



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;

approved training means practical training and experience approved by the Council and obtained at or from an office which is for the time being authorised under regulations to train provisional member;

authorised firm means a firm regulated by the Institute in its capacity as

- a. as a designated professional body under the Financial Services and Markets Act 2000, or
- b. 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;

Council means the Council of the Institute;

defendant means a member, firm or provisional member 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;

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

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

Insolvency Licence means an authorisation issued by the Institute 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;

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

Investigation and discipline scheme means any scheme in which the Institute 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;

member means a member of the Institute, 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;

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 the Institute;

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 a CFAB student; or
- b. is registered with ICAEW as an ACA student;
- c. is registered with ICAEW under a training agreement with an Authorised Training Employer or an Authorised Training Principal; or
- d. 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
- e. 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
- f. has applied for ICAEW membership outside the period allowed under the regulations and the application has not been finally determined.

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 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 the Institute 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;

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

training contract means a contract of approved training registered with the Institute 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-law 19.1 to hear a formal complaint;

United Kingdom includes the Channel Islands and the Isle of Man.

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

- a. 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;
- b. 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;
- c. 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 member, a firm, a provisional member 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.

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 the Institute's principal London address for the time being or such other address of the Institute as may be prescribed by regulations.

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.

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 and Appeal 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 and the Appeal 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 and firms in accordance with the terms of that scheme and these bye-laws.

Liability of members and provisional members to disciplinary action

4.1 A member or provisional member shall be liable to disciplinary action under these bye-laws in any of the following cases, whether or not he was a member or provisional member 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, the Institute 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, the Institute 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.

Liability of member firms to disciplinary action

5.1 A member-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, the Institute 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, the Institute 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 member 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 member 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 member 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 the Institute in its capacity as a designated professional body under the Financial Services and Markets Act 2000 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 the Institute in its capacity as a recognised supervisory body under the Companies Act 2006 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, member firms, regulated firms and firms to disciplinary action

- 6A.1 A person or body who, while he was a member, member firm, regulated firm or 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 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 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 member or a 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 or former 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 or former regulated firm, and a breach of bye-law 13 shall render the former member, former member firm or former regulated 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 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 member, member firm or provisional member 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 member, member firm or provisional member
- a. 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 5 or before a regulatory body performing its functions under the Financial Services and Markets Act 2000, the Insolvency Act 1986 or the Companies Act 2006; or
 - b. 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 A finding of fact
- a. in any report of an inspector appointed under the Companies Act 1985;
 - b. in any civil or criminal proceedings before a court of competent jurisdiction in the United Kingdom or elsewhere;
 - c. in any proceedings before, or report by, any of the bodies mentioned in paragraph 4; or
 - d. in any proceedings as a result of which an accountant was notified by the relevant authority that he was not qualified to give an accountant's report within the meaning of section 34 (accountants' reports), of the Solicitors Act 1974,
- shall for the purposes of these bye-laws be prima facie evidence of the facts found.

- 7.4 The bodies referred to in paragraph 3(c) are
- a. The Financial Services Authority;
 - b. The Financial Services Tribunal or the Financial Services and Markets Tribunal;
 - c. The Insolvency Practitioners Board;
 - d. any recognised professional body or competent authority within the meaning of the Insolvency Act 1986;
 - e. any recognised supervisory body within the meaning of the Companies Act 2006;
 - f. any body which is for the time being listed in paragraph 5;
 - g. any body situated in Ireland which exercises a similar function to the bodies listed in (a) to (g) above.
- 7.5 The bodies referred to in paragraph 2(a) and 4(g) 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.
- 7.6 The Council may at any time by regulations add any accountancy body (other than the Institute) to, or remove any body listed in paragraphs (2), (4) or (5).
- 7.7 Nothing in paragraphs 3 to 6 shall affect the evidential status of any report or other document not falling within paragraph 3.

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 ~~firm~~, ~~member~~ or ~~provisional member~~ 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 ~~member~~, a ~~firm~~ or a ~~provisional member~~ 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
- a. have come to the attention of the head of staff under paragraph 1 or otherwise; and
 - b. indicate that a member, a firm or a provisional member 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. a decision of the head of staff as to whether any facts or matters fall within paragraph 3(b); or
 - b. 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.

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
- a. if as a result of that review he remains of the opinion that the member, the firm, or the provisional member concerned may have become liable to disciplinary action under these bye-laws, he shall proceed to investigate the complaint;
 - b. 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 member, the firm or the provisional member 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.

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 the Institute.
- 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 member, a firm or a provisional member 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.

