from the **review panel hearing**, or from part of the **review panel hearing**, any person or persons whose conduct has disrupted or, in the opinion of the **Review Panel**, is likely to disrupt the **hearing**.

Conduct of a review panel hearing

36. The **review panel hearing** shall be held in public unless the **Review Panel Chair** has determined at a **pre-hearing review** that some, or all, of the **review panel hearing** shall be held in private in the interests of justice and/or due to the exceptional circumstances of the case which outweigh the public interest in the **review panel hearing** being conducted in public.
37. Unless a **Review Panel** otherwise directs, the order of proceedings will be as follows:
 - a. the **applicant**, or their **representative**, shall set out the reasons why they consider that the **Review Panel** should reach a different decision to the **regulatory committee**;
 - b. the **ICAEW representative** shall respond to the reasons submitted by the **applicant**;
 - c. a witness for one **party** may be questioned by the other **party** or their representative and by members of the **Review Panel**;
 - d. a witness so questioned may be re-examined by the **party** calling them or their representative only in relation to any matter referred to in cross-examination;

- e. the **parties** may each make a closing address to the **Review Panel** with the **applicant** addressing the panel last.
38. The rules of judicial evidence will not apply. A **Review Panel** may, at its discretion, treat as evidence any testimony whether in written, oral, or other form.
39. No objection shall be upheld to any technical fault in the procedure adopted by a **Review Panel** provided that the proceedings are fair and that the relevant **regulations** have been complied with.
40. A shorthand or stenographic note of the **review panel hearing** may be taken, or a recording made of it, on behalf of the **Review Panel**.

Determinations of a Review Panel

41. A **Review Panel** may make any of the decisions or orders which were available under the relevant **principal regulations** to the **regulatory committee** whose decision or order is the subject of the **review application**. Any **order** shall not come into effect until the end of the period provided for an **appeal** to be made in accordance with the relevant **principal regulations** and will not take effect if an **appeal** is commenced in accordance with **regulation 57** unless the **appeal** is withdrawn.
42. Any **order** made by a **Review Panel** in respect of a **review application** relating to a decision of the **Professional Indemnity Insurance Committee** shall be final and shall conclude the **regulatory proceedings**. The **order** shall take effect on service of **notice** of the **order** on the **applicant**.
43. A **Review Panel** shall produce a **record of decision** as soon as reasonably practicable after the **review panel hearing**, a copy of which shall be provided by the **Head of Committees and Tribunals** to the **parties**.

Costs orders by a Review Panel

44. A **Review Panel** may, in its absolute discretion, make a **costs order** against the **applicant** in respect of all or part of **ICAEW's** costs in responding to the **review application**. Prior to determining the amount of any **costs order**, the **Review Panel** shall:
- a. hear and consider submissions from the **applicant** (or their **representative**) and the **ICAEW representative** in respect of the **costs schedule** provided by the **ICAEW representative** to the **Review Panel** and the **applicant** at least 3 **business days** prior to the **review panel hearing**; and
 - b. have regard to any statement of means, supported with a signed statement of truth, and evidence of income and assets provided by the **applicant**.

45. Save in the case of any **appeal**, any **costs order** must be paid by the **applicant** within 30 days beginning with the date on which **notice** of the decision is served on the **applicant**, unless a longer period for payment (whether by instalments or not) is specified in the **order** of the **Review Panel**.

Withdrawal of application

46. An **applicant** may withdraw a **review application** by **notice** in writing delivered to the **Head of Committees and Tribunals** at any time up to 15 **business days** prior to the **review panel hearing** with no adverse costs order. Where the **review application** is withdrawn by the **applicant**, the decision or order of the **regulatory committee** shall take effect on service of the **notice** by the **applicant** on the **Head of Committees and Tribunals**.
47. If an **applicant** withdraws a **review application** less than 15 **business days** before the **review panel hearing**, the **ICAEW representative** may request the **Head of Committees and Tribunals** to maintain the date of the **review panel hearing** for the purpose of the **Review Panel Chair** (sitting alone) considering an application for a **costs order** to be made against the **applicant**. At that **hearing**, the **Review Panel Chair** may make a **costs order** against the **applicant** after following the procedure set out in **regulation 44**.

Publication of orders and records of decision of Review Panels

48. Subject to **regulation 54**, where a **Review Panel** makes an adverse **order** against an **applicant**, the **order** shall be published as soon as practicable following the **review panel hearing**. If the **order** is published before the period allowed for a **notice of appeal** to be filed under the relevant **principal regulations**, any publication shall make clear that such **order** may be subject to appeal (or, in the case of an **appeal**, that an **appeal** has been brought).
49. The **record of decision** of a **Review Panel** shall not be published until after the expiry of the period allowed for a **notice of appeal** to be filed under the relevant **principal regulations** and shall be published as soon as practicable thereafter if no such **notice of appeal** is filed.
50. If a **notice of appeal** is filed against the **order** of the **Review Panel**, the **record of decision** of the **Review Panel** shall not be published unless, and until, either the **appeal** is abandoned or the **appeal** is dismissed by an **Appeal Panel**.
51. Where a **Review Panel** upholds the **review application**, the **order** and **record of decision** of the **Review Panel** shall only be published if the **applicant** so requests.
52. Unless the **Review Panel** directs, the **record of decision** of the **Review Panel** shall state the name of the **applicant** and the **orders** (if any) made against them but need not include the name of any other person or body concerned in the case. A **Review Panel** may only direct that the name of the **applicant** be redacted from any **order** or

the **record of decision** where, in its opinion, there are exceptional circumstances which outweigh the public interest in its publication.

53. Where a **Review Panel** makes an adverse **order** against an **applicant**, details of the **order** (other than an **order** in relation to a **review application** under the **Professional Indemnity Insurance Regulations**) shall remain published on the **ICAEW Disciplinary Database** for the period set out in **ICAEW's Disciplinary Database policy**.
54. Where the **Review Panel** rejects a **review application** in relation to a decision of the **Professional Indemnity Insurance Committee**, it may redact (for publication) parts of the **order** or **record of decision** which would reveal commercially sensitive information regarding the **applicant's** insurance arrangements.

APPEALS TO THE APPEAL COMMITTEE

55. Subject to **regulation 56**, an **applicant** may appeal an **order** of a **Review Panel** to the **Appeal Committee** in accordance with the relevant **principal regulations** unless:
 - a. the **order** made by the **Review Panel** is in relation to a **review application** in accordance with the **Professional Indemnity Insurance Regulations** (where the decision of the **Review Panel** is final); or
 - b. the **order** made by the **Review Panel** is in relation to a **review application** in accordance with the **Legal Services Regulations** (where an appeal must be made to the Appeal Tribunal specified in the **Legal Services Regulations**); or
 - c. the only **order** being appealed is a **costs order** made by the **Review Panel**.
56. An **appeal** may only be made against an **order** made by a **Review Panel** on one or more of the grounds set out in the relevant **principal regulations**.

Service of a notice of appeal

57. An **applicant** may commence an appeal by serving a **notice of appeal** on the **Head of Committees and Tribunals** within the time period specified in the relevant **principal regulations**.
58. Upon receipt of a **notice of appeal**, the **Head of Committees and Tribunals** shall as soon as reasonably practicable:
 - a. provide a copy of the **notice of appeal** to the **ICAEW representative**;
 - b. request the **Appeal Committee Chair** to appoint an **Appeal Panel** for the **appeal hearing**; and
 - c. fix a date for the **appeal hearing** which shall, unless both **parties** consent to a shorter notice period, be no earlier than 35 **business days** from the date of

service of the **notice** and confirm the date, time, location or format of the **appeal hearing** to the **parties**.

59. The **ICAEW representative** shall have 15 **business days** to serve an **answer** to the **notice of appeal** on the **applicant** and the **Head of Committees and Tribunals**, together with any supporting evidence (an application will need to be made at a **pre-hearing review** for the admission of any new evidence).
60. An **applicant** may, at any time, withdraw an **appeal**, by serving a **notice** to that effect on the **Head of Committees and Tribunals**. The **order** of the **Review Panel** will come into effect immediately on receipt of that **notice** by the **Head of Committees and Tribunals** who shall arrange for the **order** and the **record of decision** of the **Review Panel** to be published as soon as practicable in accordance with **regulations 48 - 54**.

Application for permission to appeal out of time

61. An **applicant** may make an application for permission to appeal after the expiry of the period specified in the relevant **principal regulations** by serving on the **Head of Committees and Tribunals** a **notice of appeal** together with a statement of reasons as to why the application was not made within the period specified (and any supporting evidence).
62. Upon receipt of an application pursuant to **regulation 61**, the **Head of Committees and Tribunals** shall provide a copy of the **notice of appeal** and the statement of reasons to the **ICAEW representative** who shall have 10 **business days** from service of the application to make representations on the statement of reasons.
63. After the expiry of 10 **business days**, or receipt of representations from the **ICAEW representative** (if earlier), the **Head of Committees and Tribunals** shall provide a copy of the application, the statement of reasons and any representations to the **Appeal Committee Chair** who shall determine on the papers whether the application should be allowed and who shall provide reasons to support their determination. The **Appeal Committee Chair** shall only allow the application to proceed if they consider that there are good reasons why the **notice of appeal** could not reasonably have been served by the **applicant** within the time limit specified in the **principal regulations**.
64. The **Head of Committees and Tribunals** shall notify the **parties** of the **Appeal Committee Chair's** decision and provide them with a copy of the **Appeal Committee Chair's** reasons.
65. Where the **Appeal Committee Chair** determines that the application for permission to appeal out of time should be refused, that determination shall conclude the **regulatory proceedings**.
66. Where the **Appeal Committee Chair** determines that the application for permission to appeal out of time should be allowed, the process for hearing the **appeal** shall proceed in accordance with **regulations 57-60** and **regulation 67** onwards.

Private hearing applications

67. **Appeal hearings in regulatory proceedings** shall be held in public unless a **party** makes a successful **private hearing application**.
68. Where an **appeal hearing** is to be held in public, the name of the **applicant**, the nature of the **appeal**, and the date, time, location or format of the **hearing** shall be published on the **ICAEW** website at least 7 days prior to the **appeal hearing**.
69. If a **party** wishes to apply for all or part of any **appeal hearing** to be held in private, a **private hearing application** must be made in writing to the **Head of Committees and Tribunals** within 10 **business days** of the **parties** being notified of the date fixed for the **appeal hearing**, setting out the reasons why the **party** considers that the **appeal hearing** should be held in private.

Pre-hearing review

70. Once an **Appeal Panel** has been appointed in accordance with **regulation 58**, the **Appeal Panel Chair** may, of their own volition, or on an application by either **party** (including a request to consider a **private hearing application**) direct the **Head of Committees and Tribunals** to arrange for a **pre-hearing review** to take place prior to the date fixed for the **appeal hearing**.
71. At a **pre-hearing review**, an **Appeal Panel Chair** may consider any applications for **directions** made by the **parties** (made either orally at the **pre-hearing review** or in written representations) and shall give such **directions** as they think necessary for the purpose of securing the just, expeditious or economic disposal of the **regulatory proceedings**, which may include **directions** relating to:
 - a. whether the **Appeal Panel** should hear at the same **appeal hearing** more than one **appeal** by an **applicant** against **orders** made by **Review Panels**;
 - b. whether the **Appeal Panel** should hear **appeals** by two or more **applicants** in relation to separate **regulatory proceedings** at the same **appeal hearing**;
 - c. any amendment of the **notice of appeal** (including the grounds of appeal) or the **answer**;
 - d. the admissibility of any new evidence by either **party**;
 - e. the admission of any facts by either **party**;
 - f. the documents to be considered by the **Appeal Panel**;
 - g. whether the **appeal hearing** or part of the **appeal hearing** should be held in private (where this is requested by a **party**, an application must have been made prior to the **pre-hearing review** in accordance with **regulation 69**);
 - h. any application for oral evidence to be given at the **appeal hearing**;
 - i. changing the date or the length or the venue or platform of the **appeal hearing**.

72. When considering a **private hearing application**, an **Appeal Panel Chair** shall only make an **order** that an **appeal hearing** be held in private where they conclude that the press and public should be excluded from the whole, or part, of an **appeal hearing** in the interests of justice and/or due to the exceptional circumstances of the case which outweigh the public interest in the **appeal hearing** being held in public.

Conduct of an appeal hearing - general provisions

73. Where, prior to the start of an **appeal hearing**, a member of an **Appeal Panel**, appointed in accordance with **regulation 58**, is unable to attend the **appeal hearing**, the **Appeal Committee Chair** shall appoint another member of the **Appeal Committee** to the **Appeal Panel**. If no suitable member of the **Appeal Committee** is available on the date(s) fixed for the **appeal hearing**, the **Head of Committees and Tribunals** shall fix a new date for the **appeal hearing** and shall notify all **parties** of the new date.
74. Where, after the start of the **appeal hearing**, any member of the **Appeal Panel** is, for any reason, unable to continue to attend, the **Appeal Panel** will no longer be quorate and may not continue. In such circumstances, the **Head of Committees and Tribunals** shall request the **Appeal Committee Chair** to appoint a new **Appeal Panel** and shall fix a date and time for the **appeal hearing** to take place. No members of the original **Appeal Panel** shall be appointed as members of the new **Appeal Panel**.
75. If, at any time during an **appeal hearing**, the **Appeal Panel Chair** is for any reason of the opinion that it is impracticable or would be contrary to the interests of justice for the **hearing** to be completed by that panel, they shall so inform the **Appeal Committee Chair** or any **Appeal Committee Vice-Chair** who shall thereupon direct that the **appeal** be re-heard by a new **Appeal Panel** so appointed. (If the **Appeal Panel Chair** is the **Appeal Committee Chair**, they shall direct that the **appeal** be re-heard by a new **Appeal Panel**).
76. An **appeal hearing** may proceed in the absence of the **applicant** where the **Appeal Panel** is satisfied that the **applicant** has been notified of the date, time, location or format of the **appeal hearing** in accordance with these **regulations** and that proceeding is desirable for securing the just, expeditious and economic disposal of the **appeal**.
77. An **Appeal Panel** may adjourn proceedings of their own volition or on the application of either **party**. A **party** may also make an application to the **Appeal Panel Chair** for a further adjournment before the **appeal hearing** is resumed, which must be copied to the other **party** who shall be entitled to make written representations on the application before a decision is made by the **Appeal Panel Chair**.
78. A **party** may only amend the **notice of appeal** or any **answer** at an **appeal hearing** with the permission of the **Appeal Panel**.
79. An **Appeal Panel** may deliberate in private in the absence of the **parties** and their representatives at any time.

80. The **Appeal Panel** may exclude from the **appeal hearing**, or from part of the **appeal hearing**, any person or persons whose conduct has disrupted or, in the opinion of the **Appeal Panel**, is likely to disrupt the **hearing**.
81. Unless it directs otherwise, or it is agreed between the **parties**, an **Appeal Panel** will not receive oral evidence.
82. An **appeal hearing** will be limited to a review of the **order** of the **Review Panel** unless the **Appeal Panel** considers that in the circumstances of the individual appeal it would be in the interests of justice to hold a re-hearing.

Conduct of the appeal hearing - order of proceedings

83. At the start of the **appeal hearing**, the **Appeal Panel** shall consider as a first matter any representations from the **ICAEW representative** on whether the **appeal** falls within one or more of the grounds of appeal set out in the relevant **principal regulations**. If such representations are made, the **Appeal Panel** shall consider any representations made in response by the **applicant**.
84. Where the **Appeal Panel** considers, after hearing any representations, that the **appeal** does not fall within one or more of the grounds of appeal set out in the relevant **principal regulations**, it shall dismiss the **appeal**.
85. Where the **Appeal Panel** considers that the **appeal** falls within one or more grounds of appeal set out in the relevant **principal regulations**, the **Appeal Panel** shall continue to hear the **appeal** in respect of that ground or grounds only.
86. At an **appeal hearing**, the **Appeal Panel**:
 - a. shall consider the documents and evidence before it including, if relevant, the record of evidence given before, and the documents produced to, the **Review Panel**;
 - b. shall consider any written representations of the **parties** and shall provide the **parties** with a reasonable opportunity of being heard (either in person or via their representative);
 - c. may, if it thinks fit, re-hear any witness who gave oral evidence before the **Review Panel**;
 - d. may consider any evidence forming a ground for the appeal under the relevant **principal regulations**, or, in exceptional circumstances (as to which the **Appeal Panel** shall be the sole judge) receive new evidence.
87. The rules as to the admissibility of evidence in a court of law shall not apply. The **Appeal Panel** may determine the conduct of the **appeal hearing** in such manner as it

considers appropriate for the clarification of the issues in the **appeal** and generally for the just conduct of the proceedings. The default process shall be:

- a. The **applicant**, or their **representative**, shall address the **Appeal Panel** first on the merits of their **appeal**.
 - b. The **ICAEW representative** shall then address the **Appeal Panel** in response.
 - c. Where a witness is called by either **party**, the witness may, after being questioned by the **party** calling them, be questioned by the other **party**. They may then be re-examined by the **party** calling them but only in relation to the evidence given by them under cross-examination. The **Appeal Panel** may ask questions of any witness at any stage during their evidence. The **Appeal Panel** may, on the application of a **party**, agree that the identity of a witness should not be revealed to the public. Witnesses will not be required to swear an oath or affirm.
 - d. The **parties** may make closing addresses to the **Appeal Panel** with the **applicant** being heard last.
88. A shorthand or stenographic note of the **appeal hearing** may be taken, or a recording made, on behalf of **Appeal Panel**.

