



# *Disciplinary bye-laws*

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## PRELIMINARY

### Citation, interpretation and service of documents

1.1 These bye-laws may be cited as the Disciplinary Bye-laws of the Institute of Chartered Accountants in England and Wales.

1.2 In these bye-laws, unless the context otherwise requires

the **Appeal Committee** means the Appeal Committee appointed under the Schedule to these bye-laws;

**authorised firm** means a firm regulated by ICAEW in its capacity as

- a. as a designated professional body under the Financial Services and Markets Act 2000, or
- b. an approved regulator and licensing authority under the Legal Services Act 2007, or
- c. in any comparable capacity under any legislation, wherever in force, for the time being designated in regulations;

the **bye-laws** means all the bye-laws of the Institute for the time being in force;

**complainant**, except in bye-laws 24A and 34B, in relation to a complaint or formal complaint, means any of the following persons

- a. the person who under bye-law 9.1 brought to the attention of, or reported to, the head of staff any of the facts and matters which constitute the complaint;
- b. any person, who, before the Investigation Committee has under bye-law 15 decided whether in its opinion the complaint discloses a prima facie case, has made written representations to the head of staff on any of those facts and matters; and
- c. if the person mentioned in paragraph (a) of this definition, being an individual, dies before the complaint has been finally disposed of under these bye-laws, his personal representative.

**complaint**, except in bye-law 11 or where the reference is to a previously mentioned formal complaint, has the meaning given by bye-law 9.3;

**Contracted firm** means a sole practice, partnership, limited liability partnership or a body corporate which is not a member firm but which has contracted with ICAEW to be subject to ICAEW disciplinary bye-laws and/or to the ICAEW Code of Ethics;

**Council** means the Council of ICAEW;

**defendant** means a member, provisional member, foundation qualification holder, foundation qualification student, member firm and contracted firm against whom a formal complaint has been preferred to the Disciplinary Committee;

**director** (save in paragraph (a) of the definition of member firm below) includes a member of a limited liability partnership;

**Disciplinary Committee** means the Disciplinary Committee appointed under the Schedule to these bye-laws;

**disciplinary record**, in relation to any person or body, comprises all orders, findings, fines and penalties to which he has at any time been subject, being orders, findings, fines or penalties of any description prescribed for the purposes of this definition by regulations;

**firm** means:

- a. a body corporate or partnership including a limited liability partnership which is wholly or partly composed of members engaged in public practice or was so composed at, or at any time since, the relevant time;
- b. a member who is engaged in public practice as a sole practitioner or was so engaged at, or at any time since, the relevant time; or
- c. a person or body who was a regulated firm at the relevant time;

and in this definition, the **relevant time** means the time relevant to any facts or matters which under bye-law 9 have been reported to the head of staff, or have been brought or come to his attention, as indicating a possible liability to disciplinary action;

**formal complaint** means a complaint preferred by the Investigation Committee to the Disciplinary Committee under bye-law 15, and in relation to a tribunal means the formal complaint which the tribunal was appointed to hear;

**Fitness Committee** means the Fitness Committee appointed under the Schedule to these bye-laws;

**Fitness Panel** means a panel of the Fitness Committee;

**Foundation Qualification Holder** is someone who holds the Foundation Qualification;

**Foundation Qualification Student** is someone who is registered to study for ICAEW CFAB or the ICAEW Foundation Qualification;

**head of staff** means the person appointed under Principal Bye-law 50;

**hearing**, in relation to a formal complaint, referral or an appeal, includes the making of any finding or order on or in connection with the complaint, referral or appeal, and also includes a re-hearing;

**ICAEW** means the Institute of Chartered Accountants in England and Wales;

**Insolvency Licence** means an authorisation issued by ICAEW to a member pursuant to the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 (as from time to time amended) as a precondition to the member acting as an insolvency practitioner;

**Interim review hearing** means a hearing to review an order made under DBL 41, and in accordance with DBLs 43, 44, 45 and 46, which is held as the result of a member's application for a review of a decision made by a tribunal of the Fitness Committee, occurring before the expiration of the 'recommended period';

**Investigation Committee** means the Investigation Committee appointed under the Schedule to these bye-laws;

**Investigation and discipline scheme** means any scheme in which ICAEW participates pursuant to articles 1(b)(viiA), 1(b)(viiiA), or 1(b)(xi) of the Supplemental Charter;

**Lay member** means someone who is not and never has been a member, affiliate or employee of ICAEW or any other accountancy body. Furthermore, solicitors and those with legal training will not be regarded as lay members for the determination of any complaint about legal services work in the Review Committee, the Investigation Committee, the Disciplinary Committee and the Appeal Committee;

**legal services work** comprises any work that is considered under the jurisdiction of the Legal Ombudsman under the definitions set out by the ombudsman in accordance with section 164(10) of the Legal Services Act 2007;

**member** means a member of ICAEW, and membership shall be construed accordingly;

**member firm** means

- a. a member engaged in public practice as a sole practitioner; or
- b. a partnership engaged in public practice of which more than 50 per cent of the rights to vote on all, or substantially all, matters of substance at meetings of the partnership are held by members; or
- c. a limited liability partnership engaged in public practice of which more than 50 per cent of the rights to vote on all, or substantially all, matters of substance at meetings of the partnership are held by members; or
- d. any body corporate (other than a limited liability partnership) engaged in public practice of which:
  - i. 50 per cent or more of the directors are members; and
  - ii. more than 50 per cent of the nominal value of the voting shares is held by members; and
  - iii. more than 50 per cent of the aggregate in nominal value of the voting and non-voting shares is held by members;

**notice** means notice in writing;

**order** includes a finding;

**panel** (except in bye-law 26) means a panel appointed under bye-law 27.1 to hear an appeal;

**PCD Committee Secretary** means the Professional Conduct Department (PCD) Committee Secretary appointed to that role by the head of staff;

**physical or mental health** includes bodily or mental ill health, disability and any mental or behavioural disorder included in the International Classification of Diseases (ICD-10 Classification of Mental and Behavioural disorders) produced by the World Health Organisation and includes an episodic or relapsing condition which is in remission;

**practice** and **public practice** mean practice as a public accountant in any part of the world otherwise than as an employee, subject however to any regulations made pursuant to bye-law 51.b of the Principal Bye-laws and to any other guidance issued by the Council;

**practising certificate** means a certificate issued to a member authorising him to engage in public practice;

**prima facie case** means a prima facie case for disciplinary action under these bye-laws;

the **Principal Bye-laws** means the Principal Bye-laws of ICAEW;

**principal** means a sole practitioner, a partner in a partnership or a director of a body corporate;

**provisional member** means a person who has not been admitted to full membership of ICAEW and;

- a. is registered with ICAEW as an ACA student; or
- b. is registered with ICAEW under a training agreement with an Authorised Training Employer or an Authorised Training Principal; or
- c. has attempted an ACA examination and no more than three years have elapsed since the date of the last attempt at an ACA examination; or
- d. was registered with ICAEW under a training agreement with an Authorised Training Employer or an Authorised Training Principal and no more than three years have elapsed since the training agreement was completed or cancelled; or
- e. has applied for ICAEW membership outside the period allowed under the regulations and the application has not been finally determined.

**Recommended period** means the period set down by a Fitness Panel as the period before the expiry of which no interim review application can be made;

**registered address** means:

- a. in the case of a member in practice or a firm, the place of business registered by the member or firm with the Institute or, if more than one place of business is so registered, the one registered as the principal place of business;
- b. in the case of a member not in practice or a provisional member, the address registered by him with the Institute;
- c. in the case of a former member, former member firm, former regulated firm or former firm the latest address registered with or notified to the Institute by the person or body in question.

**registered auditor** means a firm registered as a registered auditor at the instance of the Institute (in its capacity as a recognised supervisory body under the Companies Act 2006 and the Local Audit & Accountability Act 2014 and as a recognised accountancy body and prescribed accountancy body under the Irish Companies Act 2014 or in any comparable capacity under any legislation, wherever in force, for the time being designated in regulations);

**regulated firm** means an authorised firm or a registered auditor;

**regulations** means regulations made by the Council or any committee or sub-committee under clause 16 of the Supplemental Charter (power to make regulations) and for the time being in force;

**relevant authority** means a body which authorises ICAEW to act as a regulator or to exercise any regulatory or disciplinary function.

**representative**, in relation to the defendant in any proceedings under these bye-laws, means:

- a. a barrister, solicitor or member appointed by him to represent him in those proceedings; or
- b. any person permitted under regulations to represent him in those proceedings, and represented shall be construed accordingly;

**Respondent** means any member, provisional member, foundation qualification holder and foundation qualification student who is subject to ICAEW Disciplinary bye-laws;

**Respondent firm** means a member firm or a contracted firm which is subject to ICAEW Disciplinary bye-laws;

**reviewer of complaints** means a person appointed as a reviewer of complaints under paragraph 5 of the Schedule to these bye-laws;

**Review hearing** means a hearing to review an order made under DBL 41, and in accordance with DBLs 45 and 47, which is held as a result of a direction of the Review Committee under DBL 41.4;

**training contract** means a contract of approved training registered with ICAEW and in such form and containing such provisions as may be prescribed in regulations, made between a candidate for membership and the person or firm at or from whose office the approved training is to be given;

**tribunal** means a tribunal appointed under bye-laws 19.1 and 39 to hear a formal complaint;

**United Kingdom** includes the Channel Islands and the Isle of Man;

**Written Referral** means a referral made under DBL 38.1 or 38.2.

1.3 The Interpretation Act 1978 applies to these **bye-laws** in the same way as it applies to an enactment

- 1.4 In these **bye-laws**, unless the context otherwise requires
- a. words importing the masculine gender include the neuter (as well as, by virtue of the Interpretation Act 1978 as applied by paragraph 3, the feminine);
  - b. words importing the neuter gender include both the masculine and the feminine;
  - c. any reference to a numbered **bye-law** is a reference to the **bye-law** so numbered among these **bye-laws**;
  - d. any reference within any of these **bye-laws** to a numbered paragraph is a reference to the paragraph so numbered of that **bye-law**.



- 1.5 In these **bye-laws**
- references to the date of an order made by the **Investigation Committee** under **bye-law** 16 (consent orders) or **bye-law** 16A (cautions) refer to the date on which the **order** was signed on behalf of the Committee;
  - references to the date of an **order** made by a **tribunal** or **panel** refer to the date on which the **order** was announced at the **hearing** of the **formal complaint** or appeal in question;
  - references to the date of an **order** made by the **Investigation Committee** under **bye-law** 30 (intervention orders) refer to the date on which the Committee decided to make the **order**.
- 1.6 Any **notice** or other document required to be served for the purposes of these **bye-laws** on a **respondent**, a **respondent firm** or a **defendant** may be sent by pre-paid post addressed to him at his **registered address** or, if none, at his last known or usual place of residence or business or may be sent by electronic mail where the **respondent**, **respondent firm** or the **defendant** agrees to receive notifications in this way.
- 1.7 Any **notice** or other document required to be served on the **head of staff** for the purposes of these **bye-laws** may be sent by pre-paid post addressed to the **head of staff** at **ICAEW's** principal London address for the time being or such other address of **ICAEW** as may be prescribed by **regulations** or may be sent by electronic mail to an address at which the **head of staff** has agreed to receive **notices** and documents under these **bye-laws**.
- 1.8 Service of a document sent as mentioned in paragraphs 6 or 7 shall be deemed to have been effected at the end of 48 hours from the time of posting; and in proving that a document was so sent it shall be sufficient to prove that the cover containing it was properly addressed, stamped and posted. Service of a document served by electronic mail shall be deemed to be served at 09:00 on the next business day following that on which it was transmitted.
- 1.9 **Regulations** may change, supplement or disapply any part of these **bye-laws** in specified cases or classes of case in pursuance of any provision of or made under any Act.

**Constitution of Investigation, Disciplinary, Appeal and Fitness Committees, and appointment of reviewers of complaints**

- 2 The Schedule to these **bye-laws** shall have effect with respect to the constitution of the **Investigation, Disciplinary, Appeal and Fitness Committees** and the appointment of **reviewers of complaints**.

## **LIABILITY TO DISCIPLINARY ACTION**

**Application of investigation and discipline schemes**

- 3 An **investigation and discipline scheme** shall apply to all **members, provisional members, foundation qualification holders, foundation qualification students, member firms** and **contracted firms** in accordance with the terms of that scheme and these **bye-laws**.

**Liability of *members, provisional members, foundation qualification holders* and *foundation qualification students* to disciplinary action**

- 4.1 A ***member, provisional member, foundation qualification holder*** or ***foundation qualification student*** (all hereinafter referred to as '***respondent***') shall be liable to disciplinary action under these ***bye-laws*** in any of the following cases, whether or not he was a ***member, provisional member, foundation qualification holder*** or ***foundation qualification student*** at the time of the occurrence giving rise to that liability
- a. if in the course of carrying out professional work or otherwise he has committed any act or default likely to bring discredit on himself, ***ICAEW*** or the profession of accountancy;
  - b. if he has performed his professional work or the duties of his employment, or conducted his ***practice***, inefficiently or incompetently to such an extent, or on such a number of occasions, as to bring discredit on himself, ***ICAEW*** or the profession of accountancy;
  - c. if he has committed a breach of the ***bye-laws*** or of any ***regulations*** or has failed to comply with any ***order***, direction or requirement made, given or imposed under them;
  - d. if he has failed to comply with any ***order*** of the ***Investigation, Disciplinary or Appeal Committee***, or of any ***tribunal*** or ***panel***, otherwise than by failing to pay any fine or costs;
  - e. if any of the circumstances set out in paragraph 2 exist with respect to him.
- 4.2 Those circumstances are:
- a. that he has failed to satisfy a judgment debt;
  - b. that he has, individually or as a partner, made an assignment by reason of insolvency of some or all of his assets for the benefit of his creditors;
  - c. that he has made any arrangement or entered into a composition with his creditors to satisfy his debts, whether by resolution of his creditors or court order or under any deed or other document by reason of insolvency;
  - d. that he has made a proposal to enter into a Voluntary Arrangement on grounds of insolvency, or has entered into such a Voluntary Arrangement;
  - e. that he is a partner in a ***firm*** which
    - i. has had a winding-up ***order*** made against it on grounds of insolvency; or
    - ii. has made a proposal to enter into a voluntary arrangement on grounds of insolvency, or has entered into such a voluntary arrangement; or
    - iii. has had an administration ***order*** made against it on grounds of insolvency;or
  - iv. has had a receiver appointed by a creditor or by a court on the application of a creditor;
  - f. that he is a ***director*** of a body corporate engaged in ***public practice*** which
    - i. has been the subject of an effective resolution passed by the shareholders (or in the case of a limited liability partnership, by its members) for it to be wound up or has had a winding-up ***order*** made against it on grounds of insolvency; or
    - ii. has made a proposal to enter into a voluntary arrangement on grounds of insolvency, or has entered into such a voluntary arrangement; or
    - iii. has had an administration order made against it on grounds of insolvency; or
    - iv. has had a receiver appointed by a creditor or by a court on the application of a creditor;

- g. that he has, in a court of competent jurisdiction, been convicted of an indictable offence (or has, before such a court, outside England and Wales been convicted of an offence corresponding to one which is indictable in England and Wales.)

#### Liability of *member firms* and *contracted firms* to disciplinary action

- 5.1 A **member-firm** or **contracted firm** (both hereinafter referred to as '**respondent firm**') shall be liable to disciplinary action under these **bye-laws** in any of the following cases
- a. if in the course of carrying out professional work or otherwise it has committed any act or default likely to bring discredit on itself, **ICAEW** or the profession of accountancy;
  - b. if it has performed its professional work, or conducted its practice, inefficiently or incompetently to such an extent, or on such a number of occasions, as to bring discredit on itself, **ICAEW** or the profession of accountancy;
  - c. if it has committed a breach of the **bye-laws** or of any **regulations** or has failed to comply with any **order**, direction or requirement made, given or imposed under them;
  - d. if it has failed to comply with any **order** of the **Investigation, Disciplinary or Appeal Committee**, or of any **tribunal** or **panel**, otherwise than by failing to pay any fine or costs;
  - e. if it is a partnership to which any of heads (i) to (iv) of **bye-law** 4.2(e) applies;
  - f. if it is a body corporate to which any of heads (i) to (iv) of **bye-law** 4.2(f) applies.
- In this paragraph '**regulations**' does not include any such regulations as are mentioned in **bye-law** 6.1(a) or 6.2(a).
- 5.2 It shall be a defence to a **complaint** arising by virtue of this **bye-law** for a **respondent firm** to prove that it had taken all such steps as it could reasonably have been expected to take (including the making of appropriate rules and arrangements) to prevent acts or defaults of the kind which are the subject of the **complaint**.
- 5.3 The fact that one or more partners have joined or left a **respondent firm** since the time of the acts or defaults which are the subject of disciplinary action shall not affect the **firm's** liability to such action unless the **Investigation Committee** is satisfied that, as currently constituted, the **firm** has substantially lost its identity with the **firm** as constituted at that time; but if the **respondent firm** continues to have the same or substantially the same name, that fact shall be evidence that such identity has not been lost.
- 5.4 For the purposes of this **bye-law** a **firm** which describes itself as 'Chartered Accountants' shall be presumed to be a **member firm** unless it proves that it is not.

