



Fitness Committee Regulations

EFFECTIVE FROM 1 JUNE 2018

Guidance:

These regulations supplement the procedure laid out in Disciplinary Bye-laws 38 – 50 concerning the appointment and operation of the ICAEW Fitness Committee in determining whether a respondent's fitness to participate in disciplinary proceedings and/or professional competence is seriously impaired through his/her physical or mental health.

Authority and commencement

- 1 These **regulations** are made by the Council of **ICAEW** under Clause 16 of the Supplemental Charter of 1948 and Principal Bye-law 49(a). They come into force on 1 June 2018.
- 2 Any notice or document may be served on **ICAEW** by delivering it to the **PCD Committee Secretary** in **ICAEW's** Professional Conduct Department.
- 3 Any notice, decision, order or other document which needs to be served on a **respondent, ICAEW** or other person under these **regulations** may be sent by pre-paid post or email in accordance with **Disciplinary Bye-laws** 1.6 – 1.8.
- 4 In these **regulations** the words set out below have the following meanings:
 - a. **Business day** means a day when banks are open for business (excluding weekends) in England and Wales.
 - b. **CFAB student** is someone who is registered to study for **ICAEW** CFAB and no more than 3 years have elapsed since the date of the last attempt at a CFAB examination.
 - c. **Contracted firm** has the meaning given in **Disciplinary Bye-law** 1.2.
 - d. **Disciplinary Bye-laws** means the Disciplinary Bye-laws of **ICAEW** for the time being in force.
 - e. **Fitness Committee** means the committee constituted under paragraph 6 of the Schedule to the **Disciplinary Bye-laws**.
 - f. **Foundation Qualification Holder** is someone who holds the **ICAEW** Foundation Qualification and is registered to use the relevant designatory letters;
 - g. **Hearing** means the substantive hearing in which the **panel** appointed in accordance with **Disciplinary-Bye-law** 39.1 determines whether a **respondent's** fitness to participate in disciplinary proceedings and/or professional competence is seriously impaired through his/her physical or mental health; it does not include a pre-hearing review.
 - h. **ICAEW** means the Institute of Chartered Accountants in England and Wales.
 - i. **Medical assessor** means the independent and suitably qualified medical expert appointed to act as medical assessor at the **hearing** under **Disciplinary Bye-law** 39.4.

- j. **Member** means a member of **ICAEW**.
- k. **Member firm** has the meaning given in **Disciplinary Bye-law** 1.2.
- l. **Panel** means any panel of the **Fitness Committee** appointed under **Disciplinary Bye-law** 39.1 to determine whether a **respondent's** fitness to participate in disciplinary proceedings and/or professional competence is seriously impaired through his/her physical or mental health.
- m. **Panel chair** means the lay chair of the **Fitness Committee** (or another lay member of the **Fitness Committee** who has been approved by the Regulatory Appointments Panel to act as a lay chair of tribunals of the Disciplinary Committee) and who has been appointed chair of a **panel** in accordance with **Disciplinary Bye-law** 39.1(b).
- n. **Parties** means the **respondent** and **ICAEW**.
- o. **PCD Committee Secretary** means the Professional Conduct Department (PCD) Committee Secretary.
- p. **Provisional foundation qualification holder** is someone who is registered to study for the **ICAEW** Foundation Qualification;
- q. **Provisional member** means a person who has not been admitted to full membership of **ICAEW** as defined in **Disciplinary Bye-law** 1.2.
- r. **Regulated firm** has the meaning given in **Disciplinary Bye-law** 1.2.
- s. **Regulations** means these Fitness Committee Regulations, as modified or amended from time to time.
- t. **Respondent** means any **member, provisional member, foundation qualification holder, provisional foundation qualification holder** or **CFAB student** who is subject to **ICAEW's Disciplinary Bye-laws**;
- u. **Written record of decision** means the document prepared by the **panel chair** and approved by the **panel**, which records in writing a summary of the reasons for the finding and the order(s) of the **panel**, including any term or condition on which the order(s) were made.