Orders available to the Appeal Panel

89. After hearing an **appeal** against an **order** of a **Review Panel**, the **Appeal Panel** must determine the **appeal** in accordance with the powers set out in the relevant **principal regulations**.
90. The **Appeal Panel** shall either notify the **parties** of its decision and any **orders** at the end of the **appeal hearing** or shall, as soon as reasonably practicable after the **appeal hearing**, notify the **Head of Committees and Tribunals** of its decision and any **orders**. The **Head of Committees and Tribunals** shall provide a copy of the **order(s)** to the **parties**. An **order** made by an **Appeal Panel** under these **regulations** shall take effect as specified in the relevant **principal regulations** (or, where this is not specified, on the date of the **order** unless the **Appeal Panel** directs that it shall take effect from some later date specified in the **order**). The **Appeal Panel** shall also provide its **record of decision** as soon as reasonably practicable to the **Head of Committees and Tribunals** who shall provide a copy of the **record of decision** to both **parties**.
91. Where an **order** is made by an **Appeal Panel** to remit a matter back to the **Review Committee for hearing** in accordance with the relevant **principal regulations**, it shall follow the process set out in **regulations 25 – 54**.

Costs orders

92. If an **Appeal Panel** dismisses an **appeal**, it may make a **costs order** against the **applicant** in accordance with the relevant **principal regulations**. Prior to determining the amount of any **costs order**, the **Appeal Panel** shall:
- a. hear and consider submissions from the **applicant** (or their **representative**) and the **ICAEW representative** in respect of the **costs schedule** provided by the **ICAEW representative** to the **Appeal Panel** and the **applicant** at least 3 **business days** prior to the **appeal panel hearing**; and
 - b. have regard to any statement of means, supported with a signed statement of truth, and evidence of income and assets provided by the **applicant**.
93. Unless a longer period for payment (whether by instalments or not) is allowed, any **costs order** must be paid by the **applicant** within 30 days beginning with the date on which **notice** of the decision is served on the **applicant**.
94. No **costs order** may be made against **ICAEW**.

Review of decisions and correction of errors

95. The **Appeal Panel Chair** may, of their own volition or upon application by either **party**, review any **order** made by the **Appeal Panel** or the **record of decision** and may, on such review, correct any accidental slip or omission in the **order** or the **record of decision** that does not accurately reflect the findings, reasoning and / or **orders** of the **Appeal Panel**.
96. An application made under **regulation** 95 shall be made within 28 days from the date the **record of decision** of the **Appeal Panel** was served on the **parties**.

Publication of orders and records of decision of Appeal Panels

97. Where an **Appeal Panel** dismisses an **appeal**, its **order** shall be published as soon as practicable together, with the respective **records of decision** of the **Review Panel** and the **Appeal Panel**.
98. Unless the **Appeal Panel** otherwise directs, the **order** and **record of decision** of the **Appeal Panel** shall state the name of the **applicant** but need not include the name of any other person or body concerned in the case. An **Appeal Panel** may only direct that the name of the **applicant** be redacted from any **order** or the **record of decision** where, in its opinion, there are exceptional circumstances which outweigh the public interest in full publication.
99. Where an **Appeal Panel** makes an adverse **order** in respect of an **applicant**, details of the **order** shall remain published on the **ICAEW Disciplinary Database** for the period set out in **ICAEW's Disciplinary Database policy**.

100. Where an **Appeal Panel** allows the **appeal**, a notice shall be published on the **ICAEW** website indicating that the previous decision of the **Review Panel** was successfully appealed. The **order** and **record of decision** of the **Appeal Panel** shall only be published if the **applicant** so requests.

Confidentiality

101. All written material and information provided by either the **applicant** or **ICAEW** in connection with the **regulatory proceedings**, shall at all times remain confidential and no such material or information shall be disclosed (directly or indirectly) except:

- a. to legal advisers for the purposes of the **regulatory proceedings**;
- b. to any person to whom disclosure is necessary for the purposes of obtaining evidence, information or assistance in connection with the **regulatory proceedings**;
- c. where information is disclosed indirectly to members of the public in the course of a public hearing;
- d. to an insurer where disclosure is required under the terms of any policy or in connection with any application for insurance cover;
- e. where the **applicant** is a principal in, or employed by, a firm, to a principal in that firm; or
- f. where the disclosure to any person or body undertaking regulatory, disciplinary or law enforcement responsibilities is for the purpose of assisting that person or body to undertake those responsibilities or as otherwise required or allowed by law.

This **regulation** does not apply or to any advance notice of the **review panel hearing** or **appeal hearing**, or to any **order** or **record of decision** published by the **Review Panel** or **Appeal Panel** in accordance with these **regulations**



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Legal Services *Regulations*

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1 GENERAL

The Legal Services Act 2007 permits two methods by which a firm may undertake probate work:

- as an authorised firm in which case all of the principals (and shareholders in the case of a company) have to be individually authorised to undertake probate work;
- as a licensed firm if all the principals (and shareholders in the case of a company) are not individually authorised to undertake probate work. Additional requirements then apply.

Authorisation is by an approved regulator, licensing is by a licensing authority and ICAEW is both. Once a firm is authorised or licensed under these regulations it is an 'accredited probate firm' and it has to comply with these regulations. Some regulations may only apply to a licensed firm, such as the requirement to appoint a Head of Finance and Administration and a Head of Legal Practice.

In addition to the regulatory requirements for probate work, a number of important regulatory provisions are applied to estate administration when carried out by a firm conducting probate work. 'Authorised work' for the purposes of these regulations includes estate administration.

As a licensing authority ICAEW has statutory powers to intervene in the business of firms which it has licensed. These powers and the types of default by a licensed firm (such as breaches of licence conditions or insolvency events) which trigger them are set out in schedule 14 of the Act. ICAEW uses similar powers and applies similar principles as an approved regulator in the case of authorised firms.

It is a requirement of the Act that in discharging its regulatory functions, ICAEW, as an approved regulator, must act in a way which is compatible with the regulatory objectives set out in section 1 of the Act, and in the way which it considers most appropriate for the purpose of meeting those objectives.

All individuals who are in charge of, or control the undertaking of, probate work in an accredited probate firm must be individually authorised to do so under the Act. That authorisation may have been granted by ICAEW or another approved regulator.

ICAEW must be given full details of any non-authorised person who holds or is expected to hold a material interest (see Regulation 6.2) in a licensed firm or a firm which applies to be licensed, or of any change in the holding of such an interest. Such a holding is subject to approval by ICAEW which may be granted unconditionally or subject to conditions.

In these regulations, guidance is given to help firms apply the regulations. This is printed in light type and the regulations are in **bold** type with defined terms in ***bold italics***.

1.1 **These regulations were made originally by the ICAEW Professional Standards Board pursuant to Clause 16 of the Supplemental Royal Charter of 1948 and Principal By-law 49, and they came into force on 14 August 2014. They were amended by the ICAEW Regulatory Board on 23 February 2017 and, most recently, on [TBC].**

1.2 **These regulations only apply to the grant of probate or letters of administration in England and Wales.**

The definition of probate work, and therefore the work that can be authorised by accreditation under these regulations, consists only of preparing papers to apply for a grant of probate or letters of administration. If a firm is asked to prepare papers to oppose a grant of probate, then the client should be requested to seek advice from a suitably authorised person.

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There are different arrangements in Northern Ireland and Scotland (in the latter case probate is known as 'confirmation'). Thus a firm cannot undertake probate (or confirmation) work in Northern Ireland and Scotland unless specifically permitted to do so under the law of those countries.

1.3 These *regulations* apply to firms seeking accreditation and to accredited probate firms authorised or licensed under these regulations. The regulations also apply to principals and employees of the firm. In certain instances the regulations continue to apply even if accreditation has ceased.

1.4 Any notice or document may be served on ICAEW by sending it to:

Professional Conduct Department
ICAEW
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ

1.5 Any notice, decision, order or other document which needs to be served on a firm, member, probate affiliate or other person under these regulations will be delivered by hand, or sent by email, fax or post:

- a if it is delivered by hand to the addressee, service will take effect immediately;
- b if sent by email, it will be sent to the most recent email address given by the addressee and service will take effect immediately;
- c if sent by fax, it will be sent to the most recent fax number given by the addressee and service will take effect immediately; or
- d if sent by post, it will be sent to the latest address given by the addressee and service will take effect two business days after posting.

DEFINITIONS AND INTERPRETATION

1.6 The words listed below shall have the meanings given:

Accountancy body	<ul style="list-style-type: none">• ICAEW;• Institute of Chartered Accountants of Scotland;• Chartered Accountants Ireland;• Institute of Chartered Accountants in Australia;• New Zealand Institute of Chartered Accountants;• South African Institute of Chartered Accountants;• Institute of Chartered Accountants of Zimbabwe; or• Canadian Institute of Chartered Accountants.
Accreditation (includes accredited, accredit)	The process by which ICAEW authorises or licenses persons to undertake probate work.
Accredited probate firm	A firm accredited under these regulations to conduct probate work.
Act	Legal Services Act 2007.

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Appeal Tribunal	The First-tier Tribunal established under the Tribunals, Courts and Enforcement Act 2007.
Approved Regulator	A body designated under Schedule 4 of the Act in respect of one or more <i>reserved legal activities</i>.
Associate	An associate is defined by Regulation 6.3.
Authorised firm	A <i>firm</i> authorised under these regulations to conduct probate work.
Authorised individual	A <i>principal</i> or <i>employee</i> of an <i>accredited probate firm</i> who is designated under section 4 of these regulations.
Authorised person	A person or <i>firm</i> authorised or licensed by ICAEW or another approved regulator in relation to probate work.
Authorised work	<ul style="list-style-type: none"> • Probate work • Estate Administration: Following a grant of probate or letters of administration, collecting in the assets of an estate, settling the liabilities and distributing the remainder in accordance with a will or letters of administration.
Business day	A day when banks are generally open for business (excluding weekends) in England or Wales (as appropriate).
Contact partner	<p>An individual appointed by a <i>firm</i> to:</p> <ul style="list-style-type: none"> • ensure that it has procedures and practices that enable it to comply with its obligations under these regulations; • correspond with ICAEW in relation to the activities governed by these regulations; • give an annual declaration of the firm's compliance with its responsibilities under these regulations in the form from time to time determined by ICAEW; • from time to time supply ICAEW or its agents with information as required; and • ensure that an annual compliance review is undertaken as required under Regulation 3.11. <p>The role of the contact partner is to be responsible for ensuring that the firm complies with these regulations. The contact partner should be of sufficient seniority and influence within the firm to ensure that others will act on their instructions.</p> <p>If one of more of the principals of the firm is an individual, one of those individuals should be the contact partner and it is recommended that they also be an authorised individual.</p> <p>If the firm is a sole practice, the sole practitioner is the contact partner. The Head of Legal Practice is the contact partner in a licensed firm.</p>
Employee	Anyone who carries out work for an <i>accredited probate firm</i>, but excluding a <i>principal</i>, a subcontractor or a consultant.

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Firm	A <i>firm</i> includes an individual, a partnership, a limited liability partnership or any other body corporate which is or seeks to be <i>accredited</i> under these <i>regulations</i> to conduct <i>probate work</i>.
Head of Finance and Administration	The individual appointed by a <i>licensed firm</i> who is responsible for taking all reasonable steps to ensure that the <i>firm</i> complies with the requirements in <i>Regulation 3.8</i> (clients' assets) and who is not disqualified under the <i>Act</i> from acting as a <i>Head of Finance and Administration</i> and who must report any breach of those requirements to <i>ICAEW</i> as soon as reasonably practicable. The Head of Finance and Administration (HoFA) should be of sufficient seniority and influence within the firm to ensure that others will act on their instructions. The HoFA should hold an appropriate qualification to enable the discharge of his duties with competence and skill.
Head of Legal Practice	The <i>authorised individual</i> appointed by a <i>licensed firm</i> who is responsible for taking all reasonable steps to ensure that: <ul style="list-style-type: none"> • the <i>licensed firm</i> and its <i>principals</i> and <i>employees</i> comply with their duties under these <i>regulations</i> (other than <i>regulation 3.8</i>); and • non-<i>authorised persons</i> do not do anything which causes or substantially contributes to any breach of these <i>regulations</i> by the <i>firm</i> or by any <i>authorised person</i> who is a <i>principal</i> or <i>employee</i> of the <i>firm</i>; and who is not disqualified under the <i>Act</i> from acting as a <i>Head of Legal Practice</i> and who must report any breach of those requirements to <i>ICAEW</i> as soon as reasonably practicable. The Head of Legal Practice (HoLP) should be of sufficient seniority and influence within the firm to ensure that others will act on their instructions. They should also have sufficient independence to be able to report matters freely if necessary. The HoLP in a licensed firm is also the contact partner.
ICAEW	The Institute of Chartered Accountants in England and Wales.
Legal Ombudsman	The body appointed by the Office of Legal Complaints under Part 6 of the <i>Act</i> to assist with resolving complaints.
Legal Services Board	The body established under Part 2 of the <i>Act</i>.
<u>Legal Services Committee</u>	<u>The <i>ICAEW</i> committee responsible for discharging <i>ICAEW</i>'s functions as set out in these <i>regulations</i> or any sub-committee of that committee.</u>

Deleted: Investigation Committee

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Legal Services Compensation Scheme

The scheme for the payment of grants made in accordance with the Legal Services Compensation Scheme Regulations.

Licensing authority	A body designated under Part 1 of Schedule 10 of the <i>Act</i> in respect of one or more <i>reserved legal activities</i> .
Licensed firm	A <i>firm</i> licensed under these <i>regulations</i> to conduct <i>probate work</i> .
Material interest	A <i>material interest</i> is defined by <i>Regulation 6.2</i> .
Member	A <i>member of ICAEW</i> but not including a <i>probate affiliate</i> .
Principal	<ul style="list-style-type: none">• an individual in sole practice (if the <i>firm</i> is a sole practice);• a person who is a partner (including both salaried and equity partners) (if the <i>firm</i> is a partnership);• a member of a limited liability partnership (if the <i>firm</i> is a limited liability partnership);• a director (if the <i>firm</i> is a company);• a member of the governing body (if the <i>firm</i> is an unincorporated body, other than a partnership); or• any individual or person who is held out as being a director, partner, member, or member of the governing body. <p>Corporate practices or limited liability partnerships may be principals in a firm.</p>
Probate affiliate	A person granted <i>probate affiliate</i> status by <i>ICAEW</i> for the purpose of these <i>regulations</i> .
Probate work	The preparation of papers to apply for a grant of probate or letters of administration.
Register	The <i>register of licensed firms</i> held by <i>ICAEW</i> in accordance with section 87 of the <i>Act</i> .
Regulations	These Legal Services Regulations, as modified or amended from time to time.
Regulatory penalty	An amount paid by an <i>accredited probate firm</i> by agreement for a breach of these <i>regulations</i> which the <i>accredited probate firm</i> agrees has been committed.
Relevant person	<ul style="list-style-type: none">• an <i>authorised individual</i>;

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- a *Head of Finance and Administration*;
- a *Head of Legal Practice*; or
- any other *principal* or *employee* of an *accredited probate firm*.

Reserved legal activities

- the exercise of a right of audience;
- the conduct of litigation;
- reserved instrument activities;
- probate activities;
- notarial activities;
- the administration of oaths;

as defined in section 12(1) and Schedule 2 of the *Act*.

Review Committee

The committee appointed under *ICAEW's* bye-laws with responsibility for reviewing decisions made by *ICAEW* as specified in these *regulations*.

Tribunals Committee

The Tribunals Committee of ICAEW appointed in accordance with the bye-laws.

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- 1.7 Words and expressions have the meanings given by the *Act* and the Interpretation Act 1978 unless defined above. The definitions in these *regulations* take precedence.
- 1.8 In these *regulations* words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter. Words importing the neuter gender include both the masculine and feminine genders. Headings do not affect the interpretation of these *regulations*. These *regulations* will be governed by, and interpreted in accordance with, the laws of England and Wales.
- 1.9 Any references to legislation, regulations, requirements, bye-laws, rules or other documents will apply to any re-enactment, re-issue or amendment.

