



***Draft Fitness to Practise
Committee: Provisional
Membership Applications
and Appeal Regulations
for consultation***

FEBRUARY 2022

Fitness to Practise Committee: Provisional Membership Application and Appeal Regulations

Citation, authority and commencement

1. These regulations may be cited as the Fitness to Practise Committee: Provisional Membership Application and Appeal Regulations of the Institute of Chartered Accountants in England and Wales (ICAEW) (the '**regulations**').
2. These **regulations** were made by the ICAEW Regulatory Board in accordance with clause 16 of the Supplemental Charter and Principal Bye-law 49 on [TBC] and took effect on [TBC]. Subject to **regulation** 11, from [TBC] the Fitness Committee Admission to Provisional Membership, Re-registration and Readmission Regulations (1 January 2018) and the Appeal Committee Regulations (1 January 2021) are, as they relate to applications for provisional membership, repealed.

Interpretation

3. In these **regulations**, defined terms are indicated in **bold and italics** and are defined as follows:

answer means an *answer* by ICAEW to an *appeal*, which shall include any documentation appended in support of the response.

appeal means an *appeal* by an *applicant* against a decision of the *Fitness to Practise Committee* to refuse admission to provisional membership of ICAEW in accordance with these *regulations*.

appeal application fee means the fee which is prescribed by the ICAEW Regulatory Board at the time a *notice of appeal* is served by an *applicant* in accordance with *regulation* 40 and which must be paid for the *appeal* process to commence.

Appeal Committee means the Appeal Committee of ICAEW whose members are convened into *Appeal Panels* to consider, among other matters, *appeals* made in accordance with these *regulations*.

Appeal Committee Chair means the person who is appointed from time to time as Chair of ICAEW's *Appeal Committee* by the RACAC (or relevant predecessor or successor body). The *Appeal Committee Chair* may delegate their administrative responsibilities under these *regulations* to the *Head of Committees and Tribunals*.

Appeal Committee Vice-Chair means any person who is appointed from time to time as a Vice-Chair of ICAEW's *Appeal Committee* by the RACAC (or relevant predecessor or successor body).

appeal hearing means a substantive *hearing* of the *Appeal Panel* to determine an *appeal*.

Appeal Panel means a panel of the *Appeal Committee* appointed by the *Appeal Committee Chair* to determine an *appeal*, which shall comprise three *lay members* and two *members*. One of the three *lay members* shall be either the *Appeal Committee Chair* or an *Appeal Committee Vice-Chair* who shall be appointed as Chair of the *Appeal Panel*.

Appeal Panel Chair means the member of the *Appeal Committee* who is appointed by the *Appeal Committee Chair* as the Chair of an *Appeal Panel* (and who may be the *Appeal Committee Chair* themselves) and who shall chair an *appeal hearing* and any *pre-hearing review*.

appeal proceedings means the proceedings leading up to, and during, an *appeal hearing* following a decision of a *Fitness to Practise Panel* to refuse a *provisional membership application*.

applicant means a person applying for provisional membership of *ICAEW* whose application has been referred to the *Fitness to Practise Committee* for review by *ICAEW's* Education and Training Department.

business day means a day on which banks are open for business (excluding weekends) in England and Wales.

directions means either:

- a. steps or actions which both *parties* agree to take in the *appeal proceedings* prior to an *appeal hearing*; or
- b. actions which the *parties* are directed to take by an *Appeal Panel Chair* at a *pre-hearing review*.

Fitness to Practise Committee means the Fitness to Practise Committee of *ICAEW* whose members are convened into *Fitness to Practise Panels* to consider, among other matters, *provisional membership applications* brought in accordance with these *regulations*.

Fitness to Practise Committee Chair means the person appointed as Chair of *ICAEW's* *Fitness to Practise Committee* by the *RACAC* (or relevant predecessor or successor body) at the time the application is made and/or during the time it is considered under these *regulations*.

Fitness to Practise Panel means a panel of the *Fitness to Practise Committee* consisting of two *lay members* and one *member* appointed to consider and determine *provisional membership applications* under these *regulations*

Fitness to Practise Panel Chair means a member of the *Fitness to Practise Committee* who has been approved by the *RACAC* (or relevant predecessor or successor body) to chair *Fitness to Practise Panels*, and who has been appointed

by the *Fitness to Practise Committee Chair* to chair a *Fitness to Practise Panel* in accordance with these *regulations*.

