



# *Appeal Committee Regulations*

EFFECTIVE FROM 1 JUNE 2018

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- 1 These regulations were made by the Appeal Committee under paragraph 1(6) of the Schedule to the Disciplinary Bye-laws and came into force on 1 June 2018.

## Interpretation

- 2 Except where express reference is made in this regulation, words and phrases used in these regulations have the same meaning as in the Disciplinary Bye-laws;
  - a. Answer means a written response to the **notice** and grounds of appeal served on the **appellant** by the **respondent**;
  - b. Appellant means a member, respondent or defendant (as defined in Disciplinary Bye-law 1) or an applicant (Review Committee and readmission / re-registration cases) who has given an effective **notice of appeal**;
  - c. Bye-laws means all the bye-laws of **ICAEW** for the time being in force as amended from time to time;
  - d. Chair means a member of the Appeal Committee appointed to be chair of the **panel** in accordance with Disciplinary Bye-law 27.2(a);
  - e. Contracted firm has the meaning set out in Disciplinary Bye-law 1.2;
  - f. ICAEW means the Institute of Chartered Accountants in England and Wales;
  - g. Member firm has the meaning set out in Disciplinary Bye-law 1.2;
  - h. Membership Regulations means the Membership Cessation, Readmission, Resignation Regulations
  - i. Notice of appeal means –
    1. in the case of appeals from the Investigation Committee, the notice served under Disciplinary Bye-law 31.1 (Intervention Orders); or
    2. in the case of appeals from the Disciplinary Committee, the notice served under Disciplinary Bye-law 26.1; or
    3. in the case of appeals from the **Review Committee** the notice served under the appropriate provision in the Audit Regulations, the Designated Professional Body (Investment Business) Handbook or the Insolvency Licensing Regulations; or
    4. in the case of appeals from the Fitness Committee, the notice of appeal served under the *Membership Regulations* (readmissions cases) or the Foundation Qualification Regulations (re-registration cases); or
    5. in the case of appeals from the Fitness Committee, the notice of appeal served under Disciplinary Bye-law 26.1 (fitness cases); andthe term includes 'effective notice of appeal' under Disciplinary Bye-law 26.3.
  - j. Panel means a panel of the Appeal Committee appointed under Disciplinary Bye-law 27.1 and in accordance with Disciplinary Bye-law 27.2; or a panel of the

Appeal Committee appointed under the relevant provisions of the Audit Regulations, the DPB Handbook or the Insolvency Licensing Regulations (Review Committee); or a panel of the Appeal Committee appointed under *Membership Regulation 12* or *Foundation Qualification Regulation 28*.

- k. Professional Conduct Department (PCD) Committee Secretary means the person appointed to that office from time to time by the head of staff.
  - l. Regulated firm has the meaning set out in *Disciplinary Bye-law 1.2*;
  - m. Respondent means in the case of an appeal against a decision of the Investigation Committee or the Disciplinary Committee, the Investigation Committee; in the case of an appeal against a decision of the **Review Committee**, the **Review Committee**; and in the case of an appeal against a decision of the Fitness Committee, the Fitness Committee.
  - n. Review Committee means the Committee appointed by the **ICAEW** Council to consider applications for review of any decision taken by the Audit Registration Committee, the Investment Business Committee or the Insolvency Licensing Committee.
- 3 These regulations, save where express reference is made, apply to the hearing by a **panel** of the Appeal Committee of any appeal, whether from the Investigation Committee (Intervention Orders only); a tribunal of the Disciplinary Committee; a panel of the **Review Committee**, or a panel of the Fitness Committee.
- 4 Where **notice of appeal** has been served, but no grounds of appeal have been served, an application for an extension of the 28 day period for service of grounds of appeal must be made in writing to the chair within 28 days from the date of service of the written record of decision. Grounds served outside the 28 days may be admitted where in the chair's opinion the circumstances are exceptional and the interests of justice so require.
- 5 Regulations 6, 7, 25 – 30 and 35 – 41 do not apply to appeals against decisions by panels of the Fitness Committee (fitness and readmission / re-registration cases).
- 6 Where a tribunal orders exclusion and payment of a fine and/or costs, a defendant may apply in writing to the chair or vice chair of the Appeal Committee for a reduction in the amount of costs payable in accordance with *Disciplinary Bye-law 33.5* (payment of costs before a **notice of appeal** can be effective). Any such application shall be addressed to the chair of the Appeal Committee c/o Metropolitan House, 321 Avebury Boulevard, Milton Keynes MK9 2FZ and must be made expeditiously but no later than 21 days from the date of the tribunal order.
- 7 **Notice of appeal** by a defendant, who has had an order for exclusion made against him or her, shall not be an effective **notice of appeal** unless either:
- a. all the costs ordered by the tribunal have been paid; or
  - b. that part of the costs ordered by the tribunal, which has been determined by the chair or vice chair of the Appeal Committee, in accordance with regulation 6 above, have been paid.