2 ELIGIBILITY, APPLICATION, CONTINUING OBLIGATIONS AND CESSATION

Applications

- 2.1 A *firm* that wishes to be *accredited* under these *regulations* must apply in the manner decided by *ICAEW*, on a prescribed form. The application must include the following:
- any information that *ICAEW* may require to assess the ability of the *firm* to carry out *authorised work*;
 - a statement by the *firm* of how its *accreditation* will promote the objective of improving access to justice;
 - information on the *firm's* arrangements for diversity monitoring in relation to its *principals* and *employees* and existing data derived from diversity monitoring;
 - a declaration by the *firm* that it agrees to be bound by these *regulations* and will ensure that it complies with them at all times;
 - a declaration by the *firm* that it will deal with *ICAEW* in an open and cooperative manner and inform *ICAEW* promptly about anything concerning the *firm* as required by these *regulations*;
 - an acknowledgement by the *firm* that none of *ICAEW*, its officers, staff, members of its Council or committees, their servants or agents can be held liable to the *firm* in

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damages for any act or omission arising out of the performance of any of their functions under the *Act*, or connected with the granting of authorisation or a licence, the enforcement of these *regulations* or the monitoring of compliance with these *regulations* in any respect, unless the act or omission is shown to have been in bad faith;

- g an acknowledgement that *ICAEW* may make enquiries of or about the *firm* as *ICAEW* deems necessary;
- h an acknowledgement that *ICAEW* may publish, in such manner as it may determine, information about the *firm's* status under these *regulations*; and
- i an acknowledgement that *ICAEW* may disclose information about the *firm* as set out in *Regulation 2.26*.

Eligibility

2.2 *ICAEW* may authorise a *firm* only if:

- each *principal* in the *firm* is an *authorised person* (or becomes an *authorised person* by decision of *ICAEW* at the same time as granting authorisation to the *firm*) and if another body is a *principal* in the *firm*, non-*authorised persons* are entitled to exercise, or control the exercise of, less than 10% of the voting rights in that other body; and
- in the case of a corporate body (other than a limited liability partnership) each person who has an interest in the *firm* is an *authorised person* (authorised by *ICAEW* under these *regulations* or by another approved regulator) and if another body has an interest in the *firm*, non-*authorised persons* are entitled to exercise, or control the exercise of, less than 10% of the voting rights in that other body.

The above sets out who is required to be an authorised person under these regulations. Generally the principals and shareholders in the case of a company must all be authorised persons but certain de-minimis holdings by non-authorised persons are allowed. A firm applying for authorisation may at the same time apply for approval of designation of its principals as authorised individuals as set out in section 4. If a firm is unsure of its eligibility to be authorised or licensed it should contact *ICAEW*. A person has an interest in a firm if the person holds shares in the body or is entitled to exercise, or control the exercise of, voting rights in the firm.

2.3 If a *firm* does not meet the requirements of *Regulation 2.2* *ICAEW* may license the *firm* only if at least one *principal* in the *firm* is:

- a an authorised individual; or
 - b authorised by *ICAEW* under *Regulation 2.2* or authorised by another approved regulator in relation to *probate work*;
- but in either case is not a *licensed firm*.

2.4 Having taken account of the objective of improving access to justice, *ICAEW* may accredit a *firm* only if it is satisfied that:

- c the *firm* is fit and proper to be *accredited*;
- d each individual who will undertake, or control the undertaking of, *probate work* on behalf of the *firm* is an *authorised individual* and is fit and proper;
- e the *firm* has appointed a *contact partner* whose name has been given to *ICAEW*;
- f in the case of a *firm* applying to be licensed, the *firm* has appointed a *Head of Finance and Administration* and a *Head of Legal Practice* who have consented to act in these roles and whose appointment has been approved by *ICAEW*;

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- g the *firm* has at least one office in England and Wales from which it undertakes *probate work* (unless it is a company or limited liability partnership whose registered office is in England or Wales);
- h each *principal* who is not an *accredited probate firm*, a registered auditor, a DPB-licensed firm, a *member of ICAEW*, a member of the Institute of Chartered Accountants of Scotland, a member of Chartered Accountants Ireland or another *approved regulator* holds affiliate status under these *regulations*, *ICAEW's Audit Regulations*, *ICAEW's DPB Handbook*, *ICAEW's Insolvency Regulations* or *ICAEW's regulations* governing the use of the description 'Chartered Accountants' and general affiliates;
- i in the case of a *firm* applying to be licensed, any *non-authorised person* who holds a *material interest* in the *firm* is approved by *ICAEW* under section 6;
- j in the case of a *firm* applying to be licensed, the *firm* has:
 - informed all *principals*, *employees* and shareholders who are *non-authorised persons* of the duties imposed on them by sections 90 and 176 of the *Act*; and
 - put in place procedures to prevent such persons from improperly influencing the independence and integrity of *probate work*; and
- a the *firm* has professional indemnity insurance under *ICAEW's PII Regulations* with a minimum level of indemnity of £500,000 per claim.

Section 28 of the Act requires ICAEW to act in a way which is compatible with the regulatory objectives and which it considers most appropriate for the purpose of meeting those objectives. Under section 1 of the Act the regulatory objectives include the objective of improving access to justice. The application form contains guidance to firms on how their application may promote this objective.

2.5 ICAEW may:

- a grant the application;
- b reject the application;
- c grant the application subject to restrictions or conditions; or
- d postpone consideration of the application.

Under the Act, ICAEW has a period of six months (beginning when all the information required on the application form is received) to make a decision on an application. However, under Regulation 2.5d, ICAEW may decide that it can only properly consider a firm's application after it has additional information about the firm. ICAEW may decide this is best achieved by a visit to the firm and a charge may be made for this. If it is necessary to seek additional information, ICAEW may, before the expiry of six months, issue an extension notice to the applicant extending the period of time taken to reach a decision to nine months. The extension notice must set out the reasons for the extension.

If ICAEW rejects or grants the application subject to restrictions or conditions, it must explain in writing to the applicant the reasons for its decision. Decisions will come into effect as set out in section 10.

A firm can apply for a review of a decision to reject accreditation or to grant it subject to restrictions or conditions. Details of the review process are in section 11.

2.6 ICAEW may at any time vary or end a restriction or condition made under Regulation 2.5.

Continuing obligations

2.7 An *accredited probate firm* and its *principals* and *employees* must at all times:

- a comply with these *regulations*, with any condition of the *firm's accreditation* and with any other relevant regulatory arrangements (and be able to satisfy *ICAEW* as to such compliance on request);
- b not do or permit anything which causes or substantially contributes to any breach of these *regulations* by the *firm* or by any *authorised individual* who is a *principal* or *employee* of the *firm*;
- c comply with *ICAEW's* PII Regulations;
- d deal with *ICAEW* in an open and cooperative manner;
- e if an *authorised firm*, have a *contact partner* (in the case of a sole practitioner, that person will be the *contact partner*);
- f (if a *licensed firm*) have a *Head of Legal Practice* who is also the *contact partner*;
- g (if a *licensed firm*) have a *Head of Finance and Administration*;
- h ensure that each individual who undertakes, or controls the undertaking of, *probate work* on behalf of the *firm* is an *authorised individual*;
- i have at least one office in England and Wales from which the *firm* undertakes *probate work* (unless it is a company or limited liability partnership whose registered office is in England or Wales);
- j inform *ICAEW* as soon as practicable but not later than 10 *business days* after any change to the:
- i *accredited probate firm's* registered address;
 - ii name or trading names of the *accredited probate firm*;
 - iii address(es) of the *accredited probate firm's* offices;
 - iv *accredited probate firm's principals*;
 - v name or principal business address of any of the *accredited probate firm's principals*;
 - vi name of the *contact partner*;
 - vii name of the *Head of Finance and Administration* who must be approved in that capacity by *ICAEW*;
 - viii name of the *Head of Legal Practice* who must be approved in that capacity by *ICAEW*; or
 - ix in the case of a body corporate (but excluding a limited liability partnership):
 - the name or address of any shareholder or anyone with any interest in the shares; and
 - the number of shares held by a shareholder or in the number of shares in which anyone has an interest.
- k inform *ICAEW* as soon as practicable but not later than 10 *business days* after any event affecting the *firm's* eligibility to be *accredited*;
- l in the case of a *licensed firm*, inform *ICAEW* as soon as practicable but not later than 10 *business days* after any *non-authorised person* acquires or ceases to hold, or increases or decreases a holding of, any interest in the *firm* which, either before or after the change, qualifies as a *material interest*;
- m pay any of the charges required by *ICAEW* as set out in *Regulation 2.14, 2.15 and 2.16*. Such charges may be levied at any time, including after the termination of *accreditation* provided they relate to a period before the date of termination;

- n respond, when required, to enquiries made by ICAEW (whether by writing, visiting the *accredited probate firm's* offices or by any other method) about the *firm's* application or its activities as an *accredited probate firm*;
- o arrange for the provision of any information about the *firm* or its clients (and to allow access to the *firm's* systems and personnel) that ICAEW may request about the activities as an *accredited probate firm*, whether that information is held by:
- i the *accredited probate firm*;
 - ii any *principal* or *employee* (or former *principal* or former *employee*) of the *accredited probate firm*;
 - iii any non-*authorised person* who holds shares in the *accredited probate firm*, or is entitled to exercise, or control the exercise of, voting rights in the *accredited probate firm*.
 - iv any non-*authorised person* who is entitled to exercise, or control the exercise of, at least 10% of the voting rights in 'A', where A is a *principal* of the *accredited probate firm* or holds shares in the *accredited probate firm*, or is entitled to exercise, or control the exercise of, voting rights in the *accredited probate firm*;
- p provide ICAEW with a periodic return in relation to its activities as an *accredited probate firm*;
- q subject itself and all its *principals* to any monitoring, inspection or review process specified by ICAEW, including its Practice Assurance scheme;
- r send any notice or other document to be served on ICAEW in the manner set out in *Regulation 1.4*, or as last notified to the *accredited probate firm*; and
- s monitor the diversity of the *accredited probate firm's principals* and *employees*, and publish the findings of the monitoring, in the manner and format prescribed by ICAEW from time to time.
- t publish details of the total fees it charges for the service it provides to consumers, or an estimate of the likely fees for services it provides, including VAT and disbursements (if applicable). It must provide an explanation of the basis upon which fees are calculated, for example fixed fee or an hourly rate / time spent. It must provide an explanation of what services are covered by the published fee.
- u make readily available to consumers the following service information:
- a clear and brief description of the services it offers;
 - a description of the key stages of a service; and
 - an indication of likely timescales of the service and any likely affecting factors.
- v in accordance with its duty under the bye-laws to investigate complaints, make the following information readily available to consumers:
- details of its internal complaints procedure;
 - details of how and when its clients can make a complaint to ICAEW and / or the Legal Ombudsman.
- w provide the following regulatory information:
- that it is regulated by ICAEW for probate services;
 - details of the compensation arrangements, namely the consumer's ability to claim from the ICAEW compensation fund; and
 - that it has professional indemnity insurance (PII).

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2.8 An accredited probate firm may not have as a principal or employee a person who is disqualified pursuant to section 99 of the Act from being a principal or employee of a body licensed under Part 5 of the Act.

As is reflected in Regulation 5.5, the Legal Services Board maintains a list of persons who have been disqualified from working in licensed firms by the approved regulators under section 99 of the Act. Firms are advised to refer to this list, which can be accessed on the LSB's website, before submitting their application for accreditation.

2.9 If an accredited probate firm ceases to have any principal or employee who is an authorised individual the firm will immediately cease to undertake probate work until it has notified ICAEW of the name of another principal or employee who meets the requirements of section 4.

Professional Indemnity Insurance and compensation

2.10 An accredited probate firm shall only carry out authorised work if it has professional indemnity insurance under ICAEW's PII Regulations with a minimum level of indemnity of £500,000 per claim.

If a firm is conducting authorised work and the value of the estate is likely to exceed the level of the firm's own PII, firms must notify their clients in writing at the beginning of the engagement that their PII is capped and the level of cover.

2.11 An accredited probate firm or firm that was previously accredited must comply with the regulations of ICAEW's Legal Services Compensation Scheme.

Modification

2.12 An accredited probate firm that wishes to modify the terms of its accreditation must apply in the manner decided by ICAEW. The application must include the following:

- a the terms of the proposed modification;
- b the reasons for proposing the modification; and
- c any information that ICAEW may require in connection with the application.

2.13 ICAEW may:

- a modify the accreditation in the terms of the application;
- b modify the accreditation in such other terms as it considers appropriate;
- c reject the application; or
- d postpone consideration of the application.

If ICAEW rejects the application for modification, it will inform the accredited probate firm of its reasons in writing within 10 business days. A firm can apply for a review of a decision to reject modification or to grant it subject to restrictions or conditions. Details of the review process are in section 11. A charge may be made for dealing with such an application.

Fees

2.14 An accredited probate firm must pay such registration fees (to include any costs that ICAEW is required or has agreed to pay to any other person or body exercising a regulatory or supervisory role in relation to it) as ICAEW determines, at the times and at the rates set by it. The first registration fee is due when a firm applies to be accredited under these regulations to conduct probate work. An application fee is also payable with this first fee.

If a firm's application is not accepted, the first registration fee will be refunded.

2.15 ICAEW may charge a firm or an accredited probate firm a fee if ICAEW has performed additional work. The Legal Services Committee will decide how much the fee will be.

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Additional work may be performed, for example in:

- obtaining information for or about the firm or accredited probate firm;
- collecting any charges due under these regulations;
- responding to enquiries or complaints regarding the accredited probate firm;
- reviewing the continuation of the firm's accreditation;
- visiting the accredited probate firm where ICAEW has had to make a second or subsequent visit to the accredited probate firm as a result of an earlier visit; or
- considering an application for modification under Regulations 2.12 and 2.13.

2.16 An *accredited probate firm* must pay any levy for ICAEW's **Legal Services Compensation Scheme** (whether a periodic contribution or special levy) as ICAEW may decide from time to time. This includes levies raised after the *firm's accreditation* has ceased but excludes levies relating to claims in respect of services provided by any *firm* wholly after the date of termination of the *firm's accreditation*.

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2.17 If an *accredited probate firm* has not paid any amounts due under **Regulations 2.14, 2.15 or 2.16** within 60 days of the invoice date, ICAEW may withdraw its *accreditation*.

2.18 Any amounts unpaid under **Regulations 2.14, 2.15 or 2.16** may be recovered as a debt to ICAEW.

Dispensations

2.19 The *accredited probate firm* must inform ICAEW in writing within 10 *business days* of a situation arising that may indicate that the *accredited probate firm* cannot, or expects not to be able to, comply with any of these *regulations*. The notification must state what has happened and the action that the *accredited probate firm* proposes to take.

2.20 ICAEW may grant the *accredited probate firm* a dispensation, of no more than 90 days, from the requirement to comply with a *regulation* where, in response to a written request, it considers it reasonable to do so having regard to the public interest and the interests of any client.

2.21 If ICAEW rejects the application for a dispensation, it will inform the *accredited probate firm* of its reasons in writing within 10 *business days*. The *accredited probate firm* will then be entitled to apply for a review of the decision in accordance with the procedures set out in section 11.

It is not expected that dispensations will be readily granted and any firm applying for a dispensation must clearly state why the dispensation is needed and what it is doing to remedy the situation.

Cessation of accreditation

2.22 A *firm* will cease to be an *accredited probate firm* if:

- a ICAEW accepts an application from the *firm* to cancel its *accreditation*;
- b the *firm* becomes licensed by another *licensing authority*;
- c the *firm* ceases to exist; or
- d ICAEW withdraws *accreditation* under *regulation 10.3*.

If a firm's accreditation is to be withdrawn, the firm may ask for a review of the decision under the procedures in section 11. Withdrawal at the firm's request, because the firm no longer exists or it becomes licensed by another licensing authority, cannot lead to a review. If a firm which is no longer accredited wishes to apply again it can do so in the normal manner.

2.23 If a *firm* is no longer an *accredited probate firm*:

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- a **it must still respond to enquiries (made in writing or by visiting a *firm's* office or offices) from ICAEW in connection with any circumstance that relates to these *regulations* during the time that the *firm* was *accredited* and must co-operate with the work of the *Legal Ombudsman*, including the provision of papers and the payment of any remedies ordered;**
- b **disciplinary action (including a *regulatory penalty*) may still be taken for:**
- i. **any failure to comply with these *regulations* during the time it was *accredited*;**
 - ii. **any failure to comply with any *regulation* continuing to have effect notwithstanding that *accreditation* has ceased;**
 - iii. **any failure to keep confidential any information received in the course of *authorised work*.**

2.24 ICAEW's right to recover any amounts due from a *firm* under these *regulations* does not end when a *firm* is no longer *accredited*.

The effect of Regulation 2.23 is that a firm cannot escape disciplinary action by applying to have its accreditation withdrawn. If, in the process of withdrawing accreditation, ICAEW places a condition on a firm and that condition is broken then disciplinary action can be taken. There is a continuing obligation to deal with ICAEW's enquiries and requests for information under Regulation 2.23. Finally, under Regulation 2.24, applying to have accreditation withdrawn does not remove the firm's obligation to pay outstanding fees.

Regulatory conflicts

2.25 If an *accredited probate firm* is of the view that any other regulatory requirement to which it or an *authorised individual* is subject, including the requirements of another *approved regulator*, may cause it to cease complying with these *regulations*, it must inform ICAEW within 10 *business days* of becoming aware of the conflict.

