



**REGULATION
& CONDUCT**



GUIDELINES IN RELATION TO NOTICES OF RESIGNATION AND APPLICATIONS FOR READMISSION TO MEMBERSHIP

EFFECTIVE FROM 1 OCTOBER 2026

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CONTENTS

1.	Interpretation of terms	3
2.	Notice of resignation from membership	3
3	Application for readmission to membership	4
4	Reason for loss of membership	5
5	Exceptional circumstances	6
6	Exclusion upon a conviction not involving dishonesty	8
7	Exclusion upon a finding of incompetence	8
8	Cessation of membership due to bankruptcy	8
9	Cessation of membership due to non-payment of fines or costs	10
10	Cessation of membership due to non-payment of the annual subscription	10
11	Other factors to be taken into account in considering an application for re-admission	10

These guidelines were approved by the ICAEW Regulation & Conduct Board on 11 October 2016. They supersede the guidelines in relation to notices of resignation and application for readmission to membership, which were approved by the Conduct Committee on 6 December 2005 and which were amended subsequently on 7 July 2009. They apply to all notices of resignation considered by the Investigation Committee and to applications for readmission considered by panels of the Fitness Committee on and after 2 November 2016 (irrespective of the date of application).

These guidelines are made under the Membership Cessation, Readmission, Resignation (CRR) regulations. They provide guidance to the Conduct Committee when it considers notices of resignation from membership in accordance with regulations 13 and 14 of the CRR regulations, and to a panel of the Fitness to Practise Committee it considers applications for readmission to membership in accordance with regulation 5 of those regulations. When the panel/sub-committee considers each notice or application, it shall refer to the guidelines but will consider each case on its own facts and merits.

1. INTERPRETATION OF TERMS

In these guidelines, unless the context otherwise requires:

- the **panel** means a panel of the Fitness to Practise Committee appointed to determine applications for readmission in accordance with the Fitness to Practise Committee (Admission to Provisional Membership and Readmissions) Regulations.
- the **members' registrar** means the person of that title appointed by the chief executive.

2. NOTICE OF RESIGNATION FROM MEMBERSHIP

2.1 Principal Bye-law 6 provides:

A member may tender his resignation by notice to the Institute and on its acceptance by the Council, but not until then, he shall cease to be a member. Provided that any member whose notice of resignation has not been received before 1 February in any year, shall remain liable for any fees or subscriptions in respect of that year.

2.2 Regulation 13 of the CRR regulations states:

The Members' Registrar shall accept the resignation of any member tendered under Bye-law 6 unless:

- (i) he or she has been notified that there is an unresolved complaint against that member; or
- (ii) there is in his or her view any other reason why the application should be considered by the Conduct Committee, in either of which cases the Members' Registrar shall refer the tendered resignation to the Conduct Committee to be dealt with.

2.3 If members wish to resign from membership, they must give reasons for wishing to resign and confirm that they know of no reason why their resignation should be refused. The request to resign is firstly considered by the members' registrar who will deal with all requests unless there are any outstanding complaints pending disciplinary, civil or criminal proceedings against the applicant or there are, in his or her view, any reasons why the request should be considered by the Conduct Committee.

2.4 If a member is the subject of an outstanding complaint, his or her resignation will normally not be accepted until the outstanding complaint has been determined, unless there are exceptional circumstances. Exceptional circumstances will normally only apply if the member has provided written medical evidence that they are unable to deal with the outstanding complaint because of health reasons and is unlikely to practice as a chartered accountant in the foreseeable future due to those health reasons. If it is accepted that exceptional circumstances exist, the resignation may be accepted but only on condition that the outstanding complaint will be reconsidered should the member apply for readmission to ICAEW in the future.

2.5 A member has no right of appeal against a decision of the Conduct Committee to refuse to accept a notice of resignation.

3 APPLICATION FOR READMISSION TO MEMBERSHIP

3.1 Principal Bye-law 9 provides:

Any person who has ceased for any reason to be a member may be readmitted to membership on such terms and conditions as the Council may consider appropriate.

3.2 A former member who wishes to be readmitted to membership of ICAEW must complete an application form and return it to the members' registrar with the required fee. With the exception of those cases set out in regulation 5 of the CRR regulations, the members' registrar has the power, under regulation 4 of the membership regulations, to readmit to membership any person who, in the members' registrar's opinion, has satisfactorily answered all the questions in the application form. Such readmissions will be unconditional or subject only to a condition in relation to future payments of the annual subscription.

