

Appendix 1

Draft ICAEW Disciplinary Bye-laws

PRELIMINARY

Citation and commencement

- 1.1 These **bye-laws** may be cited as the **Disciplinary Bye-laws** of the Institute of Chartered Accountants in England and Wales.
- 1.2 These **Disciplinary Bye-laws** shall come into force on [TBC] and, subject to **Disciplinary Bye-law** 3.3, the **Disciplinary Bye-laws** dated 14 October 2019 shall be repealed.

Definitions and interpretation

- 2.1 In these **Disciplinary Bye-laws**, defined terms are indicated in **bold and italics**. Unless the context otherwise requires, defined terms shall have the following meanings:

ACA means the qualification offered by *ICAEW* to allow a person to become an Associate of the Institute of Chartered Accountants in England and Wales.

Accountancy Scheme means the scheme, as amended from time to time, in which *ICAEW* participates pursuant to an agreement with the Financial Reporting Council and other professional bodies (including their relevant successors) being an investigation and discipline scheme for the purposes of clause 1(b)(viiiA) of *ICAEW's* Supplemental Charter of 21 December 1948.

affiliate means a person to whom affiliate status has been granted in accordance with clause 12A of *ICAEW's* Supplemental Charter of 21 December 1948.

allegation means an allegation arising out of a *conduct matter* which is reported to the *Conduct Committee* in accordance with these *Disciplinary Bye-laws* and the *IDRs*, and which specifies the basis for potential liability to disciplinary action under the *Disciplinary Bye-laws*. Where alternative bases are specified in respect of the same *event* or *events*, each of them constitutes a separate *allegation* for the purposes of these *Disciplinary Bye-laws*.

appeal means an appeal:

- a. against one or more *orders* of a *Tribunal* which is brought in accordance with the *IDRs*; or
- b. against one or more *orders* of a *Fitness to Practise Panel* which is brought in accordance with the *Fitness to Practise Regulations*.

Appeal Committee means the Appeal Committee of *ICAEW* whose members are convened into *Appeal Panels* to consider *appeals* of *orders* made by a *Tribunal* or a *Fitness to Practise Panel*.

Appeal Panel means a panel of the *Appeal Committee* which is convened to hear an *appeal* brought in accordance with the *IDRs* or the *Fitness to Practise Regulations*.

assessment means the process undertaken by the *Conduct Department* in respect of a *complaint* to determine whether there is a potential liability to disciplinary action under the *Disciplinary Bye-laws* and whether the matter should be the subject of an *investigation*.

bye-laws means all the bye-laws of *ICAEW* in force at the relevant time.

CFAB student means a person who is registered to study for the *ICAEW* Certificate in Finance, Accounting and Business (CFAB) and no more than three years have elapsed since the date of the last attempt at a CFAB examination.

Charter means *ICAEW's* Royal Charter of 1880 and Supplemental Charter of 1948.

complainant means a person or body (other than an officer or employee of *ICAEW* acting in such capacity) who brings a *complaint* to the attention of the *Conduct Department*.

complaint means a matter which is reported to, or comes to the attention of, the *Conduct Department* concerning the conduct or performance of a *member, firm, affiliate* or *relevant person*.

Conduct Committee means the Conduct Committee of *ICAEW* which considers *allegations* reported to it by the *Conduct Department* and which reviews decisions and / or actions taken by the *Conduct Department* in assessing *complaints*, and which prosecutes certain *formal allegations* before *Tribunals*.

Conduct Department means the department within *ICAEW's* Professional Standards Department (or relevant predecessor or successor body identified as such in the *IDRs* and/or *regulations*) which is responsible for assessing *complaints*, investigating *conduct matters*, reporting *allegations* to the *Conduct Committee* or *serious conviction allegations* to the *Tribunals Committee*, prosecuting *formal allegations* before *Tribunals* (except those prosecuted by the *Conduct Committee*) and for making or responding to *appeals* to the *Appeal Committee*.

conduct matter means one or more *events* which have been assessed by the *Conduct Department* as having the potential to give rise to disciplinary action and which are being investigated by the *Conduct Department*.

consent order means an *order* of the *Conduct Committee* made with the agreement of the *member, firm, affiliate* or *relevant person* in accordance with *Disciplinary Bye-law* 10.1(b) which specifies:

- a. the *sanction* or *sanctions* to be applied in respect of the *allegation* or *allegations* against the *member, firm, affiliate* or *relevant person*; or

- b. an *order* for no further action; and

any *costs order* against the *member, firm, affiliate* or *relevant person*.

contracted firm means a sole practice, partnership, limited liability partnership or a body corporate which is not a *member firm* but which has contracted with ICAEW to be subject to the *Disciplinary Bye-laws* and the ICAEW Code of Ethics.

costs order means:

- a. in relation to any *disciplinary proceedings*, an *order* against one *party* for payment of all or part of the costs incurred by the other *party* in connection with the *disciplinary proceedings* (and, in the case of ICAEW, the costs incurred during the *investigation* as well as the *disciplinary proceedings*);
- b. in relation to any proceedings concerning an application for an *interim order* or an existing *interim order*, an *order* against one *party* for payment of all or part of the costs incurred by the other *party* in connection with the proceedings;
- c. in relation to any *fitness to practise proceedings*, an *order* against one *party* for payment of all or part of the costs incurred by the other *party* in connection with the proceedings.

director means a director of a body corporate.

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

disciplinary committee means any of:

- a. the *Conduct Committee*;
- b. the *Tribunals Committee* and any *Tribunals*;
- c. the *Appeal Committee* and any *Appeal Panels*,

and any predecessor or successor to any such body, and ‘*disciplinary committees*’ means all of them.

disciplinary proceedings means the process by which:

- a. the *Conduct Committee* considers one or more *allegations* against a *member, firm, affiliate* or *relevant person*;
- b. a *Tribunal* is convened to hear one or more *formal allegations* against a *member, firm, affiliate* or *relevant person*;
- c. an *Appeal Panel* is convened to determine an *appeal* against one or more *orders* of a *Tribunal* in respect of such *formal allegation(s)*,

and ‘*disciplinary proceedings*’ includes all or any of the above processes under these *Disciplinary Bye-laws* and the *IDRs*.

effective date means the date on which these *Disciplinary Bye-laws* take effect being [TBC]

event means an act, omission, fact, matter or circumstance.

finding means:

- a. in relation to the *Conduct Committee*, a finding that the test set out in *Disciplinary Bye-law 5.1* is, or is not, met in relation to an *allegation*;
- b. in relation to a *Tribunal* or an *Appeal Panel* in *disciplinary proceedings*:
 - i. a finding that the test for an *interim order* set out in *IDR 30.2* is, or is not, met (including on any review or *appeal*); or
 - ii. a finding that the test set out in *Disciplinary Bye-law 5.2* is, or is not, met in relation to a *formal allegation*;
- c. in relation to a *Fitness to Practise Panel* or an *Appeal Panel* in *fitness to practise proceedings*, a finding that the test for one or more *orders* under *Disciplinary Bye-law 13.1* is, or is not, met (including on any review or *appeal*);

and, for the purposes of paragraphs (b)(ii) and (c) above, a 'finding' shall include any factual findings which form the basis of that finding.

firm means:

- a. a *member firm*;
- b. a *regulated firm*;
- c. a *contracted firm*; or
- d. a *licensed practice*.

fitness to practise application means an application to the *Fitness to Practise Committee* to consider:

- a. the fitness to respond to an *investigation* and/or to participate in *disciplinary proceedings* and/or *regulatory proceedings*; and/or
- b. the fitness to practise,

of a *member*, *affiliate* or *relevant person* which can be made by either the *PSD Chief Officer* (on behalf of *ICAEW*) or by a *member*, *affiliate* or *relevant person* themselves in accordance with the *Disciplinary Bye-laws* and the *Fitness to Practise Regulations*.

Fitness to Practise Committee means the *Fitness to Practise Committee* of *ICAEW* whose members are convened into *Fitness to Practise Panels* to:

- a. consider *fitness to practise applications* in relation to *members, affiliates and relevant persons* under the *Fitness to Practise Regulations*; and
- b. review any existing *orders* made in accordance with *Disciplinary Bye-law 13.1* in respect of such *members, affiliates or relevant persons*.

Fitness to Practise Committee Chair means the person appointed from time to time as Chair of *ICAEW's Fitness to Practise Committee* by the *RACAC* (or relevant predecessor or successor body).

fitness to practise consent order means a consent order entered into between the *member, affiliate or relevant person*, and *ICAEW*, in accordance with the *Fitness to Practise Regulations*, which includes one or more of the *orders* specified in *Disciplinary Bye-law 13.2*.

fitness to practise interim review hearing means a *hearing* to review an *order or orders* of a *Fitness to Practise Panel* made in accordance with *Disciplinary Bye-laws 13.1 and 13.2* (including any orders made by way of a ***fitness to practise consent order***) which is held at the request of the *member, affiliate or relevant person* in accordance with the *Fitness to Practise Regulations* (prior to the next *fitness to practise review hearing*).

fitness to practise hearing means a *hearing* of a *Fitness to Practise Panel* to determine a *fitness to practise application* made under the *Fitness to Practise Regulations*.