Head of Committees and Tribunals means the person within *ICAEW's* Professional Standards Department who manages the Committees and Tribunals team.

hearing means a *hearing* of a *Fitness to Practise Panel* or an *Appeal Panel*, whether conducted in person or through video or audio-conferencing facilities.

ICAEW means the Institute of Chartered Accountants in England and Wales.

ICAEW Regulatory Board means the board to which the *ICAEW* Council has delegated responsibility for the supervision of *ICAEW's* regulatory and disciplinary functions.

ICAEW representative means a barrister or solicitor or a legally qualified person (within *ICAEW's* Professional Standards Department or external to *ICAEW*) appointed to have conduct of the *appeal proceedings*.

lay member means someone who is not and never has been a *member*, affiliate or employee of *ICAEW* or any other accountancy body.

notice means *notice* in writing.

notice of appeal means the *notice* filed by the *applicant* indicating their wish to appeal the decision of a *Fitness to Practise Panel* and which includes a statement of their grounds of appeal, and which has appended to it any relevant documentation and/or evidence.

order means an order of an *Appeal Panel* made in accordance with these *regulations*.

parties means the *applicant* and *ICAEW*, and 'party' shall refer to any one of them.

pre-hearing review means a *hearing* conducted in accordance with *regulation* 49 and 50 to enable an *Appeal Panel Chair* to make *directions* and/or determine any applications by the *parties* prior to an *appeal hearing*.

private hearing means a *hearing* of a *Fitness to Practise Panel* or an *Appeal Panel* which is conducted in private and from which the public and press are excluded.

provisional member means, for the purposes of these *regulations*, a person who has not been admitted to full *ICAEW* membership and who is registered with *ICAEW* as an ACA student and/or under a training agreement with an Authorised Training Employer or an Authorised Training Principal, and 'provisional membership' shall be construed accordingly.

provisional membership application means an application by a person who wishes to become a *provisional member* of ICAEW which:

- a. has been referred to the *Fitness to Practise Committee* by ICAEW's Education and Training Department; and
- b. has appended to it all documents which the *applicant* has provided in support of their application.

PSD Chief Officer means the person with operational responsibility for the work of ICAEW's Professional Standards Department.

RACAC means the Regulatory and Conduct Appointments Committee which is responsible, among other matters, for the appointment and reappointment of members of the *Fitness to Practise Committee* and the *Appeal Committee* and which is accountable to the *ICAEW Regulatory Board*.

record of decision means a document setting out the reasons for any decision made by a *Fitness to Practise Panel* or any order made by an *Appeal Panel*.

representative means the person who has been appointed by an *applicant* to represent them at a *hearing* of a *Fitness to Practise Panel*, or at a *pre-hearing review* or a *hearing* of an *Appeal Panel*, who may be a solicitor or barrister or an *ICAEW member*, or any other person who has been approved to appear by the *Fitness to Practise Panel*, the *Appeal Panel Chair* or the *Appeal Panel* (as applicable).

4. The Interpretation Act 1978 applies to these **regulations** in the same way as it applies to an enactment.
5. In these **regulations**:
 - a. unless the context otherwise requires:
 - i. words denoting any gender include all genders and words denoting the singular include the plural and vice versa;
 - ii. any headings are inserted for convenience only and shall not affect the construction of these **regulations**;
 - iii. any reference to a numbered **regulation** is a reference to the **regulation** so numbered among these **regulations**; and
 - iv. any reference to a report includes any appendices to such report;
 - b. any references to legislation include any amendments thereto or replacement legislation;
 - c. references to the date of a decision made by a **Fitness to Practice Committee Chair** or a **Fitness to Practise Panel**, or to an **order** made by an **Appeal Panel Chair** or an **Appeal Panel**, refer to the date on which the decision or **order** was made either on a review of papers or at a **hearing**;

- d. any reference to a '**notice**' or to matters being 'notified' means **notice** in writing, which may include an electronic communication;
- e. any reference to a decision being taken by **ICAEW** refers to a decision being taken by the **PSD Chief Officer** or by staff in the ICAEW Professional Standards Department under powers delegated from the **PSD Chief Officer**.

