

# **DISCIPLINARY COMMITTEE REGULATIONS**

EFFECTIVE FROM 15 OCTOBER 20182019

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~~ 1 October 2019 for any formal complaint or formal complaints which were referred to the Disciplinary Committee on or after that date.

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~~ **Case management hearing** means a hearing that takes place for the Institute purpose set out in regulation 13.

~~a.b.~~ **Case management chair** means any member of ~~Chartered Accountants in England and the Disciplinary Committee approved by the Professional Standards Appointments Committee to chair tribunals and Wales~~; appointed to chair a case management hearing.

~~b.c.~~ **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.d.~~ **Disciplinary record** 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 or Practice Assurance penalty as defined in the Audit Regulations, the DPB (Investment Business) Handbook, Investment Business Regulations, the Insolvency Licensing Regulations, the Probate Regulations or the Probate Practice Assurance 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.e.~~ **Hearing** Final hearing means the substantive hearing when the **tribunal** appointed in accordance with **Disciplinary Bye-law 19.1** meets to consider the merits of one a formal complaint or ~~more~~ formal complaints; it does not include a pre-case management hearing ~~review~~;

f. ~~Notice~~ The Investigation Committee's report to the Disciplinary Committee means the summary referred to in **Disciplinary Bye-law 15.6**,

as prepared by the Investigation Committee representative, which shall include a report prepared for the purposes of a referral of a formal complaint or formal complaints to the Disciplinary Committee in accordance with **Disciplinary Bye-law 14B**.

- g. **Investigation Committee representative** means the person appointed by the Investigation Committee to represent that committee before the **tribunal** and/or **case management hearing** and to present the formal complaint.
- h. **Notice** means in writing;
- i. **Parties** means the **respondent/**~~respondent firm~~ **or their representative** and the Investigation Committee ~~or its representative~~;
- j. **Respondent's statement** means the statement filed by the **respondent/respondent firm** which contains the information set out in Appendix A.
- k. **Response form** means the form sent to the **respondent/respondent firm** by the **PCD Committee Secretary** means the Professional Conduct Department (PCD) under regulation 3 and which requires the **respondent/respondent firm** to confirm their position in relation to the formal complaint(s).
- l. **Sanctions hearing** means a hearing held under regulations 64-66 for the purpose of determining what sanction (if any) is to be applied in a case where the formal complaint or formal complaints have been admitted at or in advance of the **case management hearing**.
- m. **Standard directions** mean the standard directions for case management in force at the time of the referral.
- ~~j.n.~~ **Tribunal** means any **tribunal** of the Disciplinary Committee Secretary appointed to ~~that role by~~ **hear** the ~~head~~ **final hearing** of ~~staff~~ **the formal complaint or complaints.**
- ~~k.~~ **Member firm** has **Tribunal chair** means a member of the meaning set out in **Disciplinary Bye-law 1.2**
- ~~l.o.~~ **Contracted firm** has the meaning set out in **Committee appointed to be a chair of a tribunal** under **Disciplinary Bye-law 19.1.2.(b)**.
- ~~m.~~ **Regulated firm** has the meaning set out in **Disciplinary Bye-law 1.2**.
- ~~n.p.~~ **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 ~~and the reasoning of the tribunal in respect of any costs award made~~.

### **Pre-hearing procedure**

- 3 Where the Investigation Committee refers a formal complaint or formal complaints to the Disciplinary Committee the **PCD Committee Secretary** shall serve on the **respondent/respondent firm** the following documents:-
- a. The **Investigation Committee's report to the Disciplinary Committee**.
  - b. Any application made by the Investigation Committee under regulation 35 for a private hearing.
  - c. **Notice** of the date, time and arrangements for the **case management hearing**, which shall be not less than 35 days from the date of service of these documents.
  - d. Blank **response form**.
  - e. Copy of the **standard directions**.