Fitness to Practise Panel means a panel of the *Fitness to Practise Committee* which is convened to consider any matter falling to be determined by the *Fitness to Practise Committee* under *Disciplinary Bye-law 13* and in accordance with the *Fitness to Practise 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*.

fitness to practise proceedings means the proceedings under the *Disciplinary Bye-laws* and the *Fitness to Practise Regulations* following a *fitness to practise application* made by either the *PSD Chief Officer* or by a *member, affiliate or relevant person*.

Fitness to Practise Regulations means the *regulations* setting out the process by which *Fitness to Practise Panels* will consider:

- a. the fitness to respond to an *investigation* and/or to participate in *disciplinary proceedings* and/or *regulatory proceedings*; and/or
- b. the fitness to practise,

of members, affiliates and relevant persons, as amended from time to time by the ICAEW Regulatory Board in accordance with *Disciplinary Bye-law* 16.3.

fitness to practise review hearing means a *hearing* to review an *order* or *orders* made by a *Fitness to Practise Panel* under *Disciplinary Bye-laws* 13.1 and 13.2 (including any orders made by way of a **fitness to practise consent order**) which is held in accordance with the *Fitness to Practise Regulations* (not being a *fitness to practise interim review hearing*).

formal allegation means an *allegation* which:

- a. has been referred by the *Conduct Committee* for hearing by a *Tribunal*;
- b. has been referred by the *Conduct Department* for hearing by a *Tribunal* (in the case of a *serious conviction allegation*);
- c. may subsequently be considered on *appeal* by an *Appeal Panel*;
- d. may be remitted by an *Appeal Panel* for re-hearing by a *Tribunal*; and

which specifies the basis for potential liability to disciplinary action under the *Disciplinary Bye-laws*. Where alternative bases are specified in respect of the same *event* or *events*, each of them constitutes a separate *formal allegation* for the purposes of the *Disciplinary Bye-laws*.

Foundation Qualification Holder means a person who holds the ICAEW Foundation Qualification and is registered to use the relevant designatory letters.

Guidance means guidance issued by the ICAEW Regulatory Board in accordance with *Disciplinary Bye-law* 16.

Guidance on sanctions means the guidance issued by the ICAEW Regulatory Board for the *disciplinary committees* in accordance with *Disciplinary Bye-law* 16, which specifies ICAEW's policy and framework for applying *sanctions*.

hearing means a *hearing* of a *Tribunal*, an *Appeal Panel* or a *Fitness to Practise Panel*, whether conducted in person or through video or audio-conferencing facilities, and references to a *hearing* in these *Disciplinary Bye-laws* includes a re-hearing.

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

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

ICAEW Regulatory Board means the board delegated by ICAEW Council to have responsibility for the supervision of ICAEW's regulatory and disciplinary functions, and which oversees the appointment of members of the *disciplinary committees* and the *regulatory committees* by the RACAC.

IDRs means the Investigation and Disciplinary Regulations of *ICAEW* as may be made and amended from time to time by the *ICAEW Regulatory Board* in accordance with *Disciplinary Bye-law 16*.

interim order means an *order of a Tribunal* made in accordance with *Disciplinary Bye-law 11.5*, pending the final determination of *allegations* or *formal allegations* under the *Disciplinary Bye-laws*, which may include one or more of the following:

- a. suspension of a person's membership of *ICAEW*;
- b. suspension of a person's *ICAEW affiliate* status;
- c. suspension of a person's registration as a *provisional member, Foundation Qualification Holder, Provisional Foundation Qualification Holder* or *CFAB student of ICAEW*;
- d. suspension of any *practising certificate, certificate, licence or registration* issued to a *member, affiliate or relevant person* by *ICAEW*;
- e. the imposition of conditions on any *practising certificate, certificate, licence or registration* held by a *member, affiliate or relevant person*;
- f. such ancillary *orders* as the *Tribunal* thinks fit including, without limitation, that the *member, affiliate or relevant person* appoint an alternate for the period of the suspension and notify the *Conduct Department*, their clients and / or other persons or bodies of the identity and contact details of the alternate.

investigation means the process by which the *Conduct Department* investigates a *conduct matter* to determine whether a *member, firm, affiliate or relevant person* may be liable to disciplinary action under the *Disciplinary Bye-laws*.

licensed practice means a firm licensed by *ICAEW* under the *ICAEW Licensed Practice Handbook*.

member means a member of *ICAEW* and 'membership' shall be construed accordingly.

member firm means:

- a. a *member* engaged in *public practice* as a sole practitioner; or
- b. a partnership engaged in *public practice* of which more than 50 per cent of the rights to vote on all, or substantially all, matters of substance at meetings of the partnership are held by *members*; or
- c. a limited liability partnership engaged in *public practice* of which more than 50 per cent of the rights to vote on all, or substantially all, matters of substance at meetings of the partnership are held by *members*; or
- d. any body corporate (other than a limited liability partnership) engaged in *public practice* of which:
 - i. 50 per cent or more of the *directors* are *members*; and
 - ii. more than 50 per cent of the nominal value of the voting shares is held by *members*; and
 - iii. more than 50 per cent of the aggregate in nominal value of the voting and non-voting shares is held by *members*.

notice means a notice in writing, which may include an electronic communication.

order means an order of the *Conduct Committee*, a *Tribunal*, an *Appeal Panel* or a *Fitness to Practise Panel* under the *Disciplinary Bye-laws*.

parties means:

- a. in relation to any *disciplinary proceedings*, the *Conduct Department* and the *member, firm, affiliate* or *relevant person* who or which is the subject of the *allegation(s)* or *formal allegation(s)* (save in the case where, in accordance with the *IDRs*, the *Conduct Committee* has conduct of the proceedings before a *Tribunal* or an *Appeal Panel* where it shall be a party rather than the *Conduct Department*);
- b. in relation to any *fitness to practise proceedings*, *ICAEW* and the *member, affiliate* or *relevant person* who is the subject of any *fitness to practise application*;

and 'party' means any one of them.

physical or mental health includes bodily or mental ill health, disability and any mental or behavioural disorder included in the International Classification of Diseases (ICD-10 Classification of Mental and Behavioural disorders) produced by the World Health Organisation and includes an episodic or relapsing condition which is in remission.

practising certificate means a certificate issued to a *member* by *ICAEW* authorising them to engage in *public practice*.

principal means sole practitioner, a partner in a partnership, a member of a limited liability partnership or a *director* of a body corporate.

Provisional Foundation Qualification Holder means a person who is registered to study for the *ICAEW* Foundation Qualification.

provisional member means for the purposes of these *Disciplinary Bye-laws* a person who, at the time a matter is determined to be a *conduct matter* for the purposes of the *Disciplinary Bye-laws*, has not been admitted to full membership of *ICAEW* and:

- a. is registered with *ICAEW* as an *ACA* student; or
- b. is registered with *ICAEW* under a *training agreement* with an Authorised Training Employer or an Authorised Training Principal; or
- c. has attempted an *ACA* examination and no more than three years have elapsed since the date of the last attempt at an *ACA* examination; or
- d. was registered with *ICAEW* under a *training agreement* with an Authorised Training Employer or an Authorised Training Principal and no more than three

- years have elapsed since the *training agreement* was completed or cancelled;
or
- e. has applied for *ICAEW* membership outside the period allowed under the *regulations* and the application has not been finally determined.

PSD Chief Officer means the person appointed to the role of Chief Officer of *ICAEW*'s Professional Standards Department.

public practice means practice as a public accountant in any part of the world otherwise than as an employee, subject to any *regulations* made pursuant to Principal Bye-law 51(b) and to the *ICAEW* Statement on Engaging in Public Practice as may be amended from time to time by the *ICAEW Council*.