Service of notices

- 6. Subject to **regulation 7**, any **notice** or other document required to be served for the purposes of these **regulations** on an **applicant** may be served in person or sent:
 - a. by post to any address provided by the **applicant** in their **provisional membership application**;
 - b. by email to any email address provided by the **applicant** in their **provisional membership application**.
- 7. If, at any time, the **applicant** makes a written request to **ICAEW** that an alternative postal or email address be used, that alternative postal or email address shall be used for the purposes of service of **notices** or other documents under these **regulations**.
- 8. Any **notice** or other document required to be served by an **applicant** in accordance with these **regulations** may be served in person or sent:
 - a. by pre-paid post addressed to the **Head of Committees and Tribunals**, ICAEW, Professional Standards Department, Metropolitan House, 321 Avebury Boulevard, Milton Keynes MK9 2FZ; or
 - b. by email to an address at which the **Head of Committees and Tribunals** has agreed to receive **notices** and documents under these **regulations**.
- 9. Service of a document under **regulations 6, 7 and 8** shall be deemed to have been effected:
 - a. where served in person, on the date of service;
 - b. where properly addressed and sent by first class, pre-paid post, on the second **business day** after posting;
 - c. where sent by email before 16:00, on the day it is sent, and if sent after 16:00 on the next **business day**.

Application of these regulations

10. These **regulations** apply to persons:
 - a. applying for provisional membership of **ICAEW** whose applications are referred to the **Fitness to Practise Committee** for determination by **ICAEW's** Education and Training Department (formerly the Learning and Professional Development Department of **ICAEW**); and
 - b. appealing against a decision of a **Fitness to Practise Panel** to refuse a **provisional membership application** which has been referred to it for decision under paragraph (a) above.
11. For the purposes of these **regulations**,
 - a. all proceedings before the **Fitness to Practise Committee** in relation to an application for provisional membership of **ICAEW** are to be conducted in accordance with the relevant **ICAEW** regulations in force at the time of the filing of the application; and
 - b. all proceedings before an **Appeal Panel** in relation to a refusal by a **Fitness to Practise Panel** to grant such application, are to be conducted in accordance with the relevant **ICAEW** regulations in force at the time of the filing of the notice of appeal (save where the period for filing a notice of appeal commences before, but expires after, the date on which these **regulations** come into force where the previous **ICAEW** regulations governing such appeals shall apply).

Process from the referral of the provisional membership application to review

12. Where a **provisional membership application** has been referred by **ICAEW's** Education and Training Department to the **Fitness to Practise Committee**, the **Head of Committees and Tribunals** shall request the **Fitness to Practise Committee Chair** to appoint a **Fitness to Practise Panel** to consider the **provisional membership application** and shall notify the **applicant** of the date when the matter will be considered by the **Fitness to Practise Panel**.
13. The **Fitness to Practise Panel** may, prior to determining whether to approve the **provisional membership application**, request any further information and/or evidence from the **applicant**.
14. The **Fitness to Practise Panel** shall consider the **provisional membership application** on the papers and in private.
15. Where, after reviewing the **provisional membership application** and any additional documents and/or evidence provided by the **applicant** pursuant to **regulation 13**, the **Fitness to Practise Panel** decides to approve the application, the **Head of Committees and Tribunals** shall serve **notice** of its decision as soon as practicable on the **applicant** and the service of this **notice** shall conclude the proceedings. The **Head of Committees and Tribunals** shall also inform **ICAEW's** Education and Training Department of the decision of the **Fitness to Practise Panel**.

16. Where, after reviewing the **provisional membership application** and any additional documents and/or evidence provided by the **applicant** pursuant to a request under **regulation 13**, the **Fitness to Practise Panel** decides to refuse the **provisional membership application** on papers, the **Head of Committees and Tribunals** shall serve **notice** of its decision as soon as practicable on the **applicant**.
17. Within 14 days of being served with **notice** of the decision of the **Fitness to Practise Panel** to refuse the **provisional membership application**, the **applicant** may request the opportunity to make oral representations on their application to the **Fitness to Practise Panel**. If such a request is received, the **Head of Committees and Tribunals** shall fix a date for the **Fitness to Practise Panel** to hear the oral representations and shall notify the **applicant** of the date, time, location or format of the **hearing**.
18. If no application is made within 14 days in accordance with **regulation 17**, this will conclude the proceedings, and the **Head of Committees and Tribunals** will inform the **ICAEW** Education and Training Department of the refusal of the **provisional membership application**.