- 3-4 Subject Within 21 days of service of the documents referred to in regulation 4-3 the respondent ~~/~~ respondent firm shall, file with the PCD Committee Secretary:-
- a. The completed response form.
  - b. A respondent's statement (unless they agree to waive the formal complaint or vary any requirement for notice, as soon as practicable after the referral of one or more formal complaints are admitted in their entirety on the response form).
  - c. Any application made by the respondent/respondent firm under regulation 35 for a private hearing or a response to an application made by the Investigation Committee for a private hearing.
  - d. Any witness statements upon which the respondent/respondent firm intends to the Disciplinary Committee be given not less than 42 days' written notice of the date, time and place.
  - e. Availability of the hearing respondent/respondent firm, all witnesses and legal representatives for the following six months.
  - f. Copy of the standard directions with any proposed details, amendments and of the terms of the formal complaint(s) preferred against them deletions or any alternative directions proposed by the respondent/respondent firm.
- 5 Within 2 business days of receipt of the documents in regulation 4 the Committee Secretary shall serve them on the Investigation Committee Representative.
- 6 If an application is made by the respondent/respondent firm under regulation 4(c) above the Investigation Committee representative shall file a written response to the application with the PCD Committee Secretary at least 7 days before the case management hearing, and the PCD Committee Secretary shall serve it on the respondent/respondent firm within 2 business days of receipt.
- 7 At least 7 days before the case management hearing the Investigation Committee representative shall file with the PCD Committee Secretary a written response to the directions filed by the respondent/respondent firm under regulation 4f. The response should either;
- a. agree to the directions proposed by the respondent/respondent firm; or
  - b. propose amendments and/or additions to the directions proposed by the respondent/respondent firm; or
  - c. propose entirely different directions to those proposed by the respondent/respondent firm.

The **PCD Committee Secretary** shall send the written response to the **respondent/respondent firm** within 2 business days of receipt.

8 Where the **respondent/respondent firm** has not served proposed directions the **Investigation Committee representative** shall, at least 7 days before the **case management hearing** file with the **PCD Committee Secretary** a copy of the **standard directions** with any proposed details, amendments and deletions sought, or any alternative directions proposed.

4-9 Where the formal complaint comprises an allegation of breach of **Disciplinary Bye-law 13.2**, if the **respondent/respondent firm** shall, unless they agree to waive confirms in their **response form** filed under regulation 4a that the formal complaint or vary any requirement formal complaints are admitted in their entirety, makes no application under regulation 34 for **notice**, a private hearing, and requests that the case be given not less than 21 days written **notice** of listed for a **sanctions hearing**, then the admission(s) will be entered in the record and the case will be withdrawn from the **case management hearing** list and listed for a **sanctions hearing** at the earliest available date. The name of a **respondent/respondent firm**, the date, time and place of the **sanctions hearing** and of the terms of the **Principal Bye-law, Bye-law and/or regulation** under which the formal complaint preferred against them or formal complaints is brought will be published within 7 days of the date of the **sanctions hearing** being notified to the **parties**.

10 The **case management chair** appointed to hear the **case management hearing** shall decide, in their absolute discretion whether an application for a postponement of that **case management hearing** which has not commenced should be granted.

11 The **case management chair** who heard the **case management hearing**, or if they are unavailable within a reasonable time any chair or vice-chair of the **Disciplinary Committee** may postpone a **sanctions hearing** or **final hearing** which has not yet commenced from time to time as they think fit of their own volition or upon application by either **party**.

5-12 **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. After the **Investigation Committee** has resolved to refer a formal complaint or formal complaints, but before the **final hearing** the **case management chair** either at or after the **case management hearing** may direct a **respondent/respondent firm** or the **Investigation Committee representative** to provide such further information and documents relating to the formal complaint as the **case management chair** thinks necessary for the just, expeditious and economic disposal of the case and may require the **respondent/respondent firm** or the **Investigation Committee representative** to supply such further copies of any document they consider necessary. If the **case management chair** who heard the **case management hearing** is unavailable within a reasonable time any

chair or vice-chair of the Disciplinary Committee may make such a direction of their own volition or upon application of either party.