RACAC means the Regulatory and Conduct Appointments Committee which is responsible for the appointment and reappointment of members of the *disciplinary committees*, the *regulatory committees* and the *Fitness to Practise Committee*, and which is accountable to the *ICAEW Regulatory Board*.

regulated activities means:

- a. audit activities for which authorisation by a Recognised Supervisory Body is required under the Companies Act 2006 or the Local Audit & Accountability Act 2014, or by a Recognised Accountancy Body under the Irish Companies Act 2014;
- b. accountancy activities for which authorisation by a Prescribed Accountancy Body is required under the Irish Companies Act 2014;
- c. activities for which an individual is authorised to act as an insolvency practitioner by a Recognised Professional Body under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989;
- d. activities for which authorisation by the Financial Conduct Authority is required under the Financial Services and Markets Act 2000;
- e. exempt regulated activities for which authorisation by a Designated Professional Body is required under the Financial Services and Markets Act 2000; or
- f. reserved legal activities for which authorisation by an Approved Regulator or Licensing Authority is required under the Legal Services Act 2007.

regulated firm means a *firm* regulated by *ICAEW* in its capacity as:

- a. a Recognised Supervisory Body under the Companies Act 2006 or the Local Audit and Accountability Act 2014;
- b. a Designated Professional Body under the Financial Services and Markets Act 2000; or
- c. an Approved Regulator and Licensing Authority under the Legal Services Act 2007;

or in any comparable capacity under any legislation, wherever in force, for the time being designated in regulations.

regulations means regulations made by the *ICAEW Council* or any committee or sub-committee under clause 16 of the Supplemental Charter and Principal Bye-law 49 (power to make regulations) but does not include the *IDRs* or *statutory regulations*.

regulatory committee means:

- a. Audit Registration Committee;
- b. Insolvency Licensing Committee;
- c. Investment Business Committee;
- d. Legal Services Committee;
- e. Practice Assurance Committee;
- f. Professional Indemnity Insurance Committee,

and any predecessor or successor to any such committee and ‘*regulatory committee*’ means any of them.

regulatory proceedings means proceedings initiated by *ICAEW* against a *member*, *affiliate* or *relevant person* before any *regulatory committee*, and any application for review to the Review Committee and/or appeal to the *Appeal Committee* in relation to such proceedings, and ‘*regulatory proceedings*’ includes all or any of these processes.

relevant persons means the following persons who are subject to the *Disciplinary Bye-laws*:

- a. *provisional members*;
- b. *Foundation Qualification Holders*;
- c. *Provisional Foundation Qualification Holders*;
- d. *CFAB students*.

relevant time means the time relevant to any *events* which have been reported to, or have come to the attention of, the *Conduct Department* as indicating a possible liability to disciplinary action.

sanction means any of the financial or non-financial sanctions set out in *Disciplinary Bye-law* 11.1.

serious conviction means a criminal conviction which has been designated by the *ICAEW Regulatory Board* as suitable to be reported directly by the *Conduct Department* to the *Tribunals Committee*, without prior consideration by the *Conduct Committee*, in accordance with the process set out in the *IDRs*.

serious conviction allegation means an *allegation* relating to a *serious conviction*.

settlement agreement means an agreement between the *Conduct Department* and the *member*, *firm*, *affiliate* or *relevant person* to dispose of the *formal allegation* (where there is only one) or all *formal allegations* (where there is more than one)

against that *member, firm, affiliate or relevant person* which sets out:

- a. the *formal allegation(s)* and those that are admitted by the *member, firm, affiliate or relevant person*;
- b. the proposed *sanction(s)* and any *costs order*; and
- c. any conditions of settlement,

and which has appended to it a draft *settlement order*.

Settlement Chair means any member of the *Tribunals Committee* who has been approved by the *RACAC* to act as Chair of a *Tribunal* and who has been appointed to consider a proposed *settlement agreement*.

settlement order is an *order* which may be made by a *Settlement Chair* on behalf of the *Tribunals Committee* in accordance with *Disciplinary Bye-law* 11.8 in relation to one or more *formal allegations* referred to the *Tribunals Committee* by the *Conduct Committee* or the *Conduct Department*, and which specifies one or more of the *orders* (including any *costs order*) available to the *Tribunals Committee* in respect of the *member, firm, affiliate or relevant person* under *Disciplinary Bye-laws* 11.1 and 11.3(a).

statutory regulations means:

- a. any regulations made by *ICAEW* in its capacity as:
 - i. a Recognised Supervisory Body under the Companies Act 2006;
 - ii. a Recognised Supervisory Body under the Local Audit & Accountability Act 2014;
 - iii. a Recognised Professional Body under the Insolvency Act 1986;
 - iv. a Designated Professional Body under the Financial Services and Markets Act 2000; and
 - v. an Approved Regulator and Licensing Authority under the Legal Services Act 2007;
- b. the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, including any amendments thereto or replacement legislation.

training agreement means an agreement of approved training registered with *ICAEW* and in such form and containing such provisions as may be prescribed in *regulations*, made between a candidate for membership and the person or firm or organisation at or from whose office the approved training is to be given.

Tribunal means a Tribunal convened from members of the *Tribunals Committee* in accordance with the *IDRs* to consider any matter falling to be determined by the *Tribunals Committee*.

Tribunals Committee means the Tribunals Committee of *ICAEW* whose members are convened into *Tribunals* to consider:

- a. *formal allegations* referred to it by the *Conduct Committee*;
- b. *serious conviction allegations* referred to it by the *Conduct Department*;
- c. *formal allegations* referred back to it for re-hearing by an *Appeal Panel*); and
- d. applications for *interim orders* made to it by the *Conduct Department*,

and whose members (if so authorised by the *RACAC*) can approve *settlement orders* in relation to *formal allegations* in accordance with the processes set out in the *IDRs*.

United Kingdom includes the Channel Islands and the Isle of Man.

2.2 The Interpretation Act 1978 applies to these ***Disciplinary Bye-laws*** in the same way as it applies to an enactment.

2.3 In these ***Disciplinary Bye-laws***:

- 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 ***Disciplinary Bye-Laws***;
 - iii. any reference to a numbered ***Disciplinary Bye-law*** is a reference to the ***Disciplinary Bye-law*** so numbered among these ***Disciplinary Bye-laws***; and
 - iv. 'in writing' or any similar expression includes transmission by email;
- b. any references to legislation include any amendments thereto or replacement legislation.

2.4 ***Regulations*** may change, supplement or dis-apply any part of these ***Disciplinary Bye-laws*** in specified cases or classes of case in pursuance of any provision of, or made under, any Act.

The objective and application of these Disciplinary Bye-laws

3.1 The objectives of these ***Disciplinary Bye-laws*** are:

- a. to promote and maintain, in the public interest and for the protection of the reputation of *ICAEW*, its ***members*** and the profession, high standards of conduct and professional practice by ***members, firms, affiliates*** and ***relevant persons***; and
- b. to provide a fair, effective, efficient and transparent system for:

- i. assessing **complaints** and investigating **conduct matters** relating to **members, firms, affiliates** and **relevant persons** and, where necessary, taking **disciplinary proceedings** and applying **sanctions** as appropriate in respect of **allegations** and **formal allegations** arising out of such **conduct matters**; and
- ii. assessing whether the fitness to respond to an **investigation** and / or to participate in **disciplinary proceedings** and/or **regulatory proceedings**, and / or the fitness to practise, of a **member, affiliate** or **relevant person** is seriously impaired through their **physical or mental health**.

3.2 These **Disciplinary Bye-laws** apply to the following persons and bodies:

- a. **members**;
- b. **firms**
- c. **affiliates**; and
- d. **relevant persons**.

3.3 For the purposes of these **Disciplinary Bye-laws**, the liability to disciplinary action of a **member, firm, affiliate** or **relevant person** under the **Disciplinary Bye-laws** on a **conduct matter, allegation** or **formal allegation**, whether the **conduct matter, allegation** or **formal allegation** came to the attention of the **Conduct Department** before or after the **effective date**, is to be determined in accordance with the provisions of the **Disciplinary Bye-laws** and regulations and **IDRs** in force at the time the **event(s)** giving rise to the **conduct matter, allegation** or **formal allegation** occurred; but

- a. all **assessments** of **complaints** and **investigations** of **conduct matters** under the **Disciplinary Bye-laws** are to be conducted in accordance with the provisions of the **Disciplinary Bye-laws** and regulations or **IDRs** in force at the time of the **assessment** or **investigation**, save that the **Disciplinary Bye-laws** dated 14 October 2019 shall continue to apply to:
 - i. any application for a review of a decision taken prior to the **effective date** by the Investigation Committee to dismiss a complaint, and
 - ii. any reconsideration of a decision made prior to the **effective date** by the Investigation Committee to refer a complaint to the Disciplinary Committee for hearing (“Investigation Committee”, “Disciplinary Committee” and “complaint” being defined in the **Disciplinary Bye-laws** dated 14 October 2019);
- b. all proceedings before a **Tribunal** under the **Disciplinary Bye-laws** are to be conducted in accordance with the provisions of the **Disciplinary Bye-laws** and regulations or **IDRs** in force at the time of the referral of the matter to the **Tribunal** by the **Conduct Committee** or the **Conduct Department**; and

- c. all proceedings before an **Appeal Panel** under the **Disciplinary Bye-laws** are to be conducted in accordance with the provisions of the **Disciplinary Bye-laws** and regulations or **IDRs** in force at the time the application for permission to appeal is filed (other than where the period for filing the notice of appeal commences before, and expires on or after, the **effective date** and the notice of appeal is filed within that period).

