



# *Investigation Committee Regulations*

EFFECTIVE FROM 15 OCTOBER 2018

1. These regulations were made by the Investigation Committee under paragraph 1.6 of the Schedule to the **Disciplinary Bye-laws** and came into force on 15 October 2018.
2. In these regulations unless the context otherwise requires or express reference is made in these regulations, words and phrases used in these regulations have the same meaning as in the **Disciplinary Bye-laws**. Furthermore:

**committee** means the Investigation Committee;

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

**ICAEW** means the Institute of Chartered Accountants in England and Wales;

**PCD director** means the person for the time being holding the office of the director of the Professional Conduct Department (PCD) of ICAEW or any member of his or her department authorised to act in his / her name;

**sub-committee** means the sub-committee appointed from time to time by the **committee** Chair or Vice-Chair to consider a referral in accordance with regulations 11A and 11B, which is comprised of a minimum of 4 members of the **committee** (with either an equal number of lay and non-lay members or a lay member majority) and which has a lay member Chair.

3. The **committee** may in its absolute discretion appoint one or more of its members or co-opt other persons to assist it to perform its functions. Such appointments may include the appointment of a monitor or team to assist the **PCD director** to investigate complaints.
4. If the Chair considers that the appointment of one or more of its number is required on an urgent basis then he or she may make such appointment or appointments as he / she considers necessary and report back to the **committee** at the next available meeting.
5. Where a respondent or respondent firm who or which has been the subject of a complaint(s) dealt with in accordance with the **Disciplinary Bye-laws** makes a complaint about the handling of the case by the staff and remains dissatisfied notwithstanding an explanation, the **committee** shall appoint one or more of its members (Investigation Committee reviewer(s)) to review the respondent / respondent firm's complaint. The reviewer(s) shall consider written representations from the respondent / respondent firm and the staff and all documents which they consider relevant. The reviewer(s) may, if they think fit, give the respondent or respondent firm and/or the staff an opportunity to make oral representations. The reviewer(s) shall report back to the **committee** and the **committee** will notify both parties to the complaint of its conclusions in writing.
6. No objections shall be upheld to any technical fault in the procedure of the **committee** nor in any decision by the **committee** nor the terms of any order issued by it, provided that the proceedings are fair and the relevant bye-laws and regulations have been observed.
7. The rules of judicial evidence will not apply. The **committee** may at its discretion treat as evidence any testimony whether in written, oral or other forms.
8. If a dispute is referred to the **committee** in accordance with **Disciplinary Bye-law** 9(4), the PCD Committee Secretary shall lay before the **committee** a summary of the material facts and matters to which any relevant documentation may be appended.

9. The **committee** shall consider the submission received under Regulation 8 and decide whether or not any of the facts and matters could make the subject of the complaint liable to disciplinary action.
10. If the **committee** is of the opinion that a submission under Regulation 8 discloses that a respondent or respondent firm may have become liable to disciplinary action it shall instruct PCD staff to proceed in accordance with the **Disciplinary Bye-laws**.
11. If the **committee** is of the opinion that the submission under Regulation 8 does not disclose that a respondent or respondent firm may have become liable to disciplinary action it shall instruct PCD staff to dismiss the matter.
- 11A. If a referral is made to the **committee** in accordance with **Disciplinary Bye-law 9(7)**, the PCD Committee Secretary shall lay before the **sub-committee** of the **committee** a summary of the facts or matters which were brought to the attention of the head of staff in accordance with **Disciplinary Bye-law 9(1)**, together with copies of any documentation which may be relevant to the referral.
- 11B. In determining a referral under Regulation 11A and whether an investigation of the facts or matters is necessary for the protection of the public or otherwise necessary in the public interest, the **sub-committee** may have regard to the following, among other matters:
  - a) whether the facts or matters relate to an issue affecting a minor or other vulnerable individual;
  - b) whether the facts or matters involve conduct of a kind that raises serious concerns about the integrity or professional competence of the respondent / respondent firm;
  - c) whether a failure to investigate the facts or matters could adversely affect the reputation of ICAEW's disciplinary and/or regulatory function;
  - d) the length of time that has elapsed since the expiry of the time limits set down in **Disciplinary Bye-law 9.6** (and the reasons (if any) for the failure by the referrer to bring the facts and matters to the attention of the head of staff at an earlier stage);
  - e) the quality and reliability of any evidence which has been submitted in support of the referral under **Disciplinary Bye-law 9(1)**; and/or
  - f) the likelihood of there being any (further) documentary or oral evidence still in existence and available to enable the referral to be investigated.
12. The **PCD director** or any member of PCD staff authorised by him / her, may exercise the **committee's** power under **Disciplinary Bye-law 13** in the following circumstances:
  - a. if the respondent or respondent firm has failed to satisfy a previous written request made by PCD staff when carrying out its function under the **Disciplinary Bye-laws**;  
or
  - b. if in the opinion of the **PCD director** to make a written request prior to serving **notice** under **Disciplinary Bye-law 13** would cause unreasonable delay.

