



Schedule of changes to the Disciplinary Bye-laws

EFFECTIVE 15 OCTOBER 2018

Disciplinary Bye-law (DBL)	Amendment
1.1	Commencement date for amendments has been inserted.
1.2 – definition of ‘complaint’	Text has been deleted for clarity.
1.2 – definition of ‘defendant’	Deleted. References to ‘defendant’ have been replaced with ‘respondent’ and / or ‘respondent firm’ throughout the DBLs.
1.2 – definition of ‘formal complaint’	Definition has been re-ordered alphabetically.
1.2 – definition of ‘ICAEW’	New definition inserted in line with corporate brand. References throughout the DBLs to ‘Institute’ have been replaced with ‘ICAEW’.
1.2 – definition of ‘interim review hearing’	Reference to a ‘tribunal’ of the Fitness Committee has been replaced with ‘Fitness Panel’; reference to a ‘member’ has been replaced with ‘respondent’; cross-references have been updated.
1.2 – definition of ‘principal’	Definition has been re-ordered alphabetically.
1.2 – definition of ‘respondent firm’	Definition has been amended to include reference to a ‘regulated firm’ to reflect DBLs 6.1 and 6.2 (liability of such firms to disciplinary action).
1.2 – definition of ‘review hearing’	Reference to ‘Review Committee’ has been replaced with ‘Fitness Panel’. Cross-references have been updated.
1.2 – definition of ‘tribunal’	Amended to remove cross-reference to DBL 39. ‘Panels’ of the Fitness Committee are appointed to hear fitness cases, not tribunals.

1.5A	DBL has been re-ordered. It was previously set out at DBL 37.8 but DBL 37 (commencement and transitional provisions) has been deleted in its entirety. Some minor drafting amendments have been made for clarification purposes.
4.1(a) and (b)	DBL 4.1 specifies the circumstances in which an individual may be liable to disciplinary action under the DBLs. Paragraphs (a) and (b) have been amended for clarity and to remove ambiguity around the use of the term 'discredit'.
5.1(a) and (b)	DBL 5.1 concerns the liability of member firms and contracted firms to disciplinary action under the DBLs. Again, the amendments to paragraphs (a) and (b) are intended to provide clarity and remove ambiguity in the use of the term 'discredit'.
6.1	Amended to make clear that references in the DBLs to 'respondent firms' include 'authorised firms'.
6.2	Amended to make clear that references in the DBLs to 'respondent firms' include 'registered auditors'.
7.2(d) and 7.3(e)	New paragraphs inserted to enable reliance on conduct notices issued under Schedule 38 of the Finance Act 2012 as proof of certain matters for the purposes of the DBLs.
7.4(b)	Amended to clarify that a finding of fact by a court in any civil or criminal proceedings shall be prima facie evidence of facts found for the purposes of the DBLs, regardless of whether the respondent or respondent firm was a party to the proceedings.
9.1, 9.3, 9.6 – 9.10	Various amendments to DBL 9 to incorporate a time limit for the acceptance of complaints for investigation, which may be waived in exceptional circumstances.
9.3	Amended to clarify that multiple complaints may be brought against a respondent or respondent firm arising from the same fact pattern. Throughout the DBLs generally, references to 'complaint' or 'formal complaint' have been replaced with 'complaint or complaints' / 'formal complaint or formal complaints'.
10.7	New paragraph inserted to confirm that it is the duty of every respondent / respondent firm (or person or body subject to the DBLs) to cooperate promptly and in full with the head of staff and Investigation Committee (IC) in discharging his/its functions under the DBLs.
10.8	New paragraph inserted to confirm that a respondent / respondent firm shall not charge a complainant for time spent, or costs incurred, in responding to a complaint or complaints.