LIABILITY TO DISCIPLINARY ACTION

Liability of members, affiliates and relevant persons

- 4.1 A **member, affiliate or relevant person** shall be liable to disciplinary action under these **Disciplinary Bye-laws** in any of the following cases, regardless of whether they were a **member, affiliate or relevant person** at the time of the **event(s)** giving rise to that liability:
 - a. if they have committed misconduct; by committing any act or omitting to do any act, whether in the course of carrying out professional work or otherwise, likely to bring discredit on themselves, **ICAEW** or the profession of accountancy, or so as to fall significantly short of the standards reasonably expected of a **member, affiliate or relevant person**;
 - b. if they have demonstrated professional incompetence; by performing professional work, whether as a **principal, director**, employee or as an individual, incompetently, to such an extent, or on such a number of occasions, as to fall significantly short of the standards reasonably expected of an equivalent **member, affiliate or relevant person**;
 - c. if they have committed a breach of the **bye-laws**, or of any **regulations, statutory regulations** or the **IDRs** or have failed to comply with any order, direction or requirement made, given or imposed under them;
 - d. if they have failed to comply with any **order** of a **disciplinary committee**, otherwise than by failing to pay any fine or costs;
 - e. if they have, in a court of competent jurisdiction, been convicted of an indictable offence (or have, before such a court outside England and Wales, been convicted of an offence corresponding to one which is indictable in England and Wales);
 - f. if they have had a disqualification order made against them or have given a disqualification undertaking which has been accepted by the Secretary of State under the Company Directors Disqualification Act 1986 (or if they have had orders made against them or have given undertakings under legislation of equivalent effect in jurisdictions outside England and Wales where the courts are of competent jurisdiction);

- g. if, at any time, they have carried on any **regulated activities** when not duly authorised;
- h. if they have failed to comply with a **notice** to supply any information, evidence or other documentation, in whatever form it exists, served in accordance with **Disciplinary Bye-law 8** and the **IDRs** within the time allowed by or under those **IDRs**;
- i. if any of the following circumstances apply in respect of the **member, affiliate** or **relevant person**:
 - i. that the **member, affiliate** or **relevant person** has failed in a personal capacity to satisfy a judgment debt, or is a **principal** of a firm that has failed to satisfy a judgment debt;
 - ii. that the **member, affiliate** or **relevant person** has made, in a personal capacity or as a **principal** of a firm, an assignment by reason of insolvency of some or all of their assets for the benefit of their or the firm's creditors;
 - iii. that the **member, affiliate** or **relevant person** has made any arrangement or entered into a composition with their creditors to satisfy their debts, whether by resolution of their creditors or court order or under any deed or other document by reason of insolvency;
 - iv. that the **member, affiliate** or **relevant person** has made a proposal to enter into a voluntary arrangement on grounds of insolvency, or has entered into such a voluntary arrangement;
 - v. the **member, affiliate** or **relevant person** is a **principal** in a firm, or has been a **principal** in a firm at any time during the 6 months prior to the event specified in paragraphs (1) – (5) below:
 - 1. which has had a winding-up order made against it on grounds of insolvency; or
 - 2. which, in the case of a body corporate, has been the subject of an effective resolution passed by the shareholders or the members for it to be wound up on grounds of insolvency; or
 - 3. which has made a proposal to enter into a voluntary arrangement on grounds of insolvency, or has entered into such a voluntary arrangement; or
 - 4. in respect of which an administrator has been appointed on grounds of insolvency; or
 - 5. in respect of which a receiver has been appointed by a creditor or by a court on the application of a creditor.

Liability of firms

- 4.2 A **firm** shall be liable to disciplinary action under these **Disciplinary Bye-laws** in any of the following cases:
- a. if it has committed misconduct; by committing any act or omitting to do any act, whether in the course of carrying out professional work or otherwise, likely to bring discredit on itself, **ICAEW** or the profession of accountancy, or so as to fall significantly short of the standards reasonably expected of a **firm**;
 - b. if it has demonstrated professional incompetence; by performing professional work incompetently to such an extent, or on such a number of occasions, as to fall significantly short of the standards reasonably expected of a **firm**;
 - c. if it has committed a breach of the **bye-laws**, or of any **regulations, statutory regulations** or the **IDRs**, or has failed to comply with any order, direction or requirement made, given or imposed under them;
 - d. if it has failed to comply with any **order** of a **disciplinary committee** otherwise than by failing to pay any fine or costs;
 - e. if it is a **firm** to which any of paragraphs (1) to (5) of **Disciplinary Bye-law 4.1(i)(v)** apply;
 - f. if it has, in a court of competent jurisdiction, been convicted of an indictable offence (or has, before such a court outside England and Wales, been convicted of an offence corresponding to one which is indictable in England and Wales);
 - g. if, at any time, it has carried on any **regulated activities** when not duly authorised;
 - h. if it has failed to comply with a **notice** to supply any information, evidence or other documentation, in whatever form it exists, served in accordance with **Disciplinary Bye-law 8** and the **IDRs** within the time allowed by or under those **IDRs**.

Liability of former members, firms, affiliates and relevant persons

- 4.3 A person or body who, while they were a **member, firm, affiliate** or **relevant person** became liable to disciplinary action under these **Disciplinary Bye-laws**, or the **Accountancy Scheme**, shall continue to be subject to these **Disciplinary Bye-laws** after they have ceased to be a **member, firm, affiliate** or **relevant person** as the case may be, as if they had not so ceased; and references in these **Disciplinary Bye-laws** to **members, firms, affiliates** or **relevant persons** shall be construed accordingly so far as may be necessary to give effect to this paragraph.
- 4.4 **Disciplinary Bye-law 8** (duty to co-operate) shall extend to any former **member, former firm, former affiliate** or former **relevant person**, and a breach of

Disciplinary Bye-law 8 shall render the former **member**, former **firm**, former **affiliate** or former **relevant person** liable to disciplinary action by virtue of this **Disciplinary Bye-law**.

- 4.5 For the purposes of **Disciplinary Bye-laws** 4.3 and 4.4, liability to disciplinary action or other action shall, subject to **Disciplinary Bye-law** 4.4, extend only to **events** which occurred while the person or body concerned was actually a **member**, **firm**, **affiliate** or **relevant person**, as the case may be.

Liability for failure to disclose prior acts or omissions

- 4.6 A **member**, **affiliate** or **relevant person** may be liable to disciplinary action for a failure to disclose acts and / or omissions which may have rendered them liable to disciplinary action in accordance with **Disciplinary Bye-law** 4.1(a), (e), (f), (g) and/or (i), or the equivalent provisions of any predecessor **Disciplinary Bye-laws** to these **Disciplinary Bye-laws** which were in force at the relevant time of any act(s) and/or omissions, if asked to make such disclosure upon their application for membership or registration with **ICAEW**.

TESTS FOR THE DISCIPLINARY COMMITTEES AND EVIDENCE

- 5.1 The test to be applied by the **Conduct Committee** in considering an **allegation** and what (if any) action should be taken in respect of it, shall be whether there is a realistic prospect that, if the **allegation** were to be referred to a **Tribunal** for **hearing**, such **allegation** would be found proved.
- 5.2 The test of liability to be applied by a **Tribunal** or an **Appeal Panel** in considering a **formal allegation** against a **member**, **firm**, **affiliate** or **relevant person** shall be whether the **formal allegation** has been proved on the balance of probabilities.
- 5.3 The fact that a **member**, **firm**, **affiliate** or **relevant person** has been the subject of an adverse finding (not set aside on appeal or otherwise) in respect of their conduct, being a finding in proceedings before:
- a. The Institute of Chartered Accountants of Scotland; or
 - b. The Institute of Chartered Accountants in Ireland; or
 - c. The Association of Chartered Certified Accountants; or
 - d. The Chartered Institute of Management Accountants; or
 - e. The Chartered Institute of Public Finance and Accountancy; or

before a regulatory body performing its functions under the Financial Services and Markets Act 2000, the Insolvency Act 1986, the Companies Act 2006, the Irish Companies Act 2014, the Local Audit & Accountability Act 2014 or the Legal Services Act 2007 shall, for the purposes of these **Disciplinary Bye-laws**, be conclusive evidence of the commission by the **member**, **firm**, **affiliate** or **relevant person** of such an act or omission as is mentioned in **Disciplinary Bye-law** 4.1(a) or

Disciplinary Bye-law 4.2(a), as the case may be.