#### Liability of *regulated firm* to disciplinary action

- 6.1 An **authorised firm** shall be liable to disciplinary action under these **bye-laws** in any of the following cases
- a. if it has committed a breach of any **regulations** issued by **ICAEW** in its capacity as a designated professional body under the Financial Services and Markets Act 2000, as an approved regulator and licensing authority under the Legal Services Act 2007 or in any comparable capacity under any legislation, wherever in force, for the time being designated in **regulations**;
  - b. if it has failed to comply with a **notice** served by the **Investigation Committee** under **bye-law** 13 within the time allowed by or under that **bye-law**;

- c. if it has failed to comply with any **order** of the **Investigation, Disciplinary or Appeal Committee**, or of any **tribunal** or **panel**, otherwise than by failing to pay any fine or costs.

6.2 A **registered auditor** shall be liable to disciplinary action under these **bye-laws** in any of the following cases

- a. if it has committed a breach of any **regulations** issued by **ICAEW** in its capacity as a recognised supervisory body under the Companies Act 2006 and the Local Audit & Accountability Act 2014 and as a recognised accountancy body and prescribed accountancy body under the Irish Companies Act 2014, or in any comparable capacity under any legislation, wherever in force, for the time being designated in **regulations**;
- b. if it has failed to comply with a **notice** served by the **Investigation Committee** under **bye-law** 13 within the time allowed by or under that **bye-law**;
- c. if it has failed to comply with any **order** of the **Investigation, Disciplinary or the Appeal Committee**, or of any **tribunal** or **panel**, otherwise than by failing to pay any fine or costs.

**Liability of former members, former member firms, former regulated firms and former contracted firms to disciplinary action**

- 6A.1 A person or body who, while he was a **member, member firm, regulated firm** or **contracted firm**, became liable to disciplinary action under these **bye-laws**, or an **investigation and discipline scheme**, shall continue to be subject to these **bye-laws** after he has ceased to be a **member, member firm, regulated firm** or **contracted firm**, as the case may be, as if he had not so ceased; and references in these **bye-laws** to **members, member firms, regulated firms** and **contracted firms** shall be construed accordingly so far as may be necessary to give effect to this paragraph.
- 6A.2 Without prejudice to the generality of paragraph 1 above, the reference in paragraph 1 of **bye-law** 9 (**complaints**) to facts or matters indicating that a **respondent** or a **respondent firm** may have become liable to disciplinary action under these **bye-laws**, or an **investigation and discipline scheme** includes facts or matters indicating that a former **member, former member firm, former regulated firm** or former **contracted firm** may have become so liable.
- 6A.3 **Bye-law** 13 (power of **Investigation Committee** to call for information etc) shall extend to any former **member, former member firm, former regulated firm** or former **contracted firm**, and a breach of **bye-law** 13 shall render the former **member, former member firm, former regulated firm** or former **contracted firm** liable to disciplinary action by virtue of this **bye-law**.
- 6A.4 Liability to disciplinary action or other action by virtue of this **bye-law**
  - a. subject to paragraph 3, extends only to facts and matters which occurred while the person or body concerned was actually a **member, member firm, regulated firm** or **contracted firm**, as the case may be; and
  - b. does not extend to any facts or matters which occurred before 7 October 1999 unless (for the avoidance of doubt) such facts or matters, at the time when they occurred, rendered the person or body concerned liable to disciplinary action under **bye-law** 6.1(a), or **bye-law** 6.2.(a) (or earlier **regulations** covering the same subject matter as those **bye-laws**, in conjunction with any **bye-laws**) or under any

**regulations** issued by the Institute in its capacity as a recognised professional body under the Insolvency Act 1986.

## Proof of certain matters

- 7.1 The fact that a **respondent** or **respondent firm** has, before a court of competent jurisdiction, pleaded guilty to or been found guilty of an indictable offence (or has, before such a court, outside England and Wales, pleaded guilty to or been found guilty of an offence corresponding to one which is indictable in England and Wales) shall for the purposes of these **bye-laws** be conclusive evidence of the commission by him of such an act or default as is mentioned in **bye-law** 4.1(a) or 5.1(a), as the case may be.
- 7.2 The fact that a **respondent** or **respondent firm**
- has been the subject of an adverse finding (not set aside on appeal or otherwise) in respect of his conduct, being a finding in proceedings before a body which is for the time being listed in paragraph 6 or before a regulatory body performing its functions under the Financial Services and Markets Act 2000, the Insolvency Act 1986, the Companies Act 2006, the Irish Companies Act 2014, the Local Audit & Accountability Act 2014 and the Legal Services Act 2007; or
  - has had a disqualification order made against him or has given a disqualification undertaking which has been accepted by the Secretary of State under the Company Directors Disqualification Act 1986,

shall, for the purposes of these **bye-laws**, be conclusive evidence of the commission by him of such an act or default as is mentioned in **bye-law** 4.1(a) or 5.1(a), as the case may be.

- 7.3 For the purpose of **bye-law** 7.2:
- a finding of fact by a court leading to the making of a disqualification order against a **respondent** under the Company Directors Disqualification Act 1986; or
  - the details of unfit behaviour set out in the schedule attached to an undertaking given by a respondent under the Company Directors Disqualification Act 1986;

shall be conclusive evidence of any facts found or unfit behaviour as the case may be.

- 7.4 A finding of fact
- in any report of an inspector appointed under the Companies Act 2006;
  - in any civil or criminal proceedings before a court of competent jurisdiction in the **United Kingdom** or elsewhere;
  - in any proceedings before, or report by, any of the bodies mentioned in paragraph 7.5; or
  - in any proceedings as a result of which an accountant was notified by the Solicitors Regulation Authority that he was not qualified to give an accountant's report within the meaning of section 34 of the Solicitors Regulation Authority Rules or unfit to be involved in a legal practice under section 43 of the Solicitors Act 1974,

shall for the purposes of these **bye-laws** be prima facie evidence of the facts found.

- 7.5 The bodies referred to in paragraph 7.4(c) are
- The Financial Conduct Authority;
  - The Prudential Regulation Authority;

- c. The Financial Services Tribunal or the Financial Services and Markets Tribunal;
- d. The Insolvency Practitioners Board;
- e. The Financial Reporting Council;
- f. The Irish Auditing and Accounting Supervisory Authority;
- g. The Legal Services Board;
- h. The Legal Ombudsman;
- i. any recognised professional body or competent authority within the meaning of the Insolvency Act 1986;
- j. any recognised supervisory body within the meaning of the Companies Act 2006 or the Local Audit & Accountability Act 2014;
- k. any approved regulator or licensing authority within the meaning of the Legal Services Act 2007;
- l. any body which is for the time being listed in paragraph 6;
- m. any body situated in Ireland which exercises a similar function to the bodies listed in (a) to (l) above.

7.6 The bodies referred to in paragraph 2(a) and 5(l) are

- a. The Institute of Chartered Accountants of Scotland;
- b. The Institute of Chartered Accountants in Ireland;
- c. The Association of Chartered Certified Accountants;
- d. The Chartered Institute of Management Accountants;
- e. The Chartered Institute of Public Finance and Accountancy.

7.7 The **Council** may at any time by **regulations** add any accountancy body (other than the Institute) to, or remove any body listed in paragraphs 7.(2), 7.(5) or 7.(6).

7.8 Nothing in paragraphs 4 to 7 shall affect the evidential status of any report or other document not falling within paragraph 4.

#### **Relevance of codes of *practice*, *regulations* etc.**

8.1 In discharging his or its functions under these **bye-laws** a person or body mentioned in paragraph 2 may have regard to all relevant matters, including any code of ***practice*** (whether relating to the ethical, the technical or any other aspect of ***practice***), and any ***regulations*** or guidance, affecting (as the case may be) the ***respondent*** or ***respondent firm*** concerned.

8.2 Those persons and bodies are

- a. the ***head of staff***;
- b. a ***reviewer of complaints***;
- c. the ***Investigation Committee***;
- d. a ***tribunal***;
- e. a ***panel***.



## COMPLAINTS

### **Complaints**

- 9.1 Any person may bring to the attention of the **head of staff** any facts or matters indicating that a **respondent** or **respondent firm** may have become liable to disciplinary action under these **bye-laws** or an **investigation and discipline scheme** and it is the duty of every **member**, where it is in the public interest for him to do so, to report to the **head of staff** any such facts or matters of which he is aware.
- 9.2 In determining whether it is in the public interest for a **member** to report any such facts or matters under paragraph 1 regard shall be had to such guidance as may from time to time be issued by the **Council**.
- 9.3 In these **bye-laws** any facts or matters which
- have come to the attention of the **head of staff** under paragraph 1 or otherwise; and
  - indicate that a **respondent** or **respondent firm** may have become liable to disciplinary action under these **bye-laws** or an **investigation and discipline scheme** are referred to as a **complaint**.
- 9.4 Any dispute relating to
- a decision of the **head of staff** as to whether any facts or matters fall within paragraph 3(b); or
  - an opinion formed by him as mentioned in paragraph 1, 2, 3(a) or 3(b) of **bye-law** 10,
- shall be referred to and determined by the **Investigation Committee** subject to paragraph 9.(5).
- 9.5 The **Investigation Committee** shall not consider a dispute under paragraph (4) if more than 28 days have passed since the date of the letter notifying the person who disputes the decision or opinion of the head of staff, unless:
- the **head of staff** is satisfied that the person who disputes the decision or opinion could not reasonably have been expected to respond to the letter within 28 days; or
  - there is, in the opinion of the **head of staff**, fresh evidence justifying reconsideration of the decision or opinion;

The opinion of the **head of staff** as to whether any further information amounts to new evidence shall be final.

### **Processing of complaints by head of staff**

- 10.1 If, as regards any **complaint**, the **head of staff** is of the opinion that it is to be dealt with by an **investigation and discipline scheme**, he shall lay it before the **Investigation Committee**.
- 10.2 If, in the case of any **complaint** not laid before the **Investigation Committee** under paragraph 1, the **head of staff** is of the opinion that it is appropriate to do so, he shall attempt to resolve the **complaint** by conciliation or in some other way not involving disciplinary action under these **bye-laws**; and if the attempt is successful, he shall take no further action with respect to the **complaint**.

- 10.3 Where an attempt under paragraph 2 is made but fails, **the head of staff** shall review the **complaint** in the light of any further relevant facts or matters which have come to his attention since he initiated the attempt; and
- if as a result of that review he remains of the opinion that the **respondent** or **respondent firm** concerned may have become liable to disciplinary action under these **bye-laws**, he shall proceed to investigate the **complaint**;
  - if as a result of that review he is no longer of that opinion, he shall take no further action with respect to the **complaint**.
- 10.4 If, as regards any **complaint** not laid before the **Investigation Committee** under paragraph 1, the **head of staff** does not think it appropriate to make an attempt under paragraph 2, he shall proceed to investigate the **complaint**.
- 10.5 If, having investigated a **complaint** under paragraph 3 or 4, the **head of staff** is no longer of the opinion that the **respondent** or **respondent firm** concerned may have become liable to disciplinary action under these **bye-laws**, he shall take no further action with respect to the **complaint** unless the **complainant** insists on its being laid before the **Investigation Committee**; but if the **head of staff** remains of that opinion or the **complainant** so insists, the **head of staff** shall lay the **complaint** before the **Investigation Committee**.
- 10.6 The **Investigation Committee** shall not consider a **complaint** under paragraph (5) if
- more than 28 days have passed since the date of the letter notifying the **complainant** that the **head of staff** is no longer of the opinion that the **respondent** or **respondent firm** concerned may have become liable to disciplinary action unless the **head of staff** is satisfied that the **complainant** could not reasonably have been expected to respond to the letter within 28 days or, in the opinion of the head of staff, there is fresh evidence justifying reconsideration of his opinion. The opinion of the **head of staff** as to whether any further information amounts to new evidence shall be final
- Or
- there is an outstanding referral to the **Fitness Committee** against the **member** or **provisional member** or the **Fitness committee** has accepted the **member's** or **provisional member's** resignation from membership of **ICAEW** or the **Fitness Committee** has made an **order** that the **complaint** against the **member** or **provisional member** should be closed.

#### **Investigation of complaints by firms themselves**

- 11.1 Every **firm** shall ensure that all new clients are informed in writing of the name of the **principal** to be contacted in the event of their wishing to complain about the **firm's** services, and of their right to complain to **ICAEW**.
- 11.2 If a **firm** receives a **complaint** concerning any services it has provided or failed to provide to a client or former client, it shall forthwith cause the **complaint** to be investigated by a **principal**.
- 11.3 If, as a result of an investigation under paragraph 2, the **firm** is of the opinion that the **complaint** is wholly or partly justified, it shall take whatever steps are appropriate to resolve the **complaint**, whether by way of remedial work, apology, the provision of information, the return of books or documents, the reduction or repayment of fees, or otherwise.



- 11.4 If the **head of staff** receives a **complaint** against a **firm**, not being a **complaint** to which paragraph 1 of **bye-law** 10 applies, he may, if it appears to him appropriate to do so, refer it to the **firm** for investigation under paragraph 2 of this **bye-law** instead of dealing with it as provided in paragraphs 2 to 5 of **bye-law** 10.
- 11.5 The fact that a **complaint** is being investigated under this **bye-law** shall not affect the duty of **members** under **bye-law** 9.1 to report to the **head of staff**, where it is in the public interest for them to do so, any facts or matters indicating that a **respondent** or **respondent firm** may have become liable to disciplinary action.
- 11.6 The definition of '**complaint**' in **bye-law** 9.3 does not apply for the purposes of this **bye-law**.

#### **Power to reopen complaints/cases**

- 11A.1 The **head of staff** may, at any time, reopen a matter which has been previously closed following assessment or investigation where the **head of staff** has reason to believe that:
- the decision not to proceed with the matter may have been materially flawed (for any reason); or
  - there is new information which may have led, wholly or partly, to a different decision; or
  - the **respondent** or **respondent firm** may have previously withheld information; or
  - the **respondent** or **respondent firm** may have previously misled the **head of staff** but only if one or more of the grounds in paragraph (2) are also satisfied.
- 11A.2 In the opinion of the **head of staff** further consideration is necessary:
- for the protection of the public; or
  - otherwise necessary in the public interest.
- 11A.3 Where the **head of staff** decides to reopen a matter he shall, as soon as reasonably practicable notify the following, setting out his reasons for the decision in writing:
- the **respondent** or **respondent firm**; and
  - the person who brought the matter to the attention of the **head of staff**; and
  - any other person who, in the opinion of the **head of staff**, has a legitimate interest in the matter.

## **COMPLAINTS LAID BEFORE INVESTIGATION COMMITTEE**

#### **Initial consideration of complaints so laid**

- 12.1 This **bye-law** applies where a **complaint** is laid before the **Investigation Committee** under **bye-law** 10.
- 12.2 The **Investigation Committee** shall first of all decide whether it considers that, having regard to all the circumstances of the matter, it is appropriate that the **complaint** is referred to an **investigation and discipline scheme** to be dealt with under the terms of that scheme.

- 12.3 If the **Investigation Committee** does not refer a **complaint** to an **investigation and discipline scheme** under **bye-law** 12A.1, it shall either
- refer the **complaint** back to the **head of staff** to be processed by him under paragraphs 2 to 5 of **bye-law** 10 as if he had not laid it before the **Investigation Committee** under paragraph 1 of that **bye-law**, or
  - proceed to deal with it under **bye-law** 15.

#### **Referral of complaints to or from an investigation and discipline scheme**

- 12A.1 If the **Investigation Committee** decides, in accordance with **bye-law** 12.2, that it is appropriate for a **complaint** to be referred to an **investigation and discipline scheme**, it shall make a written referral of the **complaint** to that **investigation and discipline scheme**.
- 12A.2 If a referral to an **investigation and discipline scheme** is declined in accordance with the terms of the scheme, the **Investigation Committee** shall either
- refer the fact or matter back to the **head of staff** to be processed by him under paragraphs 2 to 5 of **bye-law** 10; or
  - proceed to deal with the fact or matter under **bye-law** 15.
- 12A.3 If following an enquiry under an **investigation or discipline scheme**, the fact or matter is referred to **ICAEW**, the **Investigation Committee** shall either
- refer the fact or matter back to the **head of staff** to be processed by him under paragraphs 2 to 5 of **bye-law** 10; or
  - proceed to deal with the fact or matter under **bye-law** 15.