5 In these **regulations** words importing the singular include the plural and vice versa.

6 Headings are included for convenience only and do not affect interpretation of the **regulations**.

7 The following **regulations** shall apply, where appropriate, in relation to the procedure set out in **Disciplinary Bye-laws** regarding interim review hearings, review hearings and expedited order hearings as if references to a **hearing** were references to an interim hearing, review hearing or expedited order hearing (as applicable) and references to a finding or an order were references to a finding or an order of the **panel** under **Disciplinary Byelaw** 46 – 48 (as applicable).

- 8 The timescale set out in **regulation** 10 shall not apply in the case of an expedited order hearing.

Pre-hearing procedure

- 9 The **PCD Committee Secretary** shall decide, in his/her absolute discretion, whether an application for a postponement of a **hearing** which has not commenced should be granted.
- 10 At least 14 days before the day fixed for the **hearing** the **respondent** shall provide the **PCD Committee Secretary** with a copy of any documents on which he/she intends to rely at the **hearing**, unless the documents have been included amongst the documents served in accordance with **Disciplinary Bye-law** 40.1. The **PCD Committee Secretary** shall give **ICAEW** a reasonable opportunity to respond to any documents served by the **respondent** under this **regulation**.
- 11 Prior to the **hearing** the **panel chair** may require the **respondent** or **ICAEW** to provide such further information and documents as is considered necessary to assist the **panel** in determining whether the **respondent's** fitness to participate in disciplinary proceedings and/or professional competence may be seriously impaired through his/her physical or mental health.
- 12 The **panel chair** may direct that there be a pre-hearing review of the matter by the **panel** on the application of either **party** or act on his or her own volition.

Hearing

- 13 The **respondent** may appoint a representative for the **hearing** who may be a solicitor or barrister or another person approved by the **panel chair**.
- 14 A **respondent** is deemed present when he/she appears by his/her representative.
- 15 At the commencement of the **hearing** the **medical assessor** shall read out the grounds for believing that the **respondent's** fitness to participate in disciplinary proceedings and/or professional competence may be seriously impaired through his/her mental or physical health. With the **respondent's** consent these grounds may be taken as read.
- 16 The **hearing** shall be informal and shall proceed on an inquisitorial basis in accordance with **Disciplinary Bye-law** 40.7. The **panel** may adopt any method of procedure which it considers just and fair, and the strict rules of evidence will not apply. In particular the **panel** may consider any written representations, written reports and/or oral evidence which it considers appropriate, including evidence which has not been produced prior to the **hearing** in accordance with **regulations** 10 and 11.
- 17 No objection shall be upheld to any technical fault in the procedure adopted by a **panel** provided that the proceedings are fair and the relevant bye-laws and regulations have been complied with.

- 18 On the application of either **party**, or of its own volition, the **panel** may hear evidence from the suitably qualified medical expert who was instructed by **ICAEW** to examine the **respondent** and provide a report in accordance with **Disciplinary Bye-law** 38.3(b).
- 19 The **panel** may deliberate in the absence of the **parties** and any other persons attending the **hearing**, at any time.
- 20 A **panel** may adjourn its proceedings from time to time as it thinks fit of its own volition or upon application by either **party**.
- 21 The **respondent** or his/her representative shall be allowed to address the **panel** before it makes a finding and any order or direction in accordance with **Disciplinary Bye-law** 41.
- 22 A written transcript or digital recording of the proceedings may be taken on behalf of the **panel**. The record of proceedings shall be confidential and shall not be put in the public domain.
- 23 The **PCD Committee Secretary** shall send to the **respondent** a copy of the **written record of decision** as soon as reasonably practicable after it has been approved.
- 24 All written material and information provided by either **ICAEW** or the **respondent** in connection with the 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 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;
 - 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 **respondent** is a principal in or employed by a **member firm, regulated firm** or **contracted 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 **panel** in accordance with **Disciplinary Bye-law** 41.7.

- 25 Where a **panel** makes an order in respect of a referral to the Fitness Committee in accordance with **Disciplinary Bye-law** 38.1 or 38.2, details of the order shall remain published on the **ICAEW** website for at least 5 years from:
- a. the date of the **panel's** order; or
 - b. if the order subject to an appeal, the date on which the appeal proceedings are concluded.