

PRELIMINARY

Citation, authority and commencement

- 1.1 These regulations may be cited as the Fitness to Practise Regulations (**regulations**) of the Institute of Chartered Accountants in England and Wales (**ICAEW**).
- 1.2 These **regulations** were made by the **ICAEW Regulatory Board** on [TBC] in accordance with clause 16 of the Supplemental Charter 1948 and Principal Bye-law 49 and shall come into force on [TBC]. Subject to **regulation** 3.2, from [TBC] the Fitness Committee Regulations dated 1 January 2021 and the Appeal Committee Regulations dated 1 January 2021 are, as they apply in respect of fitness to practise and appeal cases, repealed.

Definitions, interpretation and service of documents

- 2.1 In these **regulations**, defined terms are indicated in **bold and italics** and shall, unless the context otherwise requires, have the following meanings:

access consents means the consent(s) required from the *member, affiliate or relevant person* to allow an *ICAEW appointed expert* to access their medical records.

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.

answer means an answer to an *appeal* brought by a *member, affiliate or relevant person* in accordance with these *regulations*, which shall include any documentation appended in support of the response.

appeal means an appeal against one or more *orders* of a *Fitness to Practise Panel* brought in accordance with these *regulations*.

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

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

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

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

Appeal Panel means a panel of the *Appeal Committee* appointed by the *Appeal Committee Chair* to determine an *appeal* in accordance with these *regulations*.

Appeal Panel Chair means the member of the *Appeal Committee* who is appointed by the *Appeal Committee Chair* as Chair of an *Appeal Panel* (and who may be the

Appeal Committee Chair themselves) and who shall chair an *appeal hearing* and conduct any *pre-hearing review*.

appeal proceedings means the proceedings leading up to, and during, an *appeal hearing* under these *regulations*.

business day means Monday to Friday, excluding public holidays.

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.

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*.

Conduct Department means the department within *ICAEW's* Professional Standards Department (or relevant predecessor or successor body identified as such in regulations) which is responsible for assessing complaints, investigating *conduct matters* and prosecuting disciplinary matters before *ICAEW's Tribunals Committee* and *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*.

costs order means an *order*, by a *Fitness to Practise Panel* or an *Appeal Panel* under these *regulations*, against one *party* for payment of all or part of the costs incurred by the other *party* in connection with the *fitness to practise proceedings* and/or *appeal proceedings*.

costs schedule means a schedule of costs incurred by *ICAEW* in responding to a *fitness to practise application* or a *fitness to practise interim review application* brought by the *member, affiliate or relevant person* and/or an *appeal*, and includes the costs of any *hearings* of those applications before the *Fitness to Practise Panel* or *Appeal Panel*.

directions means steps or actions which the *parties* agree to take, or are directed to take, in the course of the *fitness to practise proceedings* or *appeal proceedings*.

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

disciplinary committee means:

- 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 committee* means any 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 allegations.

effective date means the date of which these *regulations* come into force, as set out in *regulation 1.2*.

expedited fitness to practise hearing means a *hearing* of a *Fitness to Practise Panel* which is convened following an *expedited fitness to practise application* in accordance with *regulation 14*.

expedited order means an *order* of a *Fitness to Practise Panel* made in accordance with *Disciplinary Bye-law 13.9* and *regulation 14.6* which specifies one or more of the orders set out in *Disciplinary Bye-law 13.2*

finding means in relation to a *Fitness to Practise Panel* in *fitness to practise proceedings*, or an *Appeal Panel* in *appeal 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) and a '*finding*' shall include any factual findings which form the basis of that finding.

fitness response form means that statement served by the *member, affiliate or relevant person* in accordance with *regulation 7.5* in response to a *fitness to practise application* made by the *PSD Chief Officer*.

fitness to practise application means an application to the *Fitness to Practise Committee* to consider the fitness of a *member, affiliate or relevant person* by either the *PSD Chief Officer* or the *member, affiliate or relevant person* themselves in accordance with *regulations 7.2* or *8.1* which includes a statement of reasons for the application and any supporting documents.

fitness to practise consent order means a consent order entered into between the *member, affiliate or relevant person*, and *ICAEW*, in accordance with *regulation 10*, which includes one or more of the orders specified in *Disciplinary Bye-law 13.2*.

Fitness to Practise Committee means the *Fitness to Practise Committee* of *ICAEW* whose members are convened into *Fitness to Practise Panels* in accordance with these *regulations*.

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

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

fitness to practise interim review application means an application by a *member, affiliate or relevant person* in accordance with *regulation 16.1* for an interim review of 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*).

fitness to practise interim review hearing means a *hearing* to review on an interim basis an order or orders of a *Fitness to Practise Panel* made 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 as a result of a *fitness to practise interim review application* by a *member, affiliate or relevant person* in accordance with *regulation* 16.1.

Fitness to Practise Panel means a panel of members of the *Fitness to Practise Committee* who are convened in accordance with *regulation* 4.6 to conduct *hearings* under these *regulations*.

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

fitness to practise proceedings means proceedings under the *Disciplinary Bye-laws* and these *regulations* following a *fitness to practise application* by either the *PSD Chief Officer* or the *member, affiliate or relevant person* who is the subject of the application (including any review).

fitness to practise review hearing means a *hearing* to review an order or orders made 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 *regulation* 15.7.

foundation qualification holder means a person who holds the *ICAEW Foundation Qualification* and is registered to use the relevant designatory letters.

Head of Committees and Tribunals means the person within *ICAEW's Professional Standards Department* who manages the *Committees and Tribunals team* and to whom administrative functions may be delegated by the *Fitness to Practise Committee Chair* and the *Appeal Committee Chair*.

Head of Investigation means the person appointed from time to time to the role of *Head of Investigation* in the *Professional Standards Department of ICAEW*, or any employee of that department who is authorised to act in that role by the *PSD Chief Officer*.

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

ICAEW appointed expert means an independent medical expert appointed by *ICAEW* to examine the *member, affiliate or relevant person* and produce a report to be used in proceedings under these *regulations*.

ICAEW Disciplinary Database means the database of published (adverse) orders against *members, firms, affiliates and relevant persons*, and the related record of decision, which can be located on the *Regulatory and Conduct pages* of the *ICAEW website*.

ICAEW Disciplinary Database policy means the policy governed by the *ICAEW Regulatory Board* which is published on the *ICAEW* website and which specifies the period during which findings or orders of the *disciplinary committees* and the *Fitness to Practise Committee* will remain published on the *ICAEW Disciplinary Database*

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

ICAEW representative means a barrister or solicitor or a legally qualified person (within *ICAEW*'s Professional Standards Department or external to *ICAEW*) appointed by the *PSD Chief Officer* to have conduct of the *fitness to practise proceedings* and any *appeal proceedings*.

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*.

lay member means someone who is not and never has been a *member*, *affiliate* or employee of *ICAEW* or any other accountancy body. Furthermore, solicitors and those with legal training will not be regarded as *lay members* for the determination of any *fitness to practise application* concerning an individual authorised to conduct reserved legal activity under the Legal Services Act 2007.

legal assessor means a barrister or solicitor who is not a member of staff of *ICAEW* who is appointed by the *Head of Committees and Tribunals* to assist a *Fitness to Practise Panel* at a *hearing* in accordance with *regulation 9.3*.

legal services work comprises any work that is considered under the jurisdiction of the Legal Ombudsman under the definitions set out by the ombudsman in accordance with section 164(10) of the Legal Services Act 2007.

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

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

notice of appeal means a notice filed by a *member*, *affiliate* or *relevant person* in accordance with *regulation 19.1* appealing one or more *orders* of the *Fitness to Practise Panel*.

order means an order of the *Fitness to Practise Panel* or an *Appeal Panel* made under the *Disciplinary Bye-laws* and these *regulations*.

parties means *ICAEW* and the *member*, *affiliate* or *relevant person* who is the subject of the *fitness to practise application*, and 'party' shall refer to 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.

pre-hearing review means a *hearing* conducted in accordance with *regulations 11.5* or *22.1* to enable the *Fitness to Practise Panel Chair* or the *Appeal Panel Chair* (as

appropriate) to make *directions* and/or determine any applications by the *parties* prior to a *fitness to practise hearing* or an *appeal hearing*.

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

proceedings means *disciplinary proceedings* and/or *regulatory proceedings* in respect of the *member, affiliate* or *relevant person*.

provisional foundation qualification holder means a person who is registered to study for the *ICAEW Foundation Qualification*.

provisional member means a person who has not been admitted to full membership of *ICAEW* and who:

- 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 regulations and the application has not been finally determined,

and 'provisional membership' shall be construed accordingly.

PSD Chief Officer means the person appointed to the role of Chief Officer of *ICAEW's* Professional Standards Department at the time when a report is received as specified in *regulation 7.1* about a *member, affiliate* or *relevant person* and who is responsible for evaluating the available evidence and determining whether to make a *fitness to practise application*.

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

record of decision means the document approved by the *Fitness to Practise Panel* or the *Appeal Panel* which records a summary of the reasons for the *finding(s)* and any *orders* of the *Fitness to Practise Panel* or *Appeal Panel*, including any term or condition on which the *order* or *orders* were made and the reasoning of the *Fitness to Practise Panel* or *Appeal Panel* in respect of any *costs order* made.

registered address means:

- a. in the case of a *member* in public practice or an *affiliate*, the place of business registered by the *member* or *affiliate* with *ICAEW* or, if more than one place of business is so registered, the one registered as the principal place of business;

- b. in the case of a *member* not in public practice, *provisional member*, *foundation qualification holder*, *provisional foundation qualification holder* or a *CFAB student*, the address registered by them with ICAEW.

registered email address means the email address registered with ICAEW by the *member*, *affiliate* or *relevant person* and, if more than one email address is registered, the one registered as the principal email address.

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 person means the following persons who are subject to the *Disciplinary Bye-laws* and these *regulations*:

- a. *provisional members*;
- b. *foundation qualification holders*;
- c. *provisional foundation qualification holders*;
- d. *CFAB students*.

representative means a solicitor or barrister or an ICAEW *member* who has been appointed by a *member*, *affiliate* or *relevant person* to represent them at a *hearing* before a *Fitness to Practise Panel* or an *Appeal Panel*, or any other person who has been approved to appear by a *Fitness to Practise Panel Chair* or by an *Appeal Panel Chair* (as appropriate).

required number has the meaning given to it in *regulation 4.3*.

Tribunals Committee means the Tribunals Committee of ICAEW whose members are convened into Tribunals to consider formal allegations in respect of *members*, *firms*, *affiliates* and *relevant persons* referred to it for hearing.