### Case management hearings

- 13 The purpose of the **case management hearing** is to decide any preliminary issues of procedure or any applications for directions which are necessary or desirable for securing the just, expeditious and economical disposal of a formal complaint or formal complaints and to set directions for the future management of the case and to timetable the **final hearing**.
- 14 A **case management chair** shall be appointed by the chair of the Disciplinary Committee to conduct the **case management hearing**. For the avoidance of doubt the **case management hearing** shall be conducted by the **case management chair** sitting alone.
- 15 The **case management hearing** shall be in private, and will take place as a telephone hearing, unless the **case management chair**, in their absolute discretion, directs otherwise.
- 16 If the **parties** have agreed proposed directions they do not need to attend the **case management hearing**, unless required to do so by the **case management chair**, but they should note that the **final hearing** will be listed at the **case management hearing** in accordance with the availability filed with the **PCD Committee Secretary**. **Parties** not attending the **case management hearing** should therefore ensure that their up to date availability is filed with the **PCD Committee Secretary** in advance of the **case management hearing**. If either **party** fails to file availability they will be assumed to be available for the hearing date.
- 17 If the **parties** cannot agree directions, either standard or otherwise, then they must attend the **case management hearing** (either in person, by telephone or video-link) and the **case management chair** will make directions after hearing representations from both **parties**. If either **party** fails to attend the **case management hearing** then it will proceed in their absence, providing always that the **case management chair** is satisfied that service has been effected in accordance with these regulations and the **Disciplinary Bye-laws** and that proceeding is in the interests of justice.
- 18 If, either before or during the **case management hearing**, the **respondent/respondent firm** indicates that they admit the formal complaint or formal complaints against them in their entirety that admission shall be recorded and the case will be listed by the **case management chair** for a **sanctions hearing** at the earliest available date. The date of the **sanctions hearing** will be publicised on the ICAEW website within 7 days of the **case management hearing** unless either party has made a successful application for a private hearing.
- 19 If the **respondent/respondent firm** fails to file any or all the documents specified in regulation 4 then they shall not be permitted to rely on any document not so filed unless given permission to do so by the **case**

*management chair* at the *case management hearing* or exceptionally by the *tribunal* at the final hearing.

20 Where an application has been made under regulation 3(b) or 4(c) above for a private hearing this application shall be determined by the *case management chair*, in accordance with regulations 33-38 below.

21 The *case management chair* will schedule the date of the *final hearing*, which will be at least 30 days from the date of the *case management hearing*, unless a closer date is agreed by both *parties* and the *PCD Committee Secretary*. The date of the *final hearing* will be publicised on the ICAEW website within 7 days of the *case management hearing* unless either party has made a successful application for a private hearing under regulation 20.

22 The *case management chair* will, in their absolute discretion, direct which witnesses should attend the final hearing. It is not expected that witnesses whose statements are agreed will attend to give evidence at the final hearing, but their witness statements will be entered into evidence and their statements may be read to the *tribunal* as agreed statements at the *final hearing*.

23 The *case management chair* may make any further directions they deem necessary for the just, expeditious and economic disposal of the formal complaint or formal complaints at the *final hearing*, including but not limited to:-

- a. directing the filing and timetabling by both *parties* of summary ('skeleton') arguments and limiting their length;
- b. directing the amount of days to be allocated to the *final hearing* and the timing of opening and closing submissions, legal arguments, witness and expert evidence;
- c. timetabling the filing of further witness statements;
- d. timetabling the filing of expert reports;
- e. directing and timetabling an experts' meeting and/or and the production of a joint expert report;
- f. directing and timetabling the filing of further and/or better details of the complaint and/or defence by either *party*;
- g. directing and timetabling the filing of further disclosure by either *party*;
- h. directing the filing of a basis of plea;
- i. where a basis of plea has been filed determining whether a hearing is needed to establish relevant facts;
- j. determining that the *respondent/respondent firm's* submissions constitute an equivocal plea and timetabling a *final hearing*;

- k. exceptionally, timetabling a further **case management hearing**;
- l. exceptionally, deciding an application to admit a witness statement which is not accepted by the other party and where the witness is unable or unavailable to attend the **final hearing**, provided that the admission is in the interests of justice;
- m. directing filing of bundles to be filed by the **parties** and the form, content and number thereof;
- n. directing the date or dates of the **final hearing**; and
- o. appointing the panel for the **final hearing**.