- 8 Where effective **notice of appeal** is received, the **PCD Committee Secretary** shall as soon as practicable thereafter arrange a date for the hearing of the appeal.
- 9 A **respondent** may, within 14 days of receipt of an effective **notice of appeal**, serve on the **appellant** an **answer** to the appeal.
- 10 Not less than 28 days before the date appointed for the hearing of the appeal, the **PCD Committee Secretary** shall provide the **appellant** with the following:
- a. a copy of the **notice of appeal** and grounds of appeal;
  - b. a copy of any **answer** to the appeal by the **respondent**; and
  - c. a copy of any documents or any other material submitted to the Investigation Committee, the Disciplinary Committee, the **Review Committee** or the Fitness Committee as appropriate.

### **New evidence**

- 11
- a. On the application of either party, the Appeal Committee may hear any witness or allow the production of any material that was not before the tribunal, panel or committee which heard the matter at first instance.
  - b. Any such application must be made in writing to the **chair** of the **panel** of the Appeal Committee appointed to hear the appeal not less than 21 days before the date fixed for hearing and give reasons for the application and specify the relevance to the grounds of appeal or the **answer** of the new evidence.
  - c. If the application to submit new evidence is granted, the successful party must immediately provide a copy of any new material and of any statement of any witness to be called at the hearing to the other party and make available for the **panel**, eight further copies.
  - d. If one party is given leave to introduce new evidence for the appeal hearing, the other party may introduce evidence in rebuttal provided that they give the first party copies of any material or statements they intend to put in evidence and make copies available for the **panel**, not less than 10 days before the date fixed for the hearing.

### **Application for leave to serve notice of appeal outside the 28-day time limit**

- 12 After the expiry of 28 days from the date of the order under Disciplinary Bye-law 26.1 (which will include **notice of appeal** under Disciplinary Bye-law 31.1), and in the case of appeals in readmission or re-registration cases after the expiry of 28 days from the date on which written reasons for refusal were served under regulation 10 of the **Membership Regulations** or regulation 25 of the Foundation Qualification Regulations an application for leave to serve **notice of appeal** shall:
1. be in writing, and sent to the PCD Committee Secretary, Professional Conduct Department, ICAEW, Metropolitan House, 321 Avebury Boulevard, Milton Keynes MK9 2FZ;
  2. set out the reasons why **notice of appeal** could not reasonably have been expected to be given within the period of 28 days originally allowed;

3. be accompanied by documents or other material in support of the application including, where appropriate, a medical certificate or other confirmation of any medical condition; and
  4. specify an address to which correspondence relating to the application and any appeal, if appropriate thereafter, should be sent.
- 13 On receipt of an application, in the form specified in regulation 12, the chair of the Appeal Committee may consider the application him or herself or appoint a **panel** to consider the application. Any such **panel** may include a **panel** already appointed under Disciplinary Bye-law 27.1.
- 14 Where the Appeal Committee chair or a **panel** considers an application for leave to serve **notice of appeal** the **PCD Committee Secretary** shall send written notice setting out the decision of the chair or the **panel** to the applicant.