Firms should note that section 176 of the Act requires individuals conducting probate work to comply with the regulatory arrangements of the approved regulator by whom they are regulated. For example, in the case of a solicitor working within an accredited probate firm this will be the Solicitors Regulation Authority (SRA).

2.26 ICAEW reserves the right to pass information (directly or indirectly) about an *accredited probate firm* to any ICAEW committee or person or body undertaking regulatory, disciplinary, redress or law enforcement responsibilities for the purpose of assisting that person or body to undertake those responsibilities or as otherwise required or allowed by law.

3 CONDUCT OF AUTHORISED WORK

3.1 An *accredited probate firm* must act in accordance with the fundamental principles set out in the Code of Ethics issued by ICAEW's Council and must make arrangements so that it, its *principals* and *employees* comply with these *regulations* and the professional principles set out in the *Act* to:

- a **act with independence and integrity;**
- b **maintain proper standards of work;**
- c **act in the best interests of their clients; and**
- d **keep the affairs of clients confidential.**

Firms of different sizes and with different types of clients will adopt different procedures to comply with these regulations and to act in accordance with the fundamental principles set out in the Code of Ethics. However, all firms will be aiming to provide a high quality and cost effective service, which

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complies with these regulations. For most firms this means having procedures for doing authorised work, and checks to make sure that the procedures are followed.

- 3.2 An accredited probate firm shall only carry out authorised work which it is competent to perform.**
- 3.3 An accredited probate firm must make sure that only authorised individuals undertake, or control the undertaking of, probate work on behalf of the firm.**
- 3.4 An accredited probate firm must make sure that all principals and employees undertaking authorised work are, and continue to be, competent to carry out the authorised work for which they are responsible.**

The above places the responsibility on the firm to ensure that its principals and employees who undertake authorised work are suitably competent in doing this work and are up to date with current developments.

- 3.5 An accredited probate firm must make arrangements to prevent anyone who is not an authorised individual in the firm, or working under the supervision of that person, from having any influence which would be likely to affect the independence or integrity of probate work.**

These arrangements need to include informing new principals, employees or shareholders who are non-authorised persons of the duties imposed on them by sections 90 and 176 of the Act.

- 3.6 An accredited probate firm shall ensure that it is in full agreement with its clients as to the nature, scope and terms of the authorised work which is or may be provided and that it retains evidence of this agreement.**

The best way to obtain and record this agreement is by using an engagement letter. This could also deal with a firm's obligations under section 240 of the Code of Ethics to notify clients of the basis for charging fees. It could draw the client's attention to the arrangements for continuing the provision of authorised work (see Regulation 3.12) and the complaints procedures established under section 7.

As a matter of best practice and in order to reduce the likelihood of future confusion and complaints, firms should also outline clearly for clients at the beginning of the engagement what is likely to occur and the nature and scope of the work that will be carried out, as well as the costs involved. They should also provide information to enable their clients actively to manage their costs, including being prepared to explain to clients aspects of their work as it progresses and provide them with revised choices and costs estimates if the original estimates are likely to be exceeded.

The client should not be put under pressure by the firm to accept terms of engagement that may not be in accordance with their wishes.

- 3.7 The accredited probate firm shall ensure that clients are advised in writing of the compensation arrangements at the beginning of the engagement and the time scales for making applications to the Legal Services Compensation Scheme.**

It is recommended that firms use the following paragraph:

'In the unlikely event that we cannot meet our liabilities to you, you may be able to seek a grant from ICAEW's Legal Services Compensation Scheme. Generally, applications for a grant must be made to ICAEW within 12 months of the time you became aware, or reasonably ought to have become aware, of the loss. Further information about the scheme and the circumstances in which grants may be made is available on ICAEW's website: icaew.com/probate.'

- 3.8 If an accredited probate firm receives any property in connection with authorised work, details of the property received should be recorded. The firm should take all reasonable steps to ensure that such property is kept safely. Where the property is money this should be dealt with in accordance with ICAEW's clients' money**

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regulations, except that monies received in connection with *authorised work* must be kept separate from other clients' monies.

3.9 Any property held by an *accredited probate firm* must only be released on the client's written instructions and a receipt obtained.

Firms should consider carefully whether to hold property in connection with authorised work. It is often the case that the value of such property may be unclear but to safeguard it properly a firm should check that it has appropriate insurance cover. A receipt should be given when any property is received and transferred to a third party.

3.10 An *accredited probate firm* shall ensure that it has appropriate records of *authorised work* undertaken on behalf of clients.

Records should evidence the work undertaken on behalf of clients under these regulations, plus any specific instructions from the client. The records do not have to be on paper but could be held on microfilm or on computers. Whatever method of storage is used, the firm must keep a mechanism for gaining access to those records.

It is likely that ICAEW will only be satisfied if the firm keeps records relating to work performed under these requirements for at least 6 years. Firms should bear in mind that some legislation requires records to be retained for longer.

3.11 An *accredited probate firm* must:

- a confirm on request that it meets the requirements of these *regulations* and supply such evidence as *ICAEW* may require to support such confirmation; and**
- b ensure that it conducts a review, at least annually, to consider whether systems it has maintained have been adequate to enable it to:**
 - i comply with these *regulations* and to confirm its compliance with these *regulations* when requested by *ICAEW*; and**
 - ii prepare any return required under *Regulation 2.7p*.**

The annual compliance review checks whether a firm has complied with these regulations.

3.12 If an *accredited probate firm* ceases to undertake *authorised work* then there must be arrangements in place to protect the interests of those clients for whom it is undertaking such work.

Arrangements must be in place in case a firm ceases to undertake authorised work. These arrangements are to protect the interests of clients and the firm may need to make some arrangements on a contingency basis.

Where a firm is ceasing to conduct authorised work, an orderly wind down or transfer of work to an identified successor firm may be arranged. However, particularly where the firm is a sole practitioner, additional measures will need to be in place to protect the interest of clients in the event of the death or incapacity of the practitioner. This may simply be an arrangement for another person to access the firm's records and then make arrangements for the authorised work to be transferred to another probate practitioner.

The firm should provide details of these arrangements within an engagement letter or similar. A suggested wording is:

'If, for any reason, I am unable to run my practice, I have made arrangements for the completion of any unfinished probate or estate administration work to clients. [Add details of the person that the client can contact.]'

4 AUTHORISED INDIVIDUALS, HEADS OF FINANCE AND ADMINISTRATION AND HEADS OF LEGAL PRACTICE

All individuals who undertake, or control the undertaking of, probate work on behalf of an accredited probate firm must be individually authorised to do so under the Act by ICAEW or another approved regulator.

In an authorised firm, all the principals will need to be authorised persons. A sole practitioner must be an authorised individual and the firm's contact partner. In other authorised firms it is recommended that one of the principals be the contact partner.

A licensed firm must appoint a Head of Finance and Administration and Head of Legal Practice who have specific responsibilities and important duties as set out in Regulation 1.6. The Head of Legal Practice must be an authorised individual and the firm's contact partner.

In all firms (including sole practices) the contact partner can designate appropriately qualified principals or employees as authorised individuals as set out in the following regulations.

Authorisation and withdrawal of authorisation

4.1 Subject to *Regulation 4.4* the *contact partner* (or the person who is intended to be the *contact partner upon accreditation*) may designate as an *authorised individual* any of the *accredited probate firm's principals or employees* (or any of the *principals or employees of a firm applying for accreditation*) who:

- a** is a member of an *accountancy body* and has provided evidence to *ICAEW* of attendance at a course and assessment, which covered at least the following subjects:
- a general introduction to the *Act* as it applies to *probate work*;
 - a general introduction to the law of property, equity and trusts;
 - the need for a grant and its effect;
 - the types of grant – probate, letters of administration;
 - who can apply for probate / letters of administration;
 - consideration of the validity, format and content of wills;
 - intestacy provisions;
 - obtaining information about the assets and liabilities of the estate and their valuation;
 - finalising of inheritance tax, corrective accounts and obtaining a clearance certificate from HM Revenue and Customs;
 - the completion of papers for an application for a grant;
 - the completion of the oath and the filing of papers; and
 - the administration of the estate;
- b** holds a qualification issued or recognised by an *approved regulator* (other than *ICAEW*) that entitles the individual to undertake *probate work*; or
- c** is otherwise qualified to undertake *probate work* so as to satisfy *ICAEW* that it should approve his designation as an *authorised individual*.

Only principals and employees of a firm are eligible to become 'authorised individuals', not subcontractors or consultants.

There are no prescribed courses for the purpose of Regulation 4.1a but the firm or member must show that the course covered the above topics. Courses can include those where the learning is computer based 'e-learning', including training delivered over the internet.

The learning outcomes of the course must be assessed and the method of assessment can include objective testing. The pass mark for an assessment must be no less than 50%.

As the course outline set out in Regulation 4.1a builds on the existing qualifications and skills of a chartered accountant, only members of the accountancy bodies as defined in Regulation 1.6 may be eligible to become accredited for probate through this route.

Applications in respect of individuals under Regulation 4.1c will be decided on a case by case basis, having regard to the sufficiency of the individual's qualification to undertake probate work.

- 4.2 Subject to Regulation 4.4 and with the agreement of the individual, a licensed firm must designate an authorised individual to be the Head of Legal Practice.**
- 4.3 Subject to Regulation 4.4 and with the agreement of the individual, a licensed firm must designate an individual to be the Head of Finance and Administration.**
- 4.4 Any designation in accordance with Regulation 4.1, 4.2 or 4.3 shall not be effective until an application has been made to ICAEW in a form specified by it and the application has been approved and this may be approved with conditions or restrictions.**

Where a firm wishes to be accredited, and any principals or employees are not authorised individuals, the applications by the firm for accreditation and for approval of designation of authorised individuals should be made (and will be dealt with) simultaneously.

- 4.5 ICAEW may only approve a person's status as an authorised individual, Head of Legal Practice or Head of Finance and Administration, if it is satisfied that that individual is a fit and proper person.**
- 4.6 ICAEW may at any time vary or end a restriction or condition made under Regulation 4.4.**

Cessation

- 4.7 Authorised individual status will cease if:**
 - a the firm in which the individual is an authorised individual ceases to be an accredited probate firm;**
 - b the individual ceases to be a principal or employee in the accredited probate firm to which the grant of authorised individual status related;**
 - c an event occurs which under ICAEW's Charter, bye-laws or other regulations the individual would cease to be a member or an affiliate;**
 - d the contact partner notifies ICAEW that the individual is no longer an authorised individual; or**
 - e ICAEW withdraws authorised individual status.**

Firms are reminded to inform ICAEW of any changes to the authorised individuals of the firm.

- 4.8 Authorised individual status will not cease under Regulation 4.7a or 4.7b if:**
 - a the accredited probate firm in which the authorised individual is a principal or employee merges with or is acquired by another accredited probate firm; or**
 - b the authorised individual leaves the accredited probate firm in which he is a principal or employee and immediately becomes a principal or employee in another accredited probate firm;**

provided that ICAEW is informed within 10 *business days* of the event. Otherwise, disciplinary action may be taken and *authorised individual* status withdrawn.

- 4.9 Status as a *Head of Legal Practice* or a *Head of Finance and Administration* will cease if:
- a the *firm* to which the status relates ceases to be an *accredited probate firm*;
 - b the individual ceases to be a *principal* or *employee* in the *accredited probate firm* to which the status relates;
 - c an event occurs which under ICAEW's Charter, bye-laws or other regulations the individual would cease to be a *member* or an *affiliate*;
 - d the *firm* or individual notifies ICAEW that the individual no longer consents to hold that status; or
 - e ICAEW disqualifies the person from holding that status under *Regulation 5.1*.
- 4.10 If an individual is no longer an *authorised individual*, a *Head of Finance and Administration* or a *Head of Legal Practice* disciplinary action under section 12 (including the imposition of a *regulatory penalty*) may still be taken for any failure to comply with these *regulations*.

Decisions under this section will come into effect as set out in section 10. The person may request a review (with subsequent right of appeal) under section 11.

Section 12 applies ICAEW's disciplinary arrangements to breaches of these regulations by an authorised individual, a Head of Finance and Administration or a Head of Legal Practice. Regulation 4.10 provides that disciplinary action may be taken after a person has ceased to hold this status.

5 DISQUALIFICATION

The following regulations set out the circumstances in which a person may be disqualified under section 99 of the Act from acting as a Head of Legal Practice or Head of Finance and Administration, or from being a principal or an employee of any licensed firm. This is liable to occur in specific situations identified in the Act as detailed below.

- 5.1 If both of the conditions set out in *Regulation 5.2* and *5.3* are satisfied, ICAEW may disqualify a person from:
- a acting as the *Head of Legal Practice* of any *licensed firm*;
 - b acting as the *Head of Finance and Administration* of any *licensed firm*;
 - c being a *principal* of any *licensed firm*; or
 - d being an *employee* of any *licensed firm*.
- 5.2 The first condition referred to in *Regulation 5.1* is that the person, intentionally or through neglect:
- a has breached a duty to which the person is subject:
 - as a *Head of Legal Practice* by section 91 of the *Act*;
 - as the *Head of Finance and Administration* by section 92 of the *Act*;
 - as a regulated person by section 176 of the *Act* (within the meaning of that section); or
 - as a *non-authorised person* by section 90 of the *Act*; or
 - b has caused, or substantially contributed to, a significant breach of the *licensed firm's accreditation*.
- 5.3 The second condition referred to in *Regulation 5.1* is that ICAEW is satisfied that it is undesirable for the person to engage in the activity or activities referred to in *Regulation 5.1*.

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5.4 Upon the application of any person so disqualified under *Regulation 5.1*, ICAEW may, if the second condition referred to in *Regulation 5.3* is no longer satisfied, decide that a person's disqualification shall cease to be in force on a date specified in the decision.

5.5 ICAEW will notify the *Legal Services Board* within 7 days of any decision under *Regulation 5.1* that a person should be disqualified, of the results of any review of such a decision under *Regulation 11.3* and of any decision under *Regulation 5.4* that a person's disqualification should cease to be in force.

If ICAEW disqualifies a person as set out above, the decision will come into effect as set out in *Regulation 10.10*. The person may request a review (with subsequent right of appeal) under section 11.

6 OWNERSHIP OF LICENSED FIRMS

This section only applies to licensed firms.

The following regulations set out the requirements where any non-authorised person holds or proposes to hold a material interest in a licensed firm.

Firms applying to be licensed must provide full details of any non-authorised person who holds or is expected to hold a material interest, even if it becomes aware of this after submitting the application.

Licensed firms must also inform ICAEW if any non-authorised person acquires or is expected to acquire a material interest, or if there is any change in the extent to which any interest in the firm is held by a non-authorised person. ICAEW will need to approve any non-authorised persons holding or intending to hold a material interest, and changes to the firm's ownership structure may affect its eligibility to be licensed.

ICAEW will decide whether to grant approval of the holding under this section. Approval may be granted unconditionally or subject to conditions as set out in these regulations.

If ICAEW objects to a holding or decides to permit it subject to conditions, an applicant or the non-authorised person may request a review (with subsequent right of appeal) under section 11.

As set out in *Regulation 6.2* there are different kinds of material interest. If ICAEW has approved a non-authorised person to hold a specific kind of material interest and that person then acquires a different kind of material interest, this needs to be approved as set out above. No approval is needed if an existing material interest is increased or decreased but notification under *Regulation 2.71* is required.

6.1 A non-authorised person may not hold a *material interest* in a licensed firm without a grant of approval by ICAEW.

6.2 A person holds a *material interest* in a body (B) if the person:

- holds at least 10% of the shares in B;
- is able to exercise significant influence over B's management by virtue of the person's shareholding in B;
- holds at least 10% of the shares in a parent undertaking (P) of B;
- is able to exercise significant influence over P's management by virtue of the person's shareholding in P;
- is entitled to exercise, or control the exercise of, voting power in B which, if it consists of voting rights, constitutes at least 10% of the voting rights in B;

- is able to exercise significant influence over B's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in B;
- is entitled to exercise, or control the exercise of, voting power in P which, if it consists of voting rights, constitutes at least 10% of the voting rights in P; or
- is able to exercise significant influence over P's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in P.

Regulation 6.2 sets out the different kinds of material interest that require ICAEW's approval.

6.3 For the purposes of this section, the interest held by a person in a *firm* will consist of the total of the interest held by the person and the interest held by any of his *associates*, and a person's *associate* is defined as:

- a the person's spouse or civil partner;
- b the person's child or stepchild if aged under 18;
- c the trustee of any settlement under which the person has a life interest in possession;
- d an undertaking of which the person is a director;
- e any employee of the person;
- f any partner in a firm (other than the *licensed firm*) of which the person is a partner;
- g if the person is an undertaking, any director or subsidiary undertaking or any director or employee of such subsidiary undertaking;
- h any person with whom the person has an agreement or arrangement regarding the acquisition, holding or disposal of any share or interest in the shareholding or voting rights referred to in *Regulation 6.2*; or
- i any person with whom the person has an agreement or arrangement to act together in exercising their voting power in relation to the shareholding or voting rights referred to in *Regulation 6.2*.