2.2 The Interpretation Act 1978 applies to these **regulations** in the same way as it applies to an enactment.

2.3 In these **regulations**:

- a. unless the context otherwise requires:

- i. words denoting any gender include all genders and words denoting the singular include the plural and vice versa;
 - ii. any headings are inserted for convenience only and shall not affect the construction of these **regulations**;
 - iii. any reference to a numbered **regulation** is a reference to the **regulation** so numbered among these **regulations**; and
 - iv. any reference to a report includes any appendices to such report;
 - b. any references to legislation include any amendments thereto or replacement legislation;
 - c. references to the date of an **order** made by a **Fitness to Practise Panel** or **Appeal Panel** refer to the date on which the **order** was made either at, or following, a **hearing** of the **Fitness to Practise Panel** or the **Appeal Panel**;
 - d. any reference to a '**notice**' or to matters being 'notified' means notice in writing, which may include an electronic communication;
 - e. references in these **regulations** to the **Head of Committees and Tribunals** include persons to whom the **Head of Committees and Tribunals** has delegated their functions or powers under these **regulations**;
 - f. references in these **regulations** to the **Fitness Committee Chair** and the **Appeal Committee Chair** include, respectively, the **Fitness to Practise Committee Vice-Chair** and any **Appeal Committee Vice-Chair** when acting under powers delegated by the Chair of each committee.
- 2.4 Subject to **regulation 2.5**, any **notice** or other document required to be served for the purposes of the **Disciplinary Bye-laws** and/or these **regulations** on a **member, affiliate** or **relevant person** may be served in person or sent:
- a. by pre-paid post to the **member, affiliate** or **relevant person** at their **registered address** or, if none, to their last known or usual place of residence or business; or
 - b. by electronic mail to the **member, affiliate** or **relevant person's registered email address**.
- 2.5 If at any time the **member, affiliate** or **relevant person** makes a written request to **ICAEW** that an alternative postal or email address be used to their **registered address** or **registered email address**, that alternative postal or email address shall be used for the purposes of service of **notices** or other documents under the **Disciplinary Bye-laws** and/or these **regulations**.
- 2.6 Any **notice** or other document required to be served by the **member, affiliate** or **relevant person** for the purposes of the **Disciplinary Bye-laws** and/or these **regulations** may be served in person or sent:

- a. by pre-paid post addressed to the Head of Committees and Tribunals, ICAEW, Professional Standards Department, Metropolitan House, 321 Avebury Boulevard, Milton Keynes MK9 2FZ; or
 - b. by electronic mail to an address at which the **Head of Committee and Tribunals** has agreed to receive **notices** and documents under the **Disciplinary Bye-laws** and/or these **regulations**.
- 2.7 Service of a document under **regulations** 2.4, 2.5, 2.6 shall be deemed to have been effected:
- a. where served in person, on the date of service;
 - b. where sent by first class, pre-paid post, on the second **business day** after posting;
 - c. where sent by electronic mail before 16:00, on the day it is sent, and if sent after 16:00 on the next **business day**.

Application of these Fitness to Practise Regulations

- 3.1 These **regulations** apply to:
- a. **members**;
 - b. **affiliates**; and
 - c. **relevant persons**.
- 3.2 For the purposes of these **regulations**:
- a. all processes and proceedings which follow from a referral to the **Fitness to Practise Committee** (or its predecessor body) are to be conducted in accordance with the provisions of the relevant **Disciplinary Bye-laws** and regulations in force at the time of such referral; and
 - b. all proceedings before an **Appeal Panel** are to be conducted in accordance with the provisions of the relevant **Disciplinary Bye-laws** and regulations in force at the time a notice of appeal is served (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 served within that period (in which case the proceedings shall be governed by the **Disciplinary Bye-laws** and regulations in force at the commencement of such period).

THE COMMITTEES

The Fitness to Practise Committee

- 4.1 The **Fitness to Practise Committee** shall consist of the same persons as the **Tribunals Committee**, of whom at least the **required number** must be **lay members**.
- 4.2 Members of the **Fitness to Practise Committee** are appointed by the **RACAC** (or relevant predecessor or successor body) for an initial term of 3 years, which term may

be renewed and extended at the discretion of the **RACAC** up to a maximum of 9 years.

- 4.3 The **required number** for the purpose of **regulations** 4.1 and 5.1 is:
- a. one half of the total number of members of the Committee; or
 - b. if the total number of members of the Committee is not divisible by two, one half of the first higher number that is so divisible.
- 4.4 The quorum for meetings of the **Fitness to Practise Committee** shall be 4 members, of whom 2 members shall be **ICAEW members** and 2 members shall be **lay members**.
- 4.5 It shall be a function of the **Fitness to Practise Committee** under these **regulations** to determine whether the fitness to respond to an **investigation** and/or to participate in **proceedings**, and/or the fitness to practise, of a **member, affiliate** or **relevant person** is seriously impaired through their **physical or mental health**.
- 4.6 **Fitness to Practise Panels** shall be convened for the purposes of **fitness to practise hearings** and shall comprise of 3 members of the **Fitness to Practise Committee**, being one **ICAEW member** and 2 **lay members**. The **Fitness to Practise Panel Chair** shall be one of the 2 **lay members**.
- 4.7 The **Fitness to Practise Committee Chair** may delegate to the **Head of Committees and Tribunals** administrative functions in relation to the appointment of members of the **Fitness to Practise Committee** to **Fitness to Practise Panels** in accordance with these **regulations**.
- 4.8 The **Fitness to Practise Committee Chair** may co-opt as temporary members of the **Fitness to Practise Committee** members of the **disciplinary committees** or the **regulatory committees** to deal with specific cases, provided that:
- a. no person shall be appointed to a **Fitness to Practise Panel** and consider an application under these **regulations** in respect of a **member, affiliate** or **relevant person** if they previously considered that specific case as a member of their own committee; and
 - b. the **required number** of **lay members** is maintained.
- 4.9 No member of a **disciplinary committee** or **regulatory committee** may consider a case as a member of their own committee which they previously considered as a co-opted member of the **Fitness to Practise Committee**.

The Appeal Committee

- 5.1 The **Appeal Committee** shall consist of no fewer than 10 members of whom at least the **required number** must be **lay members**.

- 5.2 Members of the **Appeal Committee** are appointed by the **RACAC** (or relevant predecessor or successor body) for an initial term of 3 years, which term may be renewed and extended at the discretion of the **RACAC** up to a maximum of 9 years.
- 5.3 The **Appeal Committee Chair** and any **Appeal Committee Vice-Chair** must each be either a barrister or a solicitor and neither of them shall be an accountant.
- 5.4 The quorum for meetings of the **Appeal Committee** shall be 4 members, of whom 2 shall be **ICAEW members** and 2 shall be **lay members**.
- 5.5 The functions of the **Appeal Committee** include, among other matters, determining **appeals** against **orders of Fitness to Practise Panels** under these **regulations**.
- 5.6 **Appeal Panels** shall be convened to hear **appeals** in accordance with the **Disciplinary Bye-laws** and these **regulations** comprising 5 members of the **Appeal Committee**, being:
- a. the **Appeal Panel Chair** who shall be either the **Appeal Committee Chair** or any **Appeal Committee Vice-Chair**;
 - b. two **ICAEW members**; and
 - c. two **lay members**.
- 5.7 Where **appeals** in relation to **legal services work** are being considered, an **Appeal Panel** shall have a majority of members who are **lay members**, although the **Appeal Panel** shall still be chaired by either the **Appeal Committee Chair** or an **Appeal Committee Vice-Chair** who shall be either a barrister or solicitor.
- 5.8 The **Appeal Committee Chair** may delegate to the **Head of Committees and Tribunals** administrative functions in relation to the appointment of members of the **Appeal Committee** to **Appeal Panels** in accordance with these **regulations**.
- 5.9 The **Appeal Committee Chair** may co-opt as temporary members of the **Appeal Committee** members of the **Conduct Committee**, the **Tribunals Committee** and/or the **regulatory committees** to deal with specific cases, provided that:
- a. no person shall be appointed to an **Appeal Panel** to consider an **appeal** by a **member, affiliate** or **relevant person** under these **regulations** if they have previously considered that specific case as a member of their own committee; and
 - b. the **required number** of **lay members** is maintained.

Committees – meetings and hearings

- 6.1 Members of the **Fitness to Practise Committee** and the **Appeal Committee** may participate in meetings or **hearings** via any audio or video conferencing facilities which

allow all persons in the meeting or **hearing** to communicate with each other simultaneously. Where a member of the **Fitness to Practise Committee** or the **Appeal Committee** participates in a meeting or **hearing** via such audio or video conferencing facilities they shall be deemed present at that meeting or **hearing** and counted in the quorum.

MAKING A FITNESS TO PRACTISE APPLICATION

Fitness to practise application made by the PSD Chief Officer

- 7.1 Where, at any time, the **PSD Chief Officer** considers, on a report from the **Conduct Department**, or from a Chair of any **disciplinary committee** or **regulatory committee**, that there are reasonable grounds to believe that:
- a. the fitness to respond to an **investigation** and/or to participate in **proceedings**; and/or
 - b. the fitness to practise,
- of a **member, affiliate** or **relevant person** may be seriously impaired through their **physical or mental health**, the **PSD Chief Officer** may request the **Fitness to Practise Committee** to determine whether the **member, affiliate** or **relevant person's** fitness is so impaired.
- 7.2 A request under **regulation** 7.1 shall be made by the **PSD Chief Officer** by serving a **fitness to practise application** on the **Head of Committees and Tribunals**.
- 7.3 Upon the service of a **fitness to practise application** in accordance with **regulation** 7.2, any **investigation** and/or **proceedings** in respect of the **member, affiliate** or **relevant person** will be suspended automatically until the conclusion of the **fitness to practise proceedings** and any **appeal proceedings**.
- 7.4 After the **Head of Committees and Tribunals** receives a **fitness to practise application** from the **PSD Chief Officer**, they shall serve a copy of the **fitness to practise application** on the **member, affiliate** or **relevant person** together with a **fitness response form**, as soon as practicable. Where the **PSD Chief Officer** has requested an **expedited fitness to practise hearing**, the process set out in **regulation** 14 shall apply instead unless the **Fitness to Practise Committee Chair** does not consider an **expedited fitness to practise hearing** to be necessary.
- 7.5 A **member, affiliate** or **relevant person**, served with a **fitness to practise application** in accordance with **regulation** 7.4, shall complete and return the **fitness response form** together with any representations within 14 days of the service of the **fitness to practise application**, indicating whether they:
- a. accept that their fitness is seriously impaired in either way specified in **regulation** 7.1(a) and/or 7.1(b); and/or

- b. consent to submit to a medical examination by an **ICAEW appointed expert** (at **ICAEW's** expense) and are prepared to provide the **access consents** to the **ICAEW appointed expert**.