11.2A	New paragraph inserted to clarify that a firm shall not charge a client or former client for investigating a complaint(s) raised in accordance with the firm's internal complaints process. If, however, the firm has investigated the complaint and provided its full and final response in relation to the matter, it may charge the client / former client for time spent in responding to any subsequent correspondence.
13.1	<p>Amended to clarify the power of the IC to issue notices calling for information and documentation to assist in the investigation of the complaint. The amendments extend the scope of the bye-law to other persons or bodies who or which are subject to the DBLs (i.e. not just respondents / respondent firms).</p> <p>The IC may call for such information and documents as are available to the respondent, respondent firm or other person or body, whether or not in the physical possession of the respondent etc at the time of service of the notice.</p>
14A.2	Amended so that a fixed penalty may only be proposed in respect of a complaint (not part of a complaint).
15.1 and 15.2	The drafting of these DBLs which concern the powers of the IC has been clarified.
16.6	Minor drafting amended for completeness (any complaints referred by the IC to the Disciplinary Committee (DC) will be preferred as 'formal complaints').
16.8	Amended to state that any reference to the date of service of the tribunal's written record of decision is to be taken to the date of the relevant order under DBL 16. This is a consequential amendment arising from the amendments to DBLs 32 and 33 (see below).
16A.6	Reference to 30 days has been replaced with 35 days to reflect the extended deadline for payment of costs under DBL 33.
17.2, 17.3 and 20.1	References to 'head of staff' replaced with PCD Committee Secretary as the Committee Secretary is independent of the disciplinary and appeals process.
17.4 and 18.1	Reference to 'part complaints' has been deleted.
22.2	Minor amendment to language – 'such' deleted from third line.
22.9(a)	Amended to enable a tribunal to make an order declaring that a Provisional Foundation Qualification Holder or CFAB student is unfit to become a Foundation Qualification Holder or holder of the ICAEW CFAB qualification (previously the order was restricted to a declaration that the individual was unfit to become an ICAEW member).

25.1 – 25.5	<p>DBL 25 (time when orders of the tribunal take effect) has been amended generally to:</p> <ul style="list-style-type: none"> - reflect the insertion of an appeal right for the IC in certain, limited circumstances; - reflect the extended time period for appeal for respondents / respondent firms (see below); and - refer to service of notice on the PCD Committee Secretary rather than the head of staff.
26.1	<p>The time limit for service of notice of appeal by the respondent / respondent firm has been amended to 28 days <i>beginning with the date of service of the tribunal's decision on the respondent/ respondent firm (or such longer period as the Chair of the Appeal Committee (or, failing him / her, the Vice-Chair) may allow)</i>. This is to align with the time limit for the IC in applying for permission to appeal.</p> <p>DBL has been amended also to require that notice of appeal be served on the PCD Committee Secretary rather than the head of staff.</p>
26.2	New DBL inserted to set out the grounds on which a respondent / respondent firm may appeal an order of a Disciplinary Tribunal.
26.3, 26.4 and 26.6	Paragraphs 3 and 6 have been deleted and paragraph 4 amended as a consequence of the change to the time limit for appeal under DBL 26.1. Respondents / respondent firms now need to serve a statement of their grounds of appeal with the appeal notice (see DBL 26.2).
26.5	New DBL inserted stating that the Appeal Panel may, at any time and of its own volition, amend the grounds of appeal set out in the respondent / respondent firm's appeal notice.
(Renumbered) DBL 26.6, 26.7, 26.8 and 26.9	<p>DBLs 26.6 and 26.7 amended to require that notices and applications be served on the PCD Committee Secretary rather than the head of staff.</p> <p>Reference to a 28 day time limit for appeal has been deleted from (renumbered) DBLs 26.7 and 26.8.</p> <p>References to 'leave' to appeal have been replaced with 'permission' to appeal in DBLs 26.8 and 26.9.</p>
26A	New DBL enabling the IC to appeal the decision of the Disciplinary Tribunal to dismiss a formal complaint(s) in certain, limited circumstances.
27.1	Amended to provide for the appointment of a panel in cases where the Investigation Committee is given permission to appeal in accordance with DBL 26A.6.