Acquisition of a material interest before a firm is licensed

6.4 A *firm* which applies to ICAEW to become a *licensed firm* must:

- a identify in the application any *non-authorized person* who holds, or is expected when the *firm* has been licensed to hold, an interest to which *Regulation 6.1* applies;
- b identify in the application the kind of interest which is so held or expected to be held;
- c in any such case, inform the *non-authorized person* that ICAEW may require the person to provide ICAEW with documents and information and that failure to comply with such a requirement is a criminal offence; and
- d inform ICAEW of any change in the identity of such *non-authorized person* or the kind of relevant interest so held or expected to be held occurring after the application but before the *firm* is licensed, such information to be given in writing within seven days of the occurrence of such change or, if later, the day on which the *firm* becomes aware of such change.

Firms must make any non-authorized person aware of the importance of the requirement to provide ICAEW with documents and information and ensure that the person understands that failure to comply would make them guilty of a criminal offence under paragraph 14 of schedule 13 to the Act, which is punishable by a fine and/or imprisonment.

An applicant who fails to comply with Regulation 6.4c is also guilty of an offence under paragraph 13 of schedule 13 to the Act, which is punishable by a fine.

- 6.5 ICAEW will not license the *firm* unless it grants approval to the holding of the non-*authorised person* either unconditionally or subject to conditions.**
- 6.6 In deciding whether to grant approval to the holding of the non-*authorised person*, ICAEW may require the person to provide it with any documents or information and will have regard to all relevant circumstances including:**
- a the probity and financial position of the person and any person listed in Regulation 6.3;**
 - b whether the person and any person listed in Regulation 6.3 has been disqualified (by ICAEW under section 5 of these *regulations* or by any other *licensing authority*) from acting as a Head of Legal Practice, a Head of Finance and Administration, a principal or an employee of any licensed body; and**
 - c whether the person or any person listed in Regulation 6.3 has been named in a list maintained by the Legal Services Board of persons in respect of whom a *licensing authority* has objected to or imposed conditions on the holding of a *material interest*, or of persons who acquire a holding of a *material interest* exceeding a limit specified in the licensing rules of any *licensing authority*.**

In determining whether an applicant (together with their associates) is fit and proper, ICAEW will have regard to whether they have previously been disqualified under section 99 of the Act, and whether any other licensing authority has previously objected to, or imposed a condition on, their holding of a material (or other restricted) interest in a licensed body.

- 6.7 ICAEW may grant approval to the holding of the non-*authorised person* unconditionally if it is satisfied that:**
- a the person's holding of the *material interest* does not compromise the regulatory objectives set out in section 1 of the Act;**
 - b the person's holding of the *material interest* does not compromise compliance by *authorised persons* or the *principals* or *employees* of the *firm* with these *regulations* or with any of ICAEW's regulatory arrangements; and**
 - c the person is a fit and proper person to hold the *material interest*.**
- 6.8 If ICAEW is not satisfied as required by Regulation 6.7 it may:**
- a grant approval to the holding of the non-*authorised person* subject to conditions if it is satisfied that compliance with the conditions makes this appropriate; or**
 - b object to the holding.**
- 6.9 Before deciding either to grant approval to the holding of the non-*authorised person* subject to conditions or to object to the holding, ICAEW will:**
- a give written notice of the proposed objection or conditions, with reasons for it, to the applicant for the licence and to the non-*authorised person*, explaining the nature of any proposed conditions and stating that representations may be made to ICAEW within 28 days;**
 - b consider any representations if made within the time specified by paragraph (a) above; and**

- c notify the applicant for the licence and the non-*authorised person* as soon as reasonably practicable of any objection or any conditions imposed, with reasons.**

In all such cases the notice will explain the effect of ICAEW's enforcement powers under Part 5 of Schedule 13 of the Act.

Acquisition of material interest after issue of licence

These regulations impose duties on non-*authorised persons* who acquire or propose to acquire a material interest in a firm which is already licensed. A failure, with knowledge of the relevant facts, to comply with any of these duties to notify is a criminal offence punishable with a fine.

Licensed firms should ensure that any non-*authorised person* who acquires or proposes to acquire a material interest in the firm is aware of the obligation to provide such documents or information as ICAEW may require. Failure to comply with this obligation is a criminal offence punishable by a fine and/or imprisonment.

- 6.10 If a non-*authorised person* who proposes to take a step which would result in his acquiring a *material interest* in a *licensed firm* or, if he already has any *material interest* in the *firm*, an additional kind of *material interest* in the *firm*, then he must:**
- a give written notification of the proposal to the *licensed firm* and to ICAEW; and**
 - b must not take the proposed step unless ICAEW has granted approval of his holding the *material interest*.**

As set out in Regulation 6.2 there are different kinds of material interest. If ICAEW has previously approved a non-*authorised person* to hold a specific type of material interest, and that person then acquires a different kind of material interest, this needs to be approved as set out above.

- 6.11 If a person only becomes aware of the notification requirements referred to in Regulation 6.10 after making such a proposal, he must give written notification of the proposal to the *licensed firm* and to ICAEW within 7 days of becoming aware of them and before taking the proposed step.**
- 6.12 A non-*authorised person* who acquires a *material interest* in a *licensed firm* without taking a step as referred to in Regulation 6.10 must give written notification of the acquisition to the *licensed firm* and to ICAEW within 7 days of becoming aware of the acquisition.**
- 6.13 When ICAEW receives a notification under any of Regulations 6.10, 6.11 or 6.12, or if it becomes aware that a person has failed to comply with an obligation to make such a notification, it may require the person to provide it with any documents or information and, within 90 days of the notification, will decide whether to:**
- a approve the person's holding unconditionally;**
 - b warn the person that it proposes to approve the holding subject to conditions;**
 - c approve the holding subject to conditions;**
 - d warn the person that it proposes to object to the holding; or**
 - e object to the holding.**
- 6.14 ICAEW may grant approval to the holding of the non-*authorised person* unconditionally if it is satisfied of the matters specified in Regulation 6.7.**

- 6.15 If ICAEW is not satisfied as required by *Regulation 6.14*, it may exercise either of the powers referred to in *Regulation 6.8*.
- 6.16 Subject to *Regulation 6.17*, before deciding either to grant approval to the holding of the non-*authorised person* subject to conditions or to object to the holding ICAEW will:
- a give written notice of the proposed objection or conditions, with reasons for it, to the *licensed firm* and to the non-*authorised person*, stating that representations may be made to ICAEW within 28 days;
 - b consider any representations made within the time specified by paragraph (a) above; and
 - c notify the *licensed firm* and the non-*authorised person* as soon as reasonably practicable of any objection or any conditions imposed, with reasons.
- 6.17 ICAEW may approve the holding subject to conditions or may object to the holding without giving the notice referred to in *Regulation 6.16* if it considers it necessary or desirable to do so for the purpose of protecting any of the regulatory objectives set out in section 1 of the *Act*.
- 6.18 Any approval granted by ICAEW under *Regulations 6.14* or *6.15* is effective only if the *material interest* is acquired within such period as may be specified in the written notice by ICAEW of the approval or, if no period is specified, within one year of the date of the notice.

The approval granted by ICAEW is subject to the material interest being acquired either within the period set out in the notice, or, if no period is given, within one year. If the interest is not acquired within this time, approval will need to be sought again.

Powers of ICAEW in relation to existing material interests

ICAEW is empowered to give notice objecting to, or imposing conditions on, the holding of existing material interests where necessary.

A person who holds a material interest subject to any condition may apply to ICAEW for variation or cancellation of the condition.

- 6.19 If at any time ICAEW ceases to be satisfied as required by *Regulation 6.7*, or if it is satisfied that a condition imposed by any of the *regulations* in this section has not been, or is not being, complied with, it may, within 90 days of becoming aware of the matters in question:
- a impose a condition on the holding; or
 - b object to the holding.
- 6.20 *Regulations 6.16* and *6.17* also apply to the exercise by ICAEW of the power referred to in *Regulation 6.19*.
- 6.21 A condition imposed under any of the *regulations* in this section may be varied or cancelled by written notice by ICAEW:
- a on the application of the person who holds the *material interest*; or
 - b on the initiative of ICAEW.

Enforcement of conditions and objections

Where a material interest is held in contravention of the regulations in this section, ICAEW may give notice restricting the rights attached to the holding and, subject to the procedural requirements imposed by the *Act*, may apply to the High Court for an order requiring a non-*authorised person* to sell shares.

Where a material interest is held in breach of a condition imposed under any of the regulations in this section, ICAEW may, subject to the procedural requirements imposed by the Act, apply to the High Court for an order securing compliance.

6.22 If a person holds a *material interest* in breach of any condition imposed by ICAEW under any of the *regulations* in this section, ICAEW may:

- a give written notice to the person that it intends to apply to the High Court for an order securing compliance if the conditions are not complied with before the end of the period specified in the notice (at least 28 days); and
- b upon expiry of the period specified in the notice, apply to the High Court to make such order securing compliance as the High Court thinks fit.

The High Court will not make an order securing compliance with a condition until the end of the period in which the person can appeal against the imposition of the condition and, if an appeal is made, until the appeal has been determined or withdrawn.

6.23 If a non-*authorised person*, who holds a *material interest* by virtue of a shareholding in a *licensed firm*, breaches:

- a *Regulation 6.10b*; or
- b any condition or objection imposed by ICAEW under any of the *regulations* in this section;

then ICAEW may:

- give a notice under *Regulation 6.24*; and
- apply to the High Court in accordance with paragraphs 43-45 of schedule 13 to the *Act* for an order requiring the sale of shares to secure that the non-*authorised person* no longer holds a *material interest* in contravention of any of the *regulations* in this section.

6.24 A notice under this *regulation* is a written notice to the person holding the *material interest* directing that one or more of the following restrictions apply until further notice:

- a any transfer of, or agreement to transfer, the shares, or the right to be issued with the shares, is void;
- b no voting rights are to be exercisable in respect of the shares;
- c no further shares are to be issued in right of the shares or in pursuance of any offer made to their holder; or
- d except in a liquidation, no payment is to be made of any sums due from the body corporate on the shares, whether in respect of capital or otherwise.

If ICAEW applies to the High Court for a divestiture order, it will at the same time give a restriction notice to the non-*authorised person* and send a copy of this notice to the firm.

6.25 A notice under *Regulation 6.24* ceases to have effect:

- a if the High Court so orders under paragraph 45(4) of schedule 13 to the *Act*;
- b at the end of 90 days if ICAEW does not within that time make the application referred to in *Regulation 6.23*; or
- c if the *licensed firm* ceases to be licensed by ICAEW.

Part 5 of Schedule 13 of the Act requires ICAEW to inform the Legal Services Board of decisions and actions taken under this section.

7 COMPLAINTS RESOLUTION

The following regulations detail how complaints should be dealt with. The Act requires that an accredited probate firm has procedures for dealing with complaints. Firms should take care to notify their existing clients of their right to make a complaint. This should be done at the first appropriate opportunity (eg, if a client complains or at the beginning of the next engagement).

It is clearly to the benefit of clients and firms if any complaints that may arise are dealt with promptly and efficiently. Firms should bear in mind that this may be a particularly stressful time for the client.

7.1 An accredited probate firm must establish procedures to deal with complaints.

7.2 An accredited probate firm must ensure that all clients are notified in writing at the beginning of the engagement of the name of the individual to be contacted in the event of a complaint and of their right to complain to the *Legal Ombudsman*. This individual should be a *principal* in an *authorised firm* or the *Head of Legal Practice* in a *licensed firm*.

Details of the complaint resolution procedure can be included within the terms of engagement or in any other material supplied to the client at the beginning of the engagement. The following is a suggested paragraph for inclusion:

'If you would like to talk to us about how we could improve our service to you, or if you are unhappy with the service you are receiving, please let us know by contacting [state name of principal]. We will consider carefully any complaint you may make about our probate or estate administration work as soon as we receive it and do all we can to resolve it. We will acknowledge your letter within five business days of its receipt and endeavour to deal with it within eight weeks. If we do not deal with your complaint in this time, or if you are unhappy with our response, you may of course take up the matter with the Legal Ombudsman.'

You must include the contact details for the Legal Ombudsman, which are:

- T 0300 555 0333
- Post Legal Ombudsman, PO Box 6806, Wolverhampton WV1 9WJ
- E enquiries@legalombudsman.org.uk

You must also advise the client of the timescales for making a complaint to the Legal Ombudsman. Ordinarily, the following timescales apply:

- the act or omission, or when the complainant should reasonably have known there was cause for complaint, must have been after 5 October 2010; and
- the complainant must refer the complaint to the Legal Ombudsman no later than:
 - six years from the act/omission; or
 - three years from when the complainant should reasonably have known there was cause for complaint; and
 - the complainant must refer the complaint to the Legal Ombudsman within six months of the date of your firm's written response.

As many complaints arise out of a misunderstanding of what services the firm has been retained to do, the progress in delivering those services and the cost involved, firms should ensure that they advise their clients in writing at the beginning of the engagement of the likely scope and nature of the intended work and the costs involved. Firms should ensure that their clients understand and agree to the process and these costs, and should keep their clients updated on matters as the engagements proceed.

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Firms should also bear in mind the importance of learning from complaints. It is recommended that at the conclusion of the complaints process firms reflect on whether procedures and/or systems could be introduced or modified to avoid similar complaints arising in the future.

- 7.3 If an *accredited probate firm* receives a complaint from a client or a former client it must acknowledge the complaint within five *business days*.**
- 7.4 The *accredited probate firm* must begin immediately to investigate the complaint in a fair, prompt, constructive and honest manner. The investigation should be conducted or supervised by the *Head of Legal Practice* in a *licensed firm*, or by a *principal* in an *authorised firm*.**

In the case of serious complaints, firms should bear in mind their obligations and duties under the firm's professional indemnity insurance. If cover is not to be affected, firms should notify insurers of matters that could give rise to a claim as soon as possible. However, the firm must still investigate the complaint and this does not affect the rights of the client to take the matter up with the Legal Ombudsman.

- 7.5 The *accredited probate firm* must keep a full record of the way in which the complaint has been handled. This documentation must be kept in a separate complaint file.**
- 7.6 If following such an investigation the *accredited probate firm* is of the opinion that the complaint is justified in whole or in part, it must do whatever is appropriate to resolve the complaint, whether by way of remedial work, apology, providing information, returning books or documents, reduction or repayment of fees, or otherwise.**
- 7.7 When the *accredited probate firm* notifies the client of its final response, which should be provided within 8 weeks of receiving the complaint, the client must be informed of their right to refer the matter to the *Legal Ombudsman*.**

Once a firm has concluded its investigation of the complaint, it should notify the client in writing of the outcome and how, if appropriate, it intends to rectify the matter. This may lead to more discussions with the client. However, the firm should make it clear to the client when it has made its final response. At this stage the client should also be informed of their right to refer the matter to the Legal Ombudsman.

- 7.8 If the complaint is not resolved within eight weeks of receipt of the complaint, the client must be informed in writing of their right to request that the *Legal Ombudsman* investigate the matter.**

If the complaint is not resolved within eight weeks, the client must be informed of their right to refer the matter to the Legal Ombudsman. This does not prevent a firm continuing to try to resolve the matter with the client, but the client could still request that the Legal Ombudsman look into the matter.

- 7.9 The *accredited probate firm* must cooperate with the *Legal Ombudsman*.**
- 7.10 The *accredited probate firm* must comply with any decision that the *Legal Ombudsman* may make and promptly comply with any remedy ordered by the *Legal Ombudsman*.**

The Legal Ombudsman may decide that a firm should pay the client compensation for any loss, inconvenience or distress caused to the client arising from the matter complained of. The decision may also include an apology, reimbursement of all or part of the firm's fees paid by the client, the requirement that the firm take remedial action to put the matter right or pay another firm to do so, or any other action which the Ombudsman deems necessary.

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7.11 The *accredited probate firm* must provide *ICAEW* with such details of complaints as *ICAEW* may request (whether by writing, visiting the *firm's* offices or by any other method) within **20 business days** of receiving such a request.

8 PROBATE AFFILIATES

ICAEW may accredit a firm which has a principal (an individual or a corporate body) who is not:

- a member;
- a member of one of the bodies listed below;
- an accredited probate firm;
- a registered auditor; or
- a DPB-licensed firm

and who, at the time of the proposed accreditation, is not an affiliate under the audit regulations, the DPB Handbook, the insolvency regulations or ICAEW's regulations governing the use of the description 'chartered accountant' and general affiliates, only if that principal is granted probate affiliate status by ICAEW.

The bodies referred to above are:

- the Institute of Chartered Accountants of Scotland;
- Chartered Accountants Ireland; or
- another approved regulator.

Probate affiliate status does not confer membership of ICAEW or entitle the individual or body corporate to use the title 'chartered accountant'. However, it does mean that a probate affiliate is bound by the same rules and regulations that govern a member of ICAEW.