6-24 Subject to regulation 7, the **hearing** shall be in public. The documents served by the Investigation Committee under regulation 3 and by the **respondent/respondent firm** under regulation 4 shall be the only documents upon which either **party** is permitted to rely, unless the **case management chair** at a **case management hearing** or exceptionally the **tribunal** at the **final hearing** allow for the admission of further documents. In considering whether further documents not admitted at the first **case management hearing** should be admitted the **case management chair** or **tribunal** should only admit the further documents if:

- a. they are relevant to the issues to be determined;
- b. they could not have been reasonably identified and adduced by the **party** seeking to rely on them at an earlier date; and
- c. the relevance and probative value of the evidence contained in the documents is such that the prejudice caused by the refusal of permission outweighs the prejudice caused by its admission.

25 The chair or vice-chair of the Disciplinary Committee, or the **chair** of any **tribunal** or any **case management tribunal**, may direct that there be a further **case management hearing** on the written application of either party or of their own volition. An application made by either party to vary directions made at a **case management hearing** shall be determined by the same **case management chair** unless they are not available within a reasonable timescale, in which case the application may be determined by the chair or any vice-chair of the Disciplinary Committee or any other **tribunal chair**.

26 The directions from the **case management hearing** and **notice** of the date, time and location of the **final hearing** shall be served on the **parties** by the **PCD Committee Secretary** within 7 days of the **case management hearing**.

27 If, at a further **case management hearing** or **final hearing**, either **party** is given permission for documents to be admitted other than those agreed or directed at the first **case management hearing** then the **tribunal** or **case management chair** will consider the costs consequences of admitting the documents at the later stage. In most cases the **tribunal** or **case management chair** will be expected to award the costs of the further hearing.

and any subsequent adjournment against the **party** seeking late admission of documents, providing always that they are mindful of the interests of justice, of the reasons for the delayed application, and the provisions of **Disciplinary Bye-law 33**.

28 The **case management chair** may or may not be the **tribunal chair** appointed in accordance with **Disciplinary Bye-law 19.1** for the **final hearing**.

#### Service of documents

29 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.

30 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 the address which they have registered with ICAEW . Where documents are served by post, service is deemed to have been effected 48 hours after posting. If the **respondent/respondent firm** has consented to service by email then any **notice** or document may be served on the email address which they have consented to use. Where documents are served by email, service is deemed to have been effected immediately.

#### Representation

31 Subject to regulations 3, 4, 23 and 24 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** or **case management chair**, any person.

32 The Investigation Committee may be represented by a member of **ICAEW** staff or may instruct a barrister or solicitor.

#### Public hearing and publication requirements

33 Subject to regulations 34-38 the **final hearing** shall be in public.

734 The **tribunal** (including a **tribunal** at a pre-hearing review) or, where regulation 8 below applies, the **tribunal Chair**, **case management chair** may decide that the press and public shall be excluded from the whole or any part of the **hearingfinal hearing** where it appears desirable to do so in the interests of justice or for any other **special**~~special~~**exceptional** reason provided always:

- a. the particular circumstances of the case outweigh the public interest in holding a public hearing; and  
~~the Chair or tribunal~~
- b. **the case management chair** making the decision is satisfied that the **parties** have had an opportunity to make representations.

8-35 Except in a case proceeding under regulation 4, if a party wishes to apply before the start of the **final hearing** for the whole or part of **any the final hearing** or 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 under regulation 3. A copy of any written (b) or 4(c) The 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 the **case management chair** at the **case management hearing** subject always to the requirements of regulation 7. The regulations 3, 4 and 34. The **case management 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.

9-36 On written application to Notwithstanding any decision of the **tribunal Chair, case management chair** made under the 14-day limit in preceding regulations or regulation 8 above 37 below, a **tribunal** may be extended by a maximum at any stage of a further 14 days to permit an application to be made for a **final 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. consider an oral application relating to the proper exercise of its discretion to exclude the press and the public from the whole or any part of the hearing. In deciding such an application the **tribunal** will apply the same test and considerations outlined in regulation 34, and will additionally require the **party** making the application to demonstrate that the application could not reasonably have been made at the time specified in regulations 3 and 4.

