



Disciplinary Committee (Interim Order) Regulations

EFFECTIVE FROM 1 JANUARY 2020

Guidance:

These regulations supplement the procedure set out in Disciplinary Bye-laws 30 and 30A concerning the power of tribunals of the Disciplinary Committee to make interim orders and the process for review of any orders made.

Authority and commencement

- 1 These **regulations** are made by the Disciplinary Committee in accordance with paragraph 1.4 of the Schedule to the Disciplinary Bye-laws. They come into force on 1 January 2020.
- 2 Any notice, decision, order or other document required to be served on a respondent or ICAEW under these **regulations** may be sent by pre-paid post or email in accordance with **Disciplinary Bye-laws** 1.6 – 1.8.
- 3 Any notice or document required to be served on ICAEW shall be served on the PCD Committee Secretary in ICAEW's Professional Conduct Department at the following address:

PCD Committee Secretary
Professional Conduct Department
ICAEW
321 Avebury Boulevard
Milton Keynes
MK9 2FZ

- 4 In these **regulations** the words set out below have the following meanings:
 - a. **Disciplinary Bye-laws** means the Disciplinary Bye-laws of ICAEW for the time being in force.
 - b. **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 a regulatory or Practice Assurance penalty as defined in the Audit Regulations, the DPB (Investment Business) Handbook, the Investment Business Regulations, the Probate Regulations, the Insolvency Licensing Regulations, the Licensed Practice Handbook or the 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).
 - c. **Hearing** means the substantive hearing at which the tribunal appointed in accordance with **Disciplinary-Bye-law** 30.4 determines whether an **interim order** should be made in relation to a referral under **Disciplinary Bye-law** 30.1.

- d. **Interim order** means an order made by the tribunal under **Disciplinary Bye-law** 30.14.
 - e. **Parties** means the **respondent** and **ICAEW**.
 - f. **Referral** means the report prepared by **ICAEW**, together with any supporting documentation and/or evidence which specifies:
 - i. the grounds for the belief that one or more of the circumstances set out in **Disciplinary Bye-law** 30.2 exist; and
 - ii. the basis upon which **ICAEW** considers the test for an **interim order** set out in **Disciplinary Bye-law** 30.14 is met.
 - g. **Regulations** means these Disciplinary Committee (Interim Order) Regulations, as modified or amended from time to time.
 - h. **Review hearing** means a hearing of the tribunal conducted in accordance with **Disciplinary Bye-law** 30A.1 or 30A.2 for the purpose of reviewing whether an order made under **Disciplinary Bye-law** 30.14 should remain in force, or be varied or discharged.
 - i. **Tribunal chair** means the lay member of the Disciplinary Committee who has been appointed to act as chair of the tribunal in accordance with **Disciplinary Bye-law** 30.4.
 - j. **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.
- 5 In these **regulations** words importing the singular include the plural and vice versa.
- 6 Headings are included for convenience only and do not affect interpretation of the **regulations**.

Pre-hearing procedure

- 7 Prior to the **hearing**, the PCD Committee Secretary shall provide the tribunal with copies of the **referral** and all information, evidence and/or representations received in accordance with **Disciplinary Bye-laws** 30.1 and 30.6.
- 8 The **tribunal chair** may require the **parties** to provide such further information and/or evidence as they consider necessary to assist the tribunal in determining whether an **interim order** should be made in relation to the referral under **Disciplinary Bye-law** 30.1.
- 9 In addition to the powers set out in **Disciplinary Bye-law** 30.7, the **tribunal chair** may make such pre-**hearing** directions as they consider necessary for the just, expeditious and economic disposal of the **referral** at the **hearing**.
- 10 The **tribunal chair** shall decide, in their absolute discretion, whether an application for a postponement of a **hearing** which has not yet commenced should be granted.

Hearing

- 11 The respondent may appoint a representative for the **hearing** who may be a solicitor, barrister, member of ICAEW or, with the approval of the **tribunal chair**, any other person. A respondent is deemed present when they appear by their representative.
- 12 If a respondent does not attend the **hearing** and is not represented by a representative, then, provided the tribunal is satisfied that notice of the **hearing** was served on the respondent in accordance with **Disciplinary Bye-law** 30.5, the tribunal may hear the referral in the respondent's absence.
- 13 In accordance with **Disciplinary Bye-law** 30.9, the head of staff may appoint a barrister or solicitor to represent ICAEW at the **hearing**.
- 14 Subject to **regulation** 15, the **hearing** shall be in public.
- 15 The tribunal may decide that the press and public shall be excluded from the whole or part of the **hearing** where it appears desirable to do so in the interests of justice or for any other exceptional reason, provided always:
 - a. the particular circumstances of the case outweigh the public interest in holding a public **hearing**; and
 - b. the tribunal is satisfied that the **parties** have had an opportunity to make representations on whether the **hearing** should be conducted in public or private.