3.3 Regulation 5 of the CRR regulations provides that an application for readmission will be considered by the Fitness to Practise Committee in the following cases:

In those cases set out as follows the discretion of the Council to re-admit to membership under Principal Bye-law 9 shall be exercised by the Fitness to Practise Committee in accordance with guidelines approved by the ICAEW Regulation & Conduct Board and amended from time-to-time:

- (a) a person whose membership ceased by operation of an order made pursuant to the Disciplinary Byelaws;
- (b) a person whose membership ceased by virtue of bankruptcy;
- (c) a person against whom the Members' Registrar has been notified that there is an unresolved complaint;
- (d) a person whose membership ceased by virtue of his or her failure to pay fines and/or costs imposed pursuant to the Disciplinary Bye-laws;
- (e) a person who has been out of membership for more than four years;
- (f) any other person whose application for readmission to membership, the Members' Registrar considers for any reason should be dealt with by the Fitness to Practise Committee.

- 3.4 In respect of every application for readmission, a panel of the Fitness to Practise Committee must determine whether the applicant is a fit and proper person to be accorded membership. An applicant will only be readmitted to membership if this is consistent with the protection of the public and the safeguarding of the good name of the profession. In reaching its decision, the panel must consider all relevant matters including (but not limited to) the reason for cessation of membership, the conduct of the applicant while a member, conduct since membership ceased and proposed plans should they regain membership. The panel may consider the cumulative effect of matters which, if taken individually, could be regarded as insufficient to refuse the application.
- 3.5 The decision whether an applicant is a fit and proper person to be readmitted to membership will be taken on the balance of probabilities with the burden of proof falling on the applicant.
- 3.6 All information relied upon by the panel in reaching a decision will be disclosed to the applicant and the applicant will be given adequate opportunity to make representations on it.
- 3.7 The panel may request such further information as it considers necessary to enable it to reach a decision.
- 3.8 The panel can readmit an individual to membership on such terms and conditions as it considers appropriate.
- 3.9 In cases where a hearing is convened to determine the application for readmission, the applicant will be expected to attend the hearing and, if required, answer questions from the panel, even if the applicant has instructed a third party to attend and make representations on his or her behalf.
- 3.10 If the panel refuses an application for re-admission, it must give written reasons for the refusal. The reasons may be brief but should be sufficiently cogent to enable an applicant to understand why the panel refused the application.
- 3.11 An applicant has a right of appeal to the Appeal Committee against a decision of a panel of the Fitness to Practise Committee to refuse readmission.

4 REASON FOR LOSS OF MEMBERSHIP

- 4.1 When ordering the exclusion of a member, the Tribunals Committee may make a recommendation that no application for readmission be considered before the end of a specified period. Such recommendations will be taken into account by the panel of the Fitness to Practise Committee but are not binding upon it. On the contrary, such recommendations are given for general guidance (as an indication only) and should not give rise to an expectation that an individual will be readmitted once the period recommended has expired. A copy of the record of decision and a transcript of the disciplinary proceedings will be available to the panel.
- 4.2 A person excluded from membership upon a finding of dishonesty by a disciplinary tribunal (the Tribunals Committee, Appeal Committee or tribunal set up under the Joint Disciplinary Scheme or the scheme adopted by the Accountancy and Actuarial Discipline Board) will not be readmitted unless there are exceptional circumstances.

This will be so whether or not the finding is consequent upon a criminal conviction and regardless of the length of time that has elapsed since the date of exclusion.

5 EXCEPTIONAL CIRCUMSTANCES

5.1 An exceptional circumstance would be where the applicant is able to prove that:

- the dishonest behaviour was committed in a moment of aberration; and
- it was totally out of character; and
- the applicant's subsequent conduct has been so exemplary that any reasonably minded member of the public, knowing the facts, would accept that any profession would be proud to admit the applicant.

There may not be a single circumstance which, in the panel's opinion, can properly be described as exceptional but a number of circumstances that (when taken together) may amount to exceptional circumstances. In all such cases, the panel must be satisfied that the applicant is not a risk to the public, to the good name of ICAEW or to the profession of accountancy. The applicant will need at least 10 years from the date of the exclusion to prove him or herself fit and proper to be readmitted to membership. An applicant who has, as a result of a conviction for dishonesty, received a custodial sentence which will never become spent under the Rehabilitation of Offenders Act 1974 is unlikely to be readmitted to membership of ICAEW.