7.6 The **Head of Committees and Tribunals** shall have discretion to extend time for service of the **fitness response form** and any representations from the **member, affiliate** or **relevant person** if they consider that an extension of time is reasonable in the circumstances.

7.7 If the **member, affiliate** or **relevant person**:

- a. accepts that their fitness is seriously impaired in either way specified in **regulation 7.1(a)** and/or **7.1(b)**; or
- b. indicates that they object to attending for a medical examination by an **ICAEW appointed expert** and/or that they will not provide **access consents** to an **ICAEW appointed expert**; or
- c. fails to submit a completed **fitness response form** within the time specified in **regulation 7.5** (or any extended period allowed in accordance with **regulation 7.6**),

the **Head of Committees and Tribunals** shall arrange for a **fitness to practise hearing** to take place.

7.8 Pursuant to **regulation 7.7**, the **Head of Committees and Tribunals** shall:

- a. provide a copy of any completed **fitness response form** to the **PSD Chief Officer** and request the **PSD Chief Officer** to appoint an **ICAEW representative** to represent **ICAEW** at the **fitness to practise hearing**;
- b. request the **Fitness to Practise Committee Chair** to appoint a **Fitness to Practise Panel** in accordance with **regulation 4.6** to consider the **fitness to practise application**; and
- c. notify the **member, affiliate** or **relevant person**, and the **ICAEW representative**, of the date, time and location or format of the **fitness to practise hearing** which shall be no earlier than 28 days from the service of the **notice**.

7.9 If a **member, affiliate** or **relevant person** agrees to submit themselves for a medical examination by an **ICAEW appointed expert**, the **Head of Committees and Tribunals** shall:

- a. request an **ICAEW appointed expert** to carry out a medical examination of the **member, affiliate** or **relevant person**; and

- b. provide the **member, affiliate or relevant person** with contact details of the **ICAEW appointed expert** to fix a date for the medical examination and so that **access consents** can be provided to the **ICAEW appointed expert**.
- 7.10 As soon as practicable after the **Head of Committees and Tribunals** receives a copy of a report from the **ICAEW appointed expert**, the **Head of Committees and Tribunals** shall serve a copy of the report on the **member, affiliate or relevant person** who shall have 14 days from the date of service of the report to submit any written representations for consideration by the **Fitness to Practise Committee Chair**. The **Head of Committees and Tribunals** shall have discretion to extend the time for receipt of any representations if they consider that an extension of time is reasonable in the circumstances.
- 7.11 Upon the expiry of 14 days (or any longer period agreed by the **Head of Committees and Tribunals**) or the receipt of representations (whichever is sooner), the **Head of Committees and Tribunals** shall provide the **fitness to practise application**, the **fitness response form**, the report from the **ICAEW appointed expert** and any representations made by the **member, affiliate or relevant person** to the **Fitness to Practise Committee Chair** who shall determine whether:
 - a. in accordance with **Disciplinary Bye-law** 13.7(b), the **fitness to practise proceedings** should be terminated because, in the opinion of the **Fitness to Practise Committee Chair**, there are no reasonable grounds for believing that the fitness of the **member, affiliate or relevant person** is seriously impaired in either way specified in **regulation** 7.1(a) and/or 7.1(b); or
 - b. a **Fitness to Practise Panel** should be convened to consider the **fitness to practise application** because, in the opinion of the **Fitness to Practise Committee Chair**, there are reasonable grounds for believing that the fitness of the **member, affiliate or relevant person** may be seriously impaired in either way specified in **regulation** 7.1(a) and/or 7.1(b).
- 7.12 Prior to making a determination in accordance with **regulation** 7.11, the **Fitness to Practise Committee Chair** shall have the power, by **notice** served on the **member, affiliate or relevant person**, to call for such information and explanations as they consider necessary to enable them to reach their determination. It shall be the duty of any **member, affiliate or relevant person** on whom such a **notice** is served, to cooperate with the **Fitness to Practise Committee Chair** and to comply with the **notice** within 14 days of service or such longer period as the **Fitness to Practise Committee Chair** may allow.
- 7.13 If the **Fitness to Practise Committee Chair** determines that the **fitness to practise proceedings** should be terminated in accordance with **regulation** 7.11(a) and makes an **order** accordingly, the **Head of Committees and Tribunals** shall:
 - a. inform the **parties** of the **order** made by the **Fitness to Practise Committee Chair**;

- b. inform the **Head of Investigation** of the end of the suspension of any **investigation** and/or **proceedings**.

7.14 If the **Fitness to Practise Committee Chair** determines that a **Fitness to Practise Panel** should be convened in accordance with **regulation 7.11(b)**, the **Head of Committees and Tribunals** shall:

- a. provide a copy of any completed **fitness response form**, the report from the **ICAEW appointed expert** and any representations from the **member, affiliate** or **relevant person** to the **PSD Chief Officer** and request the **PSD Chief Officer** to appoint an **ICAEW representative** to represent **ICAEW** at the **fitness to practise hearing**;
- b. request the **Fitness to Practise Committee Chair** to appoint a **Fitness to Practise Panel** in accordance with **regulation 4.6** to consider the **fitness to practise application**; and
- c. notify the **member, affiliate** or **relevant person**, and the **ICAEW representative**, of the date, time and location or format of the **fitness to practise hearing**, which shall be no earlier than 28 days from the service of the **notice**.

7.15 Where, after being served with a **fitness to practise application** in accordance with **regulation 7.4**, the **member, affiliate** or **relevant person** indicates in writing that they would be prepared to resign their membership or registration with **ICAEW**, the **Head of Committees and Tribunals** shall:

- a. provide the **Fitness to Practise Committee Chair** with a copy of the **fitness to practise application** and the written request by the **member, affiliate** or **relevant person** to resign; and
- b. request that the **Fitness to Practise Committee Chair** determine whether to accept the **member, affiliate** or **relevant person's** offer of resignation.

7.16 Where the **Fitness to Practise Committee Chair** determines that a request to resign should be accepted and the **fitness to practise proceedings** should be terminated in accordance with **Disciplinary Bye-law 13.7(a)**, the **Fitness to Practise Committee Chair** may pursuant to **Disciplinary Bye-law 13.8**:

- 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 remains seriously impaired in either way specified in **regulation 7.1(a)** and/or 7.1(b); 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.

Fitness to practise application made by a member, affiliate or relevant person

- 8.1 At any time after a **member, affiliate** or **relevant person** has been notified by **ICAEW** that they are the subject of an **investigation** and/or during any **proceedings**, the **member, affiliate** or **relevant person** may make a **fitness to practise application** if they believe that their fitness to respond to an **investigation** and/or to participate in **proceedings**, and/or their fitness to practise, may be seriously impaired through their **physical or mental health**.
- 8.2 A **fitness to practise application** made by a **member, affiliate** or **relevant person** pursuant to **regulation 8.1** must be made in writing to the **Head of Committees and Tribunals** and must be accompanied by a recent medical report which identifies the impairment. This should support the assertion, including a prognosis and indication as to when, if at all, the **member, affiliate** or **relevant person** would be well enough to participate in the process or proceedings.
- 8.3 Upon the service of a **fitness to practise application** and recent medical report in accordance with **regulation 8.2**, any **investigation** and/or **proceedings** in respect of the **member, affiliate** or **relevant person** will be suspended automatically until the conclusion of the **fitness to practise proceedings** and any **appeal proceedings**.
- 8.4 As soon as reasonably practicable after receipt of a **fitness to practise application** made in accordance with **regulation 8.2**, the **Head of Committees and Tribunals** shall provide a copy of it to the **Fitness to Practise Committee Chair** who shall determine whether, after reviewing the **fitness to practise application** and the medical report, a **Fitness to Practise Panel** should be convened or whether, prior to a **Fitness to Practise Panel** being convened, the **member, affiliate** or **relevant person** should be requested to undergo a medical examination by an **ICAEW appointed expert** (at **ICAEW's** expense) and to provide **access consents** to the **ICAEW appointed expert**.
- 8.5 Prior to making a determination in accordance with **regulation 8.4**, the **Fitness to Practise Committee Chair** shall have the power, by **notice** served on the

member, affiliate or relevant person, to call for such information and explanations as they consider necessary to enable them to reach their determination. It shall be the duty of any **member, affiliate or relevant person** on whom such a **notice** is served, to cooperate with the **Fitness to Practise Committee Chair** and to comply with the **notice** within 14 days of service or such longer period as the **Fitness to Practise Committee Chair** may allow.

8.6 If the **Fitness to Practise Committee Chair** determines that a **Fitness to Practise Panel** should be convened without the need to request that the **member, affiliate or relevant person** undergo a further medical examination, the **Head of Committees and Tribunals** shall:

- a. provide to the **PSD Chief Officer** a copy of the **fitness to practise application** and the medical report supplied by the **member, affiliate or relevant person** and shall request that the **PSD Chief Officer** appoint an **ICAEW representative** to represent **ICAEW** at the **fitness to practise hearing**;
- b. request the **Fitness to Practise Committee Chair** to appoint a **Fitness to Practise Panel** in accordance with **regulation 4.6** to consider the **fitness to practise application**; and
- c. notify the **member, affiliate or relevant person**, and the **ICAEW representative**, of the date, time and location or format of the **fitness to practise hearing**, which shall be no earlier than 28 days from the service of the **notice**.

8.7 If the **Fitness to Practise Committee Chair** decides, pursuant to **regulation 8.4**, that the **member, affiliate or relevant person** should be requested to undergo a further medical examination and provide **access consents** to an **ICAEW appointed expert**, the **Head of Committees and Tribunals** shall notify the **member, affiliate or relevant person** of the request made by the **Fitness to Practise Committee Chair** and shall provide the **member, affiliate or relevant person** with contact details of the **ICAEW appointed expert** to fix a date for the medical examination and provide the **access consents**.

8.8 Subject to **regulations 8.9 and 8.10**, if a **member, affiliate or relevant person** fails to attend for a medical examination and/or fails to provide the **access consents** within 90 days of being notified of the **Fitness to Practise Committee Chair's** request under **regulation 8.7** (or such lesser period as may be specified by the **Fitness to Practise Committee Chair**), the **Fitness to Practise Committee Chair** may order that the **fitness to practise proceedings** be terminated, and that any suspension which was put in place in accordance with **regulation 8.3** be terminated.

8.9 The **Fitness to Practise Committee Chair** shall not order that the **fitness to practise proceedings** be terminated if the **Fitness to Practise Committee Chair** considers that there is a good reason why further time should be permitted for the

member, affiliate or relevant person to attend for a medical examination and to provide the **access consents**, and agrees to extend the period specified under **regulation 8.8**. In these circumstances, the **Head of Committees and Tribunals** shall notify the **member, affiliate or relevant person** of the new deadline to comply with the **Fitness to Practise Committee Chair's** request.