#### **Assumption of matters in accordance with an investigation and discipline scheme**

- 12B If the **head of staff** receives **notice** in writing in accordance with the terms of an **investigation and discipline scheme** requiring that a fact or matter be dealt with under the terms of that scheme, then with immediate effect
- the investigation of the fact or matter shall be treated as if it had been referred under **bye-law** 12A.1; and
  - the **head of staff** and the **Investigation Committee** (or if, at the relevant time, a **formal complaint** has been preferred under **bye-law** 15.2a, the **Disciplinary Committee**) shall cease to have any responsibility for it.

#### **Power of Investigation Committee to call for information, etc.**

- 13.1 The **Investigation Committee** shall have power by **notice** served on any **respondent** or **respondent firm** to call for such information, such explanations and such books, records and documents as the Committee considers necessary to enable it or the **head of staff** to perform its or his functions under these **bye-laws**.
- 13.2 It shall be the duty of any person or body on whom a **notice** is served under paragraph 1 to comply with it within the period of fourteen days beginning with the date of service or such longer period as the **Investigation Committee** may allow.

### **Power of *Investigation Committee* to require advice to be obtained and followed**

- 14.1 If the ***Investigation Committee*** is of the opinion that a ***complaint*** laid before it indicates that the ***practice*** of any ***firm*** may have been conducted inefficiently, it may require any ***respondent*** or ***respondent firm*** concerned (at his own expense) to obtain advice from such source as the Committee may specify and to implement the advice obtained.
- 14.2 In any disciplinary proceedings for an alleged failure to comply with a requirement imposed under paragraph 1, it shall be a defence for the ***respondent*** or ***respondent firm*** concerned to prove that he had good and sufficient reasons for not complying with the requirement.
- 14.3 The power conferred on the ***Investigation Committee*** by this ***bye-law*** is without prejudice to any power exercisable by it apart from this ***bye-law***.

### **Complaints not referred to or referred back from an *investigation and discipline scheme***

- 15.1 Where a ***complaint*** laid before the ***Investigation Committee*** is
- not referred to an ***investigation and discipline scheme*** under ***bye-law*** 12A.1 and not referred back to the ***head of staff*** under ***bye-law*** 12.3a; or
  - declined by an ***investigation and discipline scheme*** under ***bye-law*** 12A.2 and not referred back to the ***head of staff*** under ***bye-law*** 12A.2a; or
  - referred back by an ***investigation and discipline scheme*** to ***ICAEW*** under ***bye-law*** 12A.3 and not referred back to the ***head of staff*** under ***bye-law*** 12A.3a,

the ***Investigation Committee*** shall consider whether or not the ***complaint*** discloses a ***prima facie case*** and, if it finds that it does not, shall dismiss the ***complaint***.

- 15.2 If the ***Investigation Committee*** finds that the ***complaint*** discloses a ***prima facie case*** it may
- prefer the whole or part of the ***complaint*** to the ***Disciplinary Committee*** as a ***formal complaint***; or
  - deal with the whole or part of it under ***bye-law*** 16 (consent orders); or (bb) deal with the whole or part of it under ***bye-law*** 16A (cautions); or
  - order that further consideration of the whole or part of the ***complaint*** be deferred, on such terms and conditions as it considers appropriate, for either or both of the following purposes, namely
    - to enable the ***Investigation Committee*** to obtain such information, such explanations and such books, records and documents as it considers necessary to perform its functions under this ***bye-law***; or
    - if the subject of the ***complaint*** is the existence of any of the circumstances set out in sub-paragraphs (b) to (f) of ***bye-law*** 4.2, to enable the Committee to monitor developments arising out of those circumstances; or
  - order that no further action be taken on the ***complaint*** or on any specified part of it.
- 15.3 The conditions on which an ***order*** under paragraph 2(c) may be made include the giving of written undertakings for the protection of client interests.

- 15.4 Before taking any decision under the preceding provisions of this **bye-law** the **Investigation Committee**
- a. unless satisfied that the **respondent** or **respondent firm** concerned has been given an opportunity to make written representations to the Committee, shall give him such an opportunity; and
  - b. may, if it thinks fit, give him or his **representative** an opportunity of being heard before the Committee (but shall not be under a duty to do so).
- 15.5 In deciding whether to prefer a **complaint** (the current **complaint**) to the **Disciplinary Committee**, the **Investigation Committee** may take into account any facts or matters
- a. which were the subject matter of any **complaint** considered by the **Investigation Committee** on any previous occasion in relation to the **respondent** or **respondent firm** concerned;
  - b. in respect of which the Committee on that occasion found that a **prima facie case** was disclosed; but
  - c. in respect of which no **formal complaint** was preferred to the **Disciplinary Committee** and no **order** was made under **bye-law** 16.2 (consent orders) or **bye-law** 16A (cautions);

and if the **Investigation Committee** decides to prefer the whole or part of the current **complaint** to the **Disciplinary Committee** as a **formal complaint**, it may also prefer to that Committee any **formal complaint** which it could have preferred to it on that previous occasion against the **respondent** or **respondent firm** in question and, if there were two or more such previous occasions, may prefer a separate **formal complaint** against him in respect of each of some or all of them.

- 15.6 If the **Investigation Committee** prefers a **formal complaint** to the **Disciplinary Committee**, it shall send to the **Disciplinary Committee** and to the **defendant** a summary of the material facts and matters which were considered by the **Investigation Committee** together with:
- a summary or copy of any written representations made to it by the **defendant**, and if the **defendant** has appeared before it in person or by a **representative**, a summary of any oral representations made to it.
- 15.7 If the **Investigation Committee** finds that a **complaint** discloses a **prima facie case** but **orders** that no further action be taken on it, it shall serve a **notice** to that effect on the **respondent** or **respondent firm** concerned; and if within the period of 28 days beginning with the date of service of that **notice** the **respondent** or **respondent firm** concerned serves **notice** on the **head of staff** that he is unwilling to accept the finding that a **prima facie case** exists, then, unless on reconsideration the Committee finds that no **prima facie case** exists, it shall prefer the whole or part of the **complaint** to the **Disciplinary Committee** under paragraph 2(a).

## Consent orders

- 16.1 If
- a. under **bye-law** 15 the **Investigation Committee** is of the opinion that a **complaint** discloses a **prima facie case**; and
  - b. after considering all the relevant circumstances (including the past **disciplinary record**, if any, of the **respondent** or **respondent firm** concerned) the Committee is of the opinion that the **complaint** is one which it is appropriate to deal with under this **bye-law**, the following provisions of this **bye-law** shall apply.
- 16.2 The **Investigation Committee** may with the agreement of the **respondent** or **respondent firm** concerned make
- a. any one or more of the **orders** which, on finding a **formal complaint** proved, the **Disciplinary Committee** would have power to make against the **defendant** by virtue of according to whether the person concerned is a **member**, **member firm**, **contracted firm**, **authorised firm**, **registered auditor**, **provisional member**, **foundation qualification holder** or **foundation qualification student**;
    - i. **bye-law** 22.3 (f), (g) or (h); or
    - ii. **bye-law** 22.4 (b), (c) or (d); or
    - iii. **bye-law** 22.5 (a), (b) or (c); or
    - iv. **bye-law** 22.6 (b) or (c) or (d); or
    - v. **bye-law** 22.7 (f) or (g),
    - vi. **bye-law** 22.8 (c), (d) or (e),
    - vii. **bye-law** 22.9 (e) or (f).
  - b. any **order** which, on finding a **formal complaint** proved, the **Disciplinary Committee** would have power to make against the **defendant** under **bye-law** 23, 24 or 24A;
  - c. an **order** that the **respondent** or **respondent firm** concerned shall pay to **ICAEW** a sum by way of costs.
- 16.3 Before making any **order** under paragraph 2 the **Investigation Committee** shall serve on the **respondent** or **respondent firm** concerned a **notice** describing the action which it proposes to take if the **respondent** or **respondent firm** agrees, and specifying the **order** which it would make in that event.
- 16.4 A **notice** under paragraph 3 must
- a. be in, or substantially in, such form as may be prescribed by **regulations** made by the **Investigation Committee**;
  - b. explain the extent to which the finding of the **Investigation Committee** would be communicated to others;
  - c. state that, if the **respondent** or **respondent firm** concerned does not agree in writing to the proposed action within a stated period, a **formal complaint** may be preferred to the **Disciplinary Committee** which, in the event of its finding that **complaint** proved in whole or in part, would have available to it the complete range of **orders** mentioned in **bye-laws** 22, 23, 24 and 24A.

- 16.5 If within the period stated in the **notice** the **respondent** or **respondent firm** agrees in writing to the **Investigation Committee** proceeding as proposed in the **notice**, the Committee shall make the **order** specified in the **notice** unless, having regard to any further information which it has received, it is of the opinion
- that a lesser or no penalty is appropriate, in which case it shall impose a lesser or no penalty, as the case may be;
  - that a smaller or no sum is appropriate by way of costs, in which case it shall order a smaller sum to be paid by way of costs or make no **order** as to costs, as the case may be; or
  - that no **prima facie case** exists, in which case it shall so find.
- 16.6 If the **respondent** or **respondent firm** does not within the period stated in the **notice** agree in writing to the **Investigation Committee** proceeding as proposed in the **notice**, the Committee shall prefer the **complaint** to the **Disciplinary Committee** under **bye-law** 15.2(a) unless, having regard to any further information which it has received, it is of the opinion that no **prima facie case** exists, in which case it shall so find.
- 16.7 Paragraphs 1, 4 and 5 of **bye-law** 32 (time limits for payment of fines) shall apply in relation to any fine imposed by an **order** made under paragraph 2(a) or (b) of this **bye-law** as they apply in relation to a fine imposed by an **order** made by a **tribunal**; and paragraphs 2, 8 and 9 of **bye-law** 33 (time limits for payment of costs) shall apply in relation to any costs payable by virtue of an **order** made under paragraph 2(c) of this **bye-law** as they apply in relation to costs payable by virtue of an **order** made under **bye-law** 33(1).
- 16.8 Where any provision of **bye-law** 32 or 33 applies by virtue of paragraph 7 of this **bye-law**, it shall do so with the modification that any reference to the date of the **order** is to be taken to refer to the date of the relevant **order** under this **bye-law**.
- 16.9 Where the **Investigation Committee** makes an **order** under this **bye-law**, it shall cause to be published, as soon as practicable and in such a manner as it thinks fit, such a report as it thinks fit of its proceedings under this **bye-law** with respect to the **complaint**.
- 16.10 Except in so far as the **Investigation Committee** in its absolute discretion otherwise directs, a report published under paragraph 9 shall
- state the name of the person or body against whom the **order** was made; and
  - describe the **order** or **orders** made against him and state that they were made with his agreement,
- but need not include the name of any other person or body concerned in the **complaint**.

## Cautions

- 16A.1 If
- under **bye-law** 15 the **Investigation Committee** finds that a **complaint** discloses a **prima facie case**; and
  - after considering all the relevant circumstances (including the past **disciplinary record**, if any, of the **respondent** or **respondent firm** concerned) the Committee is of the opinion that the **complaint** is one which it is appropriate to deal with by way of a caution under this **bye-law** (with or without an **order** to pay costs),



the following provisions of this **bye-law** shall apply.

- 16A.2 The **Investigation Committee** shall serve on the **respondent** or **respondent firm** concerned ('the subject of the **complaint**') a **notice**
- a. stating that the Committee finds that the **complaint** discloses a **prima facie case**; and
  - b. informing the subject of the **complaint** that the Committee proposes to make an **order** under this **bye-law**
    - i. that he be cautioned; or
    - ii. that he be cautioned and pay to **ICAEW** a fixed sum by way of costs, as the case may be.
- 16A.3 A **notice** under paragraph 2 must be in, or substantially in, such form as may be prescribed by **regulations** made by the **Investigation Committee** and must explain the extent to which, in accordance with **regulations**, the proposed **order**, if made, would be communicated to others; and in that paragraph 'a fixed sum' means the fixed sum for the time being so prescribed for such costs.
- 16A.4 If within the period of 28 days beginning with the date of service of a **notice** under paragraph 2 above the subject of the **complaint** serves **notice** on the **head of staff** that he is unwilling to accept the finding that a **prima facie case** exists, then, unless on reconsideration the Committee finds that no **prima facie case** exists, it shall prefer the whole or part of the **complaint** to the **Disciplinary Committee** under **bye-law** 15.2(a).
- 16A.5 If no **notice** under paragraph 4 is served on the **head of staff** within that period, the **Investigation Committee** shall make the **order** proposed in the **notice** served under paragraph 2.
- 16A.6 Any costs ordered under this **bye-law** shall be paid within the period of 30 days beginning with the date of the **order**; and **bye-law** 33.8 (latest time for payment of costs) shall apply to costs payable to **ICAEW** under this **bye-law** as it applies to costs payable under **bye-law** 33.
- 16A.7 Except with the consent of the subject of the **complaint** in question, this **bye-law** shall not apply to a **complaint** involving facts or matters which occurred before 7 October 1999.

## COMPLAINANT'S RIGHT TO REVIEW

### Review of finding of no **prima facie case**

- 17.1 This **bye-law** applies where, under **bye-law** 15, 16 or 16A, the **Investigation Committee** finds that a **complaint** laid before it does not disclose a **prima facie case** against the **respondent** or **respondent firm** concerned.
- 17.2 A **complainant** may apply in writing to the **head of staff** for a review of the finding, and the **head of staff** shall refer every such application to a **reviewer of complaints (the reviewer)** who, subject to paragraph 3, shall consider the application.

- 17.3 **The reviewer** shall not consider the application if it was received by the **head of staff** after the end of the period of 28 days beginning with the date of the finding unless
- the reviewer** is satisfied that the **complainant** could not reasonably have been expected to make the application within that period; or
  - there is, in the opinion of **the reviewer**, fresh evidence justifying consideration of the application.
- 17.4 If, after considering the application, **the reviewer** is of the opinion that one or more of the circumstances mentioned in paragraph 5 apply, he shall remit the application to the **Investigation Committee** with a recommendation that the whole or part of the **complaint** be reconsidered.
- 17.5 Those circumstances are that
- fresh evidence of a material nature has been received since the date of the finding;
  - there has been a failure on the part of the **head of staff** or the **Investigation Committee** to follow the procedure for processing or consideration of **complaints** laid down in these **bye-laws** or any **regulations**, and the Committee's consideration of the **complaint** has been prejudiced by that failure;
  - there is reason to suspect a lack of independence on the part of any **member** of the **Investigation Committee** who took part in the consideration of the **complaint**, and the Committee's consideration of the **complaint** has been prejudiced by that lack;
  - the finding was not one which could reasonably have been arrived at by the **Investigation Committee** upon due consideration of the facts and matters before it.
- 17.6 If, after considering the application, **the reviewer** is of the opinion that none of the circumstances mentioned in paragraph 5 applies, he shall so inform the **complainant** and the **Investigation Committee** and give them in writing his reasons for being of that opinion.
- 17.7 **The reviewer** may request the **head of staff** to provide him with such technical assistance as **the reviewer** considers necessary to enable him to perform his functions under this **bye-law**, and the **head of staff** shall comply with any reasonable request made under this paragraph.
- 17.8 **The reviewer** may require the **Investigation Committee** to exercise its powers under **bye-law** 13 in order to obtain such information, such explanations and such books, records and documents as he considers necessary to enable him to perform his functions under this **bye-law**; and for this purpose the reference in that **bye-law** to the Committee's functions shall be taken to include those of **the reviewer**.

#### **Further investigation of complaint after review**

- 18.1 If under **bye-law** 17.4 **the reviewer** remits the application to the **Investigation Committee** with a recommendation that the whole or part of the **complaint** be reconsidered, the **complaint** or that part of it shall be treated by the Committee as if it had then been newly laid before it by the **head of staff**, except that
- the Committee may have regard both to the information and any representations previously available to it in relation to the **complaint** and to any information or representations (whether written or oral) received by it since the date of the finding mentioned in **bye-law** 17.1; and



- b. the Committee shall not take any decision on the **complaint** under paragraphs 1 to 3 of **bye-law** 15 until the respondent or respondent firm concerned has been given a further opportunity to make written representations to it.
- 18.2 If it appears to the **Investigation Committee**, after reconsidering the **complaint** as required by paragraph 1, that there is still no **prima facie case** against the **respondent** or **respondent firm** concerned, it shall inform **the reviewer** of its reasons for proposing so to find; and **the reviewer** may, within the period of 28 days beginning with the date on which he is so informed, or such longer period as the Committee may allow, send the Committee such comments, if any, on the proposed finding as he thinks fit.
- 18.3 On receipt of any such comments within the period mentioned in paragraph 2 the **Investigation Committee** shall consider its proposed finding in the light of them, and shall then decide whether or not it is of the opinion that the **complaint** discloses a **prima facie case**.
- 18.4 If
- a. within the period allowed by or under paragraph 2 **the reviewer** informs the **Investigation Committee** that he has no comments on the proposed finding; or
  - b. when that period ends no comments by **the reviewer** have been received by the Committee, the Committee shall proceed to decide whether or not it is of the opinion that the **complaint** discloses a **prima facie case**.
- 18.5 If under paragraph 3 or 4, the **Investigation Committee** finds that the **complaint** does not disclose a **prima facie case**, it shall inform the **complainant** and **the reviewer** in writing of its reasons for so finding.