	<p>Amended to delete reference to an 'effective' notice of appeal now that both the notice and grounds of appeal must be served by the respondent / respondent firm at the same time.</p> <p>Amended to reflect that the PCD Committee Secretary, rather than the head of staff, shall receive a notice of appeal served under DBL 26.1.</p>
28.1	Amended to reflect that the PCD Committee Secretary, rather than the head of staff, shall serve notice on the respondent / respondent firm and IC stating the time and place fixed for the hearing.
28.3	Amended to both the respondent / respondent firm (or their representative) and the IC representative shall have a reasonable opportunity to make representations to the Appeal Panel.
28.4	Reference to 'tribunal' has been replaced with 'panel' (of the Appeal Committee).
29.1 – 29.3	New sub-paragraphs (a) inserted into each DBL to clarify the process and powers of Appeal Panels in cases where complaints are pleaded in to the alternative and comprise different parts.
29.1 and 29.3	Consequential amendments arising out of the insertion of DBL 26A (appeal right for the IC in certain, limited circumstances).
31.6	<p>This DBL governs the procedure for appeals against intervention orders.</p> <p>Cross-references have been updated to reflect the changes to DBLs 26 and 29 above.</p>
32.1	<p>The time limit for the payment of fines has been updated to 35 days beginning with the date of service of the tribunal's written record of decision on the respondent / respondent firm.</p> <p>This amendment is a consequence of the extended period for appeal for the respondent / respondent firm under DBL 26.1.</p>
33.1A	<p>Paragraph 1A has been amended to specify that, if a tribunal dismisses all formal complaints as unproved, the tribunal may award costs against ICAEW up to such limit as prescribed from time to time in regulations. If the respondent / respondent firm's costs exceed the prescribed limit the tribunal may order that ICAEW pay a higher amount if it finds that either the formal complaint or formal complaints have been brought in bad faith or that no reasonable person would have brought or pursued the complaint(s).</p> <p>The ICAEW Regulatory Board has determined that, initially, the prescribed limit shall be £25,000 in total. The Disciplinary Committee and Appeal</p>

	Committee Regulations have been amended with effect from 15 October 2018 to reflect this limit.
33.1B	New paragraph specifying that a tribunal may make a costs order against ICAEW if it considers that the complaint(s) have been very poorly handled and the respondent or respondent firm's costs have significantly increased as a result. In such cases the tribunal may make a costs order against ICAEW in a sum which reflects, in the opinion of the tribunal, the additional costs which should not have been incurred by the respondent / respondent firm.
33.2	<p>Amended to state that costs shall be paid by the respondent / respondent firm within 35 days beginning with the date of service of the tribunal's written record of decision on the respondent / respondent firm.</p> <p>This is a consequential amendment arising from the extended period of appeal under DBL 26.1.</p>
33.3	Reference to DBL 26.3 has been removed following the deletion of the original DBL.
33.4	Amended to reflect that the PCD Committee Secretary, rather than the head of staff, shall receive a notice of withdrawal of the appeal.
33.6	<p>Paragraph 6(b) has been amended so that a respondent or respondent firm may only be liable to pay costs to ICAEW if their appeal is unsuccessful.</p> <p>Paragraph 6(c) has been amended to specify that, if a panel finds all formal complaints unproved, it may award costs against ICAEW at its discretion up to the limit prescribed from time to time in regulations.</p> <p>A new paragraph 6(d) provides that a panel may order ICAEW to pay costs in excess of the prescribed limit if it dismisses all formal complaints as unproved and finds that either a) the formal complaint(s) have been brought in bad faith; or b) that no reasonable person would have brought or pursued the formal complaint(s).</p>
33.6A	New paragraph inserted which provides that a panel may make an award of costs against ICAEW if it considers that the respondent / respondent firm's costs have significantly increased as a result of the formal complaint(s) being very poorly handled by ICAEW.
33.6B	New paragraph inserted which provides that if the Investigation Committee has appealed an order of a tribunal and the appeal is unsuccessful , the panel shall make an order of costs against ICAEW to reflect the additional, reasonable costs incurred by the respondent / respondent firm in defending the appeal.