- 8.10 The **Fitness to Practise Committee Chair** shall not order that the **fitness to practise proceedings** be terminated if the **Fitness to Practise Committee Chair** determines that a **Fitness to Practise Panel** should be convened in any event despite the failure by the **member, affiliate or relevant person** to attend for a medical examination. In these circumstances, the **Head of Committees and Tribunals** shall proceed in accordance with **regulation 8.6(a) – (c)**.
- 8.11 As soon as reasonably practicable after the **Head of Committees and Tribunals** receives a copy of a report from the **ICAEW appointed expert** pursuant to their appointment in accordance with **regulation 8.7**, the **Head of Committees and Tribunals** shall serve a copy of the report on the **member, affiliate or relevant person** who shall have 14 days from the date of service of the report to submit any written representations. The **Head of Committees and Tribunals** shall have discretion to extend the time for receipt of any representations if they consider that an extension of time is reasonable in the circumstances.
- 8.12 Upon the expiry of 14 days (or any longer period agreed by the **Head of Committees and Tribunals**) or the receipt of representations from the **member, affiliate or relevant person** (whichever is sooner), the **Head of Committees and Tribunals** shall:
- a. provide to the **PSD Chief Officer** a copy of the **fitness to practise application**, the medical report supplied by the **member, affiliate or relevant person**, the medical report received from the **ICAEW appointed expert** and any representations from the **member, affiliate or relevant person** and shall request the **PSD Chief Officer** to appoint an **ICAEW representative** to represent **ICAEW** at the **fitness to practise hearing**;
 - b. request the **Fitness to Practise Committee Chair** to appoint a **Fitness to Practise Panel** in accordance with **regulation 4.6** to hear the **fitness to practise application**; and
 - c. notify the **member, affiliate or relevant person**, and the **ICAEW representative**, of a date, time and location or format of the **fitness to practise hearing**, which shall be no earlier than 28 days from the service of the **notice**.

CONVENING A FITNESS TO PRACTISE PANEL

- 9.1 Where the ***Fitness to Practise Committee Chair*** has convened a ***Fitness to Practise Panel*** in accordance with ***regulations*** 7.8, 7.14, 8.6, 8.10 or 8.12, there shall be no publicity regarding the decision to convene a ***Fitness to Practise Panel*** or the date when the ***Fitness to Practise Panel*** shall meet to consider the matter except, where the ***member, affiliate*** or ***relevant person*** is the subject of an ***investigation*** or ***disciplinary proceedings***, the ***Head of Investigation*** shall be entitled to inform any ***complainant*** that the matter has been referred to the ***Fitness to Practise Panel*** and that any ***investigation*** or ***disciplinary proceedings*** have been suspended pending the conclusion of the ***fitness to practise proceedings*** and any ***appeal proceedings***.
- 9.2 If, at any time after the ***Fitness to Practise Committee Chair*** has appointed a ***Fitness to Practise Panel*** in accordance with these ***regulations***, but prior to the commencement of the ***fitness to practise hearing***, any member of the ***Fitness to Practise Panel*** is for any reason unable to attend the ***hearing***, the ***Fitness to Practise Committee Chair*** shall appoint a replacement member of the ***Fitness to Practise Committee*** to the ***Fitness to Practise Panel***.
- 9.3 The ***Head of Committees and Tribunals*** may appoint one, or both, of the following to assist the ***Fitness to Practise Panel***:
- a. an independent and suitably qualified medical expert (other than the ***ICAEW appointed expert*** who has provided a medical report); and/or
 - b. a ***legal assessor***.

FITNESS TO PRACTISE CONSENT ORDERS

- 10.1 At any time after a ***fitness to practise application*** is made and prior to the start of a ***fitness to practise hearing***, the ***parties*** may agree the terms of a ***fitness to practise consent order*** for consideration by the ***Fitness to Practise Panel Chair*** (if one has been appointed and, if not, by the ***Fitness to Practise Committee Chair***). The ***PSD Chief Officer*** shall appoint an ***ICAEW representative*** to represent ***ICAEW*** in this process if one has not already been appointed.
- 10.2 Upon receipt of a draft ***fitness to practise consent order*** signed by both ***parties***, the ***Head of Committees and Tribunals*** shall provide it together with the ***fitness to practise application***, any representations and any medical evidence to the ***Fitness to Practise Panel Chair*** (or, where applicable, to the ***Fitness to Practise Committee Chair***) for consideration.
- 10.3 If the ***Fitness to Practise Panel Chair*** (or, where applicable, the ***Fitness to Practise Committee Chair***) considers, taking into account the public interest, that the draft ***fitness to practise consent order*** should be approved, the ***Fitness to***

Practise Panel Chair (or the **Fitness to Practise Committee Chair**) shall sign the **fitness to practise consent order** on behalf of the **Fitness to Practise Committee** and the **order** will be final. The **Head of Committees and Tribunals** shall then provide a copy of the signed **fitness to practise consent order** to the **parties**.

- 10.4 If the **Fitness to Practise Panel Chair** (or, where applicable, the **Fitness to Practise Committee Chair**) does not approve the draft **fitness to practise consent order**, they shall provide the **Head of Committees and Tribunals** with reasons for the refusal to approve, a copy of which shall be provided to the **parties** by the **Head of Committees and Tribunals** and the **fitness to practise proceedings** shall continue in accordance with these **regulations**.
- 10.5 The **parties** may also provide a draft **fitness to practise consent order** to the **Fitness to Practise Panel** for consideration at any time during a **fitness to practise hearing** and the **Fitness to Practise Panel** may, if it considers the terms of the **fitness to practise consent order** to be satisfactory, authorise the **Fitness to Practise Panel Chair** to sign the **fitness to practise consent order** on behalf of the panel and the **order** will be final.
- 10.6 A **fitness to practise consent order** shall comply with the provisions of **regulation 13.3**.
- 10.7 The **fitness to practise consent order** shall take effect following service of the **order** on the **member, affiliate or relevant person**.

PRE-HEARING PROCEDURE

- 11.1 As soon as practicable after the appointment of a **Fitness to Practise Panel**, the **Head of Committees and Tribunals** shall serve on the **parties** a bundle containing all documents received by the **Head of Committees and Tribunals** in connection with the **fitness to practise application**.
- 11.2 Each **party** must provide to the **Head of Committees and Tribunals** and to the other **party**, at least 14 days before the **fitness to practise hearing**, copies of any documents on which they intend to rely at the **fitness to practise hearing**, which were not included in the bundle served by the **Head of Committees and Tribunals**. The other **party** shall have the right to provide written representations on any new documents served in accordance with these **regulations** up until 3 days prior to the **fitness to practise hearing**.
- 11.3 Either **party** may apply to the **Fitness to Practise Panel Chair** for the postponement of a **fitness to practise hearing** which has not yet commenced by notifying the **Head of Committees and Tribunals** who shall request representations from the other **party** before asking the **Fitness to Practise Panel Chair** to determine the application.

- 11.4 At any time prior to a ***fitness to practise hearing***, the ***Fitness to Practise Panel Chair*** may:
- a. require the ***member, affiliate or relevant person*** or the ***ICAEW representative*** to provide such further information and documents as may be considered necessary to assist the ***Fitness to Practise Panel*** in determining the ***fitness to practise application***; and/or
 - b. direct, on the application of either ***party*** or of their own volition, that there be a ***pre-hearing review***.
- 11.5 If a ***pre-hearing review*** is held, the ***Fitness to Practise Panel Chair*** may make such ***directions*** as they deem necessary, including ***directions*** to ensure that the ***member, affiliate or relevant person*** has access to the ***fitness to practise hearing*** including, but not limited to:
- a. a ***direction*** that the ***fitness to practise hearing*** take place in a specific location;
 - b. a ***direction*** that the ***member, affiliate or relevant person*** be permitted to attend via videolink or telephone;
 - c. a ***direction*** that an interpreter can be used;
 - d. a ***direction*** that a hearing loop be used.

CONDUCT OF A FITNESS TO PRACTISE HEARING

- 12.1 A ***fitness to practise hearing*** shall be a ***private hearing*** and there shall be no prior publicity of the ***hearing***.
- 12.2 If, at any time during a ***fitness to practise hearing***:
- a. any member of the ***Fitness to Practise Panel*** is unable for any reason to continue to participate in the ***fitness to practise hearing***; or
 - b. the ***Fitness to Practise Panel Chair*** is, for any reason, of the opinion that it is impracticable, or would be contrary to the interests of justice, for the ***fitness to practise hearing*** to be completed by that ***Fitness to Practise Panel***,
- the ***Fitness to Practise Panel Chair*** shall inform the ***Fitness to Practise Committee Chair*** or, if the latter is unavailable, the ***Fitness to Practise Committee Vice-Chair***, who shall appoint a new ***Fitness to Practise Panel*** for a re-hearing of the ***fitness to practise application***.
- 12.3 Where a new ***Fitness to Practise Panel*** is appointed pursuant to ***regulation 12.2***, no member of the previous ***Fitness to Practise Panel*** may be appointed as a member of the new ***Fitness to Practise Panel***; but persons appointed in accordance with ***regulation 9.3*** as a medical expert or as a ***legal assessor*** may continue to act at the re-hearing.