13. Representative for the purpose of **Disciplinary Bye-law** 15(4)(b) or **Disciplinary Bye-law** 30(8)(b) (intervention orders) means a barrister or solicitor or any other **ICAEW** member or, with the agreement of the **committee**, any person, provided that the respondent or respondent firm shall supply to the **committee** the name and occupation and, on request, any other details of any proposed representative.
- 13A If a complaint is comprised of multiple parts, the **committee** shall make, and formally record, a finding in respect of each of those parts. If the **committee** decides to prefer the complaint to the Disciplinary Committee, it shall prefer each part of the complaint for which it finds there to be a prima facie case.
- 13B If the **committee** decides to deal with a complaint comprised of multiple parts in accordance with Disciplinary Bye-laws 16 or 16A (consent orders or cautions) it shall offer a sanction in respect of the part which, in its opinion, is the most serious, but shall indicate formally to the respondent or respondent firm in writing that, if the sanction is refused, all parts for which the **committee** finds there to be a prima facie case shall be preferred to the Disciplinary Committee as a formal complaint.
- 13C If the **committee** makes a decision under **Disciplinary Bye-law** 15(1), 16 or 16A a written record of the reasons for the decision shall be prepared by the PCD Committee Secretary.
14. If the **committee** prefers one or more formal complaints to the Disciplinary Committee under **Disciplinary Bye-law** 15(2)(a), the summary that is referred to in **Disciplinary Bye-law** 15(6) shall be prepared by the **PCD director** and the **PCD director** shall appoint a member, solicitor, barrister or member of the **ICAEW's** staff to represent the **committee** at any tribunal of the Disciplinary Committee.
15. If the **committee** considers that the **complaint(s)** should be deferred to monitor developments in accordance with **Disciplinary Bye-law** 15(2)(c)(ii) it shall instruct the **PCD director** to report at prescribed intervals the progress of those circumstances. Such monitoring may include enquiries of third parties as well as the subject of the complaint(s).
16. For the purpose of **Disciplinary Bye-law** 16(1)(b) and 16A(1)(b) '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 the Accountancy and Actuarial Discipline Board Scheme or any regulatory penalty as defined in the Audit Regulations, Designated Professional Body (Investment Business) Handbook, 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(s).
17. If the person or body served notice under **Disciplinary Bye-law** 16(3) has agreed to the terms of the order under **Disciplinary Bye-law** 16(2) the PCD Committee Secretary may make the order on behalf of the **committee**.
18. Unless the subject of the complaint, served notice under **Disciplinary Bye-law** 16A(2), serves written notice on the PCD Committee Secretary, within 28 days of service of such notice, that they are unwilling to accept the finding of a prima facie case exists, the PCD Committee Secretary shall make the order on behalf of the **committee**.

19. The fixed sum referred to in **Disciplinary Bye-law** 16A(3) shall be determined by the **committee** from time to time and shall be, in each case, the fixed sum or where less, the actual costs incurred.
20. Any notice or document required to be served by the **committee** in accordance with the **Disciplinary Bye-laws** and these regulations may be served personally or by first class post to the respondent or respondent firm at the last known place of business appearing in the **ICAEW's** register or their last known home address. Where documents are served by post, service is deemed to have been effected 48 hours after posting for the purposes of this Regulation.
21. If the **committee** is asked for directions in the event of a dispute as to the fees under **Disciplinary Bye-law** 24(4), the **committee** may determine the amount payable.
22. If a respondent's conduct is, at any time, subject to consideration by the head of staff, Investigation Committee, Disciplinary Committee, Appeal Committee, Joint Disciplinary Scheme or Accountancy and Actuarial Discipline Board Scheme, the **PCD director** may request the Members Registrar to defer demand for due payment of annual subscription until the conclusion of such consideration or disciplinary process whichever is the later.
23. At any meeting of the **committee** dealing with any complaint or dispute relating to:
  - a. a respondent or respondent firm located in the Republic of Ireland; or
  - b. the provision of audit or accountancy services by or to any person or entity located in the Republic of Ireland; or
  - c. any entity listed on any market of the Irish Stock Exchange or any subsidiary, affiliate or branch of any such listed entity,

a quorum shall consist of three **committee** members and a majority of the members present at the meeting and considering the complaint(s) shall be lay members.
24. An order made by the **committee** under **Disciplinary Bye-law** 16.2, or a fixed penalty issued on the **committee's** behalf under **Disciplinary Bye-law** 14A, shall remain published on the **ICAEW** website for at least 5 years from the date of the order.