



# *Disciplinary Committee Regulations*

EFFECTIVE FROM 15 OCTOBER 2018

- 1 These regulations were made by the Disciplinary Committee under paragraph 1.6 of the Schedule to the **Disciplinary Bye-laws** and came into force on 15 October 2018.
- 2 Except where express reference is made in these regulations, words and phrases used in these regulations have the same meaning as in the **Disciplinary Bye-laws**;
  - a. **ICAEW** means the Institute of Chartered Accountants in England and Wales;
  - b. **Disciplinary Bye-laws** means the Disciplinary Bye-laws of **ICAEW** for the time being in force;
  - c. The **Investigation Committee representative** means the person appointed by the Investigation Committee to represent that committee before the disciplinary **tribunal** and to present the formal complaint(s);
  - d. **Tribunal** means any **tribunal** of the Disciplinary Committee appointed to hear the formal complaint(s) or a pre-hearing review;
  - e. **Tribunal Chair** means a member of the Disciplinary Committee appointed to be a Chair of a **tribunal** under **Disciplinary Bye-law** 19.1(b);
  - f. **Disciplinary record** means any previous (adverse) disciplinary findings or orders whether made by the Investigation Committee, the Disciplinary Committee, the Appeal Committee, or by a Joint Disciplinary tribunal or Appeal Committee of the Joint Disciplinary Scheme or by a Disciplinary or Appeal tribunal of the Actuarial Discipline Board or any regulatory penalty as defined in the Audit Regulations, the DPB (Investment Business) Handbook, Investment Business Regulations, the Insolvency Licensing Regulations, or the Probate Regulations, but shall not include a finding of prima facie case coupled with an order of the Investigation Committee under **Disciplinary Bye-law** 15.2(d) that no further action be taken on the complaint(s).
  - g. **Hearing** means the substantive **hearing** when the **tribunal** appointed in accordance with **Disciplinary-Bye-law** 19.1 meets to consider the merits of one or more formal complaints; it does not include a pre-hearing review;
  - h. **Notice** means in writing;
  - i. **Parties** means the respondent / respondent firm or their representative and the Investigation Committee or its representative;
  - j. **PCD Committee Secretary** means the Professional Conduct Department (PCD) Committee Secretary appointed to that role by the head of staff.
  - k. **Member firm** has the meaning set out in **Disciplinary Bye-law** 1.2
  - l. **Contracted firm** has the meaning set out in **Disciplinary Bye-law** 1.2.
  - m. **Regulated firm** has the meaning set out in **Disciplinary Bye-law** 1.2.

- n. **Written record of decision** means the document approved by the **tribunal** which records in writing a summary of the reasons for the finding and the order of the **tribunal**, including any term or condition on which the order was made.
- 3 Subject to regulation 4, the respondent / respondent firm shall, unless they agree to waive or vary any requirement for **notice**, as soon as practicable after the referral of one or more formal complaints to the Disciplinary Committee be given not less than 42 days' written **notice** of the date, time and place of the **hearing** and of the terms of the formal complaint(s) preferred against them
- 4 Where the formal complaint comprises an allegation of breach of **Disciplinary Bye-law** 13.2, the respondent / respondent firm shall, unless they agree to waive or vary any requirement for **notice**, be given not less than 21 days written **notice** of the date, time and place of the **hearing** and of the terms of the formal complaint preferred against them.
- 5 **Notice** of the **hearing** as required by regulations 3 and 4 shall, unless previously provided, be accompanied by a copy of the formal complaint(s) together with a summary of the formal complaint(s) and the Investigation Committee submission and copies of any documents and/or any other material which the Investigation Committee intends to adduce in evidence.
- 6 Subject to regulation 7, the **hearing** shall be in public.
- 7 The **tribunal** (including a **tribunal** at a pre-hearing review) or, where regulation 8 below applies, the **tribunal Chair**, may decide that the press and public shall be excluded from the whole or any part of the **hearing** where it appears desirable to do so in the interests of justice or for any other special reason provided always:
- the particular circumstances of the case outweigh the public interest in holding a public **hearing**; and
  - the **Chair** or **tribunal** making the decision is satisfied that the **parties** have had an opportunity to make representations.
- 8 Except in a case proceeding under regulation 4, if a party wishes to apply before the start of the **hearing** for the whole or part of any **hearing** to be held in private, that application must be made in writing to the **tribunal Chair** and must be received by the **PCD Committee Secretary** within 14 days of the date when **notice** of the **hearing** is given in accordance with regulation 3. A copy of any written application made under this regulation will be sent to the other party or **parties** to the proceedings, who will be invited to make written representations to be received by the **PCD Committee Secretary** within 7 days of the date on which the copy of the application was sent. A written application may thereafter be determined by a **tribunal Chair** sitting alone subject always to the requirements of regulation 7. The **tribunal Chair** shall give in writing to the **parties** the principal reason or reasons for allowing or dismissing any application made under this regulation. Notwithstanding any decision of the **tribunal Chair** made under this regulation or regulation 9 below, a **tribunal** (including a **tribunal** at a pre-hearing review) may at any stage of a **hearing** consider an oral application relating to the proper exercise of its discretion under regulation 7.
- 9 On written application to the **tribunal Chair**, the 14 day limit in regulation 8 above may be extended by a maximum of a further 14 days to permit an application to be made for a **hearing** or part of a **hearing** to be held in private. An extension shall not be given unless the **tribunal Chair** is satisfied that the respondent / respondent firm could not reasonably be expected to have made an application within the period of 14 days