- 12.4 A **member, affiliate** or **relevant person** may appear at a **fitness to practise hearing** in person or they may appoint a **representative**. The **member, affiliate** or **relevant person** will be deemed present when they are represented by their **representative**.
- 12.5 If the **member, affiliate** or **relevant person** does not attend a **fitness to practise hearing** in person or by a **representative** then, provided the **Fitness to Practise Panel** is satisfied that **notice** of the **hearing** was served on the **member, affiliate** or **relevant person** as required by these **regulations**, the **Fitness to Practise Panel** may hear the **fitness to practise application** in their absence.
- 12.6 The **ICAEW representative** shall represent **ICAEW** at the **fitness to practise hearing**.
- 12.7 In determining a **fitness to practise application**, the **Fitness to Practise Panel** may adopt any procedure which it considers just and fair, in particular:
- a. the strict rules of evidence will not apply; and
 - b. the **fitness to practise hearing** will take place on an inquisitorial basis.
- 12.8 The **Fitness to Practise Panel** may consider any written and/or verbal representations made by the **parties**, written reports and/or written or oral evidence as it deems appropriate, including oral evidence from a medical expert engaged by the **member, affiliate** or **relevant person** or from the **ICAEW appointed expert**. The absence of a medical report or evidence shall not prevent the **Fitness to Practise Panel** from reaching a determination based on the other evidence before it.
- 12.9 Where a **fitness to practise application** has been made under **regulation 7** or **regulation 8** and the **member, affiliate** or **relevant person** has not provided **access consents** and/or attended for a medical examination by an **ICAEW appointed expert** at the request of the **Fitness to Practise Committee Chair**, the **Fitness to Practise Panel** shall take into account:
- a. the strength of any medical or other evidence which could support a **finding** that the fitness of the **member, affiliate** or **relevant person** is seriously impaired in either way specified in **regulation 7.1(a)** and/or **7.1(b)**;
 - b. whether the **member, affiliate** or **relevant person** has been given appropriate **notice** of the request to attend for a medical examination by an **ICAEW appointed expert** and an opportunity to explain why they have chosen not to comply with it;
 - c. the reasons (if any) given for the refusal by the **member, affiliate** or **relevant person** to submit to a medical examination by an **ICAEW appointed expert** and/or to provide the **access consents**; and

- d. any other relevant circumstances of the case.
- 12.10 No objection shall be upheld to any technical fault in the procedure adopted by a ***Fitness to Practise Panel*** provided that the proceedings are fair and the relevant ***Disciplinary Bye-laws*** and ***regulations*** have been complied with.
- 12.11 A ***Fitness to Practise Panel*** may deliberate in the absence of the ***parties*** and any other persons attending the ***hearing***, at any time.
- 12.12 A ***Fitness to Practise Panel*** may adjourn its proceedings from time to time as it thinks fit of its own volition or upon application by either ***party***.
- 12.13 In accordance with ***Disciplinary Bye-law*** 13.7(a), the ***Fitness to Practise Panel*** may accept an offer from a ***member, affiliate or relevant person*** to resign their membership or registration at the ***hearing*** instead of making an ***order*** under ***Disciplinary Bye-law*** 13.1 and, if so, the ***Fitness to Practise Panel*** may make any of the ***orders*** set out in ***regulation*** 7.16.
- 12.14 A shorthand or stenographic note or a recording may be taken or made of the ***fitness to practise hearing***. Any record / recording of the ***fitness to practise proceedings*** shall be confidential and shall not be put in the public domain.

ORDERS OF A FITNESS TO PRACTISE PANEL

- 13.1 If, after hearing the evidence and representations by the ***parties***, the ***Fitness to Practise Panel*** determines that:
 - a. the fitness to respond to an ***investigation*** and/or to participate in ***proceedings***; and/or
 - b. the fitness to practise,of the ***member, affiliate or relevant person*** is not seriously impaired through their ***physical or mental health***, it shall make a ***finding*** to that effect, and shall order that any ***investigation*** and/or ***proceedings*** that were suspended for the duration of the ***fitness to practise proceedings*** be re-started.
- 13.2 If, after hearing the evidence and representations by the ***parties***, the ***Fitness to Practise Panel*** determines that:
 - a. the fitness to respond to an ***investigation*** and/or to participate in ***proceedings***; and/or
 - b. the fitness to practise,of the ***member, affiliate or relevant person*** is seriously impaired through their ***physical or mental health***, it shall make a ***finding*** to that effect and shall, unless it

considers that in the circumstances it is inappropriate to do so, make one or more of the **orders** set out in **Disciplinary Bye-law** 13.2.

13.3 An **order** of the **Fitness to Practise Panel** made in accordance with **Disciplinary Bye-laws** 13.1 and 13.2, and **regulation** 13.2, must:

- a. set a date not more than 24 months from the date of the **order** for a **fitness to practise review hearing** to be convened to review the **order** or **orders**; and
- b. set out the nature of the impairment the **Fitness to Practise Panel** considers the **member, affiliate** or **relevant person** to be suffering from, and what steps the **member, affiliate** or **relevant person** would need to take, in order to be considered sufficiently recovered or rehabilitated for the **order** or **orders** to be lifted; and
- c. set a minimum period, based on all of the circumstances including the medical evidence and the steps outlined under (b), before which a **fitness to practise interim review application** cannot be made starting from the date of the **order** of the **Fitness to Practise Panel** (or the date of any **order** of an **Appeal Panel** in the case of an unsuccessful **appeal** against the **order**.)

13.4 The **Fitness to Practise Panel** may also in certain circumstances make a **costs order** against the **member, affiliate** or **relevant person** in accordance with **regulation** 18.

13.5 The **Head of Committees and Tribunals** shall send to the **member, affiliate** or **relevant person** as soon as reasonably practicable after the **fitness to practise hearing**:

- a. a copy of the **order** of the **Fitness to Practise Panel**; and
- b. a copy of the **record of decision** once it has been approved by the **Fitness to Practise Panel**.

EXPEDITED FITNESS TO PRACTISE APPLICATIONS

14.1 If the **PSD Chief Officer** considers, on the basis of the evidence known to them at the time of making a **fitness to practise application** in accordance with **regulation** 7.1, that a **Fitness to Practise Panel** should be convened urgently to consider the application because:

- a. it is necessary for the protection of the public; and/or
- b. it is otherwise in the public interest,

they shall request the **Fitness to Practise Committee Chair** to convene a **Fitness to Practise Panel** to hear the application on an expedited basis.

- 14.2 If the ***Fitness to Practise Committee Chair*** agrees that an ***expedited fitness to practise hearing*** should be arranged, the ***Fitness to Practise Committee Chair*** shall appoint a ***Fitness to Practise Panel*** and request the ***Head of Committees and Tribunals*** to serve upon the ***member, affiliate or relevant person***, and the ***ICAEW representative*** (appointed by the ***PSD Chief Officer*** to represent ***ICAEW***), a ***notice*** stating the time, date, location or format fixed for the ***expedited fitness to practise hearing*** together with a copy of the ***fitness to practise application*** served by the ***PSD Chief Officer***. The ***member, affiliate or relevant person*** shall have at least 7 days' notice of the time and date of the ***expedited fitness to practise hearing***.
- 14.3 If the ***Fitness to Practise Committee Chair*** does not agree that an ***expedited fitness to practise hearing*** is necessary, the ***fitness to practise proceedings*** shall continue in accordance with the process set out in ***regulation 7***.
- 14.4 ***Regulations 12.1 - 12.14*** shall apply to the conduct of the ***expedited fitness to practise hearing*** as appropriate.
- 14.5 If the ***member, affiliate or relevant person*** does not attend, and is not represented at, the ***expedited fitness to practise hearing*** then, provided that the ***Fitness to Practise Panel*** is satisfied that the ***notice*** required under ***regulation 14.2*** was served on the ***member, affiliate or relevant person***, the ***expedited fitness to practise hearing*** may continue in their absence.
- 14.6 Where, after considering all of the evidence at an ***expedited fitness to practise hearing***, the ***Fitness to Practise Panel*** considers that:
- a. there are reasonable grounds for believing that the fitness of the ***member, affiliate or relevant person*** may be seriously impaired in either way specified in ***regulation 7.1(a)*** and/or ***7.1(b)***; and
 - b. it is necessary for the protection of the public, and/or is otherwise in the public interest, for an ***expedited order*** to be made,
- the ***Fitness to Practise Panel*** may, in accordance with ***Disciplinary Bye-law 13.9*** make an ***expedited order*** for a period of no longer than 3 months.
- 14.7 If, at the ***expedited fitness to practise hearing***, the ***Fitness to Practise Panel*** is of the opinion that there is insufficient evidence to make an ***expedited order*** under ***Disciplinary Bye-law 13.9***, then the ***Head of Committees and Tribunals*** shall continue with the process set out in ***regulation 7***.
- 14.8 The ***Head of Committees and Tribunals*** shall convene a ***Fitness to Practise Panel*** to consider the ***fitness to practise application*** made in accordance with ***regulation 7*** before the expiry of the ***expedited order***, even if all medical evidence has not yet been obtained, to determine whether the ***Fitness to Practise Panel*** should make any of the ***orders*** available to it under ***Disciplinary Bye-laws 13.1*** and ***13.2***. Where one or more of the members of the ***Fitness to Practise Panel*** is not available to attend a full ***fitness to practise hearing*** within this period, the ***Fitness to Practise Committee***

Chair may, on application by the **Head of Committees and Tribunals**, appoint replacement members of the **Fitness to Practise Committee** to the **Fitness to Practise Panel**.

FITNESS TO PRACTISE REVIEW HEARINGS

- 15.1 At least 28 days before the date of the **fitness to practise review hearing** set in accordance with **regulations** 13.3(a) or 15.10(a) the **Head of Committees and Tribunals** must notify the **member, affiliate** or **relevant person** of the date, time and location or format of the **fitness to practise review hearing** and request that the **member, affiliate** or **relevant person** confirm whether they intend to contest the continuation of the **order(s)** made by the **Fitness to Practise Panel**.
- 15.2 If the **member, affiliate** or **relevant person** confirms, in response to the **notice** from the **Head of Committees and Tribunals**, that they do not wish to contest the continuation of the **order(s)** made by the **Fitness to Practise Panel**, the **Head of Committees and Tribunals** shall provide this response to the **ICAEW representative** and seek any representations. The **Head of Committees and Tribunals** shall then provide the response, and any representations from the **ICAEW representative**, to the **Fitness to Practise Committee Chair** for consideration.
- 15.3 If the **Fitness to Practise Committee Chair** is content to make an **order** that the original **order(s)** continue, then this **order** may be made without the need for a **fitness to practise review hearing** to take place and the **order** shall be notified by the **Head of Committees and Tribunals** to the **parties**.
- 15.4 If the **member, affiliate** or **relevant person** confirms that they intend to contest the continuation of one or more of the **orders** made by the **Fitness to Practise Panel**, or if they do not respond to the **notice** served by the **Head of Committees and Tribunals** in accordance with **regulation** 15.1, the **Head of Committees and Tribunals** shall, at least 14 days before the **fitness to practise review hearing**, serve a bundle of all documents relating to the original **fitness to practise application** (and any subsequent review) on the **parties**.
- 15.5 The **Head of Committees and Tribunals** shall also request that, where a **party** intends to rely on any other document not contained in the bundle, they provide a copy of that document to the **Head of Committees and Tribunals**, and to the other **party**, at least 7 days before the **fitness to practise review hearing**.
- 15.6 If the **member, affiliate** or **relevant person** serves new medical evidence prior to the **fitness to practise review hearing**, the **Fitness to Practise Panel Chair**, on the application of the **ICAEW representative**, may request the **member, affiliate** or **relevant person** to undergo a medical examination by an **ICAEW appointed expert** (appointed by the **Head of Committees and Tribunals**) and to provide **access consents** to the **ICAEW appointed expert**. If the **member, affiliate** or **relevant**

person consents to submit for a medical examination, the **Head of Committees and Tribunals** shall:

- a. provide details of an **ICAEW appointed expert** to the **member, affiliate or relevant person**; and
- b. postpone the **fitness to practise review hearing** if it is not possible to arrange the medical examination prior to the date fixed for the **hearing**.