5.2 The panel may find the following cases helpful.

5.2.1 Lord Donaldson MR in *Re a Solicitor* (1987)

It was said of a solicitor who had been struck off that:

'if you fall very seriously below the standard of (your) profession and are expelled from it there is a public interest and an interest in the profession itself hardening its heart if any question arises that they will rejoin it.... There is considerable public interest in the public as a whole being able to deal with members of those professions knowing that, save in the most exceptional circumstances, they can be sure that none of them have ever been guilty of any dishonesty at all'.

5.2.2 Sir Thomas Bingham MR in *Bolton v Law Society* (1994)

It was said of a solicitor who had been suspended from practice that:

'Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors' Disciplinary Tribunal. Lapses from the required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven dishonesty, whether or not leading to criminal proceedings and criminal penalties. In such cases the tribunal must invariably, no matter how strong the mitigation advanced for the solicitor, order that he be struck off the Roll of Solicitors. Only infrequently, particularly in recent years, has it been willing to order restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation...

It is important that there should be complete understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way...But often the order is not punitive in intention...In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence...The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied readmission...A profession's most valuable asset is its collective reputation and the confidence which that inspires...

It often happens that a solicitor appearing before a tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often, he will say convincingly that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts to re-establish himself and redeem his reputation. All these matters are relevant and should be considered. But none of them touches the essential issues, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness.'

5.2.3 Lord Roger of Earlsferry in *Gupta v The General Medical Council*

(2001) It was said of a doctor whose name had been erased from the register:

'It has frequently been observed that, where professional discipline is at stake, the relevant committee is not concerned exclusively, or even primarily, with the punishment of the practitioner concerned. Their Lordships refer, for instance, to the judgment of Sir Thomas Bingham MR in *Bolton v Law Society* ...where his Lordship set out the general approach that has to be adopted. In particular, he pointed out that, since the professional body is not primarily concerned with matters of punishment, considerations of which would normally weigh in mitigation of punishment have less effect on the exercise of this kind of jurisdiction. And he observed that it can never be an objection to an order for suspension that the practitioner may be unable to re-establish his practice when the period has passed. That consequence may be deeply unfortunate for the individual concerned but it does not make the order for suspension wrong if it is otherwise right. The Master of the Rolls concluded...

'The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price.'

6 EXCLUSION UPON A CONVICTION NOT INVOLVING DISHONESTY

6.1 Applicants excluded upon conviction (other than for dishonesty) will not normally be readmitted until they have become a rehabilitated person within the meaning of the Rehabilitation of Offenders Act 1974.

7 EXCLUSION UPON A FINDING OF INCOMPETENCE

7.1 Applicants who have been excluded from membership because they failed to perform their professional work competently must supply two independent references from members of ICAEW who are able to testify from personal and recent experience to the applicant's professional and technical ability (see paragraph 11.13).

8 CESSATION OF MEMBERSHIP DUE TO BANKRUPTCY

8.1 Principal Bye-law 7(a) provides that membership ceases automatically on the date of the bankruptcy order. A member who has been made bankrupt cannot be retained in membership. Membership ceases automatically despite the fact that the bankruptcy may subsequently be annulled.

8.2 An applicant whose membership has ceased as a result of bankruptcy, or has become bankrupt since the cessation of membership, must provide evidence of discharge from bankruptcy.

8.3 No application for readmission will normally be considered within three years of the date of discharge in order to allow applicants time to prove that they are fit and proper to be readmitted to membership. In those cases where, under the provisions of the Enterprise Act 2002, a bankruptcy restriction order (BRO) has been made against the applicant, or the applicant has given a bankruptcy restriction undertaking (BRU), an application for readmission will not normally be considered until three years after the discharge of the BRO or BRU.

8.4 In those cases where the applicant has been made bankrupt under the provisions of the Enterprise Act 2002 and the bankruptcy has been discharged after a period of 12 months, the panel will consider all the circumstances of the case in deciding whether to consider an application for readmission within three years of the date of discharge. This will not apply if the applicant is the subject of an interim bankruptcy restriction order under the Enterprise Act 2002 or if an application for such an order is pending.

8.5 In a case where the bankruptcy has been annulled shortly after the bankruptcy order was made, the panel may consider that it is not necessary to wait until three years after discharge of the bankruptcy order before considering an application for readmission. This will depend upon the reasons for the annulment and all other relevant circumstances of the case.

