



Disciplinary Committee Regulations

EFFECTIVE FROM 1 JULY 2016

- 1 These regulations were made by the *Disciplinary Committee* under paragraph 1.6 of the Schedule to the *Disciplinary Bye-laws* and came into force on 1 July 2016.
- 2 Except where express reference is made in these regulations, words and phrases used in these regulations have the same meaning as in the *Disciplinary Bye-laws*;
 - a. **ICAEW** means the Institute of Chartered Accountants in England and Wales;
 - b. **The director** means the person holding the office which is responsible for the operation of the Institute's disciplinary arrangements in the Professional Standards Department.
 - c. **The Investigation Committee representative** means the person appointed by the Investigation Committee to represent that committee before the disciplinary **tribunal** and to present the formal complaint;
 - d. **Legal assessor** means the solicitor or barrister appointed to act as legal assessor under Disciplinary Bye-law 19.5;
 - e. **Tribunal** means any **tribunal** of the Disciplinary Committee appointed to hear the formal complaint or a pre-hearing review;
 - f. **Tribunal chairman** means a member of the Disciplinary Committee appointed to be a Chairman of a **tribunal** under *Disciplinary Bye-law* 19.1(b);
 - g. **Disciplinary record** means any previous (adverse) disciplinary findings or orders whether made by the Investigation Committee, the Disciplinary Committee, the Appeal Committee, or by a Joint Disciplinary tribunal or Appeal Committee of the Joint Disciplinary Scheme or by a Disciplinary or Appeal tribunal of the Actuarial Discipline Board or any regulatory penalty as defined in the Audit regulations, the DPB Handbook, Investment Business regulations, the Insolvency Licensing regulations, or the Probate regulations, but shall not include a finding of prima facie case coupled with an order of the Investigation Committee under Disciplinary Bye-law 15.2(d); that no further action be taken on the complaint or on any specified part of it.
 - h. **Hearing** means the substantive **hearing** when the **tribunal** appointed in accordance with *Disciplinary-Bye-law* 19.1; meets to consider the merits of a formal complaint and does not include a pre-hearing review;
 - i. **Notice** means in writing;
 - j. **Parties** means the defendant or his representative and the *Investigation Committee* or its representative;
 - k. **Written record of decision** means the document prepared by the legal assessor and approved by the **tribunal** which records in writing a summary of the reasons for the finding and the order of the **tribunal**, including any term or condition on which the order was made.

- 3 Subject to regulation 4, the *defendant* shall, unless he agrees to waive or vary any requirement for **notice**, as soon as practicable after the referral of a formal complaint to the *Disciplinary Committee* be given not less than 42 days' written **notice** of the date, time and place of the **hearing** and of the terms of the formal complaint preferred against him.
- 4 Where the formal complaint comprises an allegation of breach of *Disciplinary Bye-law* 13.2; the defendant shall, unless he agrees to waive or vary any requirement for **notice**, be given not less than 21 days written **notice** of the date, time and place of the **hearing** and of the terms of the formal complaint preferred against him.
- 5 **Notice** of the **hearing** as required by regulations 3 and 4 shall unless previously provided be accompanied by a copy of the formal complaint together with a summary of the complaint and the Investigation Committee submission and copies of any documents and/or any other material which the Investigation Committee intends to adduce in evidence.
- 6 Subject to regulation 7, the **hearing** shall be in public.
- 7 The **tribunal** (including a **tribunal** at a pre-hearing review) or, where regulation 8 below applies, the **tribunal chairman**, 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 chairman or **tribunal** making the decision is satisfied that the **parties** have had an opportunity to make representations.
- 8 Except in a case proceeding under regulation 4, 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 to the **tribunal chairman** and must be received by *ICAEW* within 14 days of the date when **notice** of the **hearing** is given in accordance with regulation 3. 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 Institute within 7 days of the date on which the copy of the application was sent. A written application may thereafter be determined by a **tribunal chairman** sitting alone subject always to the requirements of regulation 7. The **tribunal chairman** shall give in writing to the **parties** the principal reason or reasons for allowing or dismissing any application made under this regulation. Notwithstanding any decision of the **tribunal chairman** made under this regulation or regulation 9 below, a **tribunal** (including a **tribunal** at a pre-hearing review) may at any stage of a **hearing** consider an oral application relating to the proper exercise of its discretion under regulation 7.
- 9 On written application to the **tribunal chairman**, the 14 day limit in regulation 8 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. An extension shall not be given unless the **tribunal chairman** is satisfied that the defendant could not reasonably be expected to have made an application within the period of 14 days originally allowed. If an extension is refused, the **tribunal chairman** shall give in writing to the party his 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 8.
- 10 The name of a defendant, the date, time and place of the **hearing** and the terms of the bye-law and/or regulation under which the formal complaint is brought will be published

seven days in advance of the **hearing**, but if an application has been made under regulation 8 or regulation 9 by either of the **parties**, the name of a defendant and the terms of the formal complaint will not be made public unless or until the **tribunal chairman** has dismissed any written application.

