



# *Disciplinary Committee Regulations*

## EXECUTIVE SUMMARY

On 1 October 2019, a number of amendments were made to ICAEW's Disciplinary Committee Regulations to introduce a robust case management system where complaints are referred by the Investigation Committee (IC) to the Disciplinary Committee (DC) for hearing. The changes were introduced to enable the earlier resolution of matters where complaints are agreed, and to reduce delay in the disciplinary process.

The changes to the Disciplinary Committee Regulations ('the Regulations') were introduced generally on 1 October 2019 following approval by the DC and ICAEW's Probate Committee and following discussion with the ICAEW Regulatory Board (IRB). While the Regulations have been published on the ICAEW website, it has been made clear that they will not be effective vis-à-vis accredited probate firms until such time as they have been approved by the Legal Services Board under the Legal Services Act 2007.

## SIGNIFICANCE, IMPACT AND RISK

ICAEW has considered the proposed amendments to the Regulations the context of the LSB's Significance, Impact and Risk (SIR) Framework. This response is limited to the significance, impact and risk of the changes on the handling of disciplinary complaints arising under the Probate Regulations, which concern accredited probate firms.

### *Significance*

**LSB: By significance we mean how fundamental and big the change is. We will consider the following areas to help determine significance.**

- 1. Would the change require approval under the previous Ministry of Justice / Legal Service Consultative Panel system? This includes "changes relating to qualification regulations and rules of conduct relating to the rights of audience and rights to conduct litigation". Potential impacts on rights of audience and fit with court rules has been a primary concern when considering any change in the past.**

ICAEW response - The proposed changes to the Regulations are procedural in nature and concern the management of disciplinary cases prior to a final, contested hearing before a tribunal of the DC. They do not concern qualification requirements or conduct rules relating to rights of audience or the conduct of litigation. ICAEW accredited probate firms are not authorised to conduct these reserved legal activities.

- 2. Is there a direct impact on or synergy with the Regulatory Objectives as detailed in Part 1 of the Act? All of the Regulatory Objectives are equally important but areas that we will particularly be considering when determining significance include:**

- a) **Impacts on competition in the provision of services, either increasing or restricting.**
- b) **Protecting and promoting the interests of consumers. As two of the areas highlighted as being of key concern to consumers we are likely to consider as being of particular significance:**
  - i. **alterations to how complaints are dealt with; and**
  - ii. **arrangements relating to financial protection including the handling of client money (account rules), indemnification and compensation.**
- c) **Encouraging an independent, strong, diverse and effective legal profession. Changes likely to impact on equalities and diversity will be of particular interest. Changes to core training and qualification and training requirements will also be deemed significant.**

ICAEW response – as explained in the application, the changes will protect and promote the interests of consumers by enabling disciplinary complaints to be dealt with more swiftly and efficiently. In particular, in cases where the formal complaint(s) are admitted by the respondent, the matter will be listed for a sanctions hearing, removing the requirement for a contested hearing.

- 3. Is the change consistent with the Better Regulation Principles? Has consideration been given to the need to move to outcome and principle based regulation?**

ICAEW response – yes, the changes are consistent with the principle of proportionality as explained in the application. The changes improve the way matters are handled pre-hearing by reducing cost and delay.

- 4. Will the change require a statutory instrument and / or parliamentary time in order to be completed?**

ICAEW response – No.

- 5. Has there been activity in relation to changing the regulatory arrangement in the past two years for example an application made under the previous system, change considered by internal Board, consultation with regulated community or others? If so did the advice received, responses to consultation, or decision made raise any issues, either positive or otherwise indicate significance?**

ICAEW response – the DC and, in particular, the Disciplinary Tribunal Chairs, were consulted during the development of the draft Regulations. There was strong support amongst Committee members for the introduction of this case management process to enable matters to be dealt with more efficiently and for less cost, and to avoid the need for unnecessary adjournments.

- 6. How much interest in the alteration is there within the Justice system and therefore how much is the confidence of those with an interest in the Justice system likely to be impacted by the alteration?**

ICAEW response – N/A, although the case management processes introduced by these changes move towards a closer alignment with the case management system used in the civil courts.

## ***Impact***

**LSB: By impact we mean what are the potential ramifications of pursuing a particular alteration? We will consider the following areas to help determine impact**

**7. The number and proportion of people (consumers, procurers, regulated community) that will be affected by the alteration?**

ICAEW response - The changes to the Regulations will only affect accredited probate firms where formal complaint(s) arise under the Probate Regulations and are referred to the DC for hearing. Currently, there are around 340 accredited probate firms and, as explained in the application, only a small number of the total complaints dealt with by the Professional Conduct Department each year proceed to hearing before a tribunal of the DC.