10-37 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 or formal complaints is brought will be published within 7 days of the **case management hearing** unless the **case management chair** has directed otherwise at the **case management hearing**.

14-38 Where an oral application is made to a **tribunal** to hold the **hearing final hearing** or part of the **final 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 736, the principal reason or reasons for holding the **final hearing** or part of the **final 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 do~~ 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 a formal complaint or formal complaints being proved at the final hearing, 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.~~ **Conduct of hearings**
- 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:~~
- ~~c. whether they accept the formal complaint(s) and, if not, on what grounds they deny the complaint(s);~~
  - ~~d. whether they accept the facts as stated in the summary and, if not, the grounds for challenge;~~
  - ~~e. if they accept the formal complaint(s), whether they have any explanation in mitigation; and~~
  - ~~f. 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.~~
- 16-39 ~~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. A **tribunal** or **case management tribunal** may proceed in the **respondent/respondent firm's**~~

absence where the **tribunal** or **case management chair** satisfied that regulations 3 and 26, have been observed. A **respondent/respondent firm** is deemed present when they appear by their representative.

1740 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. A **tribunal** may deliberate in private in the absence of the **parties** and of their representatives, at any time.

18-41 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 Without prejudice to any other powers it may have, a **tribunal** or **case management chair** may exclude from the **final hearing** or **case management hearing** or from part of those hearings any person or persons whose conduct has disrupted or, in the opinion of 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 (or **case management chair**, is likely to disrupt the **final hearing** or part of the **hearing** proceeding in private) may be decided by agreement between the **parties** without a **hearing** or **case management hearing**.

19-42 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 **case management chair** may adjourn proceedings from time to time as they think fit of their own volition or upon application of by 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, 324 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. **Final hearings**

24 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.
- 23-43 The standard of proof shall be the civil standard and the burden of proof shall be on the **Investigation Committee** may be represented by a member of **ICAEW** staff or may instruct a barrister or solicitor.
- 24-44 At the commencement of the **final 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** / **admit** or deny the formal complaint(s), and this admission or denial will be entered into the record.
- 25-45 The **Investigation Committee representative** shall outline the case against the **respondent** / **respondent firm** and, subject to regulations 43, 23 and 24, produce any document or call any witness.
- 26-46 The **respondent** / **respondent firm** shall be entitled to address **at the tribunal** and, subject to regulations 44, 23 and 24, to give evidence and to produce any document or call any witness.
- 47 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 them, but such re-examination shall be limited to matters which have been put to them in cross-examination. Members of a **tribunal** may ask questions of a witness. A witness, other than an expert witness, shall not be permitted to observe the **final hearing** until they have given their evidence.
- 27-48 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 **either party**, agree that the identity of a witness should not be revealed to the public.
- 28-49 The **final 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. 3, 4 and 24 above. However, in considering whether to admit late evidence under this provision the **tribunal** shall apply the test set out in regulation 24 and shall additionally take account of the late service when considering costs and/or adjourn or postpone the **final hearing** and make further directions to allow the other **party** to respond to the new

evidence served. In most cases the **tribunal** will be expected to award the costs of any adjournment against the **party** seeking late admission of evidence, provided always that it is mindful of the interests of justice and the reasons for the late submission and the provisions of Disciplinary Bye-law 33. 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**.~~
- 34-50 Formal complaints against a **respondent** ~~+/~~ **respondent firm** arising from the same facts or matters will be heard at the same **final hearing** unless the ~~tribunal~~ **tribunal** or **tribunal Chair** case management chair, in ~~its~~ or their discretion, ~~determines~~ determine otherwise. A **tribunal** or **case management chair** may, in their discretion, hear two or more formal complaints against a **respondent/respondent firm** arising from different facts or matters at the same **final hearing**. A **tribunal** or **case management chair** may, in their discretion, hear formal complaints against two or more **respondents/respondent firms** at the same **final hearing**.
- 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**.~~
- 34B51 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.~~
- 34-52 An application for a further adjournment made before a **final hearing** is resumed may be determined by the **Chair** chair of the **tribunal** or, in ~~his/hers~~ their absence, the **Chair** chair or ~~Vice-Chair~~ any vice-chair of the Disciplinary Committee.
- 35-53 Where ~~one a formal complaint or more formal complaints (or parts~~ part of a formal complaint) ~~are~~ is found proved, a **tribunal** may adjourn the proceedings before making an order.
- 36-54 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 **respondent firm** in a form approved by the Disciplinary Committee.