- 11 Where an oral application is made to a **tribunal** to hold the **hearing** or part of the **hearing** in private, that application will be heard in private. Where the application is successful, or where the **tribunal** otherwise decides of its own motion to exercise its power under regulation 7, the principal reason or reasons for holding the **hearing** or part of the **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 shall not in the opinion of the **tribunal** unreasonably undermine the purpose of proceeding in private. In the event of an adverse finding being made following the **hearing** of the complaint, the **tribunal's** reasons for having proceeded in private will be published, provided always that such reasons as are given shall not in the opinion of the **tribunal** unreasonably undermine the purpose of having proceeded in private. If the complaint is not proved such reasons will only be published if the defendant so requests.
- 12 **The director** shall decide, in his absolute discretion whether an application for a postponement of a **hearing** which has not commenced should be granted.
- 13 Not less than 28 days before the date fixed for the **hearing**, **the director** may require the defendant to state in writing within 14 days of service of **notice** of such a requirement:
 - c. whether he accepts the complaint and if not on what grounds he denies the complaint;
 - d. whether he accepts the facts as stated in the summary and if not the grounds for challenge;
 - e. if he accepts the complaint whether he has any explanation in mitigation; and
 - f. whether or not he intends to attend and/or be represented at the **hearing**.
- 14 At least 21 days before the day fixed for the **hearing** the defendant shall serve on **the director** eight copies of paginated and indexed bundles of all documents on which he intends to rely unless the documents have been included amongst the documents served in accordance with regulation 5 above.
- 15 Regulations 13 and 14 above and 17 below shall not apply to any formal complaint which has been served in accordance with regulation 4 above.
- 16 After the Investigation Committee has resolved to prefer a formal complaint but before any **hearing the director** may require a defendant to provide such further information and documents relating to the complaint as **the director** thinks necessary for the just, expeditious and economic disposal of the case and may require the defendant to supply such further copies of any document he considers necessary.
- 17 Not less than 21 days before the **hearing**, each party shall serve on the other a written statement of any oral evidence which will be given by or on behalf of that party. Any such statement shall be signed, dated and include the name and address of the maker. Within the same period, each party shall serve on the other a copy of any document which will be relied upon at the **hearing** and provide sufficient copies for use at the **hearing** (eight copies). Nothing in this regulation shall prevent either party waiving wholly or in part the time period specified in this regulation or the **tribunal** by order directing such alternative time period as it may specify.

- 18 Prior to the commencement of the **hearing** of the formal complaint, any preliminary issues on procedure or any application for directions which are necessary or desirable for securing the just, expeditious and economical disposal of a formal complaint may be determined by a pre-hearing review **tribunal** (which may or may not be the **tribunal** appointed in accordance with *Disciplinary Bye-law* 19.1). Any matters falling within this regulation, except matters which fall to be determined under regulation 7 (**hearing** or part of the **hearing** proceeding in private) may be decided by agreement between the **parties** without a **hearing**.
- 19 **The director**, chairman or vice chairman of the Disciplinary Committee or the Chairman of any **tribunal** or any **tribunal** may direct that there be a pre-hearing review on the application of either party or act on their or its own volition.
- 20 Any **notice** or document may be served by the defendant by sending the **notice** or document addressed to **the director** Professional Conduct Department, Metropolitan House, 321 Avebury Boulevard, Milton Keynes, MK9 2FZ by first class post. Any **notice** or document required to be served on the defendant may be served personally or by first class post to the defendant at his last known place of business appearing in the register or his last known home address. Where documents are served by post, service is deemed to have been effected 48 hours after posting.
- 21 Subject to regulations 8, 14 and 17 above, the defendant is entitled to make written representations to or to appear in person before a **tribunal** or be represented by a barrister or solicitor or any other member of **ICAEW** or with the agreement of a **tribunal**, any person.
- 22 A **tribunal** may proceed in the defendant's absence where it is satisfied that regulations 3 or 4, and 5 have been observed. A defendant is deemed present when he appears by his representative.
- 23 The Investigation Committee may be represented by a member of **ICAEW** staff or may instruct a barrister or solicitor.
- 24 At the commencement of the **hearing** the **legal assessor** shall read out the formal complaint, or with the defendant's consent the complaint can be taken as read, and invite the defendant to state whether he accepts or denies the complaint.
- 25 **The representative of the Investigation Committee** shall outline the case against the defendant and, subject to regulations 14 and 17, produce any document or call any witness.
- 26 The defendant shall be entitled to address a **tribunal** and, subject to regulations 14 and 17 to give evidence and to produce any document or call any witness.
- 27 A witness for one party (including the defendant) 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 him. Members of a **tribunal** may ask questions of a witness. **The Investigation Committee representative** and the defendant or his representative may make a closing address. The defendant or his representative will have the final opportunity to address the **tribunal**. The **tribunal** may, on the application of a party, agree that the identity of a witness should not be revealed to the public.