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

- a. 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
- b. 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 the Institute, the Investigation Committee shall either

- a. 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
- b. 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

- a. the investigation of the fact or matter shall be treated as if it had been referred under bye-law 12A.1; and
- b. 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 member, member firm, regulated firm or provisional member 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 member or member 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 member or member 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

- a. 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

- b. 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
- c. referred back by an investigation and discipline scheme to the Institute 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

- a. prefer the whole or part of the complaint to the Disciplinary Committee as a formal complaint; or
- b. 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
- c. 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
 - i. 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
 - ii. 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
- d. 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 member, member firm, regulated firm or provisional member 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 member, member firm, regulated firm or provisional member 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 member, member firm, regulated firm or provisional member 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 member, member firm, regulated firm or provisional member concerned; and if within the period of 28 days beginning with the date of service of that notice the member, member firm, regulated firm or provisional member 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 member, member firm, regulated firm or provisional member 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 member, member firm, regulated firm or provisional member 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, a member firm, an authorised firm, a registered auditor or a provisional member;
 - 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 (b), (c) or (d); or
 - iv. bye-law 22.6 (b), (c) or (d); or
 - v. bye-law 22.7 (f) or (g),
 - b. if the person concerned is a member, member firm or regulated firm, 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 member, member firm, regulated firm or provisional member concerned shall pay to the Institute a sum by way of costs.
- 16.3 Before making any order under paragraph 2 the Investigation Committee shall serve on the member, member firm, regulated firm or provisional member concerned a notice describing the action which it proposes to take if the member, member firm, regulated firm or provisional member 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 member, member firm, regulated firm or provisional member 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 member, member firm, regulated firm or provisional member 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
- a. that a lesser or no penalty is appropriate, in which case it shall impose a lesser or no penalty, as the case may be;
 - b. 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
 - c. that no prima facie case exists, in which case it shall so find.
- 16.6 If the member, member firm, regulated firm or provisional member 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
- a. state the name of the person or body against whom the order was made; and
 - b. 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
- a. under bye-law 15 the Investigation Committee finds 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 member, member firm, regulated firm or provisional member 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 member, member firm, regulated firm or provisional member 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 the Institute 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 the Institute under this bye-law as it applies to costs payable under bye-law 33, but with the omission of the words 'or instalments of costs' and 'or under'.
- 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 member, member firm, regulated firm or provisional member 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 six months beginning with the date of the finding unless
- a. the reviewer is satisfied that the complainant could not reasonably have been expected to make the application within that period; or
 - b. 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
- a. fresh evidence of a material nature has been received since the date of the finding;
 - b. 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;
 - c. 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;
 - d. 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
- a. 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 member, member firm, regulated firm or provisional member 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 member, member firm, regulated firm or provisional member 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 the Institute 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, in a case falling within paragraph 2, the remaining members of the tribunal
 - a. do not proceed or continue with the hearing; or
 - b. complete the hearing but are unable to agree on a finding,
 the complaint shall be heard or re-heard by a new tribunal appointed under paragraph 1.

- 19.4 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.
- 19.5 The Disciplinary Committee may appoint a barrister or a solicitor to act as legal assessor at the hearing of a formal complaint.
- 19.6 Where a new tribunal is appointed pursuant to paragraph 2, 3 or 4, 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.
- 19.7 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 the Institute, 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

- a. paragraph 3, 4, 5, 6 or 7 of this bye-law, as the case may be; and
- b. 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

- a. that he be excluded from membership;
- b. that his practising certificate be withdrawn either permanently or for a specified period;
- c. that any Insolvency Licence held by him be withdrawn;
- d. that he be ineligible for an Insolvency Licence;
- e. that he be ineligible for a practising certificate, either permanently or for a specified period;
- f. that he be severely reprimanded;
- g. that he be reprimanded;
- h. that he be fined a specified sum.

22.4 If the defendant is a member firm, the orders available against it are

- a. that it be prohibited from using the description 'Chartered Accountants' for a specified period;
- b. that it be severely reprimanded;
- c. that it be reprimanded;
- d. that it be fined a specified sum.

22.5 If the defendant is an authorised firm, the orders available against it are

- a. that it be severely reprimanded;
- b. that it be reprimanded;
- c. that it be fined a specified sum.

22.6 If the defendant is a registered auditor, the orders available against it are

- a. that its registration granted at the instance of the Institute be withdrawn;
- b. that it be severely reprimanded;
- c. that it be reprimanded;
- d. that it be fined a specified sum.

22.7 If the defendant is a provisional member, the orders available against him are

- a. that he be declared unfit to become a member;
- b. 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;
- c. that the registration of his training contract be suspended for a period not exceeding two years;
- d. that for a specified period not exceeding two years he be ineligible to sit for such one or more of the Institute's examinations as may be specified or for any specified part of any of those examinations;
- e. that he be disqualified from such one or more of the Institute'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 the Institute before the date of the order;
- f. that he be severely reprimanded;
- g. that he be reprimanded.

22.8 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.

22.9 An order under this bye-law against a member, member firm or regulated firm may include a direction requiring him (at his own expense) to obtain advice from a specified source and to implement the advice obtained.