15.7 **Regulations** 9.1 – 9.3, 11.1 – 11.5 and 12.1 – 12.14 shall apply to the process to be followed at a **fitness to practise review hearing**, as appropriate. In particular, if the **member, affiliate or relevant person** has refused to submit to a medical examination and/or to provide the **access consents** requested by the **Fitness to Practise Panel Chair** in accordance with **regulation** 15.6, the **Fitness to Practise Panel** shall take into account the matters set out in **regulation** 12.9 in reaching its determination.

15.8 The **Fitness to Practise Panel** should comprise, as far as possible, the same members of the **Fitness to Practise Committee** who made the **order(s)** which are the subject of the **fitness to practise review hearing** unless members of the original **Fitness to Practise Panel** have since left the **Fitness to Practise Committee** or would not be available without an unreasonable delay. In those circumstances, the **Fitness to Practise Committee Chair** shall select suitable replacement panel members.

15.9 If, at the end of a **fitness to practise review hearing**, the **Fitness to Practise Panel** is of the opinion that the fitness of the **member, affiliate or relevant person** remains seriously impaired in either way specified in **regulation** 7.1(a) and/or 7.1(b), it shall make a **finding** to that effect and it may:

- a. order that any **order** made under **Disciplinary Bye-laws** 13.1 and 13.2 continue or that any **order** be varied until the next **fitness to practise interim review hearing** or **fitness to practise review hearing**; and/or
- b. make any additional **orders** as are available under **Disciplinary Bye-law** 13.2 **orders** in respect of the **member, affiliate or relevant person**.

15.10 Where the **Fitness to Practise Panel** continues, varies and/or makes any additional **orders** in accordance with **regulation** 15.9, it shall:

- a. set a date not more than 24 months from the date of the **order** for a further **fitness to practise review hearing** to be convened to review the **order** or **orders**; and
- b. set out the nature of the impairment the **Fitness to Practise Panel** considers the **member, affiliate or relevant person** continues to suffer from, and what steps the **member, affiliate or relevant person** would need

to take, in order to be considered sufficiently recovered or rehabilitated for the **order** or **orders** to be lifted; and

- c. set a minimum period, based on all of the circumstances including the medical evidence and the steps outlined under (b), before which a **fitness to practise interim review application** cannot be made starting from the date of the **order** of the **Fitness to Practise Panel**.

15.11 If, at the end of a **fitness to practise review hearing**, the **Fitness to Practise Panel** is of the opinion that the fitness of the **member, affiliate** or **relevant person** is no longer seriously impaired in either way specified in **regulation** 7.1(a) and/or 7.1(b), it shall make a **finding** to that effect and it shall discharge any **order** made under **Disciplinary Bye-laws** 13.1 and 13.2.

15.12 If an **order** is made at a **fitness to practise review hearing** to discharge the **order**, the **Fitness to Practise Panel** shall order:

- a. that any suspension put in place pursuant to **regulations** 7.3 or 8.3 be lifted and that any **investigation** and/or **proceedings** be re-started; or
- b. that no further **investigation** should take place and/or that no further steps should be taken in any **proceedings** in relation to the **member, affiliate** or **relevant person**.

15.13 The **Head of Committees and Tribunals** shall send to the **member, affiliate** or **relevant person** as soon as reasonably practicable after the **fitness to practise review hearing**:

- a. a copy of the **order** of the **Fitness to Practise Panel**; and
- b. a copy of the **record of decision** once it has been approved by the **Fitness to Practise Panel**.

15.14 A shorthand or stenographic note or a recording may be taken or made of the **fitness to practise review hearing**. Any record / recording of the **fitness to practise review hearing** shall be confidential and shall not be put in the public domain.

FITNESS TO PRACTISE INTERIM REVIEW APPLICATIONS

Making an application

16.1 A **fitness practise interim review application** may be made by a **member, affiliate** or **relevant person** for a review of any **order** made by the **Fitness to Practise Panel** earlier than the date fixed for the initial (or any subsequent) **fitness to practise review hearing** in an **order** of the **Fitness to Practise Panel** provided:

- a. the minimum period set out in the **order** before which no **fitness to practise interim review application** may be made, has expired;
- b. no **fitness to practise interim review hearing** has taken place in the previous 6 months; and
- c. the application is accompanied by a recent medical report confirming that, in the opinion of a suitably qualified medical expert, the **member, affiliate** or **relevant person's** fitness to respond to an **investigation** and/or to participate in **proceedings**, and/or their fitness to practise, is no longer seriously impaired through their **physical or mental health**.

16.2 Where the **Head of Committees and Tribunals** receives a **fitness to practise interim review application** made in accordance with **regulation** 16.1 and is satisfied that it complies with the conditions for making such an application, they shall:

- a. request the **Fitness to Practise Committee Chair** to appoint a **Fitness to Practise Panel** in accordance with **regulation** 4.6 to consider the application;
- b. provide a copy of the application to the **ICAEW representative**; and
- c. notify the **parties** of a date, time, location or format of the **fitness to practise interim review hearing** which shall be no sooner than 28 days from the notification of the **hearing** date.

16.3 The **Fitness to Practise Panel** convened in accordance **regulation** 16.2(a) should comprise, as far as possible, the same members of the **Fitness to Practise Committee** who made the **order(s)** which are the subject of the **fitness to practise interim review application** unless members of the original **Fitness to Practise Panel** have since left the **Fitness to Practise Committee** or would not be available without an unreasonable delay. In those circumstances, the **Fitness to Practise Committee Chair** shall select suitable replacement panel members.

16.4 The **Head of Committees and Tribunals** shall serve on the **parties**, as soon as reasonably practicable after notifying the date of the **fitness to practise interim review hearing**, a bundle containing all documents relating to the original **fitness to practise application** and any subsequent review, the **fitness to practise interim review application** and the accompanying medical report.

16.5 Any **party** who wishes to rely on any document not in the bundle must provide a copy of that document to the **Head of Committees and Tribunals** and the other **party** at least 14 days prior to the **fitness to practise interim review hearing**.

16.6 After receipt of the **fitness to practise interim review application**, the **Fitness to Practise Panel Chair**, on the application of the **ICAEW representative**, may request the **member, affiliate** or **relevant person** to submit for a medical examination by an **ICAEW appointed expert** (to be appointed by the **Head of Committees and Tribunals**) and to provide **access consents** to the **ICAEW appointed expert**. If the **member, affiliate** or **relevant person** consents to submit for a medical examination,

the ***Fitness to Practise Panel Chair*** shall request the ***Head of Committees and Tribunals*** to:

- a. provide details of an ***ICAEW appointed expert*** to the ***member, affiliate or relevant person***; and
- b. postpone the ***fitness to practise interim review hearing*** if it is not possible to arrange the medical examination prior to the date fixed for the ***hearing***.

Fitness to practise interim review hearing

16.7 ***Regulations*** 9.1 – 9.3, 11.1 – 11.5 and 12.1 – 12.14 shall apply to the process to be followed at a ***fitness to practise interim review hearing***, as appropriate. In particular, if the ***member, affiliate or relevant person*** has refused to submit to a medical examination and to provide the ***access consents*** requested by the ***Fitness to Practise Panel Chair*** in accordance with ***regulation*** 16.6, the ***Fitness to Practise Panel*** shall take into account the matters set out in ***regulation*** 12.9 in reaching its determination on the ***fitness to practise interim review application***.

16.8 If, at the end of a ***fitness to practise interim review hearing***, the ***Fitness to Practise Panel*** is of the opinion that the fitness of the ***member, affiliate or relevant person*** remains seriously impaired in either way specified in ***regulation*** 7.1(a) and/or 7.1(b), it shall make a ***finding*** to that effect and may:

- a. order that any ***order*** made under ***Disciplinary Bye-laws*** 13.1 and 13.2 continue or that any ***order*** be varied until the next ***fitness to practise interim review hearing*** or ***fitness to practise review hearing***; and/or
- b. make any additional ***orders*** as are available under ***Disciplinary Bye-law*** 13.2 in respect of the ***member, affiliate or relevant person***.

16.9 Where the ***Fitness to Practise Panel*** continues, varies and/or makes any additional ***orders*** in accordance with ***regulation*** 16.8, it shall:

- a. set a date not more than 24 months from the date of the ***order*** for a ***fitness to practise review hearing*** to be convened to review the ***order*** or ***orders***; and
- b. set out the nature of the impairment the ***Fitness to Practise Panel*** considers the ***member, affiliate or relevant person*** continues to suffer from, and what steps the ***member, affiliate or relevant person*** would need to take in order to be considered sufficiently recovered or rehabilitated for the ***order*** or ***orders*** to be lifted; and
- c. set a minimum period, based on all of the circumstances including the medical evidence and the steps outlined under (b), before which a ***fitness to practise interim review application*** cannot be made starting from the date of the ***order*** of the ***Fitness to Practise Panel***,

and may also make a **costs order** against the **member, affiliate** or **relevant person** in accordance with **regulation** 18.

16.10 If, at the end of a **fitness to practise interim review hearing**, the **Fitness to Practise Panel** is of the opinion that the fitness of the **member, affiliate** or **relevant person** is no longer seriously impaired in either way specified in **regulation** 7.1(a) and/or 7.1(b), it shall make a **finding** to that effect and it shall discharge any **order** made under **Disciplinary Bye-laws** 13.1 and 13.2.

16.11 If an **order** is made at a **fitness to practise interim review hearing** to discharge the **order**, the **Fitness to Practise Panel** shall order:

- a. that any suspension put in place pursuant to **regulations** 7.3 or 8.3 be lifted and that the **investigation** and/or **proceedings** be re-started; or
- b. that no further **investigation** should take place and/or that no further steps should be taken in any **proceedings** in relation to the **member, affiliate** or **relevant person**.

16.12 The **Head of Committees and Tribunals** shall send to the **member, affiliate** or **relevant person** as soon as reasonably practicable after the **fitness to practise interim review hearing**:

- a. a copy of the **order** of the **Fitness to Practise Panel**; and
- b. a copy of the **record of decision** once it has been approved by the **Fitness to Practise Panel**.

16.13 A shorthand or stenographic note or a recording may be taken or made of the **fitness to practise interim review hearing**. Any record / recording of the **fitness to practise interim review hearing** shall be confidential and shall not be put in the public domain.

TIME WHEN ORDERS TAKE EFFECT / PUBLICITY

17.1 An **order** of the **Fitness to Practise Panel** shall take effect 28 days after the **record of decision** is served on the **member, affiliate** or **relevant person** by the **Head of Committees and Tribunals** unless, during that 28 day period, the **member, affiliate** or **relevant person** files a **notice of appeal** against the **order(s)** in accordance with **regulation** 19.1, in which case the **order** shall only take effect (if at all) once the **appeal** is finally determined or withdrawn.