## DISCIPLINARY PROCEEDINGS

### **Tribunals**

- 19.1 Subject to paragraph 7, on receipt by the **Disciplinary Committee** of a **formal complaint**, the Chairman of that Committee or, failing him, any Vice-Chairman of that Committee
- a. shall appoint three of its members, one of them being a **member** of **ICAEW** and the remaining two being **lay members** as a **tribunal** to hear that complaint; and
  - b. shall appoint one of the two **lay members** as chairman of the **tribunal**.
- 19.2 If, in the case of a **tribunal** so appointed, any member of the **tribunal**
- a. is for any reason unable to attend the **hearing** or any adjourned **hearing** of the **formal complaint**; or
  - b. is in the course of the **hearing** unable to continue so to attend, the **tribunal** will no longer be quorate and the case will have to be re-heard in full by a new **tribunal** appointed pursuant to paragraph 19(1).

- 19.3 If at any time during the **hearing** of a **formal complaint** the chairman of the **tribunal** appointed under paragraph 1 is for any reason of the opinion that it is impracticable or would be contrary to the interests of justice for the **hearing** to be completed by that **tribunal**, he shall so inform the Chairman or, failing him, any Vice-Chairman of the **Disciplinary Committee**, who shall thereupon direct that the **complaint** be re-heard by a new **tribunal** so appointed.
- 19.4 The **Disciplinary Committee** may appoint a barrister or a solicitor to act as legal assessor at the **hearing** of a **formal complaint**.
- 19.5 Where a new **tribunal** is appointed pursuant to paragraph 2 or 3, or to an **order** made on appeal under **bye-law** 29.2(e), no member of the previous **tribunal** may be appointed as a member of the new one; but a person appointed as a legal assessor may continue to act at any re-hearing of the **complaint**.
- 19.6 **Regulations** may provide for a **tribunal** to be constituted other than as required by paragraph 1 if a different constitution is prescribed or approved by a **relevant authority**.

#### **Hearing of formal complaint**

- 20.1 As soon as practicable after the appointment of a **tribunal** to hear a **formal complaint**, the **head of staff** shall serve on the **defendant** a **notice** stating the terms of the **complaint** and the time and place fixed for the **hearing**.
- 20.2 The **defendant** may appear before the **tribunal** in person or by a **representative**.
- 20.3 The **tribunal** shall give the **defendant** or his **representative** a reasonable opportunity of being heard before it.
- 20.4 If the **defendant** does not attend and is not represented at the **hearing**, then, provided that the **tribunal** is satisfied that the **notice** required by paragraph 1 was served on him, the **tribunal** may hear the **formal complaint** in his absence.
- 20.5 The **Investigation Committee** may appoint the **head of staff** or any **member** of **ICAEW**, or may instruct a barrister or solicitor, to present the **formal complaint** before the **tribunal**.

#### **Temporary suspension of activities of authorised firm**

- 21.1 If, at any time while a **tribunal** is considering a **formal complaint** against an **authorised firm**, it is of the opinion, as regards all or any of the **firm's** exempt regulated activities under the Financial Services and Markets Act 2000, that their continuation may materially prejudice the interests of any client of the **firm**, it may serve on the **firm** a **notice** specifying the activities as to which it is of that opinion and ordering the **firm** to suspend them for a specified period (not exceeding 30 days) beginning at the time of service of the **notice**.
- 21.2 A **notice** under paragraph 3 of **bye-law** 16 (consent orders) served on a **firm** undertaking exempt regulated activities under the Financial Services and Markets Act 2000 shall mention the power available under this **bye-law** (as well as the **orders** referred to in paragraph 4(c) of that **bye-law**).

## Powers of tribunal

- 22.1 If the **tribunal** appointed to hear a **formal complaint** is of the opinion that the **complaint** has been proved in whole or in part, it shall make a finding to that effect; but if it is not of that opinion, it shall dismiss the **complaint**.
- 22.2 If the **tribunal** finds that the **formal complaint** has been proved in whole or in part, it may (unless it is of the opinion that in all the circumstances it is inappropriate to do so) make against the **defendant** such one or more of the **orders** available against him under the following provisions of these **bye-laws**, namely
- paragraph 3, 4, 5, 6, 7, 8 or 9 of this **bye-law**, as the case may be; and
  - bye-laws** 23 (waiver etc. of fees), 24 (remedial action) and 24A (expenses),
- as it considers appropriate, having regard to the past **disciplinary record**, if any, of the **defendant**, the **tribunal's** views as to the nature and seriousness of the **formal complaint** (so far as proved), and any other circumstances which the **tribunal** considers relevant.
- 22.3 If the **defendant** is a **member**, the **orders** available against him are
- that he be excluded from membership;
  - that his **practising certificate** be withdrawn either indefinitely or for a specified period;
  - that any **Insolvency Licence** held by him be withdrawn;
  - that he be ineligible for an **Insolvency Licence**;
  - that he be ineligible for a **practising certificate**, either indefinitely or for a specified period;
  - that he be severely reprimanded;
  - that he be reprimanded;
  - that he be fined a specified sum.
- 22.4 If the **defendant** is a **member firm** or a **contracted firm**, the **orders** available against it are
- that it be prohibited from using the description 'Chartered Accountants' for a specified period;
  - that it be severely reprimanded;
  - that it be reprimanded;
  - that it be fined a specified sum.
- 22.5 If the **defendant** is an **authorised firm**, the **orders** available against it are
- that it be severely reprimanded;
  - that it be reprimanded;
  - that it be fined a specified sum.
- 22.6 If the **defendant** is a **registered auditor**, the **orders** available against it are
- that its registration or registrations granted at the instance of the Institute be withdrawn;
  - that it be severely reprimanded;
  - that it be reprimanded;
  - that it be fined a specified sum.

- 22.7 If the **defendant** is a **provisional member**, the **orders** available against him are
- that he be declared unfit to become a **member**;
  - that he cease to be a **provisional member** and be ineligible for re-registration as a **provisional member** for a specified period not exceeding two years;
  - that the registration of his **training contract** be suspended for a period not exceeding two years;
  - that for a specified period not exceeding two years he be ineligible to sit for such one or more of **ICAEW's** examinations as may be specified or for any specified part of any of those examinations;
  - that he be disqualified from such one or more of **ICAEW's** examinations as may be specified or from any specified part of any of those examinations, not being an examination or part the result of which was duly notified to him by **ICAEW** before the date of the **order**;
  - that he be severely reprimanded;
  - that he be reprimanded.
- 22.8 If the **defendant** is a **Foundation Qualification Holder** the **orders** available against him are
- that his **Foundation Qualification** status be removed;
  - that he be declared unfit to become a **member**;
  - that he be severely reprimanded;
  - that he be reprimanded;
  - that he be fined a specific sum.
- 22.9 If the **defendant** is a **Foundation Qualification Student** the **orders** available against him are
- that he be declared unfit to become a **member**;
  - that he cease to be a **Foundation Qualification Student** and he be ineligible for re-registration as a **Foundation Qualification Student** for a specified period not exceeding two years;
  - that for a specified period not exceeding two years he be ineligible to sit for such one or more of **ICAEW's** examinations as may be specified or for any specified part of those examinations;
  - that he be disqualified from such one or more of **ICAEW's** examinations as may be specified or from any specified part of those examinations, not being an examination or part the result of which was duly notified to him by **ICAEW** before the date of the **order**;
  - that he be severely reprimanded;
  - that he be reprimanded.
- 22.10 An **order** under this **bye-law** may include such terms and conditions (if any) as the **tribunal** considers appropriate including, in the case of an **order** for exclusion from membership made against a **member**, a recommendation that no application for his readmission be entertained before the end of a specified period and in the case of an order that a member's **practising certificate** be withdrawn indefinitely, that no application for a **practising certificate** be entertained before the end of a specified period.
- 22.11 An **order** under this **bye-law** against a **defendant** may include a direction requiring him (at his own expense) to obtain advice from a specified source and to implement the advice obtained.

22.12 In this **bye-law** 'specified', in relation to any **order** or direction under this **bye-law**, means specified in the **order** or direction.

### **Orders for waiver or repayment of fees or commission**

23.1 If the **tribunal** appointed to hear a **formal complaint** against a **respondent** or **respondent firm** engaged in **public practice** or against a **regulated firm** finds the **complaint** proved in whole or in part, it may make one or more of the following **orders** against the **defendant** namely:

- a. that he shall waive the whole or part of any fee which has been agreed by or invoiced to a client;
- b. that he shall pay to **ICAEW** the whole or part of any fee which the client has paid;
- c. that he shall pay to **ICAEW** the whole or part of any sum of money which has been retained by the **defendant** in or towards payment of a fee by a client;
- d. that he shall pay to **ICAEW** a sum assessed by the **tribunal** as the value (in whole or in part) of any commission to which he has become entitled (whether or not it has been received by him) in connection with the facts and matters which are the subject of the **complaint**.

23.2 Before making an **order** under paragraph 1 the **tribunal**

- a. if the **defendant** is present or represented before it, shall give him or his **representative** an opportunity to make representations to the **tribunal** with regard to the proposed **order**;
- b. if the **defendant** is neither present nor represented before it, shall
  - i. adjourn the **hearing** for a reasonable period;
  - ii. serve on him a **notice** describing the **order** it proposes to make under paragraph 1; and
  - iii. at the resumed **hearing** give him or his **representative** an opportunity to make representations to the **tribunal**, either orally or in writing, with regard to the proposed **order**.

23.3 Where an **order** is made under paragraph 1, the total of

- a. any fees ordered to be waived under paragraph 1(a);
- b. any sum ordered to be paid under paragraph 1(b);
- c. any sum ordered to be paid under paragraph 1(c); and
- d. any sum ordered to be paid under paragraph 1(d)

shall not exceed £10,000 or such other sum as may from time to time be fixed for the purposes of this paragraph by direction of the **Council**.

23.4 The **tribunal** making an **order** under paragraph 1 may include in it such terms or conditions as it thinks fit.

23.5 In this **bye-law** 'client' includes a former client.

## Remedial orders

- 24.1 If the **tribunal** appointed to hear a **formal complaint** against a **respondent** or **respondent firm** engaged in **public practice** or against a **regulated firm** finds the **complaint** proved in whole or in part, it may make one or more of the following **orders** against the **defendant** namely
- that he shall return to any client any books or documents belonging to the client which are not the subject of a lien;
  - that, as regards any specified fee, he shall provide the client with such particulars as may be specified;
  - that he shall take such steps as may be specified, being steps (other than payment of compensation) which the **tribunal** considers appropriate for the purpose of resolving the issues which gave rise to the **formal complaint**.
- 24.2 If the **tribunal** finds the **complaint** proved in whole or in part, then, whether it makes any **order** under paragraph 1 or not, the **tribunal**:
- may appoint a **member**, **member firm** or **regulated firm** other than the **defendant** to undertake or complete any work which the **defendant** had been engaged to perform for a client; and
  - if it does so, shall order the **defendant** to pay the reasonable fees of that **member**, **member firm** or **regulated firm** for work done as a result of the appointment.
- 24.3 **Bye-law** 23.2 shall apply in relation to the making of any **order** or appointment under paragraph 1 or 2 as it applies in relation to the making of an **order** under **bye-law** 23.1.
- 24.4 In the event of a dispute between the **defendant** and a **respondent** or **respondent firm** appointed under paragraph 2 as to the fees payable by virtue of an **order** under paragraph 2(b), the **Investigation Committee** may either
- determine the fees payable; or
  - order the parties to the dispute to submit the fees to arbitration in accordance with the directions of the **Investigation Committee**.
- 24.5 The **tribunal** making an **order** under paragraph 1 may include in it such terms or conditions (if any) as it thinks fit.
- 24.6 A **defendant** against whom an **order** has been made under paragraph 1 of **bye-law** 23 requiring him to do all or any of the things mentioned in that paragraph shall be treated for the purposes of paragraph 1(a) of this **bye-law** as having no lien in respect of the fees to which the **order** relates, if those requirements
- cover the whole of those fees; or
  - cover only part of them, and the balance has been paid by the client.
- 24.7 In this **bye-law**  
'client' includes a former client;  
'specified', in relation to any **order** under this **bye-law**, means specified in the **order**.



## Expenses

- 24A.1 If the **tribunal** appointed to hear a **formal complaint** against a **respondent** or **respondent firm** finds the **complaint** proved in whole or in part, it may make an **order** that the **defendant** shall pay a sum to **ICAEW** which will be sufficient to reimburse the **complainant** for such expense as, in the opinion of the **tribunal**, was reasonably and necessarily incurred by the **complainant** in
- bringing to the attention of or reporting to the **head of staff** any of the facts and matters which constitute the **complaint**, or
  - making written representations to the **head of staff** on any of those facts and matters before the **Investigation Committee** has under bye-law 15 decided whether in its opinion the **complaint** discloses a **prima facie case**.
- 24A.2 **Bye-law** 23.2 shall apply in relation to the making of any **order** under paragraph 1 as it applies in relation to the making of an **order** under **bye-law** 23.1.
- 24A.3 Where an **order** is made under paragraph 1, the sum which is ordered to be paid shall not exceed £1,000 sterling or such other sum as may from time to time be fixed for the purposes of this paragraph by the direction of **Council**.
- 24A.4 The **tribunal** making an **order** under paragraph 1 may include in it such terms and conditions as it thinks fit.
- 24A.5 In this **bye-law** and **bye-law** 34B, **complainant** means the person who under **bye-law** 9.1 brought to the attention of, or reported to, the **head of staff** any of the facts and matters which constitute the **complaint**.

## Time when **tribunal's order** takes effect

- 25.1 Subject to the following provisions of this **bye-law**, an **order** made by the **tribunal** appointed to hear a **formal complaint** shall, unless the **tribunal** otherwise directs, take effect at the end of the period of 28 days beginning with the date of the **order**.
- 25.2 If within that period the **defendant** serves **notice** of appeal
- against the **order**, or
  - where applicable, against the **tribunal's** omission to direct that the record of its decision required to be published under **bye-law** 35 shall not include the name of the **defendant**,
- then, subject to paragraph 3, the **order** shall take effect, if at all, only after the appeal has been determined under the following provisions of these **bye-laws**.
- 25.3 If, before the appeal has been so determined, the **defendant** by **notice** withdraws the **notice** of appeal
- the **tribunal's order** shall take effect at the end of the period of 14 days beginning with the date on which the **notice** of withdrawal is served on the **head of staff**, and
  - any fines which would have been due for payment before the end of that period if there had been no appeal shall become due at the end of that period.
- 25.4 This **bye-law** does not apply to an **order** for the payment of costs made by the **tribunal** under **bye-law** 33.1.

## APPEALS

### Right of appeal

- 26.1 Subject to **bye-law** 33.5 in the case of an **order** for exclusion from membership, if a **tribunal** makes an **order** against the **defendant**, he may within the period of 28 days beginning with the date of the **order** serve on the **head of staff notice** of appeal
- against the **order**; or
  - where applicable, against the **tribunal's** omission to direct that the record of its decision required to be published under **bye-law** 35 shall not include the name of the **defendant**.
- 26.2 The grounds on which the **defendant** may appeal against an **order** include the ground that the amount of any costs ordered by the **tribunal** to be paid by him is excessive (but not the ground that the amount of any costs ordered by it to be paid to him by **ICAEW** is too small).
- 26.3 A **notice** of appeal under paragraph 1 shall be of no effect unless, before the end of the period of 28 days beginning with the date on which the written record of the **tribunal's** decision was served on him, or such longer period as the Chairman of the **Appeal Committee** or, failing him, its Vice-Chairman may within that period allow, the **defendant** serves on the **head of staff** a **notice** stating the grounds of appeal.
- 26.4 A **notice** under paragraph 3 stating the grounds of appeal may be combined with the **notice** of appeal; but the grounds stated in a **notice** under paragraph 3 as served on the **head of staff** shall not be amended thereafter except with the leave of the **panel** appointed under **bye-law** 27 to hear the appeal.
- 26.5 A **defendant** may withdraw a **notice** of appeal by serving on the **head of staff notice** to that effect.
- 26.6 If the **defendant** serves a **notice** of appeal under paragraph 1 but fails to serve a **notice** stating the grounds of appeal before the end of the period allowed by or under paragraph 3, the **tribunal's order** shall take effect under **bye-law** 25.3 as if the **defendant** had served a **notice** of withdrawal of the appeal on the **head of staff** on the last day of that period.
- 26.7 If, after the period of 28 days allowed by paragraph 1 has expired, the **defendant** serves on the **head of staff** a written application (in the prescribed form) for leave to serve **notice** of appeal under that paragraph notwithstanding the expiration of that period, then
- the Chairman of the **Appeal Committee** or, failing him, its Vice-Chairman shall as soon as practicable appoint a **panel** (constituted as prescribed) to consider the application in accordance with the procedure prescribed for such **panels**, and
  - the **panel** may give the **defendant** leave to serve **notice** of appeal under paragraph 1 within the period of 28 days beginning with the date on which **notice** of the **panel's** decision is served on him at an address specified by him in his application.
- 26.8 Leave shall not be given under paragraph 7(b) unless the **panel** is satisfied that the **defendant** could not reasonably have been expected to serve **notice** of appeal within the period of 28 days originally allowed by paragraph 1.