Pre-hearing procedure

19. Any application made in writing for a postponement of the **hearing** fixed by the **Head of Committees and Tribunals** in accordance with **regulation 17** shall be considered by the **Fitness to Practise Panel Chair** and their determination will be final. If the postponement is granted, the **Head of Committees and Tribunals** shall notify the **applicant** of the new date, time, location or format for the **hearing**.
20. If the **applicant** wishes to rely on any document at the **hearing** which did not form part of their **provisional membership application** or intends to call a witness to give evidence at the **hearing**, the **applicant** shall provide a copy of the document, or a summary of the evidence the witness shall give, to the **Head of Committees and Tribunals** at least 5 **business days** before the **hearing**.
21. At any time prior to the **hearing**, a **Fitness to Practise Panel** may require, through a request made by the **Head of Committees and Tribunals**, that an **applicant** provide such further information and/or evidence relating to the **provisional membership application** as the **Fitness to Practise Panel** thinks is necessary to assist the **Fitness to Practise Panel** in determining the application. The **Fitness to Practise Panel Chair** may postpone the **hearing** until such information and/or evidence is provided.
22. If, prior to the start of a **hearing** of a **Fitness to Practise Panel**, any member of a **Fitness to Practise Panel** appointed by the **Fitness to Practise Committee Chair** in accordance with these **regulations** is unable to attend the **hearing**, the **Fitness to Practise Committee Chair** shall appoint another member of the **Fitness to Practise Committee** to the **Fitness to Practise Panel**. If no suitable member of the **Fitness to Practise Committee** is available on the date(s) fixed for the **hearing**, the **Fitness to Practise Committee Chair** shall request the **Head of Committees and Tribunals** to fix a new date for the **hearing** and to notify all **parties** of the new date.

Conduct of the hearing

23. The **hearing** of a **Fitness to Practise Panel** considering **provisional membership application** shall be a **private hearing**.
24. The **hearing** shall be informal and shall proceed on an inquisitorial basis and the normal rules of evidence shall not apply.
25. If, after the start of a **hearing**, any member of the **Fitness to Practise Panel** is, for any reason, unable to continue to attend, the **Fitness to Practise Panel** will no longer be quorate and may not continue. In such circumstances, the **Head of Committees and Tribunals** shall request the **Fitness to Practise Committee Chair** to appoint a new **Fitness to Practise Panel** and shall fix a date and time for a new **hearing**. No members of the original **Fitness to Practise Panel** shall be appointed as members of the new **Fitness to Practise Panel**.
26. If, at any time during a **hearing**, the **Fitness to Practise Panel Chair** is, for any reason, of the opinion that it is impracticable or would be contrary to the interests of justice for the **hearing** to be completed by that **Fitness to Practise Panel**, they shall so inform the **Fitness to Practise Committee Chair** who shall thereupon direct that the matter be re-heard by a new **Fitness to Practise Panel** so appointed.
27. A **hearing** of the **Fitness to Practise Panel** may proceed in the **applicant's** absence where the **Fitness to Practise Panel** is satisfied that the **applicant** was provided with **notice** of the **hearing** by the **Head of Committees and Tribunals** in accordance with these **regulations**.
28. An **applicant** may represent themselves or their application may be presented by a **representative**. An **applicant** is deemed present when they appear by their **representative**. If an **applicant** does not attend a **hearing** either themselves or by a **representative** but provides written representations, the **Fitness to Practise Panel** may take those representations into account in reaching its decision.
29. A **Fitness to Practise Panel** may, at its discretion, consider any evidence which has not been notified to the **Head of Committees and Tribunals** in advance of the **hearing** in accordance with **regulation 20**.
30. During the **hearing**, the **Fitness to Practise Panel** may ask any questions of the **applicant** and any witness giving evidence in support of the **provisional membership application** which are relevant to whether the application should be approved.
31. A **Fitness to Practise Panel** may adjourn the **hearing** of its own volition or upon application by the **applicant** to a date fixed by the **Fitness to Practise Panel**. An **applicant** may make an application to the **Fitness to Practise Panel Chair** for a further adjournment before the **hearing** is resumed, by serving an application on the **Head of Committees and Tribunals**. The **Fitness to Practise Panel Chair's** decision on such an application shall be final.
32. A **Fitness to Practise Panel** may deliberate in the absence of the **applicant** and their **representative** (if any) at any time during the **hearing**.