17.2 Any **order** of a **Fitness to Practise Panel** made against a **member, affiliate** or **relevant person** under these **regulations** (including at any **fitness to practise interim review hearing** or **fitness to practise review hearing**) and any **fitness to practise consent order** made under **regulation** 10, shall be published unless the **Fitness to Practise Panel** (or the **Fitness to Practise Committee Chair** or the

Fitness to Practise Panel Chair approving a ***fitness to practise consent order***) conclude that there are exceptional circumstances which outweigh the public interest in publishing such ***orders***. Such publicity shall state only:

- a. the name of the ***member, affiliate or relevant person***; and
- b. the ***orders*** that have been made in respect of them in accordance with ***Disciplinary Bye-laws*** 13.1 and 13.2 (or, in the case of a review, the ***orders*** that have been continued or varied or any new ***orders*** that have been made),

and shall not disclose any information concerning the ***physical or mental health*** of the ***member, affiliate or relevant person***.

- 17.3 If an ***order*** of a ***Fitness to Practise Panel*** is published before the expiry of the 28 days within which a ***notice of appeal*** may be filed in accordance with ***regulation*** 19.1, any publication shall make clear that such an ***order*** may be subject to ***appeal*** and, if an ***appeal*** is made, the publication shall indicate this.
- 17.4 Where a ***Fitness to Practise Panel*** refuses a ***fitness to practise application*** or discharges any existing ***orders*** following a ***fitness to practise review hearing*** or ***fitness to practise interim review hearing***, the ***order*** shall only be published if the ***member, affiliate or relevant person*** so requests.

COSTS ORDERS

- 18.1 Following a ***fitness to practise hearing*** or a ***fitness to practise interim review hearing***, a ***Fitness to Practise Panel*** may not make any ***costs order*** against ***ICAEW*** and may only make a ***costs order*** against the ***member, affiliate or relevant person*** in the following circumstances:
 - a. where a ***fitness to practise application*** has been made by the ***member, affiliate or relevant person*** under ***regulation*** 8 and the ***Fitness to Practise Panel*** finds that the fitness of the ***member, affiliate or relevant person*** is not seriously impaired in either way specified in ***regulation*** 7.1(a) and/or 7.1(b); or
 - b. where a ***fitness to practise interim review application*** has been made by the ***member, affiliate or relevant person*** under ***regulation*** 16 and the ***Fitness to Practise Panel*** determines that the ***orders*** made under ***Disciplinary Bye-laws*** 13.1 and 13.2 shall continue and/or if it makes any additional orders.
- 18.2 Prior to making any ***costs order*** against the ***member, affiliate or relevant person***, a ***Fitness to Practise Panel*** shall, as appropriate:
 - a. hear and consider submissions from the ***member, affiliate or relevant person***, or their ***representative***, and the ***ICAEW representative*** in respect of

the amounts set out in any **costs schedule** served by the **ICAEW representative** on the **member, affiliate** or **relevant person** prior to the **hearing**; and

- b. have regard to any statement of means supported with a statement of truth and evidence of income and assets provided by the **member, affiliate** or **relevant person**.

18.3 Any **costs order** made against a **member, affiliate** or **relevant person** shall, unless a longer period for payment is allowed in the **order**, be paid within the period of 35 days beginning with the date of service of the **record of decision** of the **Fitness to Practise Panel** on the **parties**.

18.4 If, within the period allowed under **regulation** 19.1, the **member, affiliate** or **relevant person** serves **notice of appeal** against the **costs order**, those costs shall not become payable until either the **appeal** has been withdrawn or the **appeal** is dismissed.

18.5 If the **member, affiliate** or **relevant person** serves a **notice** withdrawing the **appeal**, the **orders** of the **Fitness to Practise Panel** will take effect at the end of the period of 14 days beginning with the date of service of the **notice**, at which point any **costs order** shall become immediately payable (save that where the **order** of the **Fitness Panel** has permitted payment of the **costs order** by instalments, only those instalments which would have become payable before service of the **notice** shall become due, and any further instalments will become payable on the dates specified in the **Fitness to Practise Panel's order**).

18.6 If a **costs order** provides for payments to be made by instalments, any instalment of costs payable to **ICAEW** under these **regulations** must be received by **ICAEW** before the close of business on the last day of the period allowed by, or under, the **regulations** for payment (or, if that day is not a **business day**, before the close of business on the next **business day**).

18.7 Where:

- a. any **costs order** is payable by instalments; and
- b. any instalment is not received by **ICAEW** as required by **regulation** 18.6,

the whole of the **costs order** (or so much of it as remains unpaid) shall become immediately due for payment.

APPEALS

Making an appeal

- 19.1 A **member, affiliate or relevant person** may appeal an **order** of a **Fitness to Practise Panel** made in accordance with **regulations** 13.2, 14.6, 15.9, 16.8 and/or 18.1 by serving a **notice of appeal** on the **Head of Committees and Tribunals** within 28 days of service on them of the **record of decision** of the **Fitness to Practise Panel**. The **notice of appeal** must specify the ground or grounds set out in **regulation** 19.2 upon which the **appeal** is made, and enclose any documents and/or evidence (including new evidence) in support of the **appeal**.
- 19.2 An **appeal** against an **order** made by a **Fitness to Practise Panel** in accordance with **regulations** 13.2, 14.6, 15.9, 16.8 and/or 18.1 may only be made on one or more of the following grounds:
- a. the **Fitness to Practise Panel** made an error of law, or in its interpretation of any **Disciplinary Bye-law**, any regulation (whether made by **ICAEW** or otherwise), or relevant standard or guidance which would have altered one or more of its **findings** and/or **orders**;
 - b. one or more of the **Fitness to Practise Panel's findings** and/or **orders** was unjust because of a serious procedural or other irregularity in the proceedings;
 - c. the **Fitness to Practise Panel** misunderstood or misdirected themselves in respect of the medical evidence, or failed to take into account relevant evidence which would have altered one or more of its **findings** and/or **orders**;
 - d. there is significant, new evidence that was not available at the time of the **fitness to practise hearing**, and which the **party** could not with reasonable diligence have been expected to obtain, which would have altered one or more of the **Fitness to Practise Panel's findings** and/or **orders**; and/or
 - e. that one or more of the **Fitness to Practise Panel's orders** were unreasonable and/or disproportionate in light of the **findings** that it made.

Process after service of notice of appeal

- 20.1 Where the **Head of Committees and Tribunals** receives a **notice of appeal** served within the period set out in **regulation** 19.1, the **Head of Committees and Tribunals** shall as soon as reasonably practicable:
- a. provide a copy of the **notice of appeal** to the **ICAEW representative**;
 - b. request the **Appeal Committee Chair** to appoint an **Appeal Panel** in accordance with **regulation** 5.6 for the **appeal hearing**; and
 - c. fix a date for the **appeal hearing** which shall take place no earlier than 35 **business days** from the date of service of the **notice** and confirm the date,

time, location or format of the **appeal hearing** to the **parties**.

- 20.2 The **ICAEW representative** shall have 21 days to serve an **answer** to the **notice of appeal** on the **member, affiliate** or **relevant person** and the **Head of Committees and Tribunals**, together with any supporting evidence (including any new evidence in response to new evidence served by the **member, affiliate** or **relevant person** with the **notice of appeal**).
- 20.3 A **member, affiliate** or **relevant person** may, at any time, withdraw the **appeal** by serving a **notice** to that effect on the **Head of Committees and Tribunals**.

Application for permission to appeal out of time

- 21.1 A **member, affiliate** or **relevant person** may make an application for permission to appeal after the expiry of the 28 days specified in **regulation** 19.1 by serving on the **Head of Committees and Tribunals** a **notice of appeal** together with a statement of reasons as to why the application was not made within the period specified (and any supporting evidence).
- 21.2 Upon receipt of an application pursuant to **regulation** 21.1, the **Head of Committees and Tribunals** shall provide a copy of the **notice of appeal** and the statement of reasons to the **ICAEW representative** who shall have 10 **business days** from service of the application to make representations on the statement of reasons.
- 21.3 After the expiry of 10 **business days**, or receipt of representations from the **ICAEW representative** (if earlier), the **Head of Committees and Tribunals** shall provide a copy of the application, the statement of reasons and any representations to the **Appeal Committee Chair** who shall determine whether the application should be allowed on papers and who shall provide reasons to support their determination. The **Appeal Committee Chair** should only allow the application to proceed if there are good reasons why the **notice of appeal** could not reasonably have been served within the period specified in **regulation** 19.1.
- 21.4 The **Head of Committees and Tribunals** shall notify the **parties** of the **Appeal Committee Chair's** decision and provide them with a copy of the **Appeal Committee Chair's** reasons.
- 21.5 Where the **Appeal Committee Chair** determines that the application for permission to appeal out of time should be refused, that determination shall conclude the proceedings.
- 21.6 Where the **Appeal Committee Chair** determines that the application for permission to appeal out of time should be allowed, the process for hearing the **appeal** shall proceed in accordance with **regulation** 20 and **regulation** 22 and following.

Pre-hearing review

- 22.1 Once an **Appeal Panel** has been appointed in accordance with **regulation** 20.1, the **Appeal Panel Chair** may, of their own volition, or on application by either **party**, direct the **Head of Committees and Tribunals** to arrange for a **pre-hearing review** to take place prior to the date fixed for the **appeal hearing**.

- 22.2 At a **pre-hearing review**, an **Appeal Panel Chair** may consider any applications for **directions** made by the **parties** and any written representations relating to such applications, and shall give such **directions** as they think necessary for the purpose of securing the just, expeditious or economic disposal of the **appeal proceedings**, which may include **directions** relating to, among other matters:
- a. any proposed amendment of the **notice of appeal** (including the grounds of appeal) or the **answer**;
 - b. the admission of any facts by either **party**;
 - c. the documents to be considered by the **Appeal Panel**;
 - d. the introduction of new evidence;
 - e. any application for oral evidence to be given at the **appeal hearing**;
 - f. changing the date or the length or the venue or platform of the **appeal hearing**.