- 26.9 Where, in the case of an **order** made by a **tribunal** against a **defendant**, leave to serve **notice** of appeal out of time is given under paragraph 7(b)
- the **order** shall be treated for the purposes of the **bye-laws** as if its date were the date of service on the **defendant** of **notice** of the **panel's** decision as mentioned in paragraph 7(b), and references to the date of that **order** shall be construed accordingly;
  - the provisions of the **bye-laws** shall have effect in relation to that **order** subject to such directions as may be given by the **panel** giving that leave, being directions which the **panel** consider necessary for the purpose of adapting or supplementing those provisions so as to fit the circumstances resulting from the giving of that leave.

26.10 In this **bye-law** 'prescribed' means prescribed by **regulations**.

### **Panels**

- 27.1 As soon as practicable after the receipt by the **head of staff** of an effective **notice** of appeal under **bye-law** 26 the Chairman of the **Appeal Committee** or, failing him, its Vice-Chairman shall appoint a **panel** to hear the appeal.
- 27.2 Subject to paragraph 8, a panel so appointed shall consist of
- a chairman, being either the Chairman or the Vice-Chairman of the **Appeal Committee** or, if neither of them is available to sit, another person (whether a member of the **Appeal Committee** or not) who is either a barrister or a solicitor;
  - two members of the **Appeal Committee** who are **members of ICAEW**; and
  - two members of the **Appeal Committee** who are **lay members**.

In the case of appeals of **legal service** complaints, while still being chaired by either the Chairman or the Vice-Chairman of the **Appeal Committee**, the panel must have a majority of members who are **lay members**.

- 27.3 If any member of the **panel**, other than its chairman
- is for any reason unable to attend the **hearing** or any adjourned **hearing** of the appeal; or
  - is in the course of the **hearing** unable to continue so to attend,
- the **panel** will no longer be quorate and the case will have to be re-heard in full by a new **panel** pursuant to paragraph 27(2).
- 27.4 If at any time during the **hearing** of an appeal the chairman of the **panel** appointed under paragraph 1 is for any reason of the opinion that it is impracticable or would be contrary to the interests of justice for the **hearing** to be completed by that **panel**, he shall so inform the Chairman or, failing him, the Vice-Chairman of the **Appeal Committee** who shall thereupon direct that the appeal be re-heard by a new **panel** so appointed.
- 27.5 The **Appeal Committee** may appoint a barrister or solicitor to act as legal assessor at the **hearing**.
- 27.6 Where a new **panel** is appointed pursuant to paragraphs 3 or 4, no member of the original **panel** may be appointed as a member of the new one; but a person appointed as a legal assessor may continue to act at any re-hearing of the appeal.

- 27.7 **Regulations** may provide for a **panel** to be constituted other than as required by paragraph 2 if a different constitution is prescribed or approved by a **relevant authority**.

### Hearing of appeals

- 28.1 As soon as practicable after the appointment under **bye-law** 27.1 of a **panel** to hear an appeal, the **head of staff** shall serve on the **defendant** a **notice** stating the time and place fixed for the **hearing**.
- 28.2 The **defendant** may appear before the **panel** in person or by a **representative**.
- 28.3 The **panel** shall give the **defendant** or his **representative** a reasonable opportunity of being heard before it.
- 28.4 If the **defendant** does not attend and is not represented at the **hearing** then, provided that the **panel** is satisfied that the **notice** required by paragraph 1 was served on him, the **tribunal** may hear the appeal in his absence.
- 28.5 If the **defendant** or his **representative** so requests, the **hearing** of the appeal shall be held in public; but notwithstanding such a request, the **panel** may exclude the press and public from all or part of the **hearing** in circumstances in which Article 6 of the European Convention on Human Rights permits this.
- 28.6 The **Investigation Committee** may appoint the **head of staff** or any **member** of **ICAEW**, or may instruct a barrister or solicitor, to appear on behalf of the Committee at the **hearing** of the appeal.

### Powers of panel on appeal

- 29.1 On an appeal under **bye-law** 26.1 against an **order** made on a **formal complaint**, the **panel** appointed to hear the appeal
- shall take into consideration the record of the evidence given before, and the documents produced to, the **tribunal** at the **hearing** of the **complaint**;
  - may, if it thinks fit, re-hear any witness who gave oral evidence before the **tribunal**; and
  - may on special grounds (as to which the **panel** shall be the sole judge) receive fresh evidence.
- 29.2 On such an appeal, the **panel** may by order
- affirm, vary or rescind any **order** of the **tribunal**;
  - substitute for any such **order** or **orders** such other **order** or **orders** as it thinks appropriate, being in every case an order which the **tribunal** might have made on the **formal complaint**;
  - include in any substituted **order** such terms and conditions, if any, as the **panel** thinks appropriate including, in the case of an **order** for the exclusion of a **member** from membership, a recommendation that no application for his readmission be entertained before the end of a period specified in the **order**;
  - direct that the record of the **tribunal's** decision to be published under **bye-law** 35 shall not include the name of the **defendant**;

- e. direct that the **complaint** shall be re-heard by a new **tribunal** appointed under **bye-law** 19.1.

29.3 An **order** made by a **panel** on an appeal under **bye-law** 26.1 shall take effect on the date of the **order** unless the **panel** directs that it shall take effect as from some later date specified in the **order**.

## INTERVENTION ORDERS

### Intervention orders

- 30.1 Where, whether in the course of considering a **complaint** or not, the **Investigation Committee** is of the opinion that a **member** engaged in **public practice**
- a. has appeared before a court of competent jurisdiction charged with an indictable offence and has either
    - i. been remanded in custody on that charge; or
    - ii. pleaded guilty to or been found guilty of such an offence;
  - b. has been excluded from membership of any body (other than **ICAEW**) mentioned or referred to in **bye-law** 7.2(a);
  - c. is a sole practitioner who has abandoned his **practice**; or
  - d. is a member of a partnership or **director** of a body corporate which was engaged in **public practice**, but whose **principals** have all abandoned the **practice**,
- the Committee may (subject to paragraph 3 and, where it applies, paragraph 7) make against him one or more of the **orders** available against him under paragraph 2.
- 30.2 The **orders** available against a **member** are
- a. that his **practising certificate** be suspended for such period (not exceeding two years) as the **Investigation Committee** considers appropriate in all the circumstances;
  - b. that he shall not take on any new clients;
  - c. that in respect of his professional activities he shall execute, in such terms as the **Investigation Committee** may specify in the **order**, a power of attorney or an enduring power of attorney in favour of another **member** designated by the **Investigation Committee** (in this paragraph referred to as 'the substitute');
  - d. that he shall instruct his bank that cheques drawn on his client bank account are not to be honoured unless signed or counter-signed by the substitute;
  - e. that he shall provide the substitute with an account of all client account money;
  - f. that he shall hand over to the substitute all books and documents concerning any of his clients and divert his professional mail to the substitute's **registered address**.
- 30.3 Where a **member** is engaged in **public practice**
- a. as a partner in a partnership in which one or more of the other partners are **members** so engaged; or
  - b. as a **director** of a body corporate one or more of whose other **directors** are **members** so engaged,
- an **order** under this **bye-law** (other than one confined to suspending his **practising certificate**) shall not be made against him unless it is also made against each other partner or **director** so engaged who is a **member**.

- 30.4 For the purposes of this **bye-law** a **member** shall, unless the contrary is proved, be presumed to have abandoned the **practice** of which he is a **principal** if
- it appears to the **Investigation Committee** that he has, without reasonable explanation, been continuously absent from all offices of the **practice** for at least 30 days; or
  - he has persistently failed to respond to efforts to contact him at his **registered address**.
- 30.5 An **order** under this **bye-law**
- may be framed so as to be in force indefinitely or for a specified period or until the occurrence of a specified event; and
  - may include such terms and conditions (if any) as the **Investigation Committee** thinks fit.
- 30.6 Where the **Investigation Committee** has made an **order** against a **member** under this **bye-law**, it may on a written application made by him or on its own initiative
- by **order** discharge the **order** or vary it (whether so as to prolong its operation or in any other way); or
  - if the **order** has ceased to have effect, make a fresh **order** under this **bye-law**.
- 30.7 Before making an **order** against a **member** under this **bye-law** or taking any action under paragraph 6 the **Investigation Committee** shall
- serve on the **member** concerned a **notice** describing (with reasons) the action it proposes to take; and
  - give him a reasonable opportunity to make written representations to it and, if he so requests, give him or his **representative** a reasonable opportunity to make oral representations to it.
- 30.8 Paragraph 7 shall not apply if, in the opinion of the **Investigation Committee**, delay in taking action under paragraphs 1 to 5 or paragraph 6 would seriously prejudice the interests of any person, whether a client of the **member** concerned or not; but where the Committee acts by virtue of this paragraph without having done as provided in paragraph 7, it shall promptly
- serve on the **member** concerned a **notice** describing (with reasons) the action it has taken;
  - give him a reasonable opportunity to make written representations to it and, if he so requests, give him or his **representative** a reasonable opportunity to make oral representations to it; and
  - reconsider the action taken by it in the light of any representations so made.
- 30.9 As soon as practicable after making any **order** under this **bye-law** the **Investigation Committee** shall serve a copy of the **order** on the **member** concerned.
- 30.10 Where the **Investigation Committee** makes any **order** under this **bye-law**, it shall cause a statement to that effect to be published, as soon as practicable, in such manner as it thinks fit.

- 30.11 Except insofar as the **Investigation Committee** in its absolute discretion otherwise directs, a statement published under paragraph 11 shall
- state the name of the **member** against whom the **order** was made; and
  - describe the **order** or **orders** made against him, but need not include the name of any other person or body concerned.

### Appeals against intervention orders

- 31.1 If the **Investigation Committee** makes an **order** against a **member** under **bye-law** 30 (intervention orders), he may within the period of 28 days beginning with the date of the **order** serve on the **head of staff notice** of appeal
- against the **order**; or
  - where applicable, against the Committee's omission to direct that the statement required to be published under **bye-law** 35 (as applied by the following provisions of this **bye-law**) shall not include the name of the **member**.
- 31.2 The provisions of these **bye-laws** mentioned in column 1 of the table set out in paragraph 6 (which relate to appeals against **orders** made by **tribunals**) shall apply in relation to appeals under paragraph 1 of this **bye-law** as if references in those provisions to a **tribunal**, to an **order** made by a **tribunal** (or on a **formal complaint**) and to the **defendant** were respectively references to the **Investigation Committee**, to an **order** made by it under **bye-law** 30, and to the **member** against whom that **order** was made.
- 31.3 In their application by virtue of paragraph 2 the provisions mentioned in column 1 of that table shall have effect subject to any further modifications specified in column 2 of the table.
- 31.4 On an appeal under paragraph 1 the **panel** appointed to hear the appeal may, whether the appeal is successful or not, **order** the **member** concerned to pay **ICAEW** by way of costs of the appeal such sum as the **panel** may in its absolute discretion determine.
- 31.5 Any costs ordered under paragraph 4 shall, unless a longer period for payment (whether by instalments or not) is allowed by **order** of the **panel**, be paid within the period of 28 days beginning with the date of the **order**, and paragraphs 8 and 9 of **bye-law** 33 (time for payment of costs) shall apply in relation to any costs or instalment of costs payable under this **bye-law** as if references to that **bye-law** and to paragraph 8 of it were references to this **bye-law** and this paragraph respectively.
- 31.6 The following is the table referred to above

(1)	(2)
the definition of ' <b>representative</b> ' in <b>bye-law</b> 1.2	-
<b>bye-law</b> 26.3 to 10	-
<b>bye-law</b> 27	-
<b>bye-law</b> 28	-

<b>Bye-law 29</b>	<ul style="list-style-type: none"> <li>a. in paragraph 2.(b), for 'on the <b>formal complaint</b>' substitute 'under <b>bye-law 30</b>';</li> <li>b. in paragraph 2(d), for 'record of the <b>tribunal's</b> decision' substitute 'statement'; and</li> <li>c. for paragraph 2(e) substitute '(e) direct that the matter shall be referred back to the <b>Investigation Committee</b> for reconsideration'.</li> </ul>
<b>bye-law 35</b>	<ul style="list-style-type: none"> <li>a. for any reference to a record of a <b>tribunal's</b> decision substitute a reference to a statement;</li> <li>b. in paragraph 2, for the words from 'Where' to 'in part' substitute 'Where, on an appeal, a <b>panel</b> rescinds an <b>order</b> made under <b>bye-law 30</b>';</li> <li>c. in paragraph 3, omit 'the <b>tribunal</b> or, as the case may be,';</li> <li>d. in paragraph 4, for '26.1' substitute '31.1';</li> <li>e. in paragraphs 5 and 6 omit '<b>tribunal</b> or' (3 times).</li> </ul>

## FINES AND COSTS

### Time limits for payment of fines

- 32.1 Subject to paragraph 2, a fine imposed by an **order** of a **tribunal** appointed to hear a **formal complaint** shall, unless a longer period for payment (whether by instalments or not) is allowed by the **order**, be paid within the period of 30 days beginning with the date of the **order**.
- 32.2 If the **defendant** gives **notice** of appeal against the **order** of the **tribunal** within the period allowed by **bye-law 26.1**, the fine shall not become payable until the appeal has been determined under these **bye-laws**, and shall then be payable, if at all, in accordance with the following provisions of this **bye-law**.
- 32.3 A fine
- a. which is imposed by an **order** of a **panel** under these **bye-laws**; or
  - b. which, having been imposed by a **tribunal** under these **bye-laws**, is on appeal affirmed or varied in amount by an **order** of a panel under these **bye-laws**,
- shall be paid within the period of 28 days beginning with the date of the **order** unless a longer period for payment (whether by instalments or not) is allowed by the **order** of the panel.
- 32.4 Any fine or instalment of a fine imposed under these **bye-laws** must be received by **ICAEW** before the close of business on the last day of the period allowed by or under these **bye-laws** for its payment (or, if that day is not a business day, before the close of business on the next business day).



- 32.5 Where
- a. a fine imposed by these **bye-laws** is payable by instalments; and
  - b. any instalment is not duly received by **ICAEW** as required by paragraph 4, the whole of that fine or, as the case may be, so much of it as then remains unpaid shall become due for payment in accordance with paragraph 4 as if the last day of the period allowed for the payment of that instalment were the last day of the period allowed for the payment of the whole fine.

#### **Powers of tribunals and panels as to costs**

- 33.1 If the **tribunal** appointed to hear a **formal complaint** finds that the **complaint** has been proved in whole or in part, it may order the **defendant** to pay to **ICAEW** by way of costs such sum as the **tribunal** may determine.
- 33.1A If the **tribunal** appointed to hear a **formal complaint** dismisses the **complaint** as wholly unproved or finds that the **complaint** has been proved in part only, it may order **ICAEW** to pay to the **defendant** by way of costs such sum as the **tribunal** may (subject to and in accordance with **regulations**) in its absolute discretion determine.
- 33.2 Any costs ordered under paragraph 1 shall, unless a longer period for payment (whether by instalments or not) is allowed by the **order**, be paid within the period of 30 days beginning with the date of the **order**.
- 33.3 If within the period allowed by **bye-law** 26.1 the **defendant** serves **notice** of appeal against an **order** for payment of costs made under paragraph 1 of this **bye-law**, then, subject to paragraphs 4 and 5 of this **bye-law** (and to **bye-law** 26.3), those costs shall not become payable until the appeal has been determined under these **bye-laws**, and shall then be payable, if at all, in accordance with the following provisions of this **bye-law**.
- 33.4 If, before the appeal has been so determined, the **defendant** by **notice** withdraws the **notice** of appeal
- a. the **tribunal's order** for payment of costs shall take effect at the end of the period of 14 days beginning with the date on which the **notice** of withdrawal is served on the **head of staff**, and
  - b. any costs which would have been due for payment before the end of that period if there had been no appeal shall become due at the end of that period.
- 33.5 A **notice** of appeal under **bye-law** 26.1 against an **order** that the **defendant** be excluded from membership shall be of no effect unless any costs ordered by the **tribunal** under paragraph 1 (or such part of those costs as may be determined by the Chairman of the **Appeal Committee** or, failing him, by its Vice Chairman, on the written application of the **defendant**) are paid on or before the giving of the **notice**; but any costs so paid shall be repaid if and so far as their amount is reduced or cancelled by the **panel** on the appeal.
- 33.6 On an appeal against an **order** made by a **tribunal**, the **panel** appointed to hear the appeal
- a. may by **order** reduce or cancel the amount of any costs ordered by the **tribunal** to be paid by the **defendant**;
  - b. may, whether the appeal is successful or not, order the **defendant** to pay to **ICAEW** by way of costs of the appeal such sum as the **panel** may in its absolute discretion determine;

- c. may, if it finds the **complaint** wholly unproved or finds that it has been proved in part only, order the Institute to pay to the **defendant** by way of costs such sum as the **panel** may, subject to and in accordance with **regulations**, in its absolute discretion determine.