33. A written transcript or digital recording of the proceedings may be taken on behalf of the ***Fitness to Practise Panel***.
34. No objection shall be upheld to any technical fault in the procedure adopted by a ***Fitness to Practise Panel*** provided that the proceedings are fair and in accordance with the relevant regulations.

Decision of the Fitness to Practise Panel

35. The ***Fitness to Practise Panel*** shall, after hearing and reviewing all of the evidence, determine whether to grant or refuse the ***provisional membership application*** and shall, if the ***applicant*** is present at the ***hearing***, inform them verbally of its decision.
36. As soon as practicable following the ***hearing***, the ***Head of Committees and Tribunals*** shall confirm the decision of the ***Fitness to Practise Panel*** in writing to the ***applicant*** and shall provide them with a copy of its ***record of decision***.

Costs orders

37. No orders shall be made for costs against the ***applicant*** even if the ***Fitness to Practise Panel*** refuses the ***provisional membership application*** after an oral ***hearing***.

Publicity

38. There shall be no publicity of the decision made by the ***Fitness to Practise Panel*** in respect of a ***provisional membership application***.

Right of appeal against the decision of the Fitness to Practise Panel

39. An ***applicant*** may appeal a decision of the ***Fitness to Practise Panel*** to refuse a ***provisional membership application*** on grounds that:
 - a. the ***Fitness to Practise Panel*** erred in law;
 - b. the ***Fitness to Practise Panel*** wrongly interpreted any relevant regulation or guidance;
 - c. the ***Fitness to Practise Panel*** did not comply with the procedure set out in these ***regulations***;
 - d. the ***Fitness to Practise Panel*** made a decision which no panel, correctly applying these ***regulations*** and acting reasonably, would have made;
 - e. there was evidence which the ***Fitness to Practise Panel*** had not considered and which:
 - i. could reasonably have led the ***Fitness to Practise Panel*** to make a different decision; and

- ii. could not have been put before the ***Fitness to Practise Panel*** even if those concerned had done their best to produce it.

Filing a notice of appeal

40. In order to start an ***appeal***, an ***applicant*** must serve a ***notice of appeal*** on the ***Head of Committees and Tribunals*** and pay the ***appeal application fee*** within 28 days of service on them of the ***record of decision*** of the ***Fitness to Practise Panel***. The ***notice of appeal*** must specify one or more of the grounds of appeal set out in ***regulation 39***.

Process after service of notice of appeal

41. Upon receipt of a ***notice of appeal*** and the ***appeal application fee*** within the time period prescribed in ***regulation 40***, the ***Head of Committees and Tribunals*** shall as soon as reasonably practicable:
 - a. provide a copy of the ***notice of appeal*** to the ***PSD Chief Officer*** who shall appoint an ***ICAEW representative*** to respond to the ***notice of appeal***;
 - b. request the ***Appeal Committee Chair*** to appoint an ***Appeal Panel*** for the ***appeal hearing***; and
 - c. fix a date for the ***appeal hearing*** which shall be no earlier than 35 ***business days*** from the date of service of the ***notice*** and confirm the date, time, location or format of the ***appeal hearing*** to the ***applicant*** and the ***ICAEW representative***.
42. If the ***ICAEW representative*** wishes to serve an ***answer*** to the ***notice of appeal***, this must be served within 20 ***business days*** from the date of service of the ***notice of appeal*** on the ***PSD Chief Officer***, and copies of the ***answer*** shall be served on the ***applicant*** by the ***Head of Committees and Tribunals***.
43. An ***applicant*** may, at any time, withdraw their ***appeal*** by serving a ***notice*** to that effect on the ***Head of Committees and Tribunals***.