The tribunal shall give the **parties** the principal reason or reasons for allowing or dismissing an application for a private **hearing** under this **regulation**.

- 16 The **hearing** shall be informal and the strict rules of evidence shall not apply. Subject to the requirements of the **Disciplinary Bye-laws** and these **regulations**, the tribunal may adopt any method of procedure which it considers fair and which provides each **party** with an opportunity to present their case. In particular, a tribunal may receive and consider such written and verbal reports, evidence and/or representations as it considers appropriate, including evidence which was not produced by a **party** prior to the **hearing** in accordance with **Disciplinary Bye-laws** 30.1 or 30.6 and/or **regulation** 8.
- 17 No objection shall be upheld to any technical fault in the procedure adopted by the tribunal, provided that the proceedings are fair and the relevant bye-laws and regulations have been complied with.
- 18 Without prejudice to any other powers it may have, a tribunal may exclude from the hearing, or part of a hearing, any person or persons whose conduct has disrupted or, in the opinion of the tribunal, is likely to disrupt the hearing.
- 19 The tribunal may deliberate in the absence of the **parties** and any other persons attending the **hearing** at any time.
- 20 A tribunal may adjourn the proceedings from time to time as it thinks fit of its own volition or upon application by either **party**, and may make such directions as it considers necessary for the just, expeditious and economic disposal of the referral.

- 21 The respondent or their representative shall be allowed to address the tribunal before it makes a finding and any order in accordance with **Disciplinary Bye-law** 30.14.
- 22 Prior to any order being made, the representative of ICAEW shall inform the tribunal of the respondent's **disciplinary record** (if any).
- 23 If an order is made by the tribunal in accordance with **Disciplinary Bye-law** 30.14, the tribunal shall specify the date for the initial **review hearing** which shall take place after 3 months from the date of the order, if requested by the respondent.
- 24 A shorthand or stenograph note, or an audio recording, of the proceedings may be taken 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** who may impose such conditions as they consider appropriate on the confidentiality, distribution and use of the record or transcript. The cost of preparing the record or transcript shall be borne by the **party** making the request and such fee shall be paid to the PCD Committee Secretary in advance of the request being considered by the **tribunal chair**.
- 25 The PCD Committee Secretary shall send to the **parties** notice of the decision and any order of the tribunal as soon as practicable following the **hearing**.
- 26 Where an order is made in respect of a referral, the PCD Committee Secretary shall send to the respondent, as soon as practicable, a copy of the tribunal's **written record of decision** once it has been prepared and approved by the tribunal.

Publicity and disclosure

- 27 ICAEW shall publicise the proceedings under **Disciplinary Bye-law** 30 in advance of the **hearing**, including the name of the respondent, unless the **tribunal chair** has directed otherwise.
- 28 All written material and information provided by either **ICAEW** or the **respondent** in connection with the proceedings, shall at all times remain confidential and no such material or information shall be disclosed (directly or indirectly) except:
- a. to legal advisers for the purposes of proceedings;
 - b. to any other person to whom disclosure is necessary for the purposes of obtaining evidence, information or assistance in connection with the proceedings;
 - c. where information is disclosed indirectly to members of the public in the course of a public hearing;
 - d. to an insurer where disclosure is required under the terms of any policy or in connection with any application for insurance cover;
 - e. where the respondent is a principal in or employed by a member firm, regulated firm or contracted firm to a principal in that firm; or
 - f. 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 order published by the tribunal in accordance with **Disciplinary Bye-law** 30.18 or to any advance notice of the **hearing** under **regulation** 27.

29 Subject to **Disciplinary Bye-laws** 30.18 and 30.19, where a tribunal makes an order in respect of a referral in accordance with **Disciplinary Bye-law** 30.1, 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.

30 The **interim order** of the tribunal shall remain published unless:

- a) the order is discharged in accordance with **Disciplinary Bye-law** 30.16(a) or (b) on review or appeal and the respondent requests that it be removed; or
- b) the order is discharged in accordance with **Disciplinary Bye-law** 30.16(c) following a hearing before a tribunal and the tribunal orders that it be removed;

in which case, the publication shall be removed within 7 days of the respondent's request or the tribunal's direction.

Costs

31 If ICAEW wishes to make an application for costs, its representative shall present a schedule of the costs incurred in preparing and presenting the referral to the tribunal, and explain the basis upon which costs are sought.

32 The respondent shall be allowed to address the tribunal before any costs order is made. If the respondent is requesting that the tribunal reduce any costs award because of limited means then they shall give a sworn statement of their means and evidence of income and assets.

33 Subject to **regulation** 34, if a tribunal refuses to make an **interim order** in relation to the referral, it may, in its absolute discretion and on the respondent's application, order that ICAEW pay a specified sum in respect of the respondent'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-law** 33.

34 In determining for the purposes of **regulation** 33 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, and prior to, the proceedings in relation to the referral;
- c. the degree to which the **parties** have complied with any pre-**hearing** directions.