8.6 In considering an application for readmission from a discharged bankrupt, the panel will take into account any or all of the following:

- the reasons for financial failure;
- the size and nature of the applicant's liabilities;
- information from the trustee in bankruptcy/Official Receiver on whether the applicant cooperated in the course of the bankruptcy;

- whether the applicant made (or is making) his or her assets available to his/her trustee/Official Receiver;
- the extent to which the applicant has made payment (including voluntary payment) to his or her creditors; the applicant will be expected to have made all best possible efforts to repay his/her creditors albeit not necessarily in full; in considering an applicant's ability to make repayments to his or her creditors, the panel will take into account the applicant's financial circumstances both during and after discharge of the bankruptcy; applicants will not be expected to make repayments where it can clearly be shown that they were not in a financial position to do so;
- any other circumstances of the bankruptcy that might reasonably be viewed as poor conduct, for example:
 - entering into a transaction at an undervalue;
 - giving a preference;
 - failing to maintain business accounting records;
 - failing to produce business accounting records on demand by the trustee/Official Receiver;
 - failing to supply any goods or services that have been paid for in whole or in part which gave rise to a claim provable in the bankruptcy;
 - trading at a time before the commencement of the bankruptcy when the applicant knew, or ought to have known, that they were unable to pay their debts;
 - incurring, before the commencement of the bankruptcy, a debt the applicant had no reasonable expectation of being able to pay;
 - failing to account satisfactorily to the trustee/Official Receiver for a loss of property;
 - neglecting business affairs of a kind that may have materially contributed to or increased the extent of the bankruptcy; and
 - carrying on any gambling, reckless speculation or unreasonable extravagance that may have materially contributed to or have increased the extent of the bankruptcy.

This list is not exhaustive.

8.7 An applicant will be expected to supply documentary evidence of his or her current financial position and confirmation of his or her income during the bankruptcy and after discharge of the bankruptcy order.

8.8 An applicant who has been made bankrupt on more than one occasion may not be fit and proper to be readmitted to membership. The panel will consider the circumstances of each bankruptcy and, in particular, any recurring failures in the applicant's financial management, before reaching its decision.

9 CESSATION OF MEMBERSHIP DUE TO NON-PAYMENT OF FINES OR COSTS

9.1 An applicant will be required to provide a satisfactory explanation for non-payment. Payment of all outstanding fines and/or costs will be required before the application will be considered by the panel.

10 CESSATION OF MEMBERSHIP DUE TO NON-PAYMENT OF THE ANNUAL SUBSCRIPTION

10.1 The annual subscription is due and payable on 1 January each year. Failure to pay the subscription within three months of the due date results in automatic cessation of membership. The members' registrar has the power, in certain circumstances, to defer payment. If there is an outstanding complaint against a member and the member fails to pay the annual subscription by the due date, they are held in membership until such time as the complaint has been determined. If the member has still failed to pay the subscription at the time the complaint is determined, their membership will cease at that date.

10.2 An applicant whose membership ceased (for non-payment of the annual subscription more than four years prior to the date of the application) will be referred to a panel of the Fitness to Practise Committee. Usually such applications will be determined by the ICAEW Director of Investigation under delegated powers. It is not uncommon for those working abroad to go out of membership for non-payment of the subscription and to apply for readmission on their return to the UK. Subject to there being no other circumstances that may suggest that the applicant should not be readmitted to membership, such applications are usually approved on condition that all future subscriptions are paid by direct debit.

11 OTHER FACTORS TO BE TAKEN INTO ACCOUNT IN CONSIDERING AN APPLICATION FOR RE-ADMISSION

Disciplinary record

11.1 Any disciplinary record must be considered by the panel. It is a matter for the panel, bearing in mind the seriousness of the findings and the time that has elapsed, as to the weight, if any, to be given to the disciplinary record. Applicants who have been disciplined for poor professional work must supply two independent references from members of ICAEW who are able to testify from personal and recent experience as to the applicant's professional and technical ability (See paragraph 11.3).