22.10 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 member or member 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 the Institute the whole or part of any fee which the client has paid;
- c. that he shall pay to the Institute 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 the Institute 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 member or member 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 return to any client any books or documents belonging to the client which are not the subject of a lien;
- b. that, as regards any specified fee, he shall provide the client with such particulars as may be specified;
- c. 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:

- a. 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
- b. 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 member, member firm or regulated firm appointed under paragraph 2 as to the fees payable by virtue of an order under paragraph 2(b), the Investigation Committee may either

- a. determine the fees payable; or
- b. 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
- a. cover the whole of those fees; or
 - b. 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 member or member firm or against a regulated firm finds the complaint proved in whole or in part, it may make an order that the defendant shall pay a sum to the Institute 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
- a. bringing to the attention of or reporting to the head of staff any of the facts and matters which constitute the complaint; or
 - b. 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 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
- a. against the order; or
 - b. 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
- a. 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
 - b. 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
- a. against the order; or
 - b. 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 the Institute 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

- a. 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
- b. 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)

- a. 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;
- b. 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. 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;
- b. two members of the Appeal Committee who are members of the Institute; and
- c. 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

- a. is for any reason unable to attend the hearing or any adjourned hearing of the appeal; or
- b. 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, in a case falling within paragraph 3, the remaining members of the panel

do not proceed or continue with the hearing; or
complete the hearing but are unable to agree on how to determine the appeal,
the appeal shall be heard or re-heard by a new panel appointed under paragraph 1.

- 27.5 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.
- 27.6 The Appeal Committee may appoint a barrister or solicitor to act as legal assessor at the hearing.
- 27.7 Where a new panel is appointed pursuant to paragraphs 3,4 or 5, 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.
- 27.8 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 the Institute, 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
- a. shall take into consideration the record of the evidence given before, and the documents produced to, the tribunal at the hearing of the complaint;
 - b. may, if it thinks fit, re-hear any witness who gave oral evidence before the tribunal; and
 - c. 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
- a. affirm, vary or rescind any order of the tribunal;
 - b. 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;
 - c. 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;
 - d. 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 the Institute) mentioned or referred to in bye-law 7.2(a);
 - c. is a person whose professional competence or efficiency is seriously impaired as a result of ill health or mental incapacity;
 - d. is a sole practitioner who has abandoned his practice; or
 - e. 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 8) 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 In determining under this bye-law whether or not a member's professional competence or efficiency is seriously impaired as a result of ill-health or mental incapacity, the Investigation Committee may rely on a report by a registered medical practitioner; but the absence of such a report shall not prevent the Committee from so determining on the basis of the member's conduct.

30.5 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

- a. 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
- b. he has persistently failed to respond to efforts to contact him at his registered address.

30.6 An order under this bye-law

- a. may be framed so as to be in force indefinitely or for a specified period or until the occurrence of a specified event; and
- b. may include such terms and conditions (if any) as the Investigation Committee thinks fit.

30.7 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

- a. by order discharge the order or vary it (whether so as to prolong its operation or in any other way); or
- b. if the order has ceased to have effect, make a fresh order under this bye-law.

30.8 Before making an order against a member under this bye-law or taking any action under paragraph 7 the Investigation Committee shall

- a. serve on the member concerned a notice describing (with reasons) the action it proposes to take; and
- b. 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.

30.9 Paragraph 8 shall not apply if, in the opinion of the Investigation Committee, delay in taking action under paragraphs 1 to 6 or paragraph 7 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 8, it shall promptly

- a. serve on the member concerned a notice describing (with reasons) the action it has taken;
- b. 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
- c. reconsider the action taken by it in the light of any representations so made.

30.10 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.

30.11 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.

30.12 Except insofar as the Investigation Committee in its absolute discretion otherwise directs, a statement published under paragraph 11 shall

- a. state the name of the member against whom the order was made; and
- b. 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

- a. against the order; or
- b. 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 the Institute 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 'representative' in <u>bye-law 1.2</u>	-
<u>bye-law 26.3 to 10</u>	-
<u>bye-law 27</u>	-
<u>bye-law 28</u>	-
<u>bye-law 29</u>	<ul style="list-style-type: none"> a. in paragraph 2.(b), for 'on the <u>formal complaint</u>' substitute 'under <u>bye-law 30</u>'; b. in paragraph 2(d), for 'record of the <u>tribunal's</u> decision' substitute 'statement'; and c. for paragraph 2(e) substitute '(e) direct that the matter shall be referred back to the <u>Investigation Committee</u> for reconsideration'.
<u>bye-law 35</u>	<ul style="list-style-type: none"> a. for any reference to a record of a <u>tribunal's</u> decision substitute a reference to a statement; b. in paragraph 2, for the words from 'Where' to 'in part' substitute 'Where, on an appeal, a <u>panel</u> rescinds an order made under <u>bye-law 30</u>'; c. in paragraph 3, omit 'the <u>tribunal</u> or, as the case may be,'; d. in