Application for permission to appeal out of time

44. If an ***applicant*** fails to file a ***notice of appeal*** and/or fails to pay the ***appeal application fee*** within the 28 day period specified in ***regulation 40***, an ***applicant*** may apply for permission to appeal out of time by:
 - a. serving on the ***Head of Committees and Tribunals*** a ***notice of appeal*** together with a statement of reasons as to why the application was not made within the period specified (and any supporting evidence); and

- b. by paying the **appeal application fee**.
45. Upon receipt of an application pursuant to **regulation 44**, the **Head of Committees and Tribunals** shall provide a copy of the **notice of appeal** and the statement of reasons to the **ICAEW representative** who shall have 10 **business days** from service of the application to make representations on the statement of reasons.
46. After the expiry of 10 **business days**, or receipt of representations from the **ICAEW representative** (if earlier), the **Head of Committees and Tribunals** shall provide a copy of the application, the **notice of appeal**, the statement of reasons and any representations from the **ICAEW representative** to the **Appeal Committee Chair** who shall determine whether the application should be allowed on the papers and who shall provide reasons to support their determination. The **Appeal Committee Chair** should only allow the application to proceed if there are good reasons why the **notice of appeal** could not reasonably have been served within the time limit specified in **regulation 40**. The **Head of Committees and Tribunals** shall notify the **parties** of the **Appeal Committee Chair's** decision and provide them with a copy of the **Appeal Committee Chair's** reasons.
47. Where the **Appeal Committee Chair** determines that the application for permission to appeal out of time should be refused, that determination shall conclude the proceedings and the **appeal application fee** will be refunded by **ICAEW** within 30 days.
48. Where the **Appeal Committee Chair** determines that the application for permission to appeal out of time should be allowed, the process for hearing the **appeal** shall proceed in accordance with **regulations 41 - 43 and 49 onwards**.

Pre-hearing review

49. Once an **Appeal Panel** has been appointed in accordance with **regulation 40**, the **Appeal Panel Chair** may, of their own volition, or on application by either **party**, direct the **Head of Committees and Tribunals** to arrange for a **pre-hearing review** to take place prior to the date fixed for the **appeal hearing**.
50. At a **pre-hearing review**, an **Appeal Panel Chair** may consider any applications for **directions** made by the **parties** (made either orally or at the **pre-hearing review** or in written representations) and shall give such **directions** as they think necessary for the purpose of securing the just, expeditious or economic disposal of the **appeal proceedings**, which may include **directions** relating to:
- whether the **Appeal Panel** should hear at the same **appeal hearing** more than one **appeal** by an **applicant** against decisions made by **Fitness to Practise Panels**;
 - whether the **Appeal Panel** should hear **appeals** by two or more **applicants** in relation to separate proceedings at the same **appeal hearing**;
 - any proposed amendment of the **notice of appeal** (including the grounds of appeal) or the **answer**;

- d. the admission of any new evidence in response to new evidence served with the **notice of appeal**;
- e. the admission of any facts or documents;
- f. the way in which evidence is to be given at the **appeal hearing**;
- g. changing the date or the length or the venue or platform of the **appeal hearing**.

Conduct of an appeal hearing

- 51. The **hearing** of an **appeal** against a refusal by a **Fitness to Practise Panel** to approve a **provisional membership application** shall be a **private hearing**.
- 52. Where, prior to the start of an **appeal hearing**, a member of an **Appeal Panel**, appointed in accordance with **regulation 41**, is unable to attend the **appeal hearing**, the **Appeal Committee Chair** shall appoint another member of the **Appeal Committee** to the **Appeal Panel**. If no suitable member of the **Appeal Committee** is available on the date(s) fixed for the **appeal hearing**, the **Head of Committees and Tribunals** shall fix a new date for the **appeal hearing** and shall notify all **parties** of the new date.
- 53. Where, after the start of the **appeal hearing**, any member of the **Appeal Panel** is, for any reason, unable to continue to attend, the **Appeal Panel** will no longer be quorate and may not continue. In such circumstances, the **Head of Committees and Tribunals** shall request the **Appeal Committee Chair** to appoint a new **Appeal Panel** and shall fix a date and time for the **appeal hearing** to take place. No members of the original **Appeal Panel** shall be appointed as members of the new **Appeal Panel**.
- 54. If, at any time during an **appeal hearing**, the **Appeal Panel Chair** is for any reason of the opinion that it is impracticable or would be contrary to the interests of justice for the **hearing** to be completed by that **panel**, they shall so inform the **Appeal Committee Chair** or any **Appeal Committee Vice-Chair** who shall thereupon direct that the **appeal** be re-heard by a new **Appeal Panel** so appointed. (If the **Appeal Panel Chair** is the **Appeal Committee Chair**, they shall direct that the **appeal** be re-heard by a new **Appeal Panel**).
- 55. An **appeal hearing** may proceed in the absence of the **applicant** where the **Appeal Panel** is satisfied that the **applicant** has been notified of the date, time, location or format of the **appeal hearing** in accordance with these **regulations** and that proceeding is desirable for securing the just, expeditious and economic disposal of the **appeal**.
- 56. An **Appeal Panel** may adjourn proceedings of their own volition or on the application of either **party**. A **party** may also make an application to the **Appeal Panel Chair** for a further adjournment before the **appeal hearing** is resumed, which must be copied to the other **party** who shall be entitled to make written representations on the application before a decision is made by the **Appeal Panel Chair**.