- 33.7 Any costs ordered by the **panel** under paragraph 6(b), together with
- a. any unpaid costs ordered by the **tribunal** under paragraph 1; or
  - b. so much (if any) of those unpaid costs as remains payable after any reduction or cancellation under paragraph 6(a),
- shall, unless a longer period for payment (whether by instalments or not) is allowed by **order** of the **panel**, be paid within the period of 28 days beginning with the date of the **order** of the **panel**.
- 33.8 Any costs or instalment of costs payable to **ICAEW** under this **bye-law** must be received by **ICAEW** before the close of business on the last day of the period allowed by or under this **bye-law** for payment (or, if that day is not a business day, before the close of business on the next business day).
- 33.9 Where
- a. any costs ordered by these **bye-laws** are payable by instalments; and
  - b. any instalment is not duly received by **ICAEW** as required by paragraph 8,
- the whole of those costs or, as the case may be, so much of them as then remains unpaid, shall become due for payment in accordance with paragraph 8 as if the last day of the period allowed for the payment of that instalment were the last day of the period allowed for the payment of the whole of those costs.

#### **Liability for fines and costs payable by respondent firms**

- 34.1 Where a **respondent firm** has been ordered to pay any fine or costs under these **bye-laws**, the following provisions of this **bye-law** apply.
- 34.2 Any **respondent** or former **respondent** who at, or at any time since, the **relevant time**:
- a. was a **director** of or a partner in the **firm**; or
  - b. as a sole practitioner, himself constituted the **firm**,
- shall be liable for the full amount of the fine or costs in question; and where two or more persons are so liable under this paragraph, they shall be jointly and severally liable.
- 34.3 If any **respondent** or former **respondent** fails to pay on demand any amount which he is liable to pay under paragraph 2, the failure shall have the same consequences under the **bye-laws** as it would if the fine or costs had been imposed on him individually.
- 34.4 In this **bye-law** 'the relevant time' has the same meaning as in the definition of '**firm**' contained in **bye-law** 1.2.

## **REFUND OF FEES, COMMISSION AND EXPENSES**

#### **Time limit for payment of fees, commission and expenses**

- 34A **Bye-law** 32 (time limits for payment of fines) shall apply in relation to an **order** for the payment of a sum under **bye-law** 23.1 or **bye-law** 24A.1 as it applies in relation to an **order** for the payment of fines.



### Refund of sums to *complaints*

- 34B When any sum of which payment is ordered under **bye-law** 23.1 or **bye-law** 24A.1 is paid to **ICAEW**, **ICAEW** shall pay the same sum to the client (if ordered under **bye-law** 23.1) or to the **complaint** (if ordered under **bye-law** 24A.1) within 21 days.

## PUBLICITY

### Publication of findings and other orders

- 35.1 Subject to paragraphs 2 and 4, where a **tribunal** or **panel** makes any finding or other **order** under these **bye-laws**, it shall cause a record of its decision to be published, as soon as practicable, in such a manner as it thinks fit.
- 35.2 Where a **tribunal** dismisses a **formal complaint**, or, on an appeal, a **panel** decides that a **formal complaint** has been proved neither in whole nor in part, it shall cause a record of its decision to be so published if, but only if, the **defendant** so requests.
- 35.3 Unless the **tribunal** or, as the case may be, the **panel** otherwise directs, a record of its decision published under this **bye-law** shall state the name of the **defendant** and describe the finding and the other **order** or **orders** (if any) made against him, but need not include the name of any other person or body concerned in the **formal complaint** or appeal.
- 35.4 A **tribunal** shall not cause a record of its decision to be published under paragraph 1 until the period allowed by **bye-law** 26.1 for giving **notice** of appeal against the **order** has expired; and if an effective **notice** of appeal is given under **bye-law** 26, then, unless the appeal is abandoned
- a. no record of the **tribunal's** decision shall be published under paragraph 1 but
  - b. subject to paragraph 2 a record of the **panel's** decision on the appeal shall be so published.
- 35.5 Notwithstanding paragraphs 2 and 4, a **tribunal** or **panel** may cause a record of its decision to be published at any time if in its opinion publication is desirable in view of any statement or comment made in the public domain.
- 35.6 The restrictions imposed by the preceding provisions of this **bye-law** on publication of a record of the decision of a **tribunal** or **panel** shall not apply if the **hearing** by the **tribunal** or **panel** (as the case may be) was held wholly or partly in public.

### Publicity for the disciplinary process

- 36.1 Notwithstanding anything in these **bye-laws**, the Chairman of the **Investigation Committee** may at any time make such public statements as he thinks fit concerning
- a. any matter relating to or connected with the performance by **ICAEW** of any of its statutory functions;
  - b. any **complaint**; or
  - c. any matter relating to or connected with the performance by **the Investigation Committee** of its functions under **bye-law** 30 (intervention order), being a matter or **complaint** which in his opinion is or involves a matter of public concern.

- 36.2 The power to make statements under paragraph 1
- a. shall be exercised in accordance with such guidelines as the **Council** may issue from time to time; and
  - b. may, if the Chairman of the **Investigation Committee** is for any reason unavailable, be exercised by any Vice-Chairman of that Committee (in which case the reference in that paragraph to the Chairman's opinion shall be read as a reference to the opinion of that Vice-Chairman).
- 36.3 The Chairman of the **Investigation Committee** may authorise the disclosure to a **complaint** of information concerning any proceedings brought or to be brought before the **Investigation Committee** or a **tribunal** or **panel**.
- 36.4 An authorisation under paragraph 3 may be given subject to any restrictions which the Chairman of the **Investigation Committee** thinks appropriate.
- 36.5 A **hearing** of a **formal complaint** or appeal may be held in public if the **Council** has authorised it to be so held; and an authorisation under this paragraph may
- a. relate to a particular case, to cases of one or more classes, or to cases generally; and
  - b. may be given subject to any restrictions which the **Council** thinks appropriate.
- 36.6 Paragraph 5 does not affect a **panel's** duty under **bye-law** 28.5 to hear an appeal in public if so requested by the **defendant** or his **representative**, or its power under **bye-law** 28.5 to exclude the press and public in the circumstances there mentioned.
- 36.7 Where any **hearing** is held in public by virtue of an authorisation under paragraph 5, the chairman of the **tribunal** or **panel** may exclude the press and public from all or part of the proceedings if it appears to him desirable to do so in the interests of justice or for any other special reason.
- 3.8 In this **bye-law** 'statutory functions' means powers and duties conferred or imposed by or under any Act of Parliament or by or under any legislation (wherever in force) for the time being designated in **regulations**.

## COMMENCEMENT AND TRANSITIONAL PROVISIONS

### Commencement and transitional provisions

- 37.1 These **bye-laws**, as originally allowed, came into force on 1 September 1998; and references to these **bye-laws** in paragraphs 2 to 7 of this **bye-law** refer to them as originally allowed.
- 37.2 Subject to the following paragraphs of this **bye-law**, these **bye-laws** apply in relation to
- a. facts or matters which come to the attention of the **head of staff** (under **bye-law** 9.1 or otherwise) after the commencement of these **bye-laws**, including facts or matters which occurred at any time before, but come to his attention after, that commencement;
  - b. facts or matters which came to the attention of the **head of staff** before the commencement of these **bye-laws** but were not laid by him before the **Investigation Committee** before that commencement; and

- c. facts or matters which immediately before the commencement of these **bye-laws** were the subject of proceedings under Schedule 2 (Professional Conduct) to the former **bye-laws**.

37.3 In **bye-law 7** (proof of certain matters)

- a. paragraph 1 shall have effect in relation to any facts or matters falling within paragraph 2(c) of this **bye-law** as if the references to a **respondent firm** were omitted;
- b. paragraphs 2 to 7 shall not apply in relation to facts or matters which came to the attention of the **head of staff** before the commencement of these **bye-laws**.

37.4 An application for the review of a decision of the **Investigation Committee** made before the commencement of these **bye-laws** shall be proceeded with under Schedule 2 to the former **bye-laws**; but if under that Schedule the **reviewer of complaints** remits the application to the **Investigation Committee** with a recommendation that it should be reconsidered, the application shall from then on be proceeded with under **bye-law 18** of these **bye-laws**.

37.5 Where before the commencement of these **bye-laws** a **tribunal** or **panel** made a finding against a **defendant** under Schedule 2 to the former **bye-laws**, but did not make any other **order** against him, no record of its decision shall be published under **bye-law 35** of these bye-laws unless the **defendant** so requests.

37.6 Without prejudice to section 16.1 (general savings) of the Interpretation Act 1978 as applied by **bye-law 1.3**, if Schedule 2 to the former **bye-laws** is rescinded, its rescission shall not affect **ICAEW's** right to enforce any **order**, direction or requirement which was in force immediately before that rescission.

37.7 In this **bye-law** 'the former **bye-laws**' means the **bye-laws** of **ICAEW** as in force immediately before the commencement of these **bye-laws**.

37.8 It is hereby declared that

- a. the liability of a person or body to disciplinary action under these **bye-laws** on a **complaint** is to be determined in accordance with the **bye-laws** and **regulations** in force at the time when the facts or matters complained of occurred; but
- b. all disciplinary proceedings under these **bye-laws** are to be conducted in accordance with the **bye-laws** and **regulations** in force at the time of the proceedings.

37.9 Paragraph 8 does not affect the operation of paragraphs 2 to 7 of this **bye-law** or any other provision of these **bye-laws** which expressly restricts or extends the application of these **bye-laws** or any of them.

## REFERRAL

- 38.1 Where, at any time after the **head of staff** has decided that a matter is a complaint as defined in **bye-law** 9.3, it appears either to the **head of staff**, the Chairman of the **Investigation Committee**, the Chairman of a Disciplinary **Tribunal** or an Appeal **Panel** that there are reasonable grounds to believe that the **member/provisional member's** fitness to participate in disciplinary proceedings and/or professional competence might be seriously impaired through his **physical or mental health**, he shall make a written request to the **PCD Committee Secretary** that the **member/provisional member** be referred to the **Fitness Committee** which will determine whether the **member/provisional member** is so impaired.
- 38.2 At any time after the **head of staff** has decided that a matter is a **complaint** as defined in Disciplinary **Bye-law** 9.3 and the **member/provisional member** has been notified of the commencement of an investigation of that **complaint**, the **member/provisional member** may request, by written **notice** to the **PCD Committee Secretary**, a referral to the **Fitness Committee** if he believes that his fitness to participate in disciplinary proceedings and/or professional competence might be seriously impaired through his **physical or mental health**. A current medical report must be provided with the request for a referral to the **Fitness Committee**. The **PCD Committee Secretary** will serve **notice** of acknowledgement of the request for a referral on the **member/provisional member** or his representative within 7 days of receipt.
- 38.3 Where the **PCD Committee Secretary** receives a request in accordance with paragraph 1, he shall notify the **member/provisional member** that a referral to the **Fitness Committee** has been made and shall provide the **member/provisional member** with the facts and evidence relied on for the referral and shall request that the **member/provisional member**:
- Indicate in writing within 14 days of receipt of the **notice** whether he agrees or objects to the referral to the **Fitness Panel** and give him the opportunity to make representations on the matters raised;
  - Attend a medical examination by a suitably qualified medical expert instructed by **ICAEW** to prepare a report for the **Fitness Panel** (such examination to be paid for by **ICAEW**) and that he provide consent for the medical expert to access his medical records to assist with that examination.
- 38.4 Where the **PCD Committee Secretary** receives a request in accordance with paragraph 2, and the **PCD Committee Secretary** considers it appropriate for an additional medical report to be provided, the **PCD Committee Secretary** shall request that the **member/provisional member** attend a medical examination by a suitably qualified medical expert instructed by **ICAEW** to prepare a report for the **Fitness panel** (such examination to be paid for by **ICAEW**) and that he provide consent for the medical expert to access his medical records to assist with that examination.
- 38.5 Upon the service of a **notice** under paragraphs 1 or 2 the investigation or prosecution of the **complaint** will be automatically suspended until a decision is made concluding the Fitness proceedings.

- 38.6 After the expiry of 14 days from the service of the **notice** under paragraphs 1 or 2, the **PCD Committee Secretary** shall provide the facts and evidence supporting the referral to the **Fitness Committee** Chairman together with any representations received from the **member**.
- 38.7 When the **PCD Committee Secretary** receives the report from the medical expert appointed under paragraph 3.b (“the medical report”), he shall provide a copy of this report to the **member/provisional member** and ask for comments and/or representations on this report within 14 days from service of the report. Once 14 days have expired from the service of the report, the **PCD Committee Secretary** shall send a copy of the medical report and any representations made by the **member/provisional member** to the **Fitness Committee** Chairman for the purpose of determining whether a **Fitness Panel** should be convened.
- 38.8 The **PCD Committee Secretary** shall have the discretion to extend the time for representations to be received from the **member/provisional member** under both paragraphs 3(a) and 7 if he considers such an extension of time is reasonable in the circumstances.
- 38.9 If the **member/provisional member** has either confirmed in writing his refusal to attend for a medical examination or does not attend for a medical examination within a reasonable period (which shall not exceed 3 months), the **PCD Committee Secretary** shall ask the **Fitness Committee** Chairman to consider whether the **member/provisional member** should be referred to the **Fitness Panel** without the benefit of a medical report.
- 38.10 If, upon consideration of the documents and **notices** provided to him by the **PCD Committee Secretary** under paragraphs 6, 7 and 9, and any medical report provided by the **member/provisional member**, the **Fitness Committee** Chairman is of the opinion that there are no reasonable grounds for believing that the **member’s** fitness to participate in disciplinary proceedings and/or professional competence is seriously impaired through his **physical or mental health**, the **Fitness Committee** Chairman must make such a finding. Upon notification of such a finding, the **PCD Committee Secretary** shall notify such a finding to the **member/provisional member** and the **head of staff**.
- 38.11 Upon a finding being made by the **Fitness Committee** Chairman under paragraph 10, the suspension of the investigation/prosecution of the **complaint** will end and the **head of staff** shall re-start the investigation/prosecution of the **complaint**.
- 38.12 If, after reviewing the documents and **notices** provided to him by the **PCD Committee Secretary** under paragraphs 6, 7 and 9, and any medical report provided by the **member/provisional member**, the **Fitness Committee** Chairman is of the opinion that there are reasonable grounds to believe that the **member/provisional member’s** fitness to participate in disciplinary proceedings or professional competence may be seriously impaired by his **physical or mental health**, the **Fitness Committee** Chairman shall request the **PCD Committee Secretary** to convene a **Fitness Panel** to consider the matter. The **PCD Committee Secretary** shall notify the **member/provisional member** and the **head of staff** of the decision to convene a **Fitness Panel** and the date when the **Fitness Panel** will meet to consider the matter.

- 38.13 There shall be no publicity regarding the decision to convene a **Fitness Panel** or the date when the **Fitness Panel** shall meet to consider the matter but the **head of staff** shall be entitled to inform the **complainant** that the matter has been referred to the **Fitness Panel** for consideration and that the investigation/prosecution of the **complaint** has been suspended until a decision has been made concluding the fitness proceedings.
- 38.14 If the **member/provisional member** disputes the determination made by the **Fitness Committee** Chairman under paragraph 10, he must inform the **PCD Committee Secretary** in writing within 14 days of the date of receiving **notice** of the decision. If such written **notice** is received within the 14 day period, the **PCD Committee Secretary** shall convene a **hearing** of a **Fitness Panel** to consider whether the **member's** fitness to participate in disciplinary proceedings and/or professional competence is seriously impaired by his **physical or mental health**.
- 38.15 When the **Fitness Committee** Chairman receives the facts and evidence under paragraph 6 of a referral, the **Fitness Committee** Chairman shall have the power, by **notice** served on the **member/provisional member**, to call for such information and explanations as he considers necessary to enable him to carry out his functions under this **bye-law**. It shall be the duty of any **member/provisional member** on whom such a **notice** is served, to comply with the **notice** within 14 days of receipt or such longer period as the **Fitness Committee** Chairman may allow.