- 5.4 The following shall be rebuttable evidence of any facts found or unfit behaviour, as the case may be, for the purposes of these **Disciplinary Bye-laws**:
- a. a finding of fact in any report of an inspector appointed under the Companies Act 2006 or the Irish Companies Act 2014;
 - b. a finding of fact in any civil proceedings before a court of competent jurisdiction in the **United Kingdom** or elsewhere, where the **member, affiliate or relevant person** against whom the finding is made either gave evidence before the court or was a party to those proceedings;
 - c. save where **Disciplinary Bye-law** 5.3 applies, a finding of fact in any proceedings before, or report by, any professional or regulatory body (whether in the **United Kingdom** or elsewhere provided that, if the body is outside the **United Kingdom**, the jurisdiction in which the body is based has courts of competent jurisdiction);
 - d. a finding of fact in any proceedings which result in an accountant being notified by the Solicitors Regulation Authority that they are not qualified to give an accountant's report within the meaning of section 34 of the Solicitors Regulation Authority Rules or are unfit to be involved in a legal practice under section 43 of the Solicitors Act 1974; or
 - e. the details set out in a conduct notice issued under Schedule 38 of the Finance Act 2012 (not set aside on appeal or otherwise) that specify the grounds on which the determination of HM Revenue and Customs is made.
- 5.5 Nothing in **Disciplinary Bye-law** 5.4 shall affect the evidential status of any report or other document not falling within that **Disciplinary Bye-law**.
- 5.6 In discharging their functions under these **Disciplinary Bye-laws**, the **Conduct Department** and **disciplinary committees** may have regard to all relevant matters, including any code of practice (whether relating to the ethical, the technical or any other aspect of **public practice**), and any regulations or guidance affecting the **member, firm, affiliate or relevant person**.

DUTY TO REPORT

- 6.1 Subject to any **Guidance** that may be issued from time to time in accordance with **Disciplinary Bye-law** 16.1, it is the duty of every **member, firm, affiliate or relevant person** to report to the **Conduct Department** any **event(s)** which may indicate that:
- a. they may be liable to disciplinary action in accordance with the **Disciplinary Bye-laws** or the **Accountancy Scheme**; and/or

- b. another **member, firm, affiliate** or **relevant person** may be liable to disciplinary action in accordance with **Disciplinary Bye-laws** or the **Accountancy Scheme**.

DUTY TO INVESTIGATE COMPLAINTS INTERNALLY

- 7.1 Every **firm** shall have in place an internal process for the investigation and resolution of complaints raised by clients and former clients.
- 7.2. The fact that a complaint is being investigated internally by a **firm** in accordance with **Disciplinary Bye-law 7.1** shall not affect the duty of those persons and **firms** specified in **Disciplinary Bye-law 6** to report any such **event** to the **Conduct Department**.

DUTY TO CO-OPERATE

- 8.1 It shall be the duty of every **member, firm, affiliate** and **relevant person** (including such **members, firms, affiliates** or **relevant persons** who are not involved in, or the subject of, an **assessment** or an **investigation**, or **disciplinary proceedings**) to co-operate with:
 - a. the **Conduct Department** in its **assessment** of **complaints** and **investigation** of **conduct matters**; and
 - b. the **disciplinary committees** during the course of any **disciplinary proceedings**.

For the avoidance of doubt, such duty of cooperation shall override the duty of confidentiality owed to clients and third parties.

- 8.2 For the purposes of **Disciplinary Bye-law 8.1**, such co-operation may include, but shall not be limited to, providing such information, explanations, documents and computer and other electronic records as the **Conduct Department** or a **disciplinary committee** considers necessary to enable them to carry out their duties or functions.

TRANSFER OF CASES TO OR FROM THE ACCOUNTANCY SCHEME

- 9.1 The **Accountancy Scheme** shall apply to all **members, firms, affiliates** and **relevant persons**, to the extent that the scheme applies by virtue of the scheme rules, in accordance with the terms of that scheme and these **Disciplinary Bye-laws**.

- 9.2 The **Conduct Department** shall refer a **complaint, conduct matter** or **allegation** to the Financial Reporting Council (or relevant successor body) for investigation under the terms of the **Accountancy Scheme** where:
- a. it is required to do so under the provisions of that scheme; or
 - b. it is considered appropriate by the **Conduct Committee**, based on the test set out in the **Accountancy Scheme**, for the **complaint, conduct matter** or **allegation** to be dealt with under it.
- 9.3 If the Financial Reporting Council (or relevant successor body) declines a referral under **Disciplinary Bye-law** 9.2, the **Conduct Department** will deal with the **complaint, conduct matter** or **allegation** in accordance with these **Disciplinary Bye-laws**.
- 9.4 If the **Conduct Department** receives **notice** that a **complaint, conduct matter** or **allegation** is to be dealt with by the Financial Reporting Council (or relevant successor body) in accordance with the terms of the **Accountancy Scheme** then, with immediate effect, the **Conduct Department** shall suspend any **assessment, investigation** or **disciplinary proceedings** being taken by it in relation to such **complaint, conduct matter** or **allegation** until such time as:
- a. the **complaint, conduct matter** or **allegation** is referred back to the **Conduct Department** to be dealt with in accordance with these **Disciplinary Bye-laws**; or
 - b. the **complaint, conduct matter** or **allegation** has been finally determined in accordance with the terms of the **Accountancy Scheme**, following which the **Conduct Department** shall close its file.

THE OPERATION OF THE CONDUCT COMMITTEE

- 10.1 If the **Conduct Committee** finds, in respect of one or more **allegations** reported to it by the **Conduct Department**, that the test set out in **Disciplinary Bye-law** 5.1 is met in relation to a **member, firm, affiliate** or **relevant person**, the **Conduct Committee** may do one of the following:
- a. refer such **allegation** or **allegations** to the **Tribunals Committee** for **hearing** as a **formal allegation** or **formal allegations**; or
 - b. with the agreement of the **member, firm, affiliate** or **relevant person**, make any one or more of the **orders** which a **Tribunal** could make under **Disciplinary Bye-laws** 11.1 and 11.3(a) with the exception of the following:
 - i. **Disciplinary Bye-law** 11.1(a)(i), (ii) and (iii);
 - ii. **Disciplinary Bye-law** 11.1(b)(i) and (ii);
 - iii. **Disciplinary Bye-law** 11.1(c)(i), (ii) and (iii); and
 - iv. **Disciplinary Bye-law** 11.1(d)(i), (ii), (iii), (iv) and (v); or

- c. adjourn its consideration of such **allegation(s)**, on such terms and conditions as it considers appropriate, to enable further investigation or monitoring of matters relating to the **allegation(s)** or to take advice.
- 10.2 Subject to **Disciplinary Bye-law** 10.3, if the **Conduct Committee** finds that the test set out in **Disciplinary Bye-law** 5.1 has not been met in respect of any **allegation** reported to it by the **Conduct Department**, it shall dismiss any such **allegation**.
 - 10.3 The **Conduct Committee** may re-examine any **allegation** for which it has previously determined the test set down in **Disciplinary Bye-law** 5.1 not to be met if the provisions set out in the **IDRs** in respect of a **complainant's** right to request a case file review are satisfied.
 - 10.4 The **Conduct Committee** may reconsider the referral of any **allegation** that it has previously referred to the **Tribunals Committee** and may recall such **allegation** if the circumstances set out in the **IDRs** are satisfied.
 - 10.5 When considering an **allegation**, the **Conduct Committee** may direct that the **member, firm, affiliate** or **relevant person** who or which is the subject of the **allegation** (or another **member, firm, affiliate** or **relevant person**) be referred to one or more of the **regulatory committees** or the **Fitness to Practise Committee**.
 - 10.6 It shall be a function of the **Conduct Committee**, in accordance with the process set out in the **IDRs**, to make a final determination on any dispute arising out of a determination by the **Conduct Department** that a **complaint** does not give rise to a potential liability to disciplinary action.
 - 10.7 The **Conduct Committee** may, to the extent set out in the **IDRs**, delegate to any sub-committee, person or body or the **Conduct Department** the discharge of one or more of its functions or powers under these **Disciplinary Bye-laws**, save that it may not delegate to the **Conduct Department** the exercise of its functions under **Disciplinary Bye-law** 10.6.

