



23 June 2021

FAO: Vibeke Bjornfors
Legal Services Board

By email only: schedule4approvals@legalservicesboard.org.uk

Dear Vibeke

AMENDMENTS TO ICAEW'S DISCIPLINARY COMMITTEE REGULATIONS

I write further my email of 21 June and previous correspondence concerning changes which were made to ICAEW's Disciplinary Committee Regulations on **1 October 2019**. Please treat this as a formal application to the Legal Services Board for approval of the changes in accordance with Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act).

Although the changes took effect generally from this date it is recognised that the amendments will not become effective in relation to probate complaints concerning accredited probate firms until such time as they have been formally approved by the LSB for the purposes of the Act.

Please also find enclosed the following appendices to this application which have been supplied previously:

1. Disciplinary Committee Regulations dated 15 October 2019;
2. Significance, Impact and Risk (SIR) assessment for the changes;
3. Disciplinary Committee Regulations dated 15 October 2018;
4. Tracked change comparison of the 2018 and 2019 versions of the Disciplinary Committee Regulations
5. Schedule of changes to the Disciplinary Committee Regulations – 1 October 2019.

Details of the proposed changes and how they alter previous arrangements

In 2019, the Disciplinary Committee Regulations were re-drafted to provide a robust system of case management for matters pre-hearing which aims to:

- promote the early resolution of cases by enabling issues to be clarified at an early stage between the parties;
- reduce delay by enabling cases where complaints are admitted to proceed straight to a sanctions hearing;
- reduce cost and delay in the disciplinary process by inserting a case management hearing to deal with e.g. the exchange of evidence and skeleton arguments, disclosure and other procedural issues and the timetabling of the final hearing.

The changes to the Disciplinary Committee Regulations are intended to have a number of positive effects, in particular by encouraging respondents / respondent firms to engage earlier in the process. This aims to promote fewer, and shorter, contested hearings and adjournments and to reduce stress to respondents and cost to both parties. Early engagement also enables cases to be identified where evidence is available to answer the complaint(s) and allows the Investigation Committee to review its case at an earlier stage. It also allows cases to be identified at an early stage where there is a medical reason for the respondent's behaviour or failure to engage, which provides ICAEW with an opportunity to refer the respondent to the Fitness Committee for review, rather than to continue through the disciplinary process.

The key features of the new case management process are:

1. The papers and evidence upon which the Investigation Committee (on behalf of ICAEW) rely are now served at the start of the process, rather than a minimum of 42 days before the final hearing, as was the case under the 2018 Regulations, thus setting out clearly for the respondent the entirety of the case against them at an earlier stage. The respondent must then serve a 'response form' in which they confirm whether they accept or deny the formal complaint(s). The form is accompanied by a statement setting out the response (or defence) to the formal complaint(s) and the respondent's witness statements. Service of the response pack is required before a case management hearing takes place and before the final hearing is listed. The process is aimed at encouraging respondents to engage with the issues in the case at an early stage and to take advice, if necessary. We anticipate that this will lead to an increase in early admission of complaints, both before and at the case management hearing, and also to an early identification of the issues between the parties, with a resulting decrease in hearing time.
2. The introduction of a 'Sanctions Hearing', to which a case can be diverted either before or at a case management hearing. Currently, these cases are often not identified before the final hearing is listed, with the result that a full day is allocated to the case that is not utilised with the resulting costs consequences. Listing Sanctions Hearings will allow for several cases to be listed on the same day, saving time and costs. Cases can also be listed more quickly, meaning a reduction in stress to the respondent, and an earlier resolution of the complaint(s).
3. The introduction of a 'Case Management Hearing', which is obligatory in all cases which are not admitted. The hearing will be conducted by an experienced Tribunal Chair who will, if possible, manage the case throughout – allowing ICAEW to capitalise on the case management experience of our legally qualified chairs. The Case Management Tribunal Chair has a wide discretion to make directions for the progression of the case, to identify the issues between the parties, require the provision of further evidence and skeleton arguments, to deal with issues of disclosure and publicity of the hearing and all other administrative issues. It is envisaged that the final hearing will be listed at the Case Management Hearing. It is anticipated that these hearings will lead to early resolution or narrowing of the issues between the parties, lead to a reduction in adjournments and will give the Chairs and tribunals the tools to deal robustly with parties who fail to comply with directions and who do not serve evidence at the appropriate time. These hearings will usually take place over the telephone to minimise time, inconvenience and costs to all parties.

Regulation 43 confirms that tribunals of the Disciplinary Committee must apply the civil standard of proof (i.e. the balance of probabilities) in hearing cases. This regulation was included for reasons of transparency and completeness only; it did not alter the standard of proof that was applied previously in practice by disciplinary tribunals.