Conduct of an appeal hearing – general provisions

- 23.1 The **appeal hearing** shall be a **private hearing** and there shall be no prior publicity of the **hearing**.
- 23.2 Where, prior to the start of an **appeal hearing**, a member of an **Appeal Panel**, appointed in accordance with **regulation 20.1**, is unable to attend the **appeal hearing**, the **Appeal Committee Chair** shall appoint another member of the **Appeal Committee** to the **Appeal Panel**. If no suitable member of the **Appeal Committee** is available on the date(s) fixed for the **appeal hearing**, the **Head of Committees and Tribunals** shall fix a new date for the **appeal hearing** and shall notify the **parties** of the new date.
- 23.3 Where, after the start of the **appeal hearing**, any member of the **Appeal Panel** is, for any reason, unable to continue to attend, the **Appeal Panel** will no longer be quorate and may not continue. In such circumstances, the **Head of Committees and Tribunals** shall request the **Appeal Committee Chair** to appoint a new **Appeal Panel** and shall fix a date and time for the **appeal hearing** to take place. No members of the original **Appeal Panel** shall be appointed as members of the new **Appeal Panel**.
- 23.4 If, at any time during an **appeal hearing**, the **Appeal Panel Chair** is for any reason of the opinion that it is impracticable or would be contrary to the interests of justice for the **hearing** to be completed by that panel, they shall so inform the **Appeal Committee Chair** (or, if the **Appeal Panel Chair** is the **Appeal Committee Chair**, an **Appeal Committee Vice-Chair**) who shall thereupon direct that the **appeal** be re-heard by a new **Appeal Panel** so appointed. No members of the original **Appeal Panel** shall be appointed as members of the new **Appeal Panel**.
- 23.5 The **Head of Committees and Tribunals** may appoint an independent and suitably qualified medical expert (other than the **ICAEW appointed expert**) to assist the **Appeal Panel** at the **hearing**.

- 23.6 An **appeal hearing** may proceed in the absence of the **member, affiliate or relevant person** where the **Appeal Panel** is satisfied that the **member, affiliate or relevant person** has been notified of the date, time, location or format of the **appeal hearing** in accordance with these **regulations** and that proceeding is desirable for securing the just, expeditious and economic disposal of the **appeal**.
- 23.7 An **Appeal Panel** may adjourn proceedings of their own volition or on the application of either **party**. A **party** may also make an application to the **Appeal Panel Chair** for a further adjournment before the **appeal hearing** is resumed which must be copied to the other **party** who shall be entitled to make written representations on the application before a decision is made by the **Appeal Panel Chair**.
- 23.8 A **party** may only amend the **notice of appeal** or any **answer** at an **appeal hearing** with the permission of the **Appeal Panel**.
- 23.9 An **Appeal Panel** may deliberate in private in the absence of the **parties** and their representatives at any time.

Conduct of an appeal hearing - order of proceedings

- 24.1 At the start of the **appeal hearing**, the **Appeal Panel** shall consider as a first matter any representations from the **ICAEW representative** on whether the **appeal** falls within one or more of the grounds of appeal set out in **regulation 19.2**. If such representations are made, the **Appeal Panel** shall consider any representations made in response by the **member, affiliate or relevant person**.
- 24.2 Where the **Appeal Panel** considers, after hearing any representations, that the **appeal** does not fall within one or more of the grounds of appeal set out in **regulation 19.2**, it shall dismiss the **appeal**.
- 24.3 Where the **Appeal Panel** considers that the **appeal** falls within one or more grounds of appeal set out in **regulation 19.2**, the **Appeal Panel** shall continue to hear the **appeal** in respect of that ground or grounds only.
- 24.4 An **Appeal Panel**:
- shall consider the documents and evidence before it including, if relevant, the record of evidence given before, and the documents produced to, the **Fitness to Practise Panel**;
 - shall consider any written representations of the **parties** and shall provide the **parties** with a reasonable opportunity of being heard (either in person or via their representative);
 - may, if it thinks fit, re-hear any witness who gave oral evidence before the **Fitness to Practise Panel**; and
 - may consider any new evidence in support of an **appeal** brought on the basis of **regulation 19.2(d)** or, in exceptional circumstances (as to which the **Appeal Panel** shall be the sole judge) receive new evidence.

- 24.5 An **appeal hearing** will be limited to a review of the decision of the **Fitness to Practise Panel** unless the **Appeal Panel** considers that in the circumstances of an individual **appeal** it would be in the interests of justice to hold a re-hearing.
- 24.6 The rules as to the admissibility of evidence in a court of law shall not apply. The **Appeal Panel** may determine the conduct of the **appeal hearing** in such manner as it considers appropriate for the clarification of the issues in the **appeal** and generally for the just conduct of the proceedings. The default process shall be:
- a. the **member, affiliate or relevant person**, or their **representative**, shall address the **Appeal Panel** first on the merits of their **appeal**.
 - b. the **ICAEW representative** shall then address the **Appeal Panel** in response.
 - c. where the **Appeal Panel** allows a witness to be called by either **party** to give oral evidence, the witness may, after being questioned by the **party** calling them, be questioned by the other **party**. They may then be re-examined by the **party** calling them but only in relation to the evidence given by them under cross-examination. The **Appeal Panel** may ask questions of any witness at any stage during their evidence. The **Appeal Panel** may, on the application of a **party**, agree that the identity of a witness should not be revealed to the public. Witnesses will not be required to swear an oath or affirm.
 - d. the **parties** may make closing addresses to the **Appeal Panel** with the **member, affiliate or relevant person**, or their **representative**, being heard last.
- 24.7 A shorthand or stenographic note of the **appeal hearing** may be taken, or a recording made, on behalf of the **Appeal Panel**.

Decision of the Appeal Panel

- 25.1 After hearing an **appeal**, the **Appeal Panel** may make an **order** or **orders**, as appropriate, in accordance with **Disciplinary Bye-law** 14.5.
- 25.2 The **Appeal Panel** shall either notify the **parties** of its decision and any **orders** at the end of the **appeal hearing** or shall, as soon as reasonably practicable after the **appeal hearing**, notify the **Head of Committees and Tribunals** of its decision and any **orders** and the **Head of Committees and Tribunals** shall, in turn, provide a copy of the **order(s)** to the **parties**.
- 25.3 The **Appeal Panel** shall provide its **record of decision** as soon as reasonably practicable to the **Head of Committees and Tribunals** who shall, in turn, provide a copy of the **record of decision** to both **parties**.

Costs orders in appeal proceedings

- 26.1 Where an **Appeal Panel** dismisses the **appeal**, the **Appeal Panel** shall consider making a **costs order** against the **member, affiliate or relevant person** in an amount it considers appropriate concerning the costs of the **appeal** having had regard to:
- a. any **costs schedule** which has been served by the **ICAEW representative** on the **member, affiliate or relevant person** and the **Head of Committees and Tribunals** prior to the **appeal hearing**; and
 - b. any statement of means (supported with a statement of truth) and evidence of income and assets provided by the **member, affiliate or relevant person**.
- 26.2 Where an **Appeal Panel** allows an **appeal** against an **order** made by a **Fitness to Practise Panel** in respect of a **fitness to practise application** made by the **PSD Chief Officer** in accordance with **regulation 7**, the **Appeal Panel** may only make a **costs order** against **ICAEW** if it considers that either no reasonable regulator would have made the application and/or that the **PSD Chief Officer** acted in bad faith.
- 26.3 Any **costs order** made by the **Appeal Panel** pursuant to **regulation 26.1** shall, unless a longer period for payment (whether by instalments or not) is allowed by **order** of the **Appeal Panel**, be paid (together with any unpaid **costs order** of the **Fitness to Practise Panel**) within the period of 28 days beginning with the date of the **order**.
- 26.4 Any **costs order** or instalment of costs payable to **ICAEW** in accordance with **regulation 26.1** must be received by **ICAEW** before the close of business on the last day of the period allowed by, or under, these **regulations** for payment (or, if that day is not a **business day**, before the close of business on the next **business day**).
- 26.5 Where:
- a. any **costs order** under these **regulations** is payable by instalments; and
 - b. any instalment is not received by **ICAEW** as required by **regulation 26.4**,
- the whole of the **costs order** (or so much of it as remains unpaid) shall become immediately due for payment.

Review of decisions and correction of errors

- 27.1 The **Appeal Panel Chair** may, of their own volition or upon application by either **party**, review any **order** made by the **Appeal Panel** or the **record of decision** and may, on such review, correct any accidental slip or omission in the **order** or the **record of decision** that does not accurately reflect the **findings**, reasoning and / or **orders** of the **Appeal Panel**.
- 27.2 An application made under **regulation 27.1** shall be made within 28 days from the date the **record of decision** of the **Appeal Panel** was served on the **parties**.

Timing of orders of the Appeal Panel taking effect

- 28.1 An **order** made by an **Appeal Panel** shall take effect on the date of the **order** unless the **Appeal Panel** directs that it shall take effect from some later date specified in the **order**.

Publicity

- 29.1 Any **order** of an **Appeal Panel** made under these **regulations** against a **member, affiliate** or **relevant person** shall be published unless the **Appeal Panel** concludes that there are exceptional circumstances which outweigh the public interest in publishing such **orders**. Such publicity shall state only:

- a. the name of the **member, affiliate** or **relevant person**; and
- b. the **orders** that have been made by the **Appeal Panel**,

and shall not disclose any information concerning the **physical or mental health** of the **member, affiliate** or **relevant person**.

- 29.2 Where the **Appeal Panel** discharges any **orders** of the **Fitness to Practise Panel**, the **order** shall only be published if the **member, affiliate** or **relevant person** so requests.

CONFIDENTIALITY OF MATERIAL AND INFORMATION

- 30.1 All written material and information provided by either the **PSD Chief Officer** / the **ICAEW representative** or the **member, affiliate** or **relevant person** in connection with the **fitness to practise proceedings** or **appeal proceedings**, shall at all times remain confidential and no such material or information shall be disclosed by **ICAEW** or the **member, affiliate** or **relevant person** (directly or indirectly) except:
- a. to legal advisers for the purposes of the **fitness to practise proceedings** or **appeal proceedings**;
 - b. to any other person to whom disclosure is necessary for the purposes of obtaining evidence, information or assistance in connection with the proceedings (including medical experts engaged to prepare reports);
 - c. to an insurer where disclosure is required under the terms of any policy or in connection with any application for insurance cover;
 - d. where the **member, affiliate** or **relevant person** is a principal in, or employed by, a firm, to a principal in that firm; or
 - e. where the disclosure to any person or body undertaking regulatory, disciplinary or law enforcement responsibilities is for the purpose of assisting

that person or body to undertake those responsibilities or as otherwise required or allowed by law.

This **regulation** does not apply to any **order** published by the ***Fitness to Practise Panel*** or ***Appeal Panel*** in accordance with **regulations** 17.2 or 29.1.

- 30.2 Where a ***Fitness to Practise Panel*** or an ***Appeal Panel*** makes an **order** in respect of a ***fitness to practise application***, details of the **order** shall remain published on the ***ICAEW Disciplinary Database*** for the period set out in ***ICAEW's Disciplinary Database policy***.