ORDERS OF THE TRIBUNALS COMMITTEE

- 11.1 If a **Tribunal** finds that the test set out in **Disciplinary Bye-law** 5.2 is met in respect of one or more **formal allegations** against a **member, firm, affiliate** or **relevant person**, the **Tribunal** may make one or more of the following **orders**:
 - a. if the **formal allegation(s)** concern a **member**:
 - i. that the **member** be excluded from membership of **ICAEW** (which **order** may include a recommendation that no application for readmission to membership be entertained before the end of a specified period);
 - ii. that the **member** be suspended from membership of **ICAEW** for a specified period;
 - iii. that any **practising certificate** and / or licence, registration, certificate, designation or authorisation granted to the **member** by

ICAEW be withdrawn either indefinitely or for a specified period (which **order** may, if the withdrawal is for an indefinite period, include a recommendation that no application for a new **practising certificate**, licence, registration, certificate, designation or authorisation be entertained before the end of a specified period);

- iv. that the **member** be severely reprimanded;
 - v. that the **member** be reprimanded;
 - vi. that the **member** pay a financial penalty of a specified sum (part or all of which may be suspended for a specified period);
 - vii. that the **member** undertake specified training;
 - viii. that the **member** pay a specified amount in respect of costs and expenses of whatsoever nature incurred by or on behalf of **ICAEW** in investigating and bringing **disciplinary proceedings** in respect of the **formal allegation(s)**;
 - ix. that the **member** pay a specified amount to **ICAEW** in respect of expenses incurred by a **complainant** (subject to such limitations as may be stipulated in the **IDRs**) to be remitted by **ICAEW** to the **complainant**;
 - x. that the **member** repay the whole or part of any fee or commission received, waive the whole or part of any fee that is due, pay a sum assessed by the **Tribunal** as the value in whole or part of any commission to which the **member** has become entitled or repay the whole or part of any sum which has been retained in or towards payment of a fee by a client (subject to such limits as may be stipulated in the **IDRs**);
 - xi. that the **member** take such steps as may be specified (other than the payment of compensation) for the purpose of resolving the issues which gave rise to the **disciplinary proceedings**, which may include paying the reasonable fees of another person or body appointed by the **Tribunal** to complete the work that the **member** was engaged to perform (the amount of such fees to be determined by the **Tribunal** in the event of a dispute);
 - xii. that the **member** be cautioned;
 - xiii. that no further action be taken against the **member**.
- b. if the **formal allegation(s)** concern a **firm**:
- i. that the **firm** be prohibited from using the description 'Chartered Accountants' for a specified period;
 - ii. that some or all of the licences, registrations, authorisations or designations granted to the **firm** by **ICAEW** be withdrawn;
 - iii. that the **firm** be severely reprimanded;

- iv. that the **firm** be reprimanded;
 - v. that the **firm** pay a financial penalty of a specified sum (part or all of which may be suspended for a specified period);
 - vi. that the **firm** implement specified training for all persons or specified persons within the **firm**;
 - vii. that the **firm** pay a specified amount in respect of costs and expenses of whatsoever nature incurred by or on behalf of **ICAEW** in investigating and bringing **disciplinary proceedings** in respect of the **formal allegation(s)**;
 - viii. that the **firm** pay a specified amount to **ICAEW** in respect of expenses incurred by a **complainant** (subject to such limitations as may be stipulated in the **IDRs**) to be remitted by **ICAEW** to the **complainant**;
 - ix. that the **firm** repay the whole or part of any fee or commission received, waive the whole or part of any fee that is due, pay a sum assessed by the **Tribunal** as the value in whole or part of any commission to which the **firm** has become entitled or repay the whole or part of any sum which has been retained in or towards payment of a fee by a client (subject to such limits as may be stipulated in the **IDRs**);
 - x. that the **firm** take such steps as may be specified (other than the payment of compensation) for the purpose of resolving the issues which gave rise to the **disciplinary proceedings**, which may include paying the reasonable fees of another person or body appointed by the **Tribunal** to complete the work that the **firm** was engaged to perform (the amount of such fees to be determined by the **Tribunal** in the event of a dispute);
 - xi. that the **firm** be cautioned;
 - xii. that no further action be taken against the **firm**.
- c. If the **formal allegation(s)** concern an **affiliate**:
- i. that the person's **affiliate** status be withdrawn;
 - ii. that the person's **affiliate** status be suspended for a specified period;
 - iii. that some or all of the **affiliate's** licences, registrations, designations, certificates or authorisations granted by **ICAEW** be withdrawn;
 - iv. that the **affiliate** be severely reprimanded;
 - v. that the **affiliate** be reprimanded
 - vi. that the **affiliate** pay a financial penalty of a specified sum (part or all of which may be suspended for a specified period);

- vii. that the **affiliate** undertake specified training;
 - viii. that the **affiliate** pay a specified amount in respect of costs and expenses of whatsoever nature incurred by or on behalf of **ICAEW** in investigating and bringing **disciplinary proceedings** in respect of the **formal allegation(s)**;
 - ix. that the **affiliate** pay a specified amount to **ICAEW** in respect of expenses incurred by a **complainant** (subject to such limitations as may be stipulated in the **IDRs**) to be remitted by **ICAEW** to the **complainant**;
 - x. that the **affiliate** repay the whole or part of any fee or commission received, waive the whole or part of any fee that is due, pay a sum assessed by the **Tribunal** as the value in whole or part of any commission to which the **affiliate** has become entitled or repay the whole or part of any sum which has been retained in or towards payment of a fee by a client (subject to such limits as may be stipulated in the **IDRs**);
 - xi. that the **affiliate** take such steps as may be specified (other than the payment of compensation) for the purpose of resolving the issues which gave rise to the **disciplinary proceedings**, which may include paying the reasonable fees of another person or body appointed by the **Tribunal** to complete the work that the **affiliate** was engaged to perform (the amount of such fees to be determined by the **Tribunal** in the event of a dispute);
 - xii. that the **affiliate** be cautioned;
 - xiii. that no further action be taken against the **affiliate**.
- d. if the **formal allegation(s)** concern a **relevant person**:
- i. that the **relevant person's** status as a **provisional member, Foundation Qualification Holder, Provisional Foundation Qualification Holder** or **CFAB Student** cease or be withdrawn (and that they be declared ineligible to re-register for such status for a specified period not exceeding two years);
 - ii. that the **relevant person** be declared unfit to become a **member** and/or **Foundation Qualification Holder** and/or holder of the **ICAEW** **CFAB** qualification (as appropriate) for a specified period or otherwise;
 - iii. that the registration of the **relevant person's training agreement** be suspended for a period not exceeding two years;
 - iv. that, for a specified period not exceeding two years, the **relevant person** be ineligible to sit for specified examinations of **ICAEW** (or for a specified part or parts of those examinations);
 - v. that the **relevant person** be disqualified from an examination or examinations of **ICAEW**, not being an examination or examinations the result of which was duly notified to the **relevant person** by **ICAEW**

before the date of the **order**;

- vi. that the **relevant person** be severely reprimanded;
- vii. that the **relevant person** be reprimanded;
- viii. that the **relevant person** pay a financial penalty of a specified sum (part or all of which may be suspended for a specified period);
- ix. that the **relevant person** undertake specified training;
- x. that the **relevant person** pay a specified amount in respect of costs and expenses of whatsoever nature incurred by or on behalf of **ICAEW** in investigating and/or bringing **disciplinary proceedings** in respect of the **formal allegation(s)**;
- xi. that the **relevant person** pay a specified amount to **ICAEW** in respect of expenses incurred by a **complainant** (subject to such limitations as may be stipulated in the **IDRs**) to be remitted by **ICAEW** to the **complainant**;
- xii. that the **relevant person** repay the whole or part of any fee or commission received, waive the whole or part of any fee that is due, pay a sum assessed by the **Tribunal** as the value in whole or part of any commission to which the **relevant person** has become entitled or repay the whole or part of any sum which has been retained in or towards payment of a fee by a client (subject to such limits as may be stipulated in the **IDRs**);
- xiii. that the **relevant person** take such steps as may be specified (other than the payment of compensation) for the purpose of resolving the issues which gave rise to the **disciplinary proceedings**, which may include paying the reasonable fees of another person or body appointed by the **Tribunal** to complete the work that the **relevant person** was engaged to perform (the amount of such fees to be determined by the **Tribunal** in the event of a dispute);
- xiv. that the **relevant person** be cautioned;
- xv. that no further action be taken against the **relevant person**.

11.2 If a **Tribunal** finds that the test set out in **Disciplinary Bye-law** 5.2 has not been met in respect of any **formal allegation** referred to it for **hearing**, it shall dismiss that **formal allegation**.

11.3 An **order** made by a **Tribunal** under **Disciplinary Bye-law** 11.1 may:

- a. include such terms and conditions or ancillary **orders** (if any) as the **Tribunal** considers appropriate; and
- b. include a direction that the **member, firm, affiliate** or **relevant person** who or which is the subject of the **formal allegation(s)** (or another **member, firm, affiliate** or **relevant person**) be referred to one or more of the **regulatory**

committees.