37-55 The **notice** referred to in regulation 3654 will be prepared for approval by the **Chairchair** of the **tribunal** and a copy of the **notice** will be sent to the **Chairchair** of the Investment Business Committee.

### Decision and sanction

38-56 On a finding ~~one or more~~ that a formal complaint or formal complaints have been proved ~~(either wholly in whole or in part), the the~~ **Investigation Committee representative** shall inform the **tribunal** of any **disciplinary record** of the ~~respondent / respondent firm.~~ **respondent firm** and of any aggravating or mitigating features which the Investigation Committee considers to be relevant to the issue of sanction and may draw the tribunal's attention to any guidance or previously decided cases and make representations on the appropriate starting point to be applied.

57 If the Investigation Committee wishes to make an application for costs the Investigation Committee representative shall present a schedule of the costs incurred during the investigation, preparation and presentation of the case to the tribunal, and explain the basis on which costs are sought.

3958 The ~~respondent /~~ **respondent firm** or their representative shall be allowed to address the **tribunal** before any order is made, including, but not limited to, representations in relation to aggravating and mitigating features, appropriate sanction, previous record, character references and any costs application made by the Investigation Committee. If the respondent/respondent firm is requesting the tribunal reduce any financial penalty or costs award because of limited means then they shall give a sworn statement of their means and evidence of income and assets.

40-59 Subject to regulations 4160 and 41A,61 a ~~tribunal~~ **tribunal**, on finding all formal complaint(s) unproved may, in its absolute discretion and on the ~~respondent /~~ **respondent firm's** application, order that ~~ICAEW~~ **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 33.1B1.

44-60 -In determining for the purposes of regulation 4059 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) 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) b. the conduct of the **parties** during the course of the investigation and proceedings relating to the formal complaint(s);

- ~~e)c.~~ The degree to which the Investigation Committee failed to prove the formal complaint(s) against the **respondent**~~/~~**respondent firm**;
- ~~e)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;  
; and
- ~~e)f.~~ the degree to which the parties have complied with directions and the case management process.

44A61 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.

42-62 If the **tribunal** cannot deal fairly with the issue of costs against **ICAEW** at the **final hearing**, it will make such decisions of principle and detail as it can and the final order will be made by the **Chair**~~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.~~

44-63 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.

### Sanctions hearing

64 The **Investigation Committee representative** shall summarise the relevant circumstances, facts and matters of the formal complaint or formal complaints and inform the **tribunal** of any **disciplinary record** of the **respondent/**~~**respondent firm**~~ and of any aggravating or mitigating features which the Investigation Committee considers to be relevant to the issue of sanction, and may draw the **tribunal's** attention to any guidance or previously decided cases and make representations on the appropriate starting point to be applied.

65 If the Investigation Committee wishes to make an application for costs the **Investigation Committee representative** shall present a schedule of the costs incurred during the investigation and preparation of the case and of the **sanctions hearing**, and explain the basis on which costs are sought.

66 The **respondent/respondent firm** and/or their representative shall be allowed to address the **tribunal** before any order is made, including, but not limited to, representations in relation to the circumstances of the formal complaint or formal complaints, aggravating and mitigating features, appropriate sanction, previous record, character references and any costs application made by the Investigation Committee. If the **respondent/respondent firm** is requesting that the **tribunal** reduce any financial penalty or costs award because of limited means then they shall give a sworn statement of their means and evidence of income and assets.

### Recording of the hearing and decisions of the tribunal

45-67 A shorthand or stenograph note ~~or an audio recording~~ of the proceedings may be taken or an audio recording of them made on behalf of the **tribunal**. Either party may request a record or, where available, a transcript from the PCD Committee Secretary. Such a request will be considered by the **tribunal chair** of the hearing, who may impose such conditions as they consider appropriate on the confidentiality, distribution, and use of that record or transcript. The cost of preparing the record or transcript shall be borne by the party requesting the transcript and shall be paid in advance of the request being considered by the **tribunal chair**.