Internal governance approvals

The changes to the Regulations were approved by ICAEW's Disciplinary Committee in 2019 in accordance with paragraph 1.4 of the Schedule to the Disciplinary Bye-laws. They were also approved by ICAEW's Probate Committee which, at that time, was the relevant ICAEW regulatory body for legal services matters. The ICAEW Regulatory Board was also consulted during the process of making these changes.

Impact on the regulatory objectives

In making this application we have had regard to the LSB's Significance, Impact and Risk (SIR) framework; please see the attached commentary document. We have also considered the impact of the changes on the regulatory objectives set down in section 1 of the Legal Services Act 2007.

Significance

While the changes to the Disciplinary Committee Regulations are extensive, we do not consider them to be, in nature, a significant alteration to regulatory arrangements insofar as the change are procedural only. We consider that the introduction of a robust case management process in managing cases referred for hearing before a Disciplinary Tribunal will have a positive impact on some of the regulatory objectives, as promoting the early identification of issues in dispute and the earlier resolution of cases should reduce delay and cost to both parties in the disciplinary process. It also enables sanctions to be applied more swiftly in cases where complaints are admitted which will serve to:

- protect and promote the public interest (s 1(1)(a));
- protect and promote the interests of consumers (s (1)(1)(d));
- promote and maintain adherence to the professional principles (s 1(1)(h)) in particular, that authorised persons should act with independence and integrity and should maintain proper standards of work.

Impact

In terms of impact, the changes will only affect the small minority of cases (including probate cases) that have not been closed following investigation or else dealt with by consent by the Investigation Committee (this represents only ca. 60 – 70 complaints of the total 1,400 – 1,500 complaints that are dealt with by ICAEW's Professional Conduct Department each year). The case management process introduced by these changes is modelled on similar procedure in the civil courts.

Risk

The amendments do not alter the way in which final hearings will be conducted, or the powers of the Disciplinary Committee to make orders and apply sanctions. Rather the changes are procedural in nature; they are aimed simply at ensuring cases are managed efficiently pre-hearing to avoid unnecessary adjournments, cost and delay.

Compliance with Better Regulation Principles

The procedural changes that are introduced by these amendments are intended to promote the Better Regulation Principle of proportionality. A more robust case management process enables matters to be dealt with more efficiently with fewer adjournments and a clear timetable for the exchange of information and evidence. The introduction of sanctions hearings also allows for the earlier resolution of cases where complaints are admitted by the respondent / respondent firm. This

serves to reduce stress for the respondent and cost to both parties; in the case of ICAEW reduced hearing costs enables finite resources to be targeted on other areas of the disciplinary framework.

ICAEW has been transparent in introducing changes to the Disciplinary Committee Regulations which have been publicised on the ICAEW and communicated to ICAEW members / firms through usual communication channels.

Implementation and evaluation of the impact of the changes

The changes are intended to take effect in relation to accredited probate firms immediately following approval of the LSB. As explained above, the Regulations have been in force generally in respect of disciplinary cases concerning ICAEW members and other regulated individuals and firms since December 2019. There is a notice on the ICAEW website specifying that the changes do not affect probate cases concerning accredited probate firms until such time as they are approved by the LSB.

We intend to provide a report to the ICAEW Regulatory Board on the impact of the changes in October 2021 (i.e. 24 months following the introduction generally of the Regulations) to assist the IRB in assessing the extent to which the introduction of the case management process and sanctions hearings have reduced case times and hearing adjournments.

Consultation and regulatory conflict

The ICAEW Regulatory Board was consulted during the course of the development of the amendments to the Disciplinary Committee Regulations in 2019. The (then) Professional Conduct Department Committee Secretary worked closely with the Disciplinary Committee, including 3 Queens Counsel Disciplinary Tribunal Chairs, in drafting the changes to introduce a more robust case management process.

We have not identified any potential for conflict between approved regulators in introducing these changes, which are intended to enable cases to be handled more efficiently and swiftly during the period between matters being referred to the Disciplinary Committee and the final hearing of complaints by a Disciplinary Tribunal.

Next steps

I trust that the above explanation will assist the LSB in reviewing and approving the Disciplinary Committee Regulations. If you have any further queries, please do not hesitate to contact me.

Yours sincerely



Claire Phillips
Legal & Regulatory Counsel, PSD

T +44 (0) 20 7920 8873
M +44 (0) 7557 742 428
E Claire.Phillips@icaew.com
E Claire.Phillips@icaew.com