Outstanding complaint

11.2 An applicant will be told of any outstanding complaints against him or her, or any information that has been received by ICAEW after cessation of membership which might constitute a complaint. A member is normally held in membership until any such complaint is determined. However, in certain circumstances (for example bankruptcy), membership ceases automatically and the complaint remains outstanding. As the applicant is not a member, it will be inappropriate to conduct a full investigation into the complaint before considering the application for readmission. The panel may give such weight as it considers appropriate to the fact of any outstanding complaint(s). The more serious the complaint, the greater the care the panel should take when it determines the weight the complaint should be given. The panel should take into account what the applicant says in response to the complaint. If the panel decides to readmit the applicant to membership, it will normally be on condition that the outstanding complaint is passed to the Conduct Department for investigation and that the applicant agrees to cooperate fully with the investigation.

Professional competence

11.3 As members of ICAEW, applicants are required to show that they have maintained the competence to enable them to satisfy the high professional, technical and ethical standards expected of them. In line with ICAEW's principles-based approach to continuing professional development (CPD), applicants are required to give details of the appropriate professional development activities they have undertaken while out of membership to maintain competence in the areas that are relevant to their chosen area of work. This will apply to all applicants whether in public practice (inside or outside the regulated areas), in business or industry, in a financial or non-financial role, undertaking only small amounts of work or on a career break. It will not apply to those applicants who are able to demonstrate to the panel's satisfaction that, for CPD purposes, they are fully retired. Fully retired for CPD purposes means that applicants must satisfy the panel that they are 'CPD exempt members' (as defined in the Continuing Professional Development (CPD) regulations).

Practising certificates

11.4 Applicants who intend to go into public practice will need to apply for a practising certificate. The panel will require the application for a practising certificate to have been approved before it considers the application for readmission. Approval of an application for a practising certificate does not necessarily mean that the applicant is fit and proper to be readmitted to membership. However, there is no need for the panel to consider whether the applicant has demonstrated compliance with continuing professional development as the applicant's technical competence will already have been assessed by ICAEW in approving the application for a practising certificate.

Mis-description while out of membership

11.5 An applicant who has described himself as a chartered accountant while out of membership may not be fit and proper to be readmitted to membership. The panel should consider each case on its own facts and take into account the applicant's representations. An applicant will normally not be fit and proper to be readmitted to membership if there have been repeated instances of mis-description or if ICAEW has been forced to take legal proceedings to prevent the mis-description. If the mis-description has been deliberate and/or has continued up to, or ceased only shortly before, the date of the application for readmission, the applicant is unlikely to be readmitted.

Current financial position

11.6 An application for readmission from an applicant who has entered into an IVA with his or her creditors will not normally be considered until such time as the arrangement has been successfully concluded.

11.7 In considering an application from an applicant who has previously entered into an IVA with his/her creditors, the panel will give consideration to:

- whether the applicant cooperated with the supervisor of the arrangement;
- whether the applicant complied with the terms of the arrangement; and
- any other circumstances of the arrangement that might reasonably be viewed as poor conduct.

11.8 An applicant who has previously entered into an IVA with his or her creditors will be expected to supply documentary evidence of his/her current financial position.

11.9 An applicant who has entered into an IVA with his or her creditors on more than one occasion may not be fit and proper to be readmitted to membership. The panel will consider carefully the circumstances of each IVA and, in particular, any recurring failures in the applicant's financial management before reaching its decision.

Health

11.10 Evidence of mental ill health may be grounds upon which to conclude that an applicant should not be readmitted. The panel will look at all the circumstances of the case and, in particular, the applicant's competence in relation to carrying out work in his or her chosen area in a professional manner. The panel may require the applicant to provide a report by a consultant or practitioner of its choosing.

District society

11.11 In cases of exclusion, bankruptcy or other serious reasons for cessation of membership, the applicant's District Society, both at the time of cessation and at the time of application, will be asked if it knows of any reason which may suggest that the applicant is not fit and proper to be readmitted to membership. The applicant will be given the opportunity to make representations on any comments by the District Society).

References

- 11.12 Applicants who have been excluded upon a finding that they failed to perform their professional work competently or have a disciplinary record as a result of a finding that they failed to perform their professional work competently, must supply independent references from two members of ICAEW who are able to confirm their professional and technical competence and that, in their opinion, the applicant is fit and proper to be readmitted to membership. The referees must have known the applicant within the two years preceding the date of the application and have had recent contact with that person in a professional capacity.
- 11.13 In all other cases, the applicant must supply two independent references, at least one of which should be from a member of ICAEW and the other should (where possible) be from a former or current employer or someone who is a member of another professional organisation. The referees must have known the applicant within the two years preceding the date of the application and at least one of the applicants must be able to confirm the applicant's professional and technical competence.