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 by-laws and regulations have been complied with.~~

47-68 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 parties**, as soon as reasonably practicable, **notice** of the decision of the **tribunal** and any order made.

48-69 A **written record of the decision** of the **tribunal** shall be prepared for approval by the **tribunal**.

49-70 The **PCD Committee Secretary** shall send to the **respondent/respondent firm parties** a copy of the **written record of decision** where one or more formal complaints (or parts of the ~~formal complaint(s)) has) have~~ been found proved as soon as reasonably practicable after it has been approved by the **tribunal**.

### Publicity

50-71 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:

~~g.d.~~ in any advance **notice** of the name of the **respondent+/respondent firm** and the terms of the formal complaint(s);

~~h.r.~~ to legal advisers for the purposes of the disciplinary proceedings;

- ~~i.s.~~ 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;
- ~~j.t.~~ to any other person to whom disclosure is necessary for the purposes of obtaining evidence, information or assistance in connection with the disciplinary proceedings;
- ~~k.u.~~ to an insurer where disclosure is required under the terms of any policy or in connection with any application for insurance cover;
- ~~l.v.~~ where information is disclosed indirectly to members of the public in the course of a public **hearing**; and
- ~~m.w.~~ 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, or to publication of the date of the final hearing under regulation 21 or sanctions hearing under regulation 9 or 18 or publication under regulations 72 and 73.

5472 Where a **tribunal** makes an order in respect of one or more formal complaint~~(s)~~, or formal complaints, 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).~~

73 Where a party appeals a decision of a tribunal following a final hearing the written record of decision of the tribunal of the Disciplinary Committee shall remain published unless the complaint is found to be not proved on appeal and the party who made the appeal requests the written record of decision is removed (in which case it shall be removed within 7 days of that request).

## APPENDIX A

1. A **respondent/respondent firm** who wishes to defend all or part of a complaint or complaints must file a **respondent's statement**.
2. The **respondent's statement** need not be in any specific form, but must include the following information:-
  - a. The name, postal and email addresses of the member.
  - b. The reference number of the complaint.
  - c. If there is more than one formal complaint, which formal complaints are denied and which (if any) are admitted.
  - d. If there is more than one part to a formal complaint which parts are denied and which (if any) are admitted.
  - e. Whether the **respondent/respondent firm** admits the factual basis of the complaint or complaints, as set out in the **Investigation Committee's Report to the Disciplinary Committee**. If the factual basis is not accepted the **respondent's statement** should detail which paragraphs of the report are agreed and which are not agreed.
  - f. If the **respondent/respondent firm** does not agree the factual basis of the formal complaint or formal complaints they should, in addition to the information detailed in paragraph 5 above, set out the factual basis they put forward in response.
  - g. Whether the **respondent/respondent firm** accepts that, if the factual basis of the formal complaint or formal complaints is proved or admitted, that they are liable to disciplinary action under the relevant Disciplinary Bye-law.
  - h. If the **respondent/respondent firm** does not accept that they are liable to disciplinary action the basis on which this lack of liability is asserted.
  - i. If the formal complaint contains an allegation of dishonesty whether this is accepted or, if it is not the basis on which it is denied.
  - j. If the formal complaint contains an allegation of a lack of integrity whether this is accepted or, if it is not the basis on which it is denied.

- 3 Attention is drawn to regulation 19 which sets out a possible consequence of not filing a **respondent's statement**.
- 4 The period set out in the Disciplinary Committee Regulations for filing a **respondent's statement** is within 21 days of service of the documents served under Regulation 3.
- 5 In exceptional circumstances the **respondent/respondent firm** and the **Investigation Committee's Representative** may agree that the period for filing the **respondent's statement** specified in regulation 4 rule be extended by up to 28 days, providing always that the **respondent's statement** is filed within 10 days of the **case management hearing**.
- 6 Where the **respondent/respondent firm** and **Investigation Committee Representative** agree to extend the period for filing a **respondent's statement** the **respondent/respondent firm** must notify the PCD Committee Secretary in writing within 48 hours of the agreement.