- 11.4 An **order** made by a **Tribunal** suspending a **member** from membership under **Disciplinary Bye-law** 11.1(a)(ii) or a person's status as an **affiliate** under **Disciplinary Bye-law** 11.1(c)(ii) shall have the following effects:
- a. that the **member** shall not be entitled to use the description of 'Chartered Accountant' for the period of the suspension;
 - b. that the **member** or **affiliate** shall lose all rights and privileges of membership or **affiliate** status for the period of suspension;
 - c. that any **practising certificate**, licences, registrations, designations, certificates and/or authorisations granted by **ICAEW** shall also be suspended; and
 - d. that the **member** or **affiliate** shall remain bound by the professional standards of **ICAEW** including, but not limited to, the **ICAEW** Code of Ethics, the **bye-laws**, the **IDRs** and **ICAEW's** Professional Indemnity Insurance Regulations (where applicable).
- 11.5 A **Tribunal** may:
- a. make an **interim order** against a **member, affiliate** or **relevant person** if it considers that the circumstances set out in the **IDRs** are satisfied, and may continue, vary or discharge any such **interim order** upon review;
 - b. make a **costs order** against the **member, affiliate** or **relevant person** as it considers appropriate in relation to an interim order application or following an application for expedited review, in accordance with the processes set out in the **IDRs**;
 - c. make a **costs order** against **ICAEW** as it considers appropriate in relation to an interim order application in accordance with the processes, and subject to the limits, set out in the **IDRs**.
- 11.6. Where a **member, affiliate** or **relevant person** has been previously the subject of an **interim order**, a **Tribunal** may, in making an **order** in accordance with **Disciplinary Bye-law** 11.1, make a direction that the **interim order** shall remain in place until such time as the period for **appeal** has passed or, in the event of an **appeal**, until the **appeal** has been finally determined.
- 11.7 Where a **Tribunal** finds a **formal allegation** or, if there is more than one, all **formal allegations** unproved, it may order that **ICAEW** pay to the **member, firm, affiliate** or **relevant person** by way of costs such sum as the **Tribunal** may determine, subject to any limitations set out in the **IDRs**.
- 11.8 A **Settlement Chair**, acting on behalf of the **Tribunals Committee**, may make a **settlement order** to conclude the **disciplinary proceedings** against a **member, firm, affiliate** or **relevant person** in accordance with the procedure set out in the **IDRs**.

- 11.9 If, at any time while a **Tribunal** is considering one or more **formal allegations** against a **firm** authorised by **ICAEW** in its capacity as a Designated Professional Body under the Financial Services and Markets Act 2000, it is of the opinion that the continuation of all or any of the **firm's** exempt regulated activities under that Act may materially prejudice any client of the **firm**, it may serve on the **firm** a **notice** specifying the activities to which it is of that opinion and ordering the **firm** to suspend them for a specified period (not exceeding 30 days) beginning at the time of service of the **notice**.

LIABILITY OF PRINCIPALS AND FORMER PRINCIPALS

- 12.1 Where a **firm** has been ordered to pay any financial penalty or costs, or make a financial payment, under these **Disciplinary Bye-laws**, a **member, affiliate** or **relevant person** (or former **member, former affiliate** or former **relevant person**) who at, or at any time since, the **relevant time** was a **principal** in the **firm** shall be liable for the full amount of the financial penalty, financial payment or costs in question; and where two or more **members, affiliates** or **relevant persons** are so liable under this **Disciplinary Bye-law**, they shall be jointly and severally liable, and any failure to pay shall have the same consequences under the **Disciplinary Bye-laws** as if the financial penalty, financial payment or costs had been imposed on the **member, affiliate** or **relevant person** (or former **member, former affiliate** or former **relevant person**) individually.

ORDERS OF THE FITNESS TO PRACTISE COMMITTEE

- 13.1 If a **Fitness to Practise Panel** finds, after considering a **fitness to practise application** in accordance with the process set down in the **Fitness to Practise Regulations**, that:
- a. the fitness to respond to an **investigation** and/or to participate in **disciplinary proceedings** and/or **regulatory proceedings**; and/or
 - b. the fitness to practise,
- of a **member, affiliate** or **relevant person** is seriously impaired through their **physical or mental health**, a **Fitness to Practise Panel** shall, unless it considers in the circumstances that it is inappropriate to do so, make one or more of the **orders** set out in **Disciplinary Bye-law** 13.2.
- 13.2 The **orders** referred to in **Disciplinary Bye-law** 13.1 are:
- a. that the **member's** membership be suspended for a period of up to 24 months or until further **order** of the **Fitness to Practise Panel**;
 - b. that the **affiliate's** status as an **affiliate** be suspended for a period of up to 24 months or until further **order** of the **Fitness to Practise Panel**;

- c. that the **relevant person's** status as a **provisional member, Foundation Qualification Holder, provisional Foundation Qualification Holder** or **CFAB student** be suspended for a period of up to 24 months or until further **order** of the **Fitness to Practise Panel**;
- d. that any **practising certificate**, certificate, licence or registration issued to the **member, affiliate** or **relevant person** by **ICAEW** be suspended or be subject to conditions for up to a period of 24 months or until further **order** of the **Fitness to Practise Panel**;
- e. that any **investigation** and/or **disciplinary proceedings** and/or **regulatory proceedings** continue to be suspended concurrent with the period of suspension ordered under paragraphs (a), (b), (c) and/or (d) above;
- f. such ancillary orders as the **Fitness to Practise Panel** thinks fit including, without limitation, that the **member, affiliate** or **relevant person** appoint an alternate for the period of suspension and notify the **Conduct Department**, their clients and / or other persons or bodies of the identity and contact details of the alternate.

13.3 If a **Fitness to Practise Panel** finds, after considering a **fitness to practise application** in accordance with the process set down in the **Fitness to Practise Regulations**, that:

- a. the fitness to respond to an **investigation** and/or to participate in **disciplinary proceedings** and/or **regulatory proceedings**; and/or
- b. the fitness to practise,

of a **member, affiliate** or **relevant person** is not seriously impaired through their **physical or mental health**, the **Fitness to Practise Panel** shall direct that any **investigation** and/or **disciplinary proceedings** and/or **regulatory proceedings**, which were suspended for the duration of the **fitness to practise proceedings** shall be re-started.

13.4 Following any **fitness to practise hearing** or **fitness to practise interim review hearing**, a **Fitness to Practise Panel** may make a **costs order** against the **member, affiliate** or **relevant person** in the circumstances set out in the **Fitness to Practise Regulations**.

13.5 At any **fitness to practise interim review hearing** or **fitness to practise review hearing**, a **Fitness to Practise Panel** may, in accordance with the process set out in the **Fitness to Practise Regulations**:

- a. continue or vary any **order** made under **Disciplinary Bye-laws** 13.1 and 13.2 and/or make any additional **orders** as are available under **Disciplinary Bye-**

law 13.2 until the date of the next **fitness to practise interim review hearing** or **fitness to practise review hearing**, or

- b. discharge any **order** made under **Disciplinary Bye-laws** 13.1 and 13.2.
- 13.6 If an **order** is made at either a **fitness to practise interim review hearing** or a **fitness to practise review hearing** to discharge any **order** made previously in accordance with **Disciplinary Bye-laws** 13.1 and 13.2, the **Fitness to Practise Panel** shall determine whether any **investigation** and/or **disciplinary proceedings** and/or **regulatory proceedings**, which were suspended for the duration of the **fitness to practise proceedings**, shall be re-started.
- 13.7 **Fitness to practise proceedings** may be terminated in accordance with the processes set out in the **Fitness to Practise Regulations** by:
- a. the **Fitness to Practise Committee Chair** or a **Fitness to Practise Panel** where they accept the resignation of the **member, affiliate** or **relevant person** of their membership or registration with **ICAEW**;
 - b. the **Fitness to Practise Committee Chair** where they conclude, after considering medical evidence, that there are no reasonable grounds for believing that the fitness to respond to an **investigation** and/or to participate in **disciplinary proceedings** and/or **regulatory proceedings**, and/or the fitness to practise, of the **member, affiliate** or **relevant person** is seriously impaired through their **physical or mental health**;
 - c. the **Fitness to Practise Committee Chair** where the **member, affiliate** or **relevant person** fails to attend a medical examination and/or consent to their medical records being accessed by a medical expert appointed by **ICAEW**.
- 13.8 Where a resignation is accepted under **Disciplinary Bye-law** 13.7(a), the **Fitness to Practise Committee Chair** or the **Fitness to Practise Panel** may:
- a. order that any **investigation** and/or **disciplinary proceedings**, which were suspended for the duration of the **fitness to practise proceedings** be stayed; and
 - b. order that any future application by the **member, affiliate** or **relevant person** for readmission to membership of, or re-registration with, **ICAEW** be considered by a **Fitness to Practise Panel** so that it can:
 - i. make an initial determination as to whether that person's fitness to respond to an **investigation** and/or **disciplinary proceedings** and/or fitness to practise remains seriously impaired through their **physical or mental health**; and
 - ii. determine whether any **investigation** and/or **disciplinary proceedings** that were previously stayed in respect of the **member, affiliate** or **relevant person** should be re-started if the **member, affiliate** or **relevant person** is readmitted to membership of, or re-

registered with, **ICAEW** or whether such **investigation** and/or **disciplinary proceedings** should be closed; and/or

- c. impose such conditions as may be considered appropriate, including a recommendation that no application for readmission or re-registration be considered before the end of a recommended period.