#### Convening a **Fitness Panel**

- 39.1 When the **Fitness Committee** Chairman requests the **Committee Secretary** to convene a **Fitness Panel** under paragraph 12 of bye-law 38 he, or failing him, the Vice-Chairman of the **Fitness Committee** shall:
- appoint three members of the **Fitness Committee**, one of them being a **member** of **ICAEW** and two not being accountants, as a **Panel** of the **Fitness Committee** to hear that matter; and
  - appoint one of the three, being a non-accountant, as Chairman of the **Fitness Panel**.
- 39.2 If, in the case of the **Fitness Panel** so appointed, any member of the **Fitness Panel**:
- is for any reason unable to attend the **hearing** or any adjourned **hearing** of the referral; or
  - is in the course of the **hearing** unable to continue to so attend
- then the **hearing** shall either be adjourned until the **Fitness Panel** member can attend or the referral shall be heard or re-heard by a new **Fitness Panel** appointed under paragraph 1.
- 39.3 If at any time during the **hearing** of a referral, the Chairman of the **Fitness Panel** appointed under paragraph 1 is, for any reason, of the opinion that it is impracticable, or would be contrary to the interests of justice, for the **hearing** to be completed by that Panel, he shall inform the **Fitness Committee** Chairman or, failing him, the **Fitness Committee** Vice-Chairman, who shall thereupon direct that the referral be re-heard by a new **Fitness Panel** appointed under paragraph 1.



- 39.4 The **Fitness Panel** shall appoint an independent suitably qualified medical expert to act as a medical assessor at the hearing of the **Fitness Panel**. The medical assessor shall be independent of **ICAEW** and shall not have produced any of the reports which are to be considered by the **Fitness Panel** at the **hearing**.
- 39.5 If the decision of the **Fitness Panel** is likely to be contested, the **Fitness Panel** shall appoint a barrister or solicitor to act as legal assessor at the hearing of a referral.
- 39.6 Where a new **Fitness Panel** is appointed pursuant to paragraphs 2 and 3, no member of the previous **Fitness Panel** may be appointed as a member of the new one; but a person appointed as a medical or legal assessor may continue to act at the re-hearing.
- 39.7 Regulations may provide for a **Fitness Panel** to be constituted other than as required by paragraph 1 if a different constitution is prescribed or approved by a relevant authority.

### **Hearing of Fitness Panel**

- 40.1 As soon as practicable after the appointment of a **Fitness Panel**, the **PCD Committee Secretary** shall serve on the **member/provisional member** and the **head of staff** the bundle of papers considered by the **Fitness Committee** Chairman in reaching his decision under **bye-law** 38.12 and a **notice** of the time and place fixed for the **hearing** of the **Fitness Panel** which shall not be earlier than 28 days after service of the **notice** of referral.
- 40.2 Upon application by either party in advance of the date fixed for the **hearing**, the Chairman of the **Fitness Panel** may make such directions as he deems necessary to ensure that the **member** has access to the **hearing** including, but not limited to:
- a direction that the **hearing** take place in a specific location;
  - a direction that the **member** be permitted to attend via videolink or telephone;
  - a direction that an interpreter can be used;
  - a direction that a hearing loop be used.
- 40.3 The **member/provisional member** may appear before the **Fitness Panel** in person or by a **representative**.
- 40.4 The **Fitness Panel** shall give the **member/provisional member** or his **representative** a reasonable opportunity of being heard before it, including the opportunity to provide written representations if the **member** is not able to attend in person or by **representative**.
- 40.5 If the **member/provisional member** does not attend, and is not represented at the **hearing**, then, provided that the **Fitness Panel** is satisfied that the **notice** required by paragraph 1 was served on him, the **Fitness Panel** may hear the referral in his absence.
- 40.6 The **head of staff** may appoint a barrister or solicitor to represent **ICAEW** before the **Fitness Panel**.
- 40.7 In determining under this **bye-law** whether or not a **member/provisional member's** fitness to participate in disciplinary proceedings and/or professional competence is seriously impaired through his **physical or mental health**, the **hearing** will take place on an inquisitorial (not adversarial) basis and the **Fitness Panel** may consider written representations from the **member/provisional member** and the **head of staff**, written

reports and hear oral evidence, as it deems appropriate, including oral evidence from a member, from an expert witness relied upon by the **member** or from a medical examiner appointed under paragraph 3(b) or 4 of **bye-law** 38 and the **Fitness Panel** may also consider written representations from the **member**. However, the absence of a medical report or evidence shall not prevent the **Fitness Panel** from reaching a determination on the basis of the **member/provisional member's** conduct.

40.8 The **Fitness Panel hearing** shall take place in private.

#### **Powers of the Fitness Panel**

- 41.1 If the **Fitness Panel** is of the opinion that the **member/provisional member's** fitness to participate in disciplinary proceedings and/or professional competence is not seriously impaired through his **physical or mental health**, it shall make a finding to that effect and shall, save for exceptional circumstances, direct that the **head of staff** re-start the investigation or prosecution of the complaint as soon as practicable.
- 41.2 If the **Fitness Panel** is of the opinion that the **member/provisional member's** fitness to participate in disciplinary proceedings and/or professional competence is seriously impaired through his **physical or mental health**, it shall make a finding to that effect and shall, unless it is of the opinion that in the circumstances it is inappropriate to do so, make one or more of the **orders** set out in paragraph 3.
- 41.3 If the **Fitness Panel** makes a finding as set out in paragraph 2, it may make one or more of the following **orders**:
- a. that any certificate, licence or registration issued to the **member/provisional member** by **ICAEW** be suspended or be subject to conditions for up to a period of 24 months or until further order of the **Fitness Panel**; and/or
  - b. that the **member/provisional member's** membership be suspended for a period of up to 24 months or until further order of the **Fitness Panel**; and/or
  - c. that the **member/provisional member** appoint an alternate for the period of his suspension and notify the **head of staff** and his clients of the identity and contact details of the alternate within a time period set by the **Fitness Panel**; and/or
  - d. that the **member/provisional member** notify his clients in writing of the suspension within a time period set by the **Fitness Panel** copying this notification to the **head of staff**; and/or
  - e. that the **member/provisional member**, if he is employed or working in business, notify his employer of his suspension by the **Fitness Panel** within a time period set by the **Fitness Panel** copying this notification to the **head of staff**; and/or
  - f. that the **member/provisional member** provide **ICAEW** within a time period set by the **Fitness Panel** with written confirmation that his professional indemnity insurer is aware of the suspension.
  - g. that the investigation or prosecution of the **complaint** against the **member/provisional member** continues to be suspended concurrent with the period of suspension ordered under a and b above.
- 41.4 An **order** made under paragraph 3 must:
- a. set a date not more than 24 months from the date of the order of suspension for a **review hearing** to be convened to review the suspension; and

- b. set out the nature of the impairment the **Fitness Panel** considers the **member/provisional member** to be suffering from and what steps the **member/provisional member** would need to take in order to be considered to be sufficiently recovered or rehabilitated for the suspension to be lifted; and
- c. set a minimum period (recommended period) based on all of the circumstances including the medical evidence and the steps outlined under b, before which an application for the convening of an interim review **hearing** cannot be made with the recommended period starting on the date of the **order** or the date of any unsuccessful appeal against the **order** made under **bye-law** 50.

41.5 The **Fitness Panel** may accept the **member/provisional member's** resignation of his membership or provisional membership of **ICAEW** instead of making an **order** under paragraph 3, if the resignation is made in writing.

41.6 When accepting a resignation from a **member/provisional member** under paragraph 5, the **Fitness Panel** may:

- a. **order** that any future application by the **member/provisional member** for readmission to membership/provisional membership be considered by the **Fitness Committee** so that it can make an initial determination as to whether the **member/provisional member's** professional competence remains seriously impaired through his **physical or mental health**.
- b. impose such conditions as the **Fitness Panel** considers appropriate, including a recommendation that no application for readmission as a **member** or **provisional member** be considered before the end of a recommended period.
- c. order that the investigation or prosecution of the **complaint** lay on file.

41.7 Any **order** made under paragraph 3 shall be published unless there are exceptional circumstances which justify no publicity. Such publicity shall not state more than the name of the **member/provisional member**, what (if any) suspension or conditions have been imposed upon him and the length of any suspension or conditions.

## Consent orders

42.1 At any time after a request for a referral is received under paragraph 1 or 2 of **bye-law** 38, the **member/provisional member** may request the **PCD Committee Secretary** to enter into a consent **order** to conclude the fitness proceedings. However, no consent **order** can be entered into without prior approval of the terms of the consent order by the **Fitness Panel** Chairman, having considered all available facts and evidence.

42.2 Upon receipt of a request under paragraph 1, the **PCD Committee Secretary** shall provide a copy of that request to the **head of staff** and request that the **head of staff** propose a draft consent **order** to conclude the fitness proceedings. Such a consent **order** can propose any or all of the **orders** available to a **Fitness Panel** under **bye-law** 41.

42.3 When the **PCD Committee Secretary** has received the draft consent **order** from the **head of staff**, he shall provide it to the **member/provisional member** making it clear that, even if the **member/provisional member** accepts the terms of the draft consent **order**, it cannot be finalised unless, and until, it is approved by the **Fitness Panel** Chairman.

- 42.4 If the **member/provisional member** confirms his agreement in writing to the terms of the draft consent **order** by signing and returning one copy of the draft consent **order**, the **PCD Committee Secretary** shall provide a copy of the draft consent **order** to the **Fitness Panel** Chairman together with all available facts and evidence relating to the conduct or medical condition of the **member/provisional member**.
- 42.5 If, on a review of the draft consent **order** and all available facts and evidence, the **Fitness Panel** Chairman approves the consent **order** then he shall sign the consent order on behalf of the **Fitness Committee** and that **order** will be final and the **PCD Committee Secretary** shall provide a copy of the final consent **order** to the **member/provisional member** and to the **head of staff**.
- 42.6 If, on a review of the draft consent **order** and all available facts and evidence, the **Fitness Panel** Chairman does not approve the consent order then he shall refuse to make the **order** and shall provide written reasons for his refusal to the **PCD Committee Secretary**, who shall send them to the **head of staff** and the **member/provisional member**.
- 42.7 The fact that a request for a consent **order** has been made shall not delay the processing of the referral or the convening of a **Fitness Panel** to hear an interim or substantive matter under these **bye-laws**.

#### **Applications for interim review**

- 43.1 The **member/provisional member** may apply to the **PCD Committee Secretary** for a review of the suspension, condition or other **order** made by the **Fitness Panel** under paragraph 3 of **bye-law** 41 earlier than 24 months after the date of the **order**, provided:
- a. the recommended period has expired; and
  - b. no **interim review hearing** has taken place in the previous 6 months; and
  - c. the application is accompanied by a current medical report confirming that, in the opinion of a suitably qualified medical expert, the **member/provisional member's** fitness to participate in disciplinary proceedings and professional competence is no longer seriously impaired through his **physical or mental health**.

#### **The convening of interim review and review hearings**

- 44.1 Where an **order** is made under paragraph 3 of **bye-law** 41, the **PCD Committee Secretary** must convene a **Fitness Panel** for a **review hearing** no later than 24 months after the date of the **order**.
- 44.2 When the **PCD Committee Secretary** determines that an application has been made in accordance with paragraph 1 of **bye-law** 43, he shall convene a meeting of the **Fitness Panel** for an **interim review hearing** as soon as is practicable to do so.
- 44.3 The **Fitness Panel** convened for an **interim review hearing** or a **review hearing** should comprise the same members who made the original **order** except where one or more members of the original **Fitness Panel** are no longer members of the **Fitness Committee** or where convening the same **Fitness Panel** members would lead to an unreasonable delay in holding the **interim review hearing** or the **review hearing**.

- 44.4 If new ***Fitness Panel*** members need to be appointed, the ***Fitness Committee*** Chairman shall appoint replacement members of the ***Fitness Panel***, ensuring that the ***Fitness Panel*** is comprised of one ***member*** of ***ICAEW*** and two non-accountant members and that the Chairman of the ***Fitness Panel*** should be one of the non-accountant members.
- 44.5 If, in the case of a ***Fitness Panel*** appointed under paragraphs 1 and 2, any member of the Panel:
- a. is for any reason unable to attend the ***interim review hearing*** or the ***review hearing***; or
  - b. is, in the course of the ***hearing***, unable to continue to so attend
- then the ***hearing*** shall either be adjourned until the ***Fitness Panel*** member can attend or, if this would lead to an unreasonable delay, a replacement ***Fitness Panel*** should be appointed under paragraph 4.
- 44.6 If, at any time, during an ***interim review hearing*** or a ***review hearing***, the Chairman of the ***Fitness Panel***, appointed under paragraphs 1 and 2, is for any reason of the opinion that it is impracticable or would be contrary to the interests of justice for the ***interim review hearing*** or the ***review hearing*** to be completed by that ***Fitness Panel***, he shall inform the ***Fitness Committee*** Chairman or, failing him, any Vice-Chairman of the ***Fitness Committee***, who shall appoint a new ***Fitness Panel*** to conduct the ***interim review hearing*** or the ***review hearing*** under paragraph 4.
- 44.7 The ***Fitness Panel*** shall appoint an independent suitably qualified medical expert to act as medical assessor at an ***interim review*** or ***review hearing***. The medical assessor shall be independent of ***ICAEW*** and shall not have produced any of the reports which are to be considered by the ***Fitness Panel*** at the ***hearing***.
- 44.8 The ***Fitness Panel*** may appoint a barrister or solicitor to act as legal assessor at the ***hearing*** of an interim review or review application.
- 44.9 Regulations may provide for the ***Fitness Panel*** to be constituted other than as required by paragraph 3 or 4 if a different constitution is prescribed or approved by a relevant authority.
- 44.10 As soon as is practicable after the convening of a ***Fitness Panel*** for an ***interim review hearing*** or a ***review hearing***, and no later than 28 days before the date of the ***interim review hearing*** or a ***review hearing***, the ***PCD Committee Secretary*** shall serve on the ***member/provisional member*** and the ***head of staff***:
- a. a ***notice*** specifying the time and place fixed for the ***interim review hearing*** or ***review hearing***;
  - b. a copy of the original ***order*** and directions made by the ***Fitness Panel*** under paragraph 3 of ***bye-law*** 41;
  - c. a copy of any interim review application and order and directions made by the ***Fitness Panel***;
  - d. a full copy of the papers considered by the ***Fitness Panel*** when making the original ***order*** under paragraph 3 of ***bye-law*** 41 and in considering any interim review application.



### ***Interim review and review hearings***

- 45.1 The **member/provisional member** may appear before the **Fitness Panel** in person or by a **representative**.
- 45.2 The **Fitness Panel** shall give the **member/provisional member** or his **representative** a reasonable opportunity of being heard before it, including the opportunity to provide written representations if the **member/provisional member** is not able to attend in person or by **representative**.
- 45.3 If the **member/provisional member** does not attend, and is not represented at the hearing, then, provided that the **Fitness Panel** is satisfied that the **notice** required by paragraph 10 of **bye-law** 44 was served on him, the **Fitness Panel** may conduct the **interim review hearing** or the **review hearing** in his absence.
- 45.4 Upon application by either party, the Chairman of the **Fitness Panel** may make such directions as he deems necessary to ensure that the **member** has access to the **hearing** including, but not limited to;
- a. a direction that the **hearing** take place in a specific location;
  - b. a direction that the **member** be permitted to attend via video link or telephone;
  - c. a direction that an interpreter can be used;
  - d. a direction that a hearing loop be used.
- 45.5 The **head of staff** may instruct a barrister or solicitor, to represent **ICAEW** before the **Fitness Panel**.
- 45.6 In determining under this **bye-law** whether or not a **member/provisional member's** fitness to participate in disciplinary proceedings/professional competence remains seriously impaired through his **physical or mental health**, the **interim review hearing** and the **review hearing** will take place on an inquisitorial (not adversarial) basis and the **Fitness Panel** may hear oral evidence as it deems appropriate, including oral evidence from the **member/provisional member**, oral or written evidence from an expert witness relied upon by the **member/provisional member** or a medical examiner appointed by **ICAEW** and written representations from the **member**. However, the absence of a recent medical report or evidence shall not prevent the **Fitness Panel** from reaching a determination on the basis of the **member/provisional member's** conduct.
- 45.7 All **interim review** and **review hearings** shall take place in private.

### ***Powers of the Fitness Panel on an interim review hearing***

- 46.1 If the **Fitness Panel** hearing an interim review application is of the opinion that the **member/provisional member's** fitness to participate in disciplinary proceedings and/or professional competence remains seriously impaired through his **physical or mental health**, it shall make a finding to that effect and **order** that all of the original **orders** made under paragraph 3 of **bye-law** 41 continue until a **review hearing** is convened in accordance with paragraph 1 of **bye-law** 44, or may vary any of the original **orders** made under paragraph 3 of **bye-law** 41, or make additional **orders** available under paragraph 3 of **bye-law** 41 as it thinks appropriate in the circumstances.