Granting probate affiliate status

- 8.1** *Probate affiliate* status does not give the *probate affiliate* any rights other than those contained in these *regulations*. Neither the *probate affiliate* nor his *accredited probate firm* shall make any public representation that the *probate affiliate* has any rights other than those contained in these *probate affiliate regulations*.
- 8.2** A person must apply for *probate affiliate* status in the manner decided by *ICAEW*. To carry out its responsibilities under these *probate affiliate regulations*, *ICAEW* may make any enquiries necessary to assess the eligibility of the applicant.
- 8.3** *ICAEW* may grant *probate affiliate* status if it is satisfied that the applicant:
- a is a fit and proper person to be granted *probate affiliate* status;
 - b has agreed to comply with these *regulations*;
 - c has agreed to observe and uphold *ICAEW's* Code of Ethics; and
 - d has agreed to provide *ICAEW* with all the information it needs.
- 8.4** *ICAEW* may, on receiving an application for *probate affiliate* status:
- a grant *probate affiliate* status;
 - b reject the application;
 - c grant *probate affiliate* status with restrictions or conditions; or
 - d postpone consideration of the application.
- 8.5** *ICAEW* may at any time vary or end a restriction or condition made under *Regulation 8.4*.

Withdrawal of probate affiliate status

- 8.6 **ICAEW may in its sole discretion withdraw *probate affiliate* status if the *probate affiliate*:**
- a is in the opinion of *ICAEW* no longer a fit and proper person;
 - b fails to pay on time any fines or costs ordered by any committee or tribunal of *ICAEW*;
 - c has a disciplinary order made against him by any committee or tribunal of *ICAEW*;
 - d fails to pay the annual subscription within 30 days of the date of a notice to renew *probate affiliate* status; or
 - e fails or ceases to comply with any of these *regulations* and, in the circumstances, *ICAEW* considers that withdrawal is justified.

Decisions under Regulations 8.4, 8.5 or 8.6 will come into effect as set out in section 10.
If a probate affiliate is dissatisfied with a decision made by ICAEW under Regulations 8.4, 8.5 or 8.6 it may apply for a review of the decision in accordance with the procedures set out in section 11.

Cessation of probate affiliate status

- 8.7 **Probate affiliate status will cease if:**
- a subject to *Regulation 8.8*, the *firm* in which the *probate affiliate* is a *principal* ceases to be accredited;
 - b subject to *Regulation 8.8*, the *probate affiliate* ceases to be a *principal* in the accredited *probate firm* to which the grant of *probate affiliate* status related;
 - c the *probate affiliate* is an individual and has a bankruptcy order made against him;
 - d the *probate affiliate* is a body corporate which:
 - has been the subject of an effective resolution passed by the shareholders (or in the case of a limited liability partnership, by its members) for it to be wound up or has had a winding up order made against it on the grounds of insolvency;
 - has had an administration order made against it on grounds of insolvency; or
 - has had a receiver appointed by a creditor or by a court on the application of a creditor.
- 8.8 **Probate affiliate status will not cease under *Regulation 8.7a* or *8.7b* if:**
- a the accredited *probate firm* in which the *probate affiliate* is a *principal* merges with or is acquired by another accredited *probate firm*; or
 - b the *probate affiliate* leaves the accredited *probate firm* in which he is a *principal* and immediately becomes a *principal* in another accredited *probate firm*;

provided that *ICAEW* is informed within 10 *business days* of the event. Otherwise, disciplinary action may be taken and *probate affiliate* status withdrawn.

Changes in circumstances

- 8.9 **A *probate affiliate* or the accredited *probate firm*'s contact partner must inform *ICAEW* in writing within 10 *business days* of any changes relevant to matters considered by *ICAEW* under *Regulation 8.3*.**

Fees

- 8.10 ***Probate affiliates* must pay a fee each year in addition to the accredited *probate firm*'s annual fee. The first annual fee for *probate affiliate* status is due when an application is made for such status, together with any application fee.**

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8.11 The amount of the fees for *probate affiliate* status will be determined by ICAEW from time to time.

Disciplinary arrangements

8.12 The disciplinary provisions of ICAEW that apply to a *member* also apply to a *probate affiliate*.

8.13 A *probate affiliate* shall be liable to disciplinary action for any failure to observe and uphold any guidance issued by ICAEW, including any ethical guidance.

8.14 A *probate affiliate* will remain liable to disciplinary action under these *regulations* for any acts or omissions relating to the obligations in these *regulations* during the period in which *probate affiliate* status was held, regardless of any subsequent cessation of such status.

9 LEGAL SERVICES AND OTHER COMMITTEES

This section describes the various committees involved in the regulatory process and their powers. Some, but not all, of the powers may be delegated by the Legal Services Committee to either sub-committees or staff.

A firm generally has the right to seek a review of a decision. Details are in section 11.

Legal Services Committee

9.1 There shall be a Legal Services Committee which must:

- a comprise ten members, half of whom must be lay members; and
- b have a quorum of five members, the majority of whom must be lay members.

The chair of the Legal Services Committee must be a lay member and will have the casting vote where required. A lay member is a person who has never qualified or practised as a professional accountant. Solicitors and persons with legal training are also unable to act as lay members on the committee.

Members of ICAEW's Council and Board are excluded from membership of this committee.

9.2 The Legal Services Committee is responsible for discharging ICAEW's functions as an *approved regulator* and *licensing authority* as set out in these *regulations* and is also responsible for:

- a reviewing the returns and reports made under these *regulations*, and investigating failure to make returns or reports;
- b making appropriate enquiries into the eligibility of applicants for *accreditation*; *authorised individual* status; *Head of Legal Practice* status; *Head of Finance and Administration* status; or *probate affiliate* status (by writing, visiting a *firm's* office or offices, or in any other way);
- c making appropriate enquiries into the eligibility of applicants for status as non-*authorised persons* who hold *material interests* in *licensed firms*;
- d making appropriate enquiries to confirm that an *authorised person*, *Head of Legal Practice*, *Head of Finance and Administration* or *probate affiliate* is complying with these *regulations* (by writing, visiting a *firm's* office or offices, using a periodic return, or in any other way);
- e making appropriate enquiries to confirm that a non-*authorised person* who holds a *material interest* in a *licensed firm* is complying with these *regulations* (by writing, visiting a *firm's* office or offices, using a periodic return, or in any other way);

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- f publishing, in any manner it decides, its decisions if it considers this appropriate; and
- g compiling and maintaining a *register of licensed firms* and supplying information to the *Legal Services Board* as required.

In discharging its functions the Legal Services Committee will have regard at all times to the public interest, and the requirements and regulatory objectives of the Act.

9.3 The Legal Services Committee may delegate the following functions to sub-committees, *ICAEW* staff, or another duly appointed agent:

- granting applications for *accreditation* under *Regulation 2.5a*;
- granting applications for *accreditation* subject to conditions under *Regulation 2.5c*;
- varying or ending a condition or restriction under *Regulation 2.6*;
- granting applications for *authorised individual, Head of Legal Practice* or *Head of Finance and Administration* status under *Regulation 4.4*;
- granting applications for *authorised individual, Head of Legal Practice* or *Head of Finance and Administration* status subject to conditions under *Regulation 4.4*;
- varying or ending a condition or restriction under *Regulation 4.6*;
- granting approval to a holding of a *material interest* by a *non-authorised person* with or without conditions under *Regulations 6.7, 6.8a, 6.14* or *6.15*;
- deciding to vary or end a condition on the holding of a *material interest* by a *non-authorised person* under *Regulation 6.21*;
- granting applications for *probate affiliate* status under *Regulation 8.4a*;
- granting applications for *probate affiliate* status subject to conditions under *Regulation 8.4c*;
- varying or ending a condition or restriction under *Regulation 8.5*;
- withdrawing *probate affiliate* status under *regulations*:
 - 8.6b - failure to pay on time any fines or costs;
 - 8.6c - disciplinary order; or
 - 8.6d - failure to pay annual subscriptions;
- reviewing the returns and reports made under these regulations, and investigating failure to make returns or reports;
- making appropriate enquiries into the eligibility of applicants for accreditation; authorised individual status; Head of Legal Practice status; Head of Finance and Administration status; or probate affiliate status (by writing, visiting a firm's office or offices, or in any other way);
- making appropriate enquiries into the eligibility of non-authorised persons who seek approval as holders of material interests in a licensed firm;
- making appropriate enquiries to confirm that an authorised person; Head of Legal Practice; Head of Finance and Administration; or probate affiliate is complying with these regulations (by writing, visiting a firm's office or offices, using a periodic return, or in any other way);
- making appropriate enquiries to confirm that a non-authorised person who holds a material interest in a licensed firm is complying with these regulations (by writing, visiting a firm's office or offices, using a periodic return, or in any other way);
- publishing, in any manner it decides, its decisions if it considers this appropriate;

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- compiling and maintaining a register of licensed firms and supplying information to the Legal Services Board as required;
- imposing a condition on accreditation under *Regulation 10.1*;
- varying or ending a condition or restriction under *Regulation 10.2*; or
- withdrawing accreditation under regulations:
 - 10.3b - non-compliance with the PII Regulations;
 - 10.3c - failure or delay in submitting a return or report;
 - 10.3d - failure to pay amounts due;
 - 10.3e - failure to pay costs awarded by the *Review Committee*; or
 - 10.3f - failure to pay fines or costs awarded by ICAEW's disciplinary committees or the *Appeal Tribunal*.

9.4 All information obtained under these *regulations* will be confidential but may be disclosed by ICAEW (directly or indirectly) to any person or body undertaking regulatory, redress, disciplinary or law enforcement responsibilities for the purpose of assisting that person or body to undertake those responsibilities or as otherwise required or allowed by law.

All information that ICAEW receives will remain confidential except in the above circumstances.

9.5 In carrying out its responsibilities under these *regulations*, ICAEW, the ***Legal Services Committee***, the *Review Committee* and the *Appeal Tribunal* may consider any disciplinary findings, orders, ongoing investigations or any other information (including criminal and civil court judgments) concerning or affecting the *firm* or its *principals* or *employees*, any non-*authorised persons* holding a *material interest* in a *firm* (either actual or proposed), an applicant for *authorised individual* status, an *authorised individual*, an applicant for *Head of Legal Practice* status, a *Head of Legal Practice*, an applicant for *Head of Finance and Administration* status, a *Head of Finance and Administration*, an applicant for *probate affiliate* status or *probate affiliate*.

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Regulation 9.5 allows consideration of any disciplinary or other matter that affects the firm.

Notification to committees

9.6 The ***Legal Services Committee*** must notify the ***Conduct Committee*** about any fact or matter which:

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a suggests that an *accredited probate firm*, an *authorised individual*, a *Head of Legal Practice*, a *Head of Finance and Administration*, a *probate affiliate* or any other person (including a non-*authorised person* holding a *material interest*) may be liable to disciplinary action under these *regulations* or other regulations or by-laws of ICAEW; and

b in the opinion of the ***Legal Services Committee*** needs to be investigated.

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9.7 The ***Conduct Committee*** must inform the ***Legal Services Committee*** about any fact or matter which appears to it to be relevant to the powers and duties of the ***Legal Services Committee*** under these *regulations*.

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Under Regulations 9.6 and 9.7 information may be exchanged between the ICAEW committees responsible for regulation and discipline.

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10 REGULATORY ACTION

This section explains how ICAEW may take regulatory action against an accredited probate firm, including withdrawal of accreditation if necessary.

Regulatory decisions come into effect as set out in Regulations 10.9 to 10.11.

A firm may ask for a review of a decision and this is dealt with in section 11. A firm must apply for a review within 10 business days (or in some cases 28 days) of the decision being given to the firm.

Restrictions and conditions

10.1 ICAEW may impose restrictions or conditions on an *accredited probate firm* if it considers that:

- a any of the circumstances mentioned in *Regulation 10.3a to 10.3f or 10.3j* exist, or may exist, and the restrictions or conditions are justified;
- b the *firm* has not or may not have complied with these *regulations* in the past, and the restrictions or conditions are justified;
- c there is reason to believe that the *firm* may cease to comply with these *regulations* in the future and the restrictions or conditions are justified;
- d being *accredited or continuing probate work* without restrictions or conditions could adversely affect a client or any other person; or
- e it is appropriate to do so to ensure that *probate work* is undertaken, supervised and managed effectively.

10.2 ICAEW may at any time vary or end a restriction or condition made under *Regulation 10.1*.

ICAEW may place conditions on how an accredited probate firm carries out or manages its probate work. These could be that a firm should undertake specified training or change its procedures.

ICAEW may place restrictions on an accredited probate firm such as:

- against the firm, for example that it cannot accept any new clients or probate work;
- against a principal, for example that a particular principal may no longer be an authorised individual; or
- that an employee may no longer be involved in probate work.

If conditions or restrictions are imposed by ICAEW, a firm will have to undertake to comply with the terms of the restriction or condition. Any failure to deal with these matters is likely to be viewed extremely seriously.

As an alternative to regulatory action, ICAEW may accept a written undertaking from a firm that it will undertake a particular course of action.

Withdrawal of accreditation

10.3 ICAEW may withdraw a *firm's accreditation* if:

- a it considers that the *firm* no longer meets one or more of the eligibility requirements of *Regulations 2.2 or 2.3*;
- b it considers that the *firm* is not complying with the PII Regulations;
- c the *firm* is over 30 days late submitting the required returns or reports;
- d the *firm* has not paid the amounts due under *Regulations 2.14, 2.15 or 2.16* within

60 days of the date of an invoice under *Regulation 2.17*;

- e the *firm* has not paid the costs in the time set by the *Review Committee* under *Regulation 11.4*;
- f the *firm* has not paid in the time set any fines or costs ordered by the *Conduct Committee*, the *Tribunals Committee*, or the *Appeal Tribunal*;
- g it considers that the *firm* has not complied with any restriction or condition under *Regulation 10.1* or any written undertaking that the *firm* has given to ICAEW;
- h it considers that the *firm* or any of its *principals*, *employees* and shareholders have not complied with any other *Regulation* and, in the circumstances, withdrawal is justified;
- i it considers that the continued *accreditation* of the *firm* may adversely affect a client or any other person; or
- j in the case of a *licensed firm*, a *non-authorized person* holds an interest in the *firm* as a result of which the *firm* has ceased to comply with any of the *regulations* in section 6.

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Suspension

- 10.4 ICAEW may suspend an *accredited probate firm's accreditation* for a period if it considers that:
- a any of the circumstances mentioned in *Regulation 10.3a* to *10.3g* or *10.3j* exists or may exist;
 - b the *firm* is not, or may no longer be, complying with these *regulations*; or
 - c the continuation of the *firm's probate work* could adversely affect a client or any other person.

- 10.5 During a period of suspension an *accredited probate firm*:
- a may continue with any ongoing *probate work* with the permission of the *Legal Services Committee*; but
 - b may not accept any new appointments for *probate work*.

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- 10.6 ICAEW may vary or end a suspension made under *Regulation 10.4*.

ICAEW can decide that a firm's accreditation is suspended rather than withdrawing accreditation. This allows ICAEW to consider further evidence while protecting the public interest.

Urgent orders

- 10.7 ICAEW may impose restrictions or conditions on a *firm's accreditation* in the terms permitted by *Regulation 10.1* by means of an urgent order if it considers that, in addition to the matters justifying the imposition under *Regulation 10.1*, there is:
- a a risk of loss to a client of the firm if an urgent order is not made, or
 - b another reason justifying the making of an urgent order.
- 10.8 *Regulation 10.7* is subject to ICAEW allowing the *accredited probate firm* an opportunity to make oral or written representations within 10 *business days* of the urgent order being made. Having considered any representations ICAEW may:
- a end the order; or
 - b continue the order.

Regulation 10.7 allows ICAEW to take immediate regulatory action if the need arises. ICAEW may do this in the case of, for example, serious allegations or if there is a potential or actual loss of client money. As well as making immediate representations on the fact that an urgent order has been made, a firm can ask for a review under *Regulation 11.2* of any underlying decision made under

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Regulation 10.1. The order comes into force when it is served on the firm (see Regulation 10.9) and is not lifted if a review is requested.

Implementation of decisions and orders

10.9 A decision made under *Regulations 2.5, 2.6, 2.13, 2.20, 2.21, 4.4, 4.6, 5.4, 6.7, 6.8, 6.13, 6.19, 6.21, 8.4, 8.5, 10.2, 10.6, 10.7, or 11.7* will come into effect as soon as notice of it is served on the firm.