### Pre-hearing review

- 15
- a. The chair or vice chair of the Appeal Committee, or **chair** of any **panel** appointed to hear an appeal, may, of his or her own volition or on application by either party at any stage in the proceedings, direct that there be a pre-hearing review.
  - b. On any pre-hearing review a **panel** shall consider every application for directions made by any party and any written representations relating to the application and shall give such directions as it thinks necessary for the purpose of securing the just, expeditious or economical disposal of the proceedings.
  - c. Without prejudice to the generality of paragraph (b) above, the **panel** may give such directions as it thinks fit in relation to:
    1. amendment of any **notice** and/or grounds or **answer** to the appeal or any other document;
    2. the admission of any facts or documents;
    3. the admissibility in evidence of any documents or other material;
    4. the way in which evidence is to be given at the hearing;
    5. the consideration of more than one appeal at the same time;
    6. the length of the hearing; and
    7. the venue for the hearing.

### Conduct of the hearing

- 16 A **respondent** may be represented by a member of **ICAEW** staff or may instruct a barrister or solicitor.
- 17 The rules as to the admissibility of evidence in a court of law shall not apply. Witnesses will not be required to swear an oath or affirm. The **panel** may determine the conduct of its hearings 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. Without prejudice to the generality of this provision, the order of the proceedings will be:

- a. in the case of appeals from the **Review Committee**, the parties may address the **panel** on the question of whether or not any arguable ground of appeal has been given in accordance with Audit Regulation 8.08, Regulation 7.04 of the Designated Professional Body (Investment Business) Handbook or Insolvency Licensing Regulation 5.24 as appropriate. The **panel** shall then decide whether or not there is an arguable ground or grounds of appeal.
- b. where the appeal is from the **Review Committee** and the **panel** decides that there is one or more grounds of appeal then, in respect of that ground or grounds, and in relation to all other appeals, the following provisions shall apply:
  - i. the **appellant** or his or her representative may address the **panel** and adduce any new evidence in respect of which leave has been given or which is admissible under regulation 11(a) above;
  - ii. the **respondent** may then address the **panel** and adduce any new evidence in respect of which leave has been given or which is admissible under regulation 11(a) or (d) above;
  - iii. the **appellant** may adduce any new evidence in rebuttal if the same is admissible under regulation 11(d);
  - iv. where a witness is called by either party to the appeal he or she may, after being questioned by the party calling him/her, be questioned by the other party. He or she may then be re-examined by the party calling him/her. The **panel** may ask questions of a witness at any stage. The **panel** may, upon the application of a party, agree that the identity of a witness should not be revealed to the public;
  - v. the **respondent** may make a closing address to the **panel** followed by the **appellant**.

The **panel** may vary the above order of proceedings if the parties agree or the interests of justice require it.

- 18 The **panel** may in its absolute discretion hear two or more appeals from an **appellant** at the same time.
- 19 The **panel** may in its absolute discretion hear the appeals of two or more **appellants** at the same time.
- 19A If a formal complaint is comprised of multiple parts and the **panel** finds the formal complaint proved, the **panel** shall make an order in respect of the part which, in its opinion, is the most serious.
- 20 The chair or vice chair of the Appeal Committee or the **chair** of a **panel**, or a **panel** may postpone or adjourn proceedings from time to time as they think fit of their own volition or upon application by either party.
- 21 An application for a further adjournment made before a hearing is resumed may be determined by the **chair** of the **panel** or in his or her absence the chair or vice chair of the Appeal Committee.

- 22 The **appellant** may make written representations to a **panel**, or appear in person or be represented by a barrister or solicitor or any other member of **ICAEW** or, with the agreement of a **panel** or the chair or vice chair of the Appeal Committee, any person.
- 23 A shorthand record or a tape recording of the proceedings may be taken on behalf of a **panel**.
- 24 Any **notice** or document may be served by an **appellant** personally or by sending the **notice** or document addressed to the PCD Committee Secretary, Professional Conduct Department, ICAEW, Metropolitan House, 321 Avebury Boulevard, Milton Keynes MK9 2FZ by first class post. Any notice or document required to be served on the **appellant** may be served personally or by first class post to the **appellant** at his or her last known place of business appearing in the register or his or her last known home address. Where documents are served by post, service is deemed to have been effected 48 hours after posting.