33.6C	New paragraph inserted which provides that if the Investigation Committee has appealed an order of a tribunal and the appeal is successful , the panel may make an order of costs against the respondent / respondent firm in a sum which reflects the reasonable costs incurred by ICAEW up to and including the tribunal hearing only.
35.2	Amended to clarify that in cases where a Disciplinary Tribunal or Appeal Panel has dismissed all the complaints, it shall only cause the decision to be published at the respondent / respondent firm's request.
35.4	Reference to an 'effective' notice of appeal has been removed following the deletion of DBL 26.3.
36.1	<p>Amended to provide the IC with the ability to make such public statements as it may consider necessary to maintain public confidence in ICAEW's disciplinary or statutory function.</p> <p>These amendments enable the IC (as opposed to the IC Chair) to make public statements concerning the reasons why certain facts or matters, or complaints (as defined in DBL 9.3) do not give rise to a potential liability or liability to disciplinary action under the DBLs.</p>
36.2	Paragraph b) has been deleted as a consequence of the amendments to DBL 36.1 – i.e. the ability to make public statements rests with the IC, rather than the Chair of the IC.
37	<p>The DBL setting out commencement and transitional provisions has been deleted in its entirety. The substance of paragraph 8 is now set out at DBL 1.5A.</p> <p>Subsequent DBLs have been renumbered and cross-references have been updated throughout the bye-laws.</p>
(Re-numbered 37.1 and 37.2)	Minor amendments to drafting to refer to defined terms.
37.15	Amended to clarify that persons on whom notices are served are required to cooperate with the Fitness Committee, or persons to whom it has delegated its authority (a similar change to DBL 10.7).
37.16 and 37.17	New paragraphs giving the Fitness Committee Chair the power to accept the respondent's resignation of his/her membership, provisional membership or registration at the outset of the fitness process and prior to the appointment of a Fitness Panel under DBL 38.
41.2	Amended to clarify that the head of staff may, at the request of the respondent, propose a consent order to conclude the fitness proceedings, provided he / she agrees with the request.

	Cross-reference to the orders available under (re-numbered) DBL 40.3 has been inserted.
48.3	Amended to extend the time limit for the payment of costs to 35 days from the date of service of the Fitness Panel's written record of decision on the respondent. This is a consequential amendment arising from the changes to DBL 26.1.
48.4	Reference to DBL 26.3 has been removed as the provision has been deleted.
49.5	References to DBLs 26, 28 and 29 have been updated to reflect the amendments to those bye-laws (appeals).
Schedule – paragraph 1	Paragraph 1.3 has been deleted as the relevant regulations were rescinded by the ICAEW Regulatory Board in April 2017. Contractual arrangements are now in place to enable the suspension or termination of membership of the Investigation Committee, Disciplinary Committee and Appeal Committee.
Schedule – paragraph 1	Paragraph 1.4 has been deleted. Committee members from other disciplinary committees may now be co-opted onto the Disciplinary Committee, Appeal Committee and Fitness Committee to deal with specific cases (see below).
Schedule – paragraph 1	(Re-numbered) paragraph 1.3 has been amended to clarify that remuneration will be paid to members of the Investigation Committee, Disciplinary Committee and Appeal Committee in accordance with the payment policies approved and revised from time to time by the ICAEW Regulatory Board.
Schedule – paragraph 2	Minor amendments to definitions for completeness.
Schedule – paragraph 3	<p>Paragraph 3.3 has been amended to state that the Disciplinary Committee may co-opt members of the Appeal Committee or the Fitness Committee to deal with specific cases provided that:</p> <ul style="list-style-type: none"> a) those persons have not previously been involved in a decision concerning that case or the respondent while serving as members of the Investigation Committee, Appeal Committee or Fitness Committee; and b) the required number of lay members is maintained.
Schedule – paragraph 4	<p>Paragraph 4.5 has been amended to state that the Appeal Committee may co-opt members of the Disciplinary Committee or the Fitness Committee to deal with specific cases provided that:</p> <ul style="list-style-type: none"> a) those persons have not previously been involved in a decision concerning that case or the respondent while serving as a member of

	<p>the Investigation Committee, Disciplinary Committee or Fitness Committee; and</p> <p>b) the required number of lay members is maintained.</p>
Schedule – paragraph 6	Reference to the required number of ‘accountants’ on the Fitness Committee has been replaced with ‘lay members’ in paragraph 6.1.
Schedule – paragraph 6	<p>Paragraph 6.3 has been amended to state that the Fitness Committee may co-opt members of the Appeal Committee to deal with specific cases provided that:</p> <p>a) those persons have not previously been involved in a decision concerning the respondent while serving as a member of the Investigation Committee, Disciplinary Committee or Appeal Committee; and</p> <p>b) the required number of lay members is maintained.</p>
Schedule – paragraph 6	New paragraph 6.4 inserted to enable to Fitness Committee to make regulations for the performance of its functions, provided such regulations are not inconsistent with the provisions of the DBLs. This reflects a previous decision of the ICAEW Regulatory Board in 2016.