- 46.2 If the **Fitness Panel** is of the opinion that the **member/provisional member's** fitness to participate in disciplinary proceedings and/or professional competence is no longer seriously impaired by his **physical or mental health**, it shall make a finding to that effect and it may:
- discharge or vary any or all of the original **orders** made under paragraph 3 of **bye-law 41**;
  - make such **orders** as it considers appropriate, for example, in relation to the member's continuing professional development.
- 46.3 If an **order** is made to end the suspension of a **member/provisional member's** membership or provisional membership, licence, certificate or registration, the **Fitness Panel** must determine in all of the circumstances of the case whether the investigation or prosecution of the original **complaint** against the **member/provisional member** should be re-started or whether the **complaint** should be closed and should make such directions or **orders** as are appropriate to give effect to that determination.

### **Powers of the Fitness Panel on a review hearing**

- 47.1 If the **Fitness Panel** is of the opinion that the **member/provisional member's** fitness to participate in disciplinary proceedings and/or professional competence remains seriously impaired through his **physical or mental health**, it shall make a finding to that effect and it may:
- order** that the suspension of the **member/provisional member's** membership or provisional membership and any licence, certificate or registration be continued indefinitely or that any conditions imposed be extended indefinitely or until such time that a successful interim review application is made;
  - set a recommended period before the expiry of which no interim review application can be made;
  - accept the **member/provisional member's** resignation of his membership or provisional membership and order that any future application by the **member/provisional member** for readmission to membership/provisional membership be considered by the **Fitness Committee** so that it can make an initial determination as to whether the **member/provisional member's** professional competence remains seriously impaired through his **physical or mental health**.
- 47.2 If the **Fitness Panel** is of the opinion that the **member/provisional member's** professional competence is no longer seriously impaired by his **physical or mental health**, it shall make a finding to that effect and it may:
- discharge or vary any or all of the original **orders** made under paragraph 3 of **bye-law 41**;
  - make such **orders** as it considers appropriate, for example, in relation to continuing professional development.
- 47.3 If an **order** is made to end the suspension of a **member/provisional member's** membership or provisional membership, licence, certificate or registration, the **Fitness Panel** must determine in all of the circumstances of the case whether the investigation or prosecution of the original **complaint** against the **member/provisional member** should be re-started or whether the **complaint** should be closed.

- 47.4 An **order** made under paragraph 1 must contain details of the nature of the impairment the **Fitness Panel** considers the **member/provisional member** to be suffering from and what steps the member would need to take in order to be sufficiently recovered or rehabilitated for the **orders** made under that paragraph to be discharged or varied.
- 47.5 Any **order** made under paragraphs 1 or 2 shall be published unless there are exceptional circumstances which justify no publicity. Such publicity shall not state more than the name of the **member/provisional member** and whether any suspension or conditions continue or whether the suspension and conditions have been terminated or varied.

### **Expedited order procedure**

- 48.1 If, at any time after a request for a referral is made under paragraphs 1 or 2 of **bye-law** 38, the **Fitness Committee** Chairman is of the opinion that it is necessary for the protection of the public or is otherwise in the public interest or is in the interests of the **member** for a **Fitness Panel** to be convened urgently to consider making an expedited **order** to suspend the **member's/provisional member's** membership/provisional membership or practising certificate, the **Fitness Committee** Chairman shall request the **PCD Committee Secretary** to convene an expedited **order hearing**.
- 48.2 A **Fitness Panel** convened to consider making an expedited **order** shall be appointed in the same way as, and in accordance with, paragraphs 1-7 of **bye-law** 39 except that the **Fitness Committee** Chairman shall have a discretion in whether a medical assessor is appointed.
- 48.3 Not less than 7 days before an expedited **order** hearing, the **PCD Committee Secretary** shall serve upon the **member/provisional member** a **notice** stating the time and place fixed for the expedited **order** hearing and copies of all of the documents considered by the **Fitness Committee** Chairman under paragraph 1 above.
- 48.4 Upon application by either party prior to the expedited **order hearing**, the **Fitness Panel** Chairman may make such directions as he deems necessary to ensure that the **member/provisional member** can participate at the **hearing** including, but not limited to the following directions:
- that the **hearing** take place in a specific location;
  - that the **member** be permitted to attend via video link or telephone;
  - that an interpreter can be used;
  - that a hearing loop can be used;
  - that the **member** be permitted to make written representations.
- 48.5 If the **member/provisional member** does not attend and is not represented at the expedited **order hearing** then, provided that the **Fitness Panel** is satisfied that the notice required by paragraph 3 was served on him, the expedited **order hearing** can continue in the absence of the **member/provisional member**.
- 48.6 In determining under this **bye-law** whether an expedited **order** should be made, the hearing shall take place on an inquisitorial (not adversarial) basis and the **Fitness Panel** may consider written representations and reports and hear oral evidence if it deems it appropriate, including oral evidence from the **member/provisional member** or his **representative**, from any medical expert instructed by the **member/provisional member**

and from any medical examiner instructed by **ICAEW** if a medical examination has already taken place. However, the absence of any medical evidence shall not prevent the **Fitness Panel** from reaching a determination on the basis of the evidence and facts before them.

- 48.7 If, after considering all of the evidence referred to in paragraph 6, the **Fitness Panel** is of the opinion that there are reasonable grounds for believing that the **member** may be suffering from a serious impairment of his **mental or physical health** and it is necessary for the protection of the public or is otherwise in the public interest or in the interests of the **member/provisional member**, the **Fitness Panel** can make an expedited order suspending membership, provisional membership or a practising certificate of the **member/provisional member** for the period until a full **hearing** can be held.
- 48.8 An expedited **order** made under paragraph 7 can last for a maximum of 3 months, before the expiry of which the **PCD Committee Secretary** must convene a **Fitness Panel** under **bye-law** 39 whether or not any more evidence, medical or otherwise, becomes available during that period.
- 48.9 Where the **member/provisional member** applies for, and is granted, an adjournment of a **hearing** convened under **bye-law** 39 by way of paragraph 8, the **Fitness Panel** Chairman may grant an extension of the expedited **order** until the adjourned **hearing** takes place.
- 48.10 If the **Fitness Panel** is of the opinion at an expedited **order hearing** that no expedited **order** should be made, then the **PCD Committee Secretary** shall convene a full **Fitness Panel** in accordance with **bye-law** 39, as if it had been requested by the **Fitness Committee** Chairman, under paragraph 12 of **bye-law** 38.
- 48.11 Any expedited **order** made by the **Fitness Panel** will be published by the **PCD Committee Secretary** unless there are exceptional circumstances which justify no publicity. Such publicity shall not state more than the name of the **member/provisional member**, what (if any) suspension or conditions have been imposed upon him and the length of any suspension or conditions.

### **Costs of the fitness process**

- 49.1 If a **Fitness Panel** is convened as a result of a written referral by a **member** or **provisional member** under paragraph 2 of **bye-law** 38, and the **Fitness Panel** finds that the **member/provisional member** is fit to participate in disciplinary proceedings and/or that the **member/provisional member's** professional competence is not seriously impaired, then the **Fitness Panel** may order the **member/provisional member** to pay to **ICAEW** by way of costs such sum as the **Fitness Panel** may determine to be appropriate.
- 49.2 If the **Fitness Panel**, convened as a result of a written referral under paragraph 1 or 2 of **bye law** 38, is of the opinion that the **member/provisional member's** fitness to participate in disciplinary proceedings and/or professional competence is seriously impaired by his physical or mental health, then it shall not make an order relating to costs against the **member/provisional member**.
- 49.3 Any costs ordered under paragraph 1 shall, unless a longer period for payment is allowed in the **order**, be paid within the period of 30 days beginning with the date of the **order**.

- 49.4 If, within the period allowed by **bye-law** 26.1, the **member/provisional member** serves **notice** of appeal against an **order** for payment of costs made under this **bye-law**, then, subject to **bye-law** 26.3, those costs shall not become payable until the appeal has been determined under these **bye-laws** or withdrawn by the **member/provisional member**, and shall then be payable, if at all, in accordance with the following provisions of this **bye-law** and **bye-law** 50.
- 49.5 Any instalment of costs payable to **ICAEW** under this **bye-law** must be received by **ICAEW** before the close of business on the last day of the period allowed by or under this **bye-law** for payment (or, if that day is not a business day, before the close of business on the next business day).
- 49.6 Where
- any costs ordered by these **bye-laws** are payable by instalments; and
  - any instalment is not duly received by **ICAEW** as required by paragraph 6
- the whole of those costs or, as the case may be, so much of them as then remains unpaid, shall become due for payment in accordance with paragraph 6 as if the last day of the period allowed for the payment of that instalment were the last day of the period allowed for the payment of the whole of those costs.

#### **Right of appeal against orders of the Fitness Committee**

- 50.1 The provisions of these **bye-laws** mentioned in column 1 of the table set out in paragraph 5 (which relate to appeals against **orders** made by **tribunals**) shall apply in relation to appeals under this paragraph as if references in those provisions to a **tribunal**, to an **order** made by a **tribunal** (on a **formal complaint**) and to the **defendant** were respectively references to the **Fitness Panel** of the **Fitness Committee**, to an **order** made by it under **bye-laws** 38, 41, 46, 47 or 48 and to the **member/provisional member** against whom the **order** was made.
- 50.2 In their application by virtue of paragraph 1 the provisions mentioned in column 1 of that table shall have effect subject to any further modifications specified in column 2 of the table.
- 50.3 On an appeal under paragraph 1 of **bye-law** 26 (as amended by paragraph 50.5 below) the **panel** appointed to hear the appeal may, whether the appeal is successful or not, **order** the **member** concerned to pay **ICAEW** by way of costs of the appeal such sum as the **panel** may in its absolute discretion determine.
- 50.4 Any costs ordered under paragraph 3 shall, unless a longer period for payment (whether by instalments or not) is allowed by **order** of the **Appeal Committee**, be paid within the period of 28 days beginning with the date of the **order**, and paragraphs 8 and 9 of **bye-law** 33 (time for payment of costs) shall apply in relation to any costs or instalment of costs payable under this **bye-law** as if references to that **bye-law** and to paragraph 8 of it were references to this **bye-law** and this paragraph respectively.
- 50.5 The following is the table referred to above:-

<b>Bye-law</b> 26	In paragraph (1) delete the words 'Subject to <b>bye-law</b> 33(5) in the case of an <b>order</b> for exclusion from membership' and the entirety of sub-paragraph (b).
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	Delete paragraph (2)
<b>Bye-law</b> 27	Add a further sub-paragraph (8) reading: 'The <b>Appeal Committee</b> may appoint an independent suitably qualified medical expert to act as medical assessor at the <b>hearing</b> . If appointed, the medical assessor shall be independent of <b>ICAEW</b> and shall not have produced any of the reports which are to be considered by the <b>Fitness Panel</b> at the <b>hearing</b> .'
<b>Bye-law</b> 28	In paragraph (2) add the words 'or may provide written representations if he is not able to attend in person or by <b>representative</b> .' In paragraph (6) for ' <b>Investigation Committee</b> ' substitute ' <b>Fitness Committee</b> '.
<b>Bye-law</b> 29	in paragraph 1(a) for 'on a <b>formal complaint</b> ' substitute 'by the <b>Fitness Panel</b> '. In paragraph 2(b) for 'which the <b>tribunal</b> might have made on the <b>formal complaint</b> ' substitute 'which the <b>tribunal</b> may have made at the time of the original <b>hearing</b> '. In paragraph 2(c) remove the words 'including, in the case of an order for the exclusion of a <b>member</b> from membership, a recommendation that no application for his readmission be entertained before the end of the period specified in the <b>order</b> .' Paragraph 2(d) shall not apply. In paragraph 2(e) for '19(1)' substitute '39.1 or 44.1 or 48.2' and for 'complaint' substitute 'matter' or 'review'.

- 50.6 Any **order** made under paragraphs 1 or 2 shall be published unless there are exceptional circumstances which justify no publicity. Such publicity shall not state more than the name of the **member/provisional member** and whether any suspension or conditions continue or whether the suspension and conditions have been terminated or varied.

## SCHEDULE - BYE-LAW 2 - CONSTITUTION OF INVESTIGATION, DISCIPLINARY, FITNESS AND APPEAL COMMITTEES AND APPOINTMENT OF REVIEWERS OF COMPLAINTS

### The *Investigation, Disciplinary and Appeal Committees*

- 1.1 The **Council** shall appoint an **Investigation Committee**, a **Disciplinary Committee** and an **Appeal Committee**, and in this paragraph 'the Committees' means those Committees and 'a Committee' means any of them.
- 1.2 Initial appointment as a member of a Committee shall be for a period of not less than three years (such period may be extended at the discretion of **Council**); but a member or former member of a Committee may be re-appointed.

- 1.3 The **Council** may terminate a person's membership of a Committee on grounds of serious misconduct or incapacity in such manner as shall be prescribed in **regulations** made by **Council**. Such **regulations** may include a provision to suspend any person's membership of a Committee pending final determination.
- 1.4 No person shall be a member of more than one of the Committees at the same time.
- 1.5 The **Council** may pay reasonable expenses of the members of a Committee. The **Council** will also pay remuneration to the **lay members** of a Committee including those considered non-lay for the determination of **complaints** about **legal services work**.
- 1.6 A Committee may make such **regulations** (not inconsistent with the provisions of these **bye-laws**) as it considers necessary for the performance of its functions.

### **The Investigation Committee**

- 2.1 The **Investigation Committee** shall consist of not fewer than 14 persons, of whom at least the required number must be lay members.
- 2.2 The required number for this purpose is:
  - a. one half of the total number of members of the Committee; or
  - b. if the total number of the number of members of the Committee is not divisible by two, one half of the first higher number that is so divisible; or
  - c. such higher number as regulations may provide if a different constitution is prescribed or approved by a **relevant authority**.
- 2.3 Where the required number for the Committee under 2.2 differs when **legal services work** is to be considered, the Committee will delegate from their members to a Legal Services Sub-committee whose members meet the required number for this purpose.
- 2.4 The Committee may co-opt other persons, being either **members** of **ICAEW** or persons who are **lay members**, provided that the required number of **lay members** is maintained.
- 2.5 At a meeting of the Committee, a quorum shall consist of:
  - a. four members of the Committee (or in the case of **legal services work**, of the Legal Services Sub-committee), of whom two must be **members** of **ICAEW** and two must be **lay members**; or
  - b. such other constitution as is prescribed or approved by a **relevant authority** if regulations so provide.
- 2.6 A meeting includes any consideration by the Committee through the medium of conference telephone, video conference or similar form of communication provided that all persons participating in the meeting are able to communicate simultaneously with each other throughout the meeting. A member of the Committee participating in any meeting in this way is deemed to be present in person at the meeting and is counted in the quorum. Such a meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chairman of the meeting is.



### **The *Disciplinary Committee***

- 3.1 The ***Disciplinary Committee*** shall consist of not fewer than 14 persons, of whom at least the required number must be ***lay members***.
- 3.2 Paragraph 2.2 of this Schedule (meaning of 'required number') applies for this purpose.
- 3.3 No member of the ***Disciplinary Committee*** shall take part in a decision concerning a case if, while a member of the ***Investigation Committee***, he took part in a decision on that case.

### **The *Appeal Committee***

- 4.1 The ***Appeal Committee*** shall consist of not fewer than 14 persons, of whom at least the required number must be ***lay members***.
- 4.2 Paragraph 2.2 of this Schedule (meaning of 'required number') applies for this purpose.
- 4.3 The Chairman and Vice-Chairman of the Committee must each be either a barrister or a solicitor; and neither of them shall be an accountant.
- 4.4 No serving member of the ***Council*** shall be appointed to the ***Appeal Committee***. If a member of the ***Appeal Committee*** becomes a member of ***Council*** he shall with immediate effect cease to be a member of the ***Appeal Committee***.
- 4.5 A person who, as a member of the ***Investigation Committee*** or the ***Disciplinary Committee***, has been concerned with a ***formal complaint*** or with the making of an ***order*** under ***bye-law*** 30 (intervention orders) shall not be appointed to a ***panel*** which is to hear an appeal arising out of that ***complaint*** or ***order***.

### **Reviewers of complaints**

- 5.1 The ***Council*** shall appoint one or more ***reviewers of complaints***, none of whom shall be an accountant.
- 5.2 Appointment as a ***reviewer of complaints*** shall be for a period of not less than three years, and any such appointment may be renewed.
- 5.3 The ***Council*** shall pay remuneration to, and the reasonable expenses of, every ***reviewer of complaints***, and shall indemnify him against any civil liability incurred by him in that capacity.
- 5.4 The ***reviewer of complaints*** or, if two or more such reviewers are appointed, those reviewers acting jointly, shall make a report to the ***Council*** annually.

### **The *Fitness Committee***

- 6.1 The ***Fitness Committee*** shall consist of the same persons, of whom at least the required number must not be accountants, as the ***Disciplinary Committee***.
- 6.2 Paragraph 2.2 of this Schedule (meaning of 'required number') applies for this purpose.
- 6.3 No member of the ***Fitness Committee*** shall take part in a decision concerning a case if, while a member of the ***Investigation Committee***, he took part in a decision on that case.