### Public hearings

- 25 Subject to regulation 26, the hearing shall be in public.
- 26 A **panel** (including a **panel** at a pre-hearing review) or, where regulation 27 below applies, the **chair** of the **panel** appointed under Disciplinary Bye-law 27.1, may decide that the press and public shall be excluded from the whole or any part of the hearing where it appears desirable to do so in the interests of justice or for any other special reason provided always:
- a. the particular circumstances of the case outweigh the public interest in holding a public hearing; and
  - b. the **panel** or **chair** making the decision is satisfied that the parties have had an opportunity to make representations.
- 27
- a. If a party wishes to apply before the start of the hearing for the whole or part of any hearing to be held in private, that application must be made in writing and served in accordance with regulation 24. The application should be addressed to the **chair** of the **panel** appointed to hear the appeal under Disciplinary Bye-law 27.1, c/o the PCD Committee Secretary, Professional Conduct Department.
  - b. The application must be received within 14 days of the date when notice of the day appointed for hearing the appeal is given under Disciplinary Bye-law 28.1.
  - c. A copy of any written application made under this regulation will be sent to the other party or parties to the proceedings, who will be invited to make written representations to be received by the **PCD Committee Secretary** within 7 days of the date on which the copy of the application was sent.
  - d. A written application will thereafter be determined by the **chair** of the **panel** appointed under Disciplinary Bye-law 27.1 sitting alone. The application will be determined in accordance with regulation 26.
  - e. The **chair** of the **panel** shall give in writing to the parties the principal reason or reasons for allowing or dismissing any application made under this regulation.



- f. Notwithstanding any decision made under this regulation or under regulation 28 below, a **panel** (including a **panel** at a pre-hearing review) may at any stage of a hearing consider an oral application relating to the exercise of its discretion under regulation 26.
- 28
- a. On written application to the **chair** of the **panel** appointed under Disciplinary Bye-law 27.1, the 14 day limit in regulation 27 above may be extended by a maximum of a further 14 days to permit an application to be made for a hearing or part of a hearing to be held in private.
  - b. An extension shall not be given unless the **chair** of the **panel** appointed under Disciplinary Bye-law 27.1 is satisfied that the **appellant** could not reasonably be expected to have made an application within the period of 14 days originally allowed.
  - c. If an extension is refused, the **chair** of the **panel** appointed under Disciplinary Bye-law 27.1 shall give in writing to the party his or her principal reason or reasons for the refusal. If an extension is granted, the application shall proceed as if it had been made in accordance with regulation 27.
- 29 The name of the **appellant**, the date, time and place of the hearing and the terms of the **bye-law** and/or regulation under which the formal complaint was brought will be published by **ICAEW** 7 days in advance of the hearing, but if an application has been made under regulation 27 by either of the parties, the name of the **appellant** and the order that is the subject of the appeal will not be made public unless or until the written application has been dismissed.
- 30
- a. Where an oral application is made to a **panel** to hold the hearing or part of the hearing in private, that application will be heard in private.
  - b. Where the application is successful, or where the **panel** otherwise decides of its own motion to exercise its power under regulation 26, the principal reason or reasons for holding the hearing or part of the hearing in private will be given by the **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 **panel** unreasonably undermine the purpose of proceeding in private.
  - c. In the event that an appeal against an adverse finding is dismissed, the **panel's** reasons for having proceeded in private will be published with the record of its decision, provided always that such reasons as are given shall not in the opinion of the **panel** unreasonably undermine the purpose of having proceeded in private. In the event that, on appeal, a **panel** decides that a formal complaint has been proved neither in whole nor in part, such reasons will only be published if the **appellant** so requests.
- 31 A **panel** may deliberate in camera, in the absence of the parties and of their representatives, at any time.
- 32 Without prejudice to any other powers it may have, a **panel** may exclude from the hearing or part of it any person or persons whose conduct has disrupted or, in the opinion of the **panel**, is likely to disrupt the hearing.