originally allowed. If an extension is refused, the **tribunal Chair** shall give in writing to the party his or her principal reason or reasons for the refusal. If an extension is granted, the application shall proceed as if it had been made in accordance with regulation 8.

- 10 The name of a respondent / respondent firm, the date, time and place of the **hearing** and the terms of the bye-law and/or regulation under which the formal complaint(s) are brought will be published 7 days in advance of the **hearing**, but if an application has been made under regulation 8 or regulation 9 by either of the **parties**, the name of a respondent / respondent firm and the terms of the formal complaint(s) will not be made public unless or until the **tribunal Chair** has dismissed any written application.
- 11 Where an oral application is made to a **tribunal** to hold the **hearing** or part of the **hearing** in private, that application will be heard in private. Where the application is successful, or where the **tribunal** otherwise decides of its own motion to exercise its power under regulation 7, the principal reason or reasons for holding the **hearing** or part of the **hearing** in private will be given by the **tribunal** in public on the day that the decision is made provided always that such reasons as are given shall not in the opinion of the **tribunal** unreasonably undermine the purpose of proceeding in private. In the event of an adverse finding being made following the **hearing** of the complaint(s), the **tribunal's** reasons for having proceeded in private will be published, provided always that such reasons as are given shall not in the opinion of the **tribunal** unreasonably undermine the purpose of having proceeded in private. If the formal complaint(s) are not proved, such reasons will only be published if the respondent / respondent firm so requests.
- 12 The **PCD Committee Secretary** shall decide, in his or her absolute discretion, whether an application for a postponement of a **hearing** which has not commenced should be granted.
- 13 Not less than 28 days before the date fixed for the **hearing**, the **PCD Committee Secretary** may require the respondent / respondent firm to state in writing within 14 days of service of **notice** of such a requirement:
  - a. whether they accept the formal complaint(s) and, if not, on what grounds they deny the complaint(s);
  - b. whether they accept the facts as stated in the summary and, if not, the grounds for challenge;
  - c. if they accept the formal complaint(s), whether they have any explanation in mitigation; and
  - d. whether or not they intend to attend and/or be represented at the **hearing**.
- 14 At least 21 days before the day fixed for the **hearing** the respondent / respondent firm shall serve on the **PCD Committee Secretary** eight copies of paginated and indexed bundles of all documents on which they intend to rely unless the documents have been included amongst the documents served in accordance with regulation 5 above.
- 15 Regulations 13 and 14 above and 17 below shall not apply to any formal complaint which has been served in accordance with regulation 4 above.
- 16 After the Investigation Committee has resolved to prefer one or more formal complaint(s), but before any **hearing**, the **PCD Committee Secretary** may require a

respondent / respondent firm to provide such further information and documents relating to the formal complaint(s) as the **PCD Committee Secretary** thinks necessary for the just, expeditious and economic disposal of the case and may require the respondent / respondent firm to supply such further copies of any document he/she considers necessary.