57. A **party** may only amend the **notice of appeal** or any **answer** at an **appeal hearing** with the permission of the **Appeal Panel**.
58. An **Appeal Panel** may deliberate in private in the absence of the **parties** and their representatives at any time.

Conduct of an appeal hearing – order of proceedings

59. At the start of the **appeal hearing**, the **Appeal Panel** shall consider as a first matter any representations from the **ICAEW representative** on whether the **appeal** falls within one or more of the grounds of appeal set out in **regulation 39**. If such representations are made, the **Appeal Panel** shall consider any representations made in response by the **applicant**.
60. Where the **Appeal Panel** considers, after hearing any representations, that the **appeal** does not fall within one or more of the grounds of appeal set out in **regulation 39**, it shall dismiss the **appeal**.
61. Where the **Appeal Panel** considers that the **appeal** falls within one or more grounds of appeal set out in **regulation 39**, the **Appeal Panel** shall continue to hear the **appeal** in respect of that ground or grounds only.
62. The **Appeal Panel**:
 - a. shall consider the record of evidence given before, and the documents produced to, the **Fitness to Practise Panel**;
 - b. shall consider any written representations of the **parties** and shall provide the **parties** with a reasonable opportunity of being heard (either in person or via their representative);
 - c. may, if it thinks fit, re-hear any witness who gave oral evidence before the **Fitness to Practise Panel**; andmay, in exceptional circumstances (as to which the **Appeal Panel** shall be the sole judge) receive fresh evidence.
63. The rules as to the admissibility of evidence in a court of law shall not apply. The **Appeal Panel** may determine the conduct of the **appeal hearing** 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. The default process shall be:
 - a. The **applicant**, or their **representative**, shall address the **Appeal Panel** first on the merits of their **appeal**.
 - b. The **ICAEW representative** shall then address the **Appeal Panel** as to why the **appeal** should not be allowed.
 - c. Where an **Appeal Panel** allows a witness to be called by a **party** to give oral evidence, the witness may, after being questioned by the **party** calling them,

be questioned by the other **party**. They may then be re-examined by the **party** calling them but only in relation to the evidence given by them under cross-examination. The **Appeal Panel** may ask questions of any witness at any stage during their evidence. The **Appeal Panel** may, on the application of a **party**, agree that the identity of a witness should not be revealed to the public. Witnesses will not be required to swear an oath or affirm.

- d. The **parties** may make closing addresses to the **Appeal Panel** with the **applicant** being heard last

- 64. A shorthand or stenographic note of the appeal hearing may be taken, or a recording made, on behalf of **Appeal Panel**.