- 33 Regulations 25 - 30 do not apply to appeals from the Investigation Committee (Intervention Orders only), from the **Review Committee** or from the Fitness Committee (fitness and readmission / re-registration cases).

### Review of decisions and correction of errors

- 34 a. The **panel** may of its own volition or upon application by either party, review any order made by it and may on such review revoke or vary that order on the grounds that:
- i. the order was wrongly made as a result of an error on the part of the **panel**, secretariat or either party, or
  - ii. a party did not receive proper notice of the proceedings leading to the order.
- b. An application made under paragraph (a) above shall be made within 28 days from the date the **panel's** record of decision was served on the **appellant**.
- c. Where at least one of the grounds in (a)(i) and (ii) above apply, the **panel** may direct that an appeal should be re-heard by a new **panel** of the Appeal Committee constituted under Disciplinary Bye-law 27.1.

### Costs

- 35 The **panel** may order the **appellant** to pay such sum by way of costs as it, in its absolute discretion, thinks fit.
- 36 A **panel** on finding a complaint not proved or proved in part only may, on the **appellant's** application, order that **ICAEW** pay a specified sum in respect of the **appellant's** costs. In deciding whether such an order should be made, the **panel** shall have regard to all the facts and matters it considers relevant including the conduct of the **appellant** and the conduct of **ICAEW**. The sum payable by **ICAEW** shall be in the amount determined by the **panel** in its absolute discretion.
- 37 For the purposes of regulation 36, the **appellant's** costs shall be limited to costs reasonably incurred by the **appellant** since the date of the referral of the formal complaint by the Investigation Committee to the Disciplinary Committee.
- 38 Where an application is made under regulation 36, the **panel** shall give opportunity to the representative of the Investigation Committee to be heard.
- 39 If the **panel** considers that it cannot deal fairly with the issue of costs against **ICAEW** at the hearing, because of lack of information, it will make such decisions of principle and detail as it can and will make directions as to the provision of further information to be provided by the **appellant**. The final order will be made by the **chair** of the **panel** having considered such additional information as is provided by the **appellant** in accordance with the directions made by the **panel**.

- 40 If for any reason the **chair** of the **panel** considers that it would be inappropriate for him or her to make a final order, the order will be made by the chair or failing him the vice chair of the Appeal Committee.
- 41 Unless a **panel** orders an extended period, any costs to be paid by **ICAEW** will be paid within 28 days of **ICAEW** authorising payment of the sum ordered.

## Disclosure and publication

- 42 All written material and information provided by either **ICAEW** or the **appellant** in connection with any appeal, shall at all times remain confidential and no such material or information shall be disclosed (directly or indirectly) except:
- a. any advance notice of the name of the **appellant** and the terms of the formal complaint that is the subject of the appeal;
  - b. to legal advisers for the purposes of the proceedings;
  - c. where the **appellant** is a principal in or employed by a **member firm, regulated firm** or a **contracted firm**, to a principal in that firm;
  - d. to any other person to whom disclosure is necessary for the purposes of obtaining evidence, information or assistance in connection with the proceedings;
  - e. to an insurer where disclosure is required under the terms of any policy or in connection with any application for insurance cover; and
  - f. where information is disclosed indirectly to members of the public in the course of a public hearing; and
  - g. 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 the written record of decision published in accordance with Disciplinary Bye-laws 35.1, 35.5 and/or 36.6

- 43 Where a **panel** makes an order in respect of a formal complaint which it finds proved, 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 **panel** orders that the formal complaint be re-heard by a new tribunal of the Disciplinary Committee in accordance with Disciplinary Bye-law 29.2, the date on which the tribunal proceedings are concluded (unless the complaint is found to be not proved).