- 35 The tribunal shall give the ICAEW representative an opportunity to make representations before determining an application by the respondent for costs.
- 36 If the tribunal cannot deal fairly with the issue of costs against ICAEW at the **hearing**, it will make such decisions in principle as it can and the final order will be made by the **tribunal chair** on considering any other material considered relevant.
- 37 Unless the tribunal orders an extended period for the payment of costs, any costs to be paid by ICAEW will be paid within 28 days of ICAEW authorising payment of the sum ordered.

Review hearings

- 38 If the respondent wishes to request that an initial **review hearing** be held in accordance with **Disciplinary Bye-law** 30A.1, they shall notify the PCD Committee Secretary of their request in writing at least 20 **business days** prior to the provisional date set down for the first **review hearing** under **regulation** 23.
- 39 The purpose of a **review hearing** is to enable the tribunal to conduct a review of the **interim order** and determine whether, having regard to the test set out in **Disciplinary Bye-law** 30.14, the **interim order** should:
- a. remain in force;
 - b. remain in force but on varied terms; or
 - c. be discharged.
- 40 Where possible, a review hearing shall be heard by the same tribunal as was appointed to hear the initial referral under **Disciplinary Bye-law** 30.4. Where one or more of the tribunal members is unable to attend the review hearing, a new tribunal may be appointed in accordance with the procedure laid out in **Disciplinary Bye-law** 30.4.
- 41 The respondent shall be entitled to request that further **review hearings** be held every 3 months for the period that the **interim order** remains in force. The respondent shall submit their request in writing to the PCD Committee Secretary at least 20 **business days** prior to the date set down for any subsequent **review hearing**.
- 42 **Regulations** 7 – 37 shall apply, as appropriate, to any **review hearing** conducted in accordance with **Disciplinary Bye-laws**, save that:
- a. references in those **regulations** to a ‘**hearing**’ and a referral under **Disciplinary Bye-law** 30.1 shall be regarded, respectively, as references to a **review hearing** and a review of an **interim order** made under **Disciplinary Bye-law** 30.14;
 - b. the party applying for the hearing (the ‘applicant’) shall provide the PCD Committee Secretary with any information or evidence upon which they wish to rely at the **review hearing** at least 15 **business days** prior to the date of the **review hearing**. The PCD Committee Secretary shall provide copies of such information and/or evidence to the other **party**, which shall have at least 5 **business days** to respond. The PCD Committee Secretary shall then submit all representations, information and evidence to the tribunal at least 5 **business days** prior to the **review hearing**;

- c. at the conclusion of a **review hearing** the tribunal shall, in respect of the **interim order** made under **Disciplinary Bye-law** 30.14:
 - i. confirm that the order shall remain in force;
 - ii. vary the terms of the order; or
 - iii. discharge the order.
- d. at the conclusion of each **review hearing** the tribunal shall specify the provisional date for the next **review hearing** which shall take place, if requested by the respondent, after 3 months save where:
 - i. the **interim order** is discharged at the **review hearing**; or
 - ii. a **party** makes a request for an expedited **review hearing** before 3 months in accordance with the procedure set out in **Disciplinary Bye-law** 30A.2 and **regulations** 43 – 47 below.
- e. if the terms of the order are varied on review, the varied order shall be published, in addition to the original order, on the ICAEW website for a period of 5 years from the date of the order in accordance with **regulation** 29.

Expedited review hearings

- 43 If the respondent or ICAEW wishes to apply for a **review hearing** before the elapse of 3 months in accordance with **Disciplinary Bye-law** 30A.2, they shall submit their application in writing to the PCD Committee Secretary specifying the basis upon which the application is made. The **party** will need to demonstrate that new evidence exists to support the application that was not available at the time of the original **hearing** (or, where one or more **review hearing** has taken place subsequently, the date of the last **review hearing**).
- 44 An application in accordance with **regulation** 43 shall be disclosed by the PCD Committee Secretary to the other **party** and that **party** shall be given an opportunity to respond. The PCD Committee Secretary shall then submit a copy of the application, and any representations and/or evidence of the **parties** concerning the application, to the **tribunal chair** for consideration.
- 45 The **tribunal chair** shall have an absolute discretion in determining an application for an expedited **review hearing** in accordance with **Disciplinary Bye-law** 30A.2. The application shall be determined by the **tribunal chair** on the papers and the decision of the **tribunal chair** will be final.
- 46 If the **tribunal chair** grants the application for an expedited **review hearing**, they shall make directions as to the time and place fixed for the **review hearing**, and may make such other directions as they consider necessary for the tribunal to carry out the review in a just, efficient and economic manner.
- 47 **Regulations** 7 – 37 shall apply, as appropriate, to any **review hearing** conducted in accordance with **Disciplinary Bye-law** 30A.2, subject to the qualifiers set out in paragraphs (a) – (e) of **regulation** 42.