13.9 At any time after a **fitness to practise application** is made, a **Fitness to Practise Panel** may, if it is satisfied that the circumstances set out in the **Fitness to Practise Regulations** are satisfied, make any of the **orders** set out in **Disciplinary Bye-law 13.2** on an expedited basis pending a full **fitness to practise hearing** in accordance with the process set out in the **Fitness to Practise Regulations**.

13.10 It shall be the duty of every **member, affiliate** and **relevant person** who is the subject of a **fitness to practise application** to cooperate with the **Fitness to Practise Committee** and the **Fitness to Practise Committee Chair** (and any **Fitness to Practise Panel** and **Fitness to Practise Panel Chair**) during the course of any **fitness to practise proceedings**.

APPEALS

Appeals against orders made by a Tribunal

14.1 A **member, firm, affiliate** or **relevant person** may appeal any **order** of a **Tribunal**, including an **interim order**, to the **Appeal Committee** if the circumstances specified in the **IDRs** are satisfied.

14.2 The **Conduct Department** may appeal any **order** of a **Tribunal**, other than an **interim order**, to the **Appeal Committee** if the circumstances specified in the **IDRs** are satisfied.

14.3 After hearing an **appeal**, an **Appeal Panel** may by **order**:

- a. vary or rescind the **finding** and / or **order** of the **Tribunal**;
- b. substitute for any **order** or **orders** such **order** or **orders** as it thinks appropriate, being in every case an **order** which the **Tribunal** might have made under the relevant **Disciplinary Bye-laws** in the first instance;
- c. direct that the matter be re-heard by a new (and differently constituted) **Tribunal**;
- d. dismiss the **appeal**,

and may make a **costs order** payable by the **member, firm, affiliate** or **relevant person**, or **ICAEW**, to the other **party** in the circumstances, and subject to the limits, set out in the **IDRs**.

Appeals against orders made by a Fitness to Practise Panel

- 14.4 A **member, affiliate** or **relevant person** may appeal any **order** of a **Fitness to Practise Panel** to the **Appeal Committee** if the circumstances specified in the **Fitness to Practise Regulations** are satisfied.
- 14.5 After hearing an **appeal**, an **Appeal Panel** may by **order**:
- a. vary or rescind the **finding** and / or **order** of the **Fitness to Practise Panel**;
 - b. substitute for any **order** or **orders** such **order** or **orders** as it thinks appropriate, being in every case an **order** which the **Fitness to Practise Panel** might have made under the relevant **Disciplinary Bye-laws** in the first instance;
 - c. direct that the matter be re-heard by a new (and differently constituted) **Fitness to Practise Panel**;
 - d. dismiss the **appeal**,

and may make a **costs order** payable by the **member, affiliate** or **relevant person**, or **ICAEW**, to the other party in the circumstances, and subject to the limits, set out in the **Fitness to Practise Regulations**.

PUBLICITY AND PUBLIC HEARINGS

- 15.1 **Hearings** of **Tribunals** and **Appeal Panels** in disciplinary cases shall be heard in public, save:
- a. in exceptional circumstances where a **Tribunal** or **Appeal Panel** may direct that the whole or part of a **hearing** may be heard in private in accordance with the **IDRs** and any **Guidance** that may be issued by the **ICAEW Regulatory Board**; and
 - b. where a **Tribunal** considers an application for an **interim order**.
- 15.2 Subject to **Disciplinary Bye-law** 15.3, where a **disciplinary committee** makes an adverse **finding** against a **member, firm, affiliate** or **relevant person** in respect of one or more **allegations** or **formal allegations**, the **order(s)** of the **disciplinary committee** (including any **settlement orders** and **consent orders**) shall be published as soon as practicable.
- 15.3 Where a caution or an order for no further action is agreed by a **member, firm, affiliate** or **relevant person** by way of **consent order**, the **Conduct Committee** may direct that such an **order** should not be published.
- 15.4 Any **order** to be published shall include the name of the **member, firm, affiliate** or **relevant person** who is the subject of the **allegation(s)** or **formal allegation(s)**,

except where a **disciplinary committee** is satisfied that exceptional circumstances apply.

POWER TO MAKE IDRS, FITNESS TO PRACTISE REGULATIONS AND ISSUE GUIDANCE

Guidance

- 16.1 The **ICAEW Regulatory Board** may, from time to time:
- a. amend or substitute the **Guidance on sanctions**; and
 - b. issue, and amend, **Guidance** to clarify the intended objective and application of these **Disciplinary Bye-laws** and the **IDRs**.

IDRs

- 16.2 The **ICAEW Regulatory Board** may, from time to time, and under powers delegated by the **ICAEW Council**, make, amend or continue in force **IDRs** governing the process whereby the conduct and professional competence of **members, firms, affiliates** and **relevant persons** may be investigated and **members, firms, affiliates** and **relevant persons** may be subject to disciplinary action, provided such **IDRs** shall not be inconsistent with the **Charter, bye-laws** and any applicable legislation. Without prejudice to the generality of the foregoing, such **IDRs** shall prescribe or provide for the following:
- a. the rights of **members, firms, affiliates** and **relevant persons** including, but not limited to, the right to:
 - i. **notice** that **allegations** are to be reported to the **Conduct Committee** and to make representations in respect of the **allegations**;
 - ii. attend and be represented at any **hearing** of a **Tribunal** or **Appeal Panel**;
 - iii. call and cross-examine witnesses at any **hearing** before a **Tribunal** or **Appeal Panel**; and
 - iv. appeal any **order** made by a **Tribunal** on specified grounds;
 - b. procedures governing the **investigation** and conduct of **disciplinary proceedings** where **members, firms, affiliates** and **relevant persons** may become subject to disciplinary action including, without limitation, procedures concerning the admissibility of evidence in **disciplinary proceedings**;
 - c. the circumstances in which a **member, firm, affiliate** or **relevant person** is required to provide information, explanation and / or evidence to the **Conduct Department** and / or to a **disciplinary committee**;

- d. the circumstances in which **appeals** may be brought by the **members, firms, affiliates** or **relevant persons**, or by the **Conduct Department**, and the procedure for hearing such **appeals**;
- e. the constitution and the conduct of business of the **disciplinary committees** including, without limitation, composition and quorum requirements, appointment of members, and their powers, duties and permissible delegations;
- f. the publication of any **findings** or **orders** made;
- g. publication of **notices** of **hearings** being held in public;
- h. procedures governing the approval of **settlement orders** by the **Tribunals Committee** and other procedures for the resolution of **conduct matters** and **allegations** by agreement with the **member, firm, affiliate** or **relevant person**.

Fitness to Practise Regulations

16.3 The **ICAEW Regulatory Board** may, from time to time, and under powers delegated by the **ICAEW Council**, make, amend or continue in force **Fitness to Practise Regulations** governing **fitness to practise proceedings**, provided such **Fitness to Practise Regulations** shall not in any way be inconsistent with the **Charter, bye-laws** and applicable legislation. Without prejudice to the generality of the foregoing, such **Fitness to Practise Regulations** shall prescribe or provide for the following:

- a. the rights of **members, affiliates** and **relevant persons** under the process, including, but not limited to, the right to:
 - i. **notice** of a **fitness to practise application** being made to the **Fitness to Practise Committee**;
 - ii. attend and be represented at a **fitness to practise hearing**;
 - iii. appeal any **order** made by a **Fitness to Practise Panel** on specified grounds.
- b. the procedures governing the business of the **Fitness to Practise Committee** (and panels thereof) including any powers and/or responsibilities which may be delegated;
- c. the circumstances in which **appeals** may be brought and the procedure for hearing such **appeals**;
- d. the procedures by which **orders** of **Fitness to Practise Panels** may be made on an expedited basis;

- e. the procedures by which **orders of Fitness to Practise Panels** may be reviewed (including on an interim basis);
- f. the constitution, appointment of members, responsibilities, powers, and quorum requirements of the **Fitness to Practise Committee** (and panels thereof);
- g. the publication of any **findings** or **orders of Fitness to Practise Panels**;
- h. the procedure for the resolution of **fitness to practise applications** by way of a **fitness to practise consent order**;
- i. the procedure for the conclusion of the **fitness to practise proceedings** by way of resignation by the **member, affiliate** or **relevant person** of their membership or registration with **ICAEW**.

[END]