- 28 The **hearing** shall be informal and the strict rules of evidence shall not apply. Subject to these regulations, the **tribunal** may adopt any method of procedure which it may consider fair and which gives each party an opportunity to have his case presented. The **tribunal** may at its discretion consider evidence which has not been provided in accordance with regulations 14 and 17 above. Subject to regulation 7, the **hearing** will be in public. Evidence will not be taken on oath.
- 29 The **tribunal** may deliberate in camera, in the absence of the **parties** and of their representatives, at any time.
- 30 Without prejudice to any other powers it may have, a **tribunal** may exclude from the **hearing** or part of it any person or persons whose conduct has disrupted or, in the opinion of the **tribunal**, is likely to disrupt the **hearing**.
- 31 A **tribunal** may in its discretion hear two or more formal complaints against a defendant at the same **hearing**.
- 32 A **tribunal** may in its discretion hear complaints against two or more defendants in the same **hearing**.
- 33 A **tribunal** may adjourn its proceedings from time to time as it thinks fit of its own volition or upon application by either party.
- 34 An application for further adjournment made before a **hearing** is resumed may be determined by the chairman of the **tribunal** or, in his absence, the chairman or vice chairman of the Disciplinary Committee.
- 35 Where a formal complaint or part of a complaint is found proved, a **tribunal** may adjourn the proceedings before making an order.
- 36 If the **tribunal** decides to exercise its powers under *Disciplinary Bye-law 21*, (temporary suspension of activities of regulated firm) it shall serve a **notice** on the defendant firm in a form approved by the Disciplinary Committee.
- 37 The **legal assessor** will prepare the **notice** referred to in regulation 36 for approval by the **chairman** of the **tribunal** and a copy of the **notice** will be sent to the chairman of the Investment Business Committee.
- 38 On a finding that a formal complaint has been proved in whole or in part, **the representative of the Investigation Committee** shall inform the **tribunal** of any **disciplinary record** of the defendant.
- 39 The defendant or his representative shall be allowed to address the **tribunal** before any order is made.
- 40 A **tribunal** on finding a complaint not proved or proved in part only may, on the defendant's application, order that **ICAEW** pay a specified sum in respect of the defendant's costs. In deciding whether such an order should be made, the **tribunal** shall have regard to all the facts and matters it considers relevant including the conduct of the defendant and the conduct of **ICAEW**. The sum payable by **ICAEW** shall be in the amount determined by **the tribunal** in its absolute discretion. The **tribunal** shall give opportunity to **the representative of the Investigation Committee** to be heard.

- 41 For the purposes of regulation 40, the defendant's costs shall be limited to costs reasonably incurred by the defendant since the date of the referral of the formal complaint by the Investigation Committee to the Disciplinary Committee.
- 42 If the **tribunal** cannot deal fairly with the issue of costs against **ICAEW** at the **hearing**, it will make such decisions of principle and detail as it can and the final order will be made by the **chairman** of the **tribunal** on considering any other material considered relevant.
- 43 If for any reason the **tribunal** considers that it would be inappropriate for it to make a final order, the order will be made by the chairman, or failing him, the vice chairman of the Disciplinary Committee.
- 44 Unless a **tribunal** orders an extended period, any costs to be paid by **ICAEW** will be paid within 28 days of the Institute authorising payment of the sum ordered.
- 45 A shorthand or stenograph note of the proceedings may be taken or a tape recording of them made on behalf of the **tribunal**.
- 46 No objection shall be upheld to any technical fault in the complaint or in the procedure adopted by a **tribunal** provided that the proceedings are fair and the relevant Bye-laws and regulations have been complied with.
- 47 Where a formal complaint (or part of the complaint) has been found proved, **the director** shall send to the defendant, as soon as reasonably practicable, **notice** of the decision of the **tribunal** and any order made.
- 48 A *written record of the decision* of the **tribunal** shall be prepared by the **legal assessor** for approval by the **tribunal**.
- 49 **The director** shall send to the defendant a copy of *the written record of decision* where a formal complaint (or part of the complaint) has been found proved as soon as reasonably practicable after it has been approved by the **tribunal**.
- 50 All written material and information provided by either **ICAEW** or the defendant in connection with any disciplinary proceedings, shall at all times remain confidential and no such material or information shall be disclosed (directly or indirectly) except:
- g. any advance **notice** of the name of the defendant and the terms of the formal complaint;
 - h. to legal advisers for the purposes of the disciplinary proceedings;
 - i. where the defendant is a partner in or employed by a member firm to a partner in that firm;
 - j. to any other person to whom disclosure is necessary for the purposes of obtaining evidence, information or assistance in connection with the disciplinary proceedings; and
 - k. to an insurer where disclosure is required under the terms of any policy or in connection with any application for insurance cover.
 - l. where information is disclosed indirectly to members of the public in the course of a public **hearing**.

- m. 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-law* 35.1 and 35.5.