**8. Is there an anticipated impact on the ability of members to practise, operate effectively, make a profit, and earn a livelihood?**

ICAEW response - No. Although the changes should reduce cost and delay in the handling of disciplinary cases pre-hearing, which will benefit any accredited probate firm that, in the future, is the subject of a complaint proceeding to a tribunal hearing.

**9. Will the change affect the ability of or requirements for prospective members to enter and/or operate effectively within the regulated community?**

ICAEW response – N/A

**10. Is there any crossover and / or conflict with other bodies regulating the same area or person? Are there differences in standards (standards must be comparable not necessarily the same)?**

ICAEW response – No. However, as mentioned above, the case management processes introduced by these changes are consistent with the approach taken in the civil courts.

**11. The number of alterations included within the application.**

ICAEW response – the amendments to the Regulations are extensive as the Regulations have been effectively re-drafted.

**12. What are the integrated consumer protection and competition impacts? Will the proposed alteration result in the addition of regulation or the removal of regulation (as opposed to a neutral amendment to existing regulation)?**

ICAEW response – the proposed changes will enable disciplinary matters to be dealt with more swiftly and efficiently pre-hearing. This will benefit complainants and reduce cost for the respondent / respondent firm and ICAEW.

## **Risk**

**LSB: By risk we mean potential for having a detrimental impact on the regulatory arrangements. We will consider the following areas to help determine risk.**

**13. Previous track record of the AR in competently making changes that have been fully consulted on and the impacts fully assessed.**

ICAEW response – since the ICAEW began authorising and licensing firms for probate in 2014, the LSB has approved all rule change applications submitted under the exemption direction process. However, ICAEW's application for approval of changes that were made to the Disciplinary Bye-laws in 2019 was approved in part only.

**14. How transparent and robust are the internal processes that the AR will follow in making changes? In particular does the process incorporate appropriate consultation and use of impact assessments (please see paragraph 13)?**

ICAEW response – as noted above, the changes to the Regulations have been approved by ICAEW's Disciplinary and Probate Committees, and shared with the ICAEW Regulatory Board.

**15. Is there a high level of good quality data and evidence to support / justify the making the change? If not are there robust plans to obtain this information and for it to inform the change and enable actual impacts to be assessed.**

Although ICAEW does not have specific data, it is of note that adjournment requests previously averaged about 10 per annum in c55 cases. The main reason for the change, however, is to introduce a system of case management which encourages both parties to engage with the issues at an early stage. The amendments to the Regulations enable cases where complaints are admitted to be listed for early hearings (sanctions hearings), allowing for earlier resolution.

**16. How many would be impacted how quickly (immediacy of impact)?**

ICAEW response – if approved by the LSB, the new Regulations would take effect immediately in relation to probate matters referred subsequently to the DC for hearing.

**17. If the change did not go ahead, what would the impact be?**

ICAEW response – as the LSB is aware, the changes took effect generally from 1 October 2019 for complaints relating to accountancy and other non-probate activities. If the amendments are not approved, the Regulations dated 15 October 2018 will continue to apply and probate matters will not have the benefit of the case management processes proposed under the new Regulations.

**18. How and when does the AR plan to assess the impact of the change following its introduction? What action would be taken if the benefits were not realised? Has consideration been given to whether there is need to include a defined sunset clause?**

ICAEW response – the Head of Committees and Tribunals will continue to monitor the impact of the new Regulations on the progress and age of cases referred to the DC for final hearing. It is intended that the IRB will receive an update on the impact of the new process in October 2021 (i.e. 24 months after the changes to the Regulations took effect generally).

**19. Has there been activity in relation to changing the regulatory arrangement in the past two years (see paragraph 5)? Has any other AR made a similar change or undertaken activity relating to a similar regulatory arrangement in the past and was there any detrimental outcome or did the change process identify the potential for a detrimental impact?**

ICAEW response – unknown.

**20. If the change introduces regulation, does the AR have the capability of identifying breaches and providing / ensuring appropriate remedy and / or enforcement (see paragraph 12)?**

ICAEW response – N/A. These changes are procedural in nature and do not introduce additional regulation. If parties do not comply with case management processes (e.g. by failing to comply with any directions) this may be addressed through the application of an adverse cost award.