The regulations quoted in regulation 10.9 concern the following:

- the grant or refusal of an application for accreditation under Regulation 2.5;
- the decision to vary or end a condition or restriction on accreditation under Regulation 2.6;
- decisions on applications to modify accreditation under Regulation 2.13;
- the grant or refusal of dispensations under Regulations 2.20 and 2.21;
- the grant or refusal of authorised individual status, or status as a Head of Legal Practice or Head of Finance and Administration under Regulation 4.4;
- the decision to vary or end a condition or restriction on a person's status as an authorised individual, Head of Legal Practice or Head of Finance and Administration under Regulation 4.6;
- the decision to end a person's disqualification under Regulation 5.4;
- the decision to approve a holding by a non-authorised person either unconditionally or subject to conditions, or to object to the holding, prior to the grant of a firm's accreditation under Regulations 6.7 and 6.8;
- the decision to approve a holding by a non-authorised person either unconditionally or subject to conditions, or to object to a holding, following a firm's accreditation under Regulation 6.13;
- the decision to approve a holding of a material interest by a non-authorised person subject to conditions, or to object to such a holding, following a firm's accreditation under Regulation 6.15;
- the decision to impose conditions on a holding, or to object to a holding, of an existing material interest by a non-authorised person under Regulation 6.19;
- the decision to vary or end a condition on a holding of a material interest by a non-authorised person under Regulation 6.21;
- the grant or refusal of an application for probate affiliate status under Regulation 8.4;
- the decision to vary or end a condition or restriction on a person's status as a probate affiliate under Regulation 8.5;
- the decision to vary or end a condition or restriction on accreditation under Regulation 10.2;
- the decision to vary or end a suspension on accreditation under Regulation 10.6;
- orders in respect of restrictions or conditions on a firm's accreditation that are made on a urgent basis under Regulation 10.7; and
- Appeal Tribunal decisions under Regulation 11.7.

10.10 A decision made under *Regulations 4.7e, 5.1, 8.6 or 10.1* will come into effect 10 business days after notice of it is served on the firm or any later time that ICAEW specifies, save that:

- a if a firm has applied for a review under *Regulation 11.2*, the effect of the decision will be suspended pending a decision on the review under *Regulation 11.3* or the withdrawal of the request for a review; or**

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- b if a firm appeals to the Appeal Tribunal the effect of the decision will be suspended until the appeal is finally determined or withdrawn.**

Decisions made under the regulations referred to in Regulation 10.10 come into effect 10 business days after the firm has been given the decision. However, the decisions are postponed if an application for review or appeal is made. The decision of the Review Committee or Appeal Tribunal is the one that will come into effect.

The regulations referred to in Regulation 10.10 concern the following:

- withdrawal of status as an authorised individual under Regulation 4.7e;
- disqualification from status as a Head of Legal Practice or Head of Finance and Administration or from being a principal or an employee of a licensed firm under Regulation 5.1;
- withdrawal of status as a probate affiliate under Regulation 8.6; and
- the imposition of conditions or restrictions on an accredited probate firm under Regulation 10.1.

Regulation 1.5 details how decisions and orders are served on firms.

10.11 A decision made under Regulations 10.3 or 10.4 will come into effect 28 days after notice of it is served on the accredited probate firm or any later time that ICAEW specifies, save that:

- a if a firm has applied for a review under Regulation 11.2, the effect of the decision will be suspended pending a decision on the review under Regulation 11.3 or the withdrawal of the request for a review; or**
- b if a firm appeals to the Appeal Tribunal the effect of the decision will be suspended until the appeal is finally determined or withdrawn.**

Decisions made under the regulations referred to in Regulation 10.11 come into effect 28 days (rather than business days) after the firm has been given the decision. However, the decisions are postponed if an application for review or appeal is made. The decision of the Review Committee or Appeal Tribunal is the one that will come into effect.

The regulations referred to in Regulation 10.11 relate to the following:

- withdrawal of a firm's accreditation under Regulation 10.3; and
- suspension of a firm's accreditation under Regulation 10.4.

11 REVIEW AND APPEAL PROCESS

At the request of a firm or an accredited probate firm, a decision to refuse an application, grant it with conditions, withdraw a firm's accreditation or only allow it to continue with conditions or restrictions may be reviewed by ICAEW using the following process.

The same process may be used against a decision to reject an application for authorised individual status, Head of Legal Practice status, Head of Finance and Administration status or affiliate status. It may also be used against a decision to grant these applications with restrictions or conditions or to withdraw status altogether.

Similarly this process may be used against a decision to object to the holding or continued holding of a material interest or a decision to allow a holding subject to conditions.

11.1 In Regulations 11.2 to 11.8, 'affected party' means:

- a firm;

- an *accredited probate firm*;
 - an applicant for *authorised individual status*;
 - an *authorised individual*;
 - an applicant for *Head of Legal Practice status*;
 - a *Head of Legal Practice*;
 - an applicant for *Head of Finance and Administration status*;
 - a *Head of Finance and Administration*;
 - an applicant for *probate affiliate status*;
 - a *probate affiliate*;
 - a person seeking approval of the holding of a *material interest*; or
 - a person holding a *material interest* in a *licensed firm*
- which is affected by a decision of ICAEW under these *regulations*.

Review

- 11.2a An affected party may apply for a review in accordance with *Regulations 11.2b and 11.2c*.
- 11.2b An application for review must be made in writing to ICAEW within 10 *business days* of service on the affected party of a decision made under:
- Regulation 2.5b* refusing to grant a *firm accreditation* as an authorised or *licensed firm*;
 - Regulation 2.5c* granting *accreditation* to a *firm* subject to conditions or restrictions;
 - Regulation 2.6* refusing to vary or end a condition or restriction on a *firm's accreditation* or varying a *firm's accreditation* in terms other than those sought in the *firm's* application;
 - Regulation 2.13* refusing to modify a *firm's accreditation* or modifying a *firm's accreditation* in terms other than those sought in the *firm's* application for modification;
 - Regulation 2.21* refusing to grant a dispensation from the *regulations*;
 - Regulation 4.4* refusing to grant *authorised individual, Head of Legal Practice or Head of Finance and Administration status* or granting such status subject to conditions or restrictions;
 - Regulation 4.6* refusing to vary or end a condition or restriction on a person's *authorised individual, Head of Legal Practice or Head of Finance and Administration status*, or varying the condition or restriction in terms other than those sought in the person's application;
 - Regulation 4.7e* withdrawing *authorised individual status*;
 - Regulation 5.1* disqualifying a person from acting as a *Head of Legal Practice or Head of Finance and Administration* or from being a *principal or employee* of any *licensed firm*;
 - Regulation 5.4* refusing to order that a person's disqualification shall cease to be in force;
 - Regulation 6.8* objecting to the holding of a *material interest* or granting approval subject to conditions;
 - Regulation 6.15* objecting to a change in the holding of a *material interest* or granting approval subject to conditions;

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- Regulation 6.19** objecting to the continued holding of a *material interest* or imposing conditions on that holding;
 - Regulation 6.21** refusing to vary or end a condition on the holding of a *material interest* by a *non-authorised person*, or varying the condition in terms other than those sought in the person's application;
 - Regulation 8.4b** refusing to grant *probate affiliate* status;
 - Regulation 8.4c** granting *probate affiliate* status subject to conditions or restrictions;
 - Regulation 8.5** refusing to vary or end a condition or restriction on a person's status as a *probate affiliate*, or varying the condition or restriction in terms other than those sought in the person's application;
 - Regulation 8.6** withdrawing *probate affiliate* status; and
 - Regulation 10.1** imposing restrictions or conditions on *accreditation*.
- 11.2c An application for review must be made in writing to *ICAEW* within 28 days of service on the affected party of a decision made under:
- Regulation 10.3** withdrawing an *accredited probate firm's accreditation*; or
 - Regulation 10.4** suspending an *accredited probate firm's accreditation*.
- 11.3 A meeting of the *Review Committee* will be arranged as soon as practicable after an affected party has applied under *Regulation 11.2b* or *11.2c*. The *Review Committee* will consider the matter afresh and will hear new material put forward by the affected party. The *Review Committee* may make any decision which *ICAEW* could have made.
- 11.4** ~~The *Review Committee* may require an affected party to contribute to the costs of the review.~~

The Review Committee has the same powers as ICAEW when making decisions in relation to a firm, an accredited probate firm, an applicant for authorised individual status, an authorised individual, an applicant for Head of Legal Practice status, a Head of Legal Practice, an applicant for Head of Finance and Administration status, a Head of Finance and Administration, an applicant for affiliate status or a probate affiliate. It can also make decisions disqualifying persons from holding positions in licensed firms (as set out in section 5) or from holding material interests in those firms (as set out in section 6).

It can impose the same, more severe or less severe decisions. It can also award costs. Costs are likely to be awarded if, for example, the affected party fails to attend the review when it said it would, does not send in further material it has promised, or the application is frivolous.

Appeal

A firm or person who is the subject of a decision of the Review Committee and is dissatisfied with that decision can appeal to the Appeal Tribunal.

The Appeal Tribunal is the General Regulatory Chamber of the First-tier Tribunal. This is the independent public body established under the Tribunals, Courts and Enforcement Act 2007 for deciding appeals. Such appeals will be subject to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (SI 2009/1976). Parties should note in particular the time limit (28 days from when the notice of the Review Committee's decision was sent to the affected party, subject to a discretionary power to extend or shorten the time limit) and the requirements for a notice of appeal imposed by those Rules.

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The Appeal Tribunal can only consider an appeal on any of the grounds in Regulation 11.5. On appeal, the decision of the Review Committee is postponed until the Appeal Tribunal confirms or varies the decision (see Regulation 10.10 and 10.11).

Upon an appeal the Appeal Tribunal has the powers set out in Regulation 11.7.

- 11.5 The affected party may appeal to the *Appeal Tribunal* against the *Review Committee's* decision on one or more of the following grounds:**
- a that the *Review Committee*:**
 - i was wrong in law; or**
 - ii wrongly interpreted any relevant regulation, bye-law, or associated guidance;**
 - b that the *Review Committee* made a decision which no tribunal, correctly applying the law to the facts before it and acting reasonably, would have made; or**
 - c that there was evidence which the *Review Committee* had not considered and which:**
 - i could reasonably have led the *Review Committee* to make a different decision; and**
 - ii could not have been put before the *Review Committee* even if those concerned had done their best to produce it, including evidence that was not in existence at the time the *Review Committee* made its decision.**

Regulations 10.9 to 10.11 explain when decisions come into effect.

- 11.6 An appeal to the *Appeal Tribunal* cannot be made if the appeal is only against the costs awarded by the *Review Committee*.**
- 11.7 On appeal the *Appeal Tribunal* may:**
- a affirm the *Review Committee's* decision wholly or in part;**
 - b set aside the *Review Committee's* decision wholly or in part;**
 - c substitute for all or part of the *Review Committee's* decision a new decision which the *Review Committee* could have made;**
 - d send the matter back to the *Review Committee* to be considered again (generally, or in accordance with a finding made or direction given by the *Appeal Tribunal*); or**
 - e dismiss the appeal.**
- 11.8 If the *Appeal Tribunal* sends a matter back to the *Review Committee* under *regulation 11.7* then *Regulation 11.3* will apply when the *Review Committee* reconsiders. The meeting of the *Review Committee* to reconsider the matter will be arranged as soon as is practicable.**

12 DISCIPLINARY ARRANGEMENTS

The Legal Services Committee does not have the power to apply the disciplinary arrangements of ICAEW to the firms that it accredits. Only the Conduct Committee or the Tribunals Committee can do this. The bye-laws already provide a framework for disciplinary action to be taken against members, affiliates and firms and the purpose of this section is to apply the disciplinary arrangements of ICAEW to the firms that it accredits. If the terms of these regulations differ from those of the bye-laws, these regulations prevail.

Any fine imposed by a Tribunal in the exercise of ICAEW's powers as a licensing authority cannot exceed the amount(s) from time to time stipulated by the Legal Services Board under section 95 of the Act (currently £250m in the case of a firm or £50m in the case of an individual: see the Legal Services Act 2007 (Licensing Authorities) (Maximum Penalty) Rules 2011 (SI 1659/2011).

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Under regulation 12.2 the Tribunals Committee shares with the Legal Services Committee the power to withdraw status as an authorised individual or to disqualify an individual from holding the status of Head of Legal Practice or Head of Finance and Administration or from being a principal of, or employed by, any licensed firm.

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Appeals against decisions of the Tribunals Committee are made to the Appeal Tribunal. This is the General Regulatory Chamber of the First-tier Tribunal, which is the independent public body established under the Tribunals, Courts and Enforcement Act 2007 for deciding appeals. Such appeals will be subject to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (SI 2009/1976). Parties should note in particular the time limit (28 days from when the notice of the Tribunal's decision was sent to the affected party, subject to a discretionary power to extend or shorten the time limit) and the requirements for a notice of appeal imposed by those Rules.

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12.1 Save as provided below, the Disciplinary Bye-laws apply to breaches of these *regulations and references in the Disciplinary Bye-laws to a 'member' shall be construed as also including references to a relevant person.*

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12.2 In addition to the powers of the Tribunals Committee set out in the Disciplinary Bye-laws, if a Tribunal finds a formal allegation or formal allegations against a relevant person proved, it may order:

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a as if references in those bye-laws to a member firm, authorised firm or contracted firm are construed as references to an accredited probate firm; and¶
b as if

a that the relevant person be reprimanded or severely reprimanded;

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b that the relevant person be fined;

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c that the relevant person's status as an authorised individual be withdrawn; or

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d that the relevant person be disqualified under Regulation 5.1 from acting as the Head of Legal Practice, as the Head of Finance and Administration or as a principal or employee of any licensed firm.

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12.3 The affected party may appeal to the Appeal Tribunal against a Tribunal's order(s) under this section on one or more of the following grounds:

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a that the Tribunal:

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i was wrong in law; or

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ii wrongly interpreted any relevant regulation, bye-law, or associated guidance;

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b that the Tribunal made an order which no tribunal, correctly applying the law to the facts before it and acting reasonably, would have made; or

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c that there was evidence which the Tribunal had not considered and which:

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i could reasonably have led the Tribunal to make a different order; and

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ii could not have been put before the Tribunal even if those concerned had done their best to produce it, including evidence that was not in existence at the time the Tribunal made the order; and/or

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d in the case of an appeal against the imposition of a fine:

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i that the imposition of the fine is unreasonable in all the circumstances of the case;

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ii that the amount of the fine is unreasonable; or

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iii that it is unreasonable of the Tribunal to require the penalty imposed or any portion of it to be paid by the time or times by which it was required to be paid.

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12.4 An appeal to the Appeal Tribunal cannot be made if the appeal is only against a costs order of the Tribunal.

12.5 On appeal the *Appeal Tribunal* may:

- a affirm the Tribunal's order;
- b set aside the Tribunal's order;
- c substitute for all or part of the Tribunal's order a new decision which the Tribunal could have made; or
- d send the matter back to the Tribunals Committee to be considered again (generally, or in accordance with a finding made or direction given by the *Appeal Tribunal*); or
- e dismiss the appeal; and/or
- f in the case of an appeal against the imposition of a fine:
 - i quash the fine;
 - ii substitute a fine of such lesser amount as it considers appropriate; or
 - iii change the time by which the fine is required to be paid.

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Regulatory penalties

ICAEW may decide that a referral to the Conduct Department to investigate an apparent failure to comply with these regulations is not appropriate. Instead, with the agreement of the firm, ICAEW may propose a regulatory penalty. The following regulations explain this process.

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12.6 ICAEW may propose a *regulatory penalty* to an *accredited probate firm* subject to the following:

- a the *accredited probate firm* must have agreed that the breach of these *regulations* has been committed;
- b ICAEW will decide the amount of the penalty and when it is to be paid and will set this out in the letter to the *accredited probate firm* proposing the penalty; and
- c if the *accredited probate firm* wishes to accept the terms on which the penalty is proposed, it must notify ICAEW within 10 *business days* of the date of service of the letter from ICAEW containing the proposal.

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12.7 There are no rights of review or appeal against a *regulatory penalty*.

12.8 ICAEW will take account of any comments an *accredited probate firm* makes about the terms of the *regulatory penalty*. It may then reduce the amount of the penalty.

12.9 If the *accredited probate firm* accepts the penalty under *Regulation 12.6c*, ICAEW, as soon as is practicable:

- a will make a decision; and
- b may publish the decision in any way it decides.

12.10 Details of any penalty accepted, and the decision made, will be kept by ICAEW and it may, if it wishes, use that information in the future.

12.11 If an *accredited probate firm* does not agree that the breach has been committed, or does not agree to the terms of the penalty proposed or fails to comply with the terms of the penalty, the matter may be dealt with under the *Disciplinary Bye-laws*.

Regulatory penalties are likely to be used, for example, if a firm has consistently been late in replying to letters from ICAEW, has failed to submit annual returns, has given incorrect information on the return, or has not honoured undertakings given to ICAEW.

There is no right of appeal, as a regulatory penalty can only be made with the firm's agreement. Once a matter has been settled by a regulatory penalty, there will be no further regulatory or

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disciplinary action against the firm on the matter. However, the details of the regulatory penalty will be put on the firm's record and may be taken into account in the future.

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Legal Services Compensation Scheme Regulations

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1 GENERAL

Authority and commencement

- 1.1. These *regulations* are made originally by the Professional Standards Board of ICAEW, pursuant to Clause 16 of the Supplemental Royal Charter of 1948. They came into force on 22 September 2014. They were amended by the ICAEW Regulatory Board on 23 February 2017 and [TBC].
- 1.2. Any notice or document may be served on ICAEW by sending it to:
- Professional Conduct Department
ICAEW
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ
- 1.3. Subject as herein provided, any notice, decision, order or other document which needs to be served on any *applicant*, *firm* or *accredited probate firm* under these *regulations* will be delivered by hand, or sent by email, fax or post:
- if it is delivered by hand to the addressee, service will take effect immediately;
 - if sent by email, it will be sent to the most recent email address given by the addressee and service will take effect immediately;
 - if sent by fax, it will be sent to the most recent fax number given by the addressee and service will take effect immediately; or
 - if sent by post, it will be sent to the latest address given by the addressee and service will take effect two business days after posting.
- 1.4. Any requirement of the Legal Services Committee under these *regulations* will be communicated in writing.