Decision of the Appeal Panel

- 65. After hearing an **appeal**, the **Appeal Panel** may by **order**:
 - a. allow the **appeal** and approve the **provisional membership application**;
 - b. remit the **provisional membership application** to the **Fitness to Practise Committee** for re-consideration by newly appointed **Fitness to Practise Panel**; or
 - c. dismiss the **appeal**;
- 66. Where an **Appeal Panel** allows an **appeal** or remits the application back to the **Fitness to Practise Committee** for re-consideration, the **appeal application fee** shall be refunded by **ICAEW** to the **applicant** within 30 days of the **hearing**. Where an **Appeal Panel** dismisses the **appeal**, the **appeal application fee** shall be retained by **ICAEW**.
- 67. The **Appeal Panel** shall either notify the **parties** of its decision and any **orders** at the end of the **appeal hearing** or, if not, shall notify the **parties** of its decision and any **orders** as soon as reasonably practicable after the **appeal hearing**, through the **Head of Committees and Tribunals**. The **Head of Committees and Tribunals** shall also inform **ICAEW's** Education and Training Department of the **Appeal Panel's** decision on the application.
- 68. An **order** made by an **Appeal Panel** under these **regulations** shall take effect on the date of the **order** unless the **Appeal Panel** directs that it shall take effect as from some later date specified in the **order**. The **Appeal Panel** shall also provide its **record of decision** as soon as reasonably practicable to the **Head of Committees and Tribunals** who shall, in turn, provide a copy of the **record of decision** to both **parties**.

Costs orders

- 69. No orders shall be made for costs against the **applicant** or **ICAEW** by an **Appeal Panel**.

Publicity

70. No order made by an **Appeal Panel** in respect of a **provisional membership application** shall be published.

Review of decisions and correction of errors

71. The **Appeal Panel Chair** may, of their own volition or upon application by either **party**, review any **order** made by the **Appeal Panel** or the **record of decision** and may, on such review, correct any accidental slip or omission in the **order** or the **record of decision** that does not accurately reflect the findings, reasoning and / or **orders** of the **Appeal Panel**.
72. An application made under **regulation 71** shall be made within 28 **business days** from the date the **record of decision** of the **Appeal Panel** was served on the **parties**.

Confidentiality

73. All written material and information provided by either **ICAEW** or the **applicant** in connection with 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 the proceedings;
 - b. where the applicant is a principal in, or employed by, a member firm, contracted firm or regulated firm, to a principal in that firm;
 - c. to any other person to whom disclosure is necessary for the purposes of obtaining information or assistance in connection with proceedings;
 - d. to an insurer where disclosure is required under the terms of a policy or in connection with any application for insurance cover;
 - 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 required or allowed by law.

Our role as a world-leading improvement regulator

We protect the public interest by making sure ICAEW's firms, members, students and affiliates maintain the highest standards of professional competency and conduct.

ICAEW's regulatory and disciplinary roles are separated from ICAEW's other activities so that we can monitor, support or take steps to ensure change if standards are not met. These roles are carried out by the Professional Standards Department and overseen by the independent ICAEW Regulatory Board (IRB).

Our role is to:

- **authorise** ICAEW firms, members and affiliates to undertake work regulated by law: audit, local audit, investment business, insolvency and probate;
- **support** the highest professional standards in general accountancy practice through our Practice Assurance scheme;
- **provide** robust anti-money laundering supervision and monitoring;
- **monitor** ICAEW firms and insolvency practitioners to ensure they operate correctly and to the highest standards;
- **investigate** complaints and hold ICAEW firms and members to account where they fall short of standards;
- **respond** and comment on proposed changes to the law and regulation; and
- **educate** through guidance and advice to help stakeholders comply with laws, regulations and professional standards.

Chartered accountants are talented, ethical and committed professionals. There are more than 1.8m chartered accountants and students in the world, and more than 187,800 of them are members and students of ICAEW. All of the top 100 global brands employ chartered accountants.*

Founded in 1880, ICAEW has a long history of serving the public interest and we continue to work with governments, regulators and business leaders globally. And, as a world-leading improvement regulator, we supervise and monitor over 12,000 firms, holding them, and all ICAEW members and students, to the highest standards of professional competency and conduct.

We promote inclusivity, diversity and fairness and we give talented professionals the skills and values they need to build resilient businesses, economies and societies, while ensuring our planet's resources are managed sustainably.

ICAEW is the first major professional body to be carbon neutral, demonstrating our commitment to tackle climate change and supporting UN Sustainable Development Goal 13.

We are proud to be a founding member of Chartered Accountants Worldwide, a network of 750,000 members across 190 countries which promotes the expertise and skills of chartered accountants around the world.

We believe that chartered accountancy can be a force for positive change. By sharing our insight, expertise and understanding we can help to create sustainable economies and a better future for all.

www.charteredaccountantsworldwide.com

www.globalaccountingalliance.com

ICAEW

Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ
UK

T +44 (0)1908 248 250

E contactus@icaew.com

icaew.com/regulation