- 17 Not less than 21 days before the **hearing**, each party shall serve on the other a written statement of any oral evidence which will be given by or on behalf of that party. Any such statement shall be signed, dated and include the name and address of the maker. Within the same period, each party shall serve on the other a copy of any document which will be relied upon at the **hearing** and provide sufficient copies for use at the **hearing** (eight copies). Nothing in this regulation shall prevent either party waiving wholly or in part the time period specified in this regulation or the **tribunal** by order directing such alternative time period as it may specify.
- 18 Prior to the commencement of the **hearing** of the formal complaint(s), any preliminary issues on procedure or any application for directions which are necessary or desirable for securing the just, expeditious and economical disposal of the formal complaint(s) may be determined by a pre-hearing review **tribunal** (which may or may not be the **tribunal** appointed in accordance with **Disciplinary Bye-law** 19.1). Any matters falling within this regulation, except matters which fall to be determined under regulation 7 (**hearing** or part of the **hearing** proceeding in private) may be decided by agreement between the **parties** without a **hearing**.
- 19 The Chair or Vice Chair of the Disciplinary Committee, or the **Chair** of any **tribunal** or any **tribunal**, may direct that there be a pre-hearing review on the application of either party or act on their or its own volition.
- 20 Any **notice** or document may be served by the respondent / respondent firm by sending the **notice** or document addressed to the PCD Committee Secretary, Professional Conduct Department, Metropolitan House, 321 Avebury Boulevard, Milton Keynes, MK9 2FZ by first class post. Any **notice** or document required to be served on the respondent / respondent firm may be served personally or by first class post to the respondent / respondent firm at their last known place of business appearing in the register or their last known home address. Where documents are served by post, service is deemed to have been effected 48 hours after posting.
- 21 Subject to regulations 8, 14 and 17 above, the respondent / respondent firm is entitled to make written representations to or to appear in person before a **tribunal** or be represented by a barrister or solicitor or any other member of **ICAEW** or, with the agreement of a **tribunal**, any person.
- 22 A **tribunal** may proceed in the respondent / respondent firm's absence where it is satisfied that regulations 3 or 4, and 5 have been observed. A respondent / respondent firm is deemed present when they appear by their representative.
- 23 The Investigation Committee may be represented by a member of **ICAEW** staff or may instruct a barrister or solicitor.
- 24 At the commencement of the **hearing**, the formal complaint(s) shall be read out or, with the respondent / respondent firm's consent, the formal complaint(s) can be taken as read, and the respondent / respondent firm shall be invited to state whether they accept or deny the formal complaint(s).

- 25 The **Investigation Committee representative** shall outline the case against the respondent / respondent firm and, subject to regulations 14 and 17, produce any document or call any witness.
- 26 The respondent / respondent firm shall be entitled to address a **tribunal** and, subject to regulations 14 and 17, to give evidence and to produce any document or call any witness.
- 27 A witness for one party (including the respondent / respondent firm) may be questioned by or on behalf of the other party. A witness so questioned may be re-examined by or on behalf of the party calling him/her. Members of a **tribunal** may ask questions of a witness. The **Investigation Committee representative** and the respondent / respondent firm (or their representative) may make a closing address. The respondent / respondent firm (or their representative) will have the final opportunity to address the **tribunal**. The **tribunal** may, on the application of a party, agree that the identity of a witness should not be revealed to the public.
- 28 The **hearing** shall be informal and the strict rules of evidence shall not apply. Subject to these regulations, the **tribunal** may adopt any method of procedure which it may consider fair and which gives each party an opportunity to have their case presented. The **tribunal** may at its discretion consider evidence which has not been provided in accordance with regulations 14 and 17 above. Subject to regulation 7, the **hearing** will be in public. Evidence will not be taken on oath.
- 29 The **tribunal** may deliberate in camera, in the absence of the **parties** and of their representatives, at any time.
- 30 Without prejudice to any other powers it may have, a **tribunal** may exclude from the **hearing** or part of it any person or persons whose conduct has disrupted or, in the opinion of the **tribunal**, is likely to disrupt the **hearing**.
- 31 Formal complaints against a respondent / respondent firm arising from the same facts or matters will be heard at the same hearing unless the **tribunal** or **tribunal Chair**, in its or their discretion, determines otherwise.
- 31A A **tribunal** may, in its discretion, hear two or more formal complaints against a respondent / respondent firm arising from different facts or matters at the same **hearing**.
- 31B If a formal complaint is comprised of multiple parts and the **tribunal** finds the formal complaint proved, the **tribunal** shall make a finding on each part of the formal complaint and specify whether it finds that part proved. However, the **tribunal** shall only make an order in respect of the part which, in the opinion of the **tribunal**, is the most serious.
- 32 A **tribunal** may in its discretion hear formal complaints against two or more respondents / respondent firms in the same **hearing**.
- 33 A **tribunal** may adjourn its proceedings from time to time as it thinks fit of its own volition or upon application by either party.
- 34 An application for further adjournment made before a **hearing** is resumed may be determined by the **Chair** of the **tribunal** or, in his/her absence, the Chair or Vice Chair of the Disciplinary Committee.