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Interpretation

- 1.5. The words listed below shall have the meanings given:

Accreditation	The process by which ICAEW authorises or licenses persons to undertake <i>probate work</i> in accordance with the <u>Legal Services Regulations</u> .
Accredited probate firm	A <i>firm</i> authorised or licensed under ICAEW's <u>Legal Services Regulations</u> to conduct <i>probate work</i> .
Act	Legal Services Act 2007
Appeal Tribunal	The First-tier Tribunal established under the Tribunals, Courts and Enforcement Act 2007.
Applicant	A person (including an individual or a body corporate) who makes an <i>application</i> for a <i>grant</i> of compensation in accordance with these <i>regulations</i> , but excluding a person as set out in <i>regulation 3.3</i> .
Application	A claim for the <i>grant</i> of compensation made in accordance with <i>regulation 7.1</i> .
Authorised work	<ul style="list-style-type: none"><i>Probate work</i>Following a grant of probate or letters of administration, work undertaken in collecting in the assets of an estate, settling the liabilities and distributing the remainder in accordance with a will or letters of administration.

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Employee Anyone who carries out *authorised work* for an *accredited probate firm* but excluding a principal.

Firm A *firm* includes a:

- sole practice;
- partnership;
- limited liability partnership; or
- body corporate.

Grant The payment to an *applicant* in accordance with a decision of the Legal Services Committee under *regulation 3*.

ICAEW The Institute of Chartered Accountants in England and Wales.

Legal Services Committee The committee established under chapter 9 of the Legal Services Regulations.

Legal Services Compensation Scheme The scheme for the payment of grants made in accordance with these regulations.

Principal

- an individual in sole practice (where the *firm* is a sole practice);
- a person who is a partner (including both salaried and equity partners) (where the *firm* is a partnership);
- a member of a limited liability partnership (where the *firm* is a limited liability partnership);
- a director (where the *firm* is a company);
- a member of the governing body (where the *firm* is an unincorporated body, other than a partnership); or
- any individual or person who is held out as being a director, partner, member, or member of the governing body.

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Deleted: The committee established under chapter 9 of the Probate Regulations.

Deleted: Probate Compensation Scheme

Deleted: The *scheme* for the payment of *grants* made in accordance with these *regulations*.

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Probate work The preparation of papers to apply for a grant of probate or letters of administration.

Regulations These Legal Services Compensation Scheme Regulations, as modified or amended from time to time.

1.6. In these *regulations*, headings are for convenience only, and shall not affect interpretation.

1.7. In these *regulations* words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter. Words importing the neuter gender include both the masculine and feminine genders. These *regulations* will be governed by, and interpreted in accordance with, the laws of England and Wales.

Administration of the scheme

1.8. The Legal Services Committee is responsible for administering the Legal Services Compensation Scheme and for determining *applications* for compensation made under these *regulations*.

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2 THE LEGAL SERVICES COMPENSATION SCHEME

- 2.1 These *regulations* apply to:
- accredited probate firms*;
 - firms* that were previously *accredited* in accordance with the Legal Services Regulations and any reference to *accredited probate firms* shall include such *firms*; and
 - applicants*.
- 2.2 An *accredited probate firm* must pay any levy for ICAEW's Legal Services Compensation Scheme (whether a periodic contribution or special levy) as ICAEW may decide from time to time. This includes levies raised after the *firm's accreditation* has ceased but excludes levies relating to claims in respect of services provided by any *firm* wholly after the date of termination of the *firm's accreditation*.
- 2.3 ICAEW may invest any money which forms part of the Legal Services Compensation Scheme in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act).
- 2.4 ICAEW may insure, in relation to the Legal Services Compensation Scheme, for such purposes and on such terms as it considers appropriate.
- 2.5 ICAEW may borrow for the purposes of the Legal Services Compensation Scheme and charge investments which form part of the *Scheme* as security for borrowing by ICAEW for the purposes of the *Scheme*.
- 2.6 The Legal Services Compensation Scheme may be applied by ICAEW for the following purposes (in addition to the making of *grants* in respect of *applications* for compensation):
- payment of premiums on insurance policies effected under *regulation 2.4*;
 - repayment of money borrowed by ICAEW for the purposes of the Legal Services Compensation Scheme and payment of interest on any money so borrowed under *regulation 2.5*;
 - payment of any other costs, charges or expenses incurred by ICAEW in establishing, investing, maintaining, protecting, administering or applying the Legal Services Compensation Scheme;
 - payment of any costs, charges or expenses incurred by the ICAEW in exercising its powers under Schedule 14 to the *Act* (intervention powers) or any intervention powers which it may have as an approved regulator under the *Act*;
 - payment of any costs or damages incurred by ICAEW or its employees, agents, any member, officer, and any member of the Legal Services Committee, as a result of proceedings against any of them for any act or omission made in good faith and in the exercise or purported exercise of any of their functions under these *regulations*.

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3 GRANTS FROM THE COMPENSATION SCHEME

- 3.1 A *grant* from the Legal Services Compensation Scheme is made wholly at the discretion of the Legal Services Committee and on such terms as the *Committee* deems appropriate. No person has a right to a *grant* enforceable at law.
- 3.2 In particular and for the avoidance of doubt, the Legal Services Committee may only make a *grant* if, and to the extent that, funds are available in the *Scheme* at the time of the decision on whether to make a *grant*.
- 3.3 The Legal Services Committee will not make a *grant* in favour of an *applicant* which, if a body corporate or a registered charity, had an annual turnover in the last accounting year equal to, or exceeding, £1 million.

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3.4 For a *grant* to be made from the Legal Services Compensation Scheme, an *applicant* must satisfy the Legal Services Committee that:

- a. they have suffered loss in consequence of fraud or other dishonesty on the part of an *accredited probate firm* or of any *principal* or *employee* of an *accredited probate firm*, in connection with their activities in the course of *authorised work*; or
- b. they have suffered loss in consequence of a failure to account for money which was received by an *accredited probate firm*, or the *principal* or *employee* of an *accredited probate firm*, in connection with their activities in the course of *authorised work*.

3.5 A *grant* may be made, at the sole discretion of the Legal Services Committee, as an interim measure and on such terms as the Legal Services Committee deems appropriate.

4 GRANTS IN RESPECT OF PERSONS IN DEFAULT OF REGULATORY REQUIREMENTS

4.1 At the absolute discretion of the Legal Services Committee a *grant* may be made even if at the time of the relevant act or default by the *accredited probate firm* or its *principal* or *employee*:

- a. the *accreditation* of the *accredited probate firm* had ceased under regulation 2.22 of the Legal Services Regulations; or
- b. the *accreditation* of the *accredited probate firm* was suspended under chapter 10 of the Legal Services Regulations; or
- c. the *principal* or *employee* of the *accredited probate firm* was disqualified under chapter 5 of the Legal Services Regulations,

provided that the Legal Services Committee is reasonably satisfied that the *applicant* at that time was unaware of the cessation, suspension or disqualification.

5 CASES NOT COVERED BY THE LEGAL SERVICES COMPENSATION SCHEME

5.1 For the avoidance of doubt, a *grant* will not be made in respect of losses which:

- a. are the personal debts of an *accredited probate firm* or a *principal* or *employee* of such a *firm* and where the facts would not otherwise give rise to an *application* to the Legal Services Compensation Scheme;
- b. result from, but do not form part of, any misappropriation of, or failure to account for, money or money's worth;
- c. result from the trading debts or liabilities of the *accredited probate firm*;
- d. amount to a claim for contractually agreed interest between the *applicant* and the *accredited probate firm*;
- e. were not notified to the Legal Services Committee in accordance with *regulation 7.1*;
- f. result from activities of the *accredited probate firm* other than in its performance of *authorised work*;
- g. arise solely by reason of professional negligence by an *accredited probate firm* or a *principal* or *employee* of such a *firm*; or
- h. arose at any time when the *firm* was not *accredited*, save for the circumstances set out in *regulation 4.1*.

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6 MULTI-PARTY AND MULTI-PROFESSION ISSUES

- 6.1 Where the loss has been sustained as a result of the combined activities of more than one party (eg, an *accredited probate firm* conspires with a solicitor or is assisted by a negligent solicitor), the *Legal Services Committee* will consider the role of each contributing factor in causing the *applicant's* loss. The *Legal Services Committee* will base any *grant* on its assessment of that portion of the loss primarily attributable to the acts of the *accredited probate firm*. The *Legal Services Committee* may decide to make a *grant* on a pro-rata basis in accordance with its assessment of the importance of each contributing factor in the loss, or may reject an *application* in its entirety if it is of the opinion that the loss was primarily due to factors other than the fraud or dishonesty of the *accredited probate firm*, or its *principal(s)* or *employee(s)*, or their failure to account for money which was received in connection with activities in the course of *authorised work*.
- 6.2 When an individual authorised by another approved regulator (as set out in Schedule 4 of the *Act*) is practising as the *principal* or *employee* of an *ICAEW accredited probate firm*, *ICAEW* may, in its absolute discretion, consider an *application* in respect of that individual's act or default.

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7 APPLICATIONS: FORM AND TIME LIMIT

- 7.1 Every *application* must be delivered to *ICAEW*, in such form as may from time to time be prescribed by *ICAEW*, within twelve months after the loss first came, or reasonably should have come, to the knowledge of the *applicant*. The *Legal Services Committee* may extend this period if satisfied that there are exceptional circumstances which justify the extension of the time limit.

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8 DOCUMENTATION IN SUPPORT

- 8.1 An *applicant* must provide such documentation as may be required by the *Legal Services Committee* including, when requested, a statement of truth. Failure to provide such documentation or to cooperate with the *Legal Services Committee* will be taken into account when determining the merits of the *application* and may be treated as a reason for withholding or reducing a *grant*.

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9 EXHAUSTING OTHER REMEDIES

- 9.1 A *grant* will be refused where:
- the loss is an insured risk; or
 - in the reasonable opinion of the *Legal Services Committee*, the loss is capable of being made good by some other means.
- 9.2 A *grant* will be reduced where, and to the extent that:
- part of the loss is an insured risk; or
 - in the reasonable opinion of the *Legal Services Committee*, part of the loss is capable of being made good by some other means.
- 9.3 In particular the *Legal Services Committee* may, before deciding whether to make a *grant* or the amount of a *grant*, require the *applicant* to:
- pursue any civil remedy which may be available to the applicant in respect of the loss;
 - commence insolvency proceedings;
 - make a formal complaint to the Police in respect of any dishonesty on the part of the accredited probate firm or its principal(s) or employee(s); or
 - assist in the taking of any action against the accredited probate firm or its principal(s) or employee(s).

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9.4 If a grant is made (whether under regulation 3.5 or otherwise) before requiring the applicant to resort to other means of recovery, such grant will be made repayable to ICAEW in the event (and to the extent) that losses are recovered by such other means.

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10 NOTICE TO ACCREDITED FIRM

10.1 The Legal Services Committee shall not make a grant unless:

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- a. a communication has been sent to the accredited probate firm at its last known correspondence address, as set out in regulation 1.3, or to its representative informing the accredited probate firm of the nature of the application; and
- b. at least eight days have elapsed since the date of receipt of such communication which, notwithstanding regulation 1.3, shall be regarded as the day following the date of the communication.

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10.2 If it appears to the Legal Services Committee that any communication sent under Regulation 10.1 will not come to the attention of the accredited probate firm or its representative, then the Legal Services Committee may make a grant notwithstanding failure to comply with the provisions of this regulation.

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11 COSTS

Litigation costs

11.1 Where an applicant intends to institute or has already instituted civil proceedings for recovery of their loss and wishes to apply for a grant in respect of the costs of the proceedings, the Legal Services Committee will not consider making or increasing a grant in respect of such costs unless:

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- a. they can be shown to be proportionate to the loss and the amount likely to be recovered; or
- b. the proceedings are/were necessary for the making of the application for a grant.

Application costs

11.2 Where a grant is made, the Legal Services Committee may, in its absolute discretion, consider an application for a further grant in respect of any reasonable fees payable by the applicant to any professional adviser, provided that such costs were incurred wholly, necessarily and exclusively in connection with the preparation, submission and proof of the application.

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12 MAXIMUM PAYMENT

12.1 Subject to regulation 12.2 the maximum total amount that may be granted pursuant to applications under this scheme in respect of authorised work in connection with any single estate is limited to £500,000 (exclusive of any interest payable under regulation 17.1).

12.2 The maximum amount which the Legal Services Committee may determine shall be paid out of the Legal Services Compensation Scheme in any calendar year shall be:

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- a. the amount determined by the Legal Services Committee which may be expected not to cause the grants payable in that year to exceed £5,000,000; plus
- b. the amount of any money recovered in that year by the Legal Services Compensation Scheme, net of VAT (if applicable), pursuant to the provisions of regulation 13.1 and available for payment in that year; plus
- c. the amount of any sums so recovered in previous years and not disbursed and which are available for payment in the relevant year, net of VAT (if applicable).

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Accordingly if, in the course of any such calendar year, it appears to the Legal Services Committee, in its absolute discretion, that the total of such amounts is otherwise likely to be exceeded in that calendar year, then in the remainder of that calendar year it shall not determine that the full amount shall be paid in respect of any *application*, but shall secure, as far as it reasonably can, that all *grants* it thereafter determines shall be made, taking into consideration any *grant* on account, are abated rateably one with another.

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12.3 Where the Legal Services Committee has abated a *grant* under 12.2 it may, in its absolute discretion, at the end of the financial year of *ICAEW* in which the initial *grant* was made (the Grant Year) determine whether or not:

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- a. the balance of the amount stated in the *application* or a part thereof; and
- b. interest on such balance;

should be paid in the next following year of *ICAEW* (the Following Year) and any such further *grant* shall be made out of funds available to the Legal Services Committee for the Following Year as provided in *regulation 12.2*.

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13 RECOVERY AND SUBROGATION

13.1 Where a *grant* is made otherwise than by way of loan, or where a *grant* is made by way of a loan and repayment of the loan is waived or otherwise the borrower has failed to repay part or all of the loan, *ICAEW* shall be subrogated to the rights and remedies of the person to whom or on whose behalf the *grant* is made (the recipient) to the extent of the amount of the *grant*. In such event the recipient shall if required by *ICAEW* whether before or after the making of a *grant* and upon *ICAEW* giving to the recipient a sufficient indemnity against costs, prove in any insolvency and/or winding-up of the *accredited probate firm* and/or sue for recovery of the loss in the name of the recipient but on behalf of *ICAEW*. The recipient shall also comply with all proper and reasonable requirements of *ICAEW* for the purpose of giving effect to *ICAEW*'s rights and shall permit *ICAEW* to have conduct of such proceedings.

14 REDUCTION IN GRANTS

14.1 Where an *applicant* or the *applicant's* servant or agent has contributed to the loss as a result of their activities, omissions or behaviour whether before, during or after the event giving rise to the *application*, the Legal Services Committee may, in the exercise of its absolute discretion and to the extent that it considers that such activity, omission or behaviour has contributed to the loss, reduce the amount of any *grant* or reject the *application* in its entirety.

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15 DEDUCTION FROM GRANTS

15.1 The Legal Services Committee may deduct from any *grant* the fees that would have been payable by the *applicant* to the *accredited probate firm* so that the *applicant* will not be in a better position by reason of a *grant* than he would otherwise have been in had the loss not occurred.

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15.2 The Legal Services Committee may deduct from any *grant* all monies already recovered by an *applicant* and monies which in its reasonable opinion either will be or should have been recovered.

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16 REFUSAL OF AN APPLICATION

- 16.1 If the Legal Services Committee refuses to make a *grant* of either the whole or part of the amount applied for, the *applicant* will be informed in writing of the reasons for the decision.
- 16.2 If an *application* is refused in whole or in part, a further *application* for the same loss (or loss which includes the same loss) may not be made unless, in the reasonable opinion of the Legal Services Committee, it is supported by substantial new relevant evidence, information or submissions in which case *ICAEW* may, in its absolute discretion, consider a renewed *application*.

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17 INTEREST

- 17.1 The Legal Services Committee may in its absolute discretion pay interest to an *applicant* on a *grant* of compensation. Any interest shall accrue from a date three calendar months after the date on which all information necessary to determine the *application* was provided by the *applicant* to the Legal Services Committee.
- 17.2 Any interest payable under *regulation* 17.1 shall be simple interest paid at a rate which is applied by HMRC in respect of Income Tax repayments.

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18 APPEALS

If an *application* is refused in whole or in part, the *applicant* may appeal to the *Appeal Tribunal* in accordance with regulations 11.5 to 11.8 of the Legal Services Regulations as if the refusal of the application were a decision of the Review Committee under the Legal Services Regulations.

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