- 35 Where one or more formal complaints (or parts of a formal complaint) are found proved, a **tribunal** may adjourn the proceedings before making an order.
- 36 If the **tribunal** decides to exercise its powers under **Disciplinary Bye-law 21**, (temporary suspension of activities of an authorised firm) it shall serve a **notice** on the firm in a form approved by the Disciplinary Committee.
- 37 The **notice** referred to in regulation 36 will be prepared for approval by the **Chair** of the **tribunal** and a copy of the **notice** will be sent to the Chair of the Investment Business Committee.
- 38 On a finding one or more formal complaints proved (either wholly or in part) the **Investigation Committee representative** shall inform the **tribunal** of any **disciplinary record** of the respondent / respondent firm.
- 39 The respondent / respondent firm or their representative shall be allowed to address the **tribunal** before any order is made.
- 40 Subject to regulations 41 and 41A, a **tribunal** on finding all formal complaint(s) unproved may, in its absolute discretion and on the respondent / respondent firm's application, order that **ICAEW** pay a specified sum in respect of the respondent / respondent firm's costs up to the value of £25,000 in total. Above that limit, any order in respect of costs payable by **ICAEW** may only be made in accordance with the criteria set out in Disciplinary Bye-laws 33.1A and 33.1B.
- 41 In determining for the purposes of regulation 40 an application for costs up to the value of £25,000 in total, the **tribunal** shall have regard to all facts and matters it considers relevant including, but not limited to:
- a) the principle, set down in case law, that a costs award should only be made against a regulator in exceptional circumstances to safeguard against the risk that the regulator may be fettered in exercising its disciplinary function due to the risk of an adverse costs order;
  - b) the conduct of the parties during the course of the investigation and proceedings relating to the formal complaint(s);
  - c) the degree to which the Investigation Committee failed to prove the formal complaint(s) against the respondent / respondent firm;
  - d) whether the investigation and disciplinary proceedings arose from a complaint or complaints initiated by the head of staff, or whether they were required to be conducted following a referral by a complainant under the Disciplinary Bye-laws; and
  - e) the fact that the Investigation Committee had determined that there was a prima facie case to answer following consideration of written evidence.
- 41A The **tribunal** shall give the **Investigation Committee representative** an opportunity to make representations before determining the respondent / respondent firm's application for costs. Any costs payable by **ICAEW** shall be limited to costs reasonably incurred by the respondent / respondent firm since the date of the referral of the formal complaint(s) by the Investigation Committee to the Disciplinary Committee.

- 42 If the **tribunal** cannot deal fairly with the issue of costs against **ICAEW** at the **hearing**, it will make such decisions of principle and detail as it can and the final order will be made by the **Chair** of the **tribunal** on considering any other material considered relevant.
- 43 If for any reason the **tribunal** considers that it would be inappropriate for it to make a final order, the order will be made by the Chair, or failing him/her, the Vice Chair of the Disciplinary Committee.
- 44 Unless a **tribunal** orders an extended period, any costs to be paid by **ICAEW** will be paid within 28 days of the **ICAEW** authorising payment of the sum ordered.
- 45 A shorthand or stenograph note or an audio recording of the proceedings may be taken on behalf of the **tribunal**.
- 46 No objection shall be upheld to any technical fault in the formal complaint(s) or in the procedure adopted by a **tribunal**, provided that the proceedings are fair and the relevant bye-laws and regulations have been complied with.
- 47 Where one or more formal complaints (or parts of those formal complaints) have been found proved, the **PCD Committee Secretary** shall send to the respondent / respondent firm, as soon as reasonably practicable, **notice** of the decision of the **tribunal** and any order made.
- 48 A **written record of the decision** of the **tribunal** shall be prepared for approval by the **tribunal**.
- 49 The **PCD Committee Secretary** shall send to the respondent / respondent firm a copy of **the written record of decision** where one or more formal complaints (or parts of the formal complaint(s)) has been found proved as soon as reasonably practicable after it has been approved by the **tribunal**.
- 50 All written material and information provided by either **ICAEW** or the respondent / respondent firm in connection with any disciplinary proceedings, shall at all times remain confidential and no such material or information shall be disclosed (directly or indirectly) except:
- a. any advance **notice** of the name of the respondent / respondent firm and the terms of the formal complaint(s);
  - b. to legal advisers for the purposes of the disciplinary proceedings;
  - c. where the respondent / respondent firm is a principal in, or employed by, a member firm, regulated firm or contracted firm, to a principal in that firm;
  - d. to any other person to whom disclosure is necessary for the purposes of obtaining evidence, information or assistance in connection with the disciplinary proceedings;
  - e. to an insurer where disclosure is required under the terms of any policy or in connection with any application for insurance cover;
  - f. where information is disclosed indirectly to members of the public in the course of a public **hearing**; and



- g. 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 *the written record of decision* published in accordance with **Disciplinary Bye-law** 35.1 and 35.5.

- 51 Where a **tribunal** makes an order in respect of one or more formal complaint(s), details of the order shall remain published on the ICAEW website for at least 5 years from:
- a. the date of the **tribunal's** order; or
  - b. if the order is subject to an appeal, the date on which the appeal proceedings are concluded (unless the formal complaint(s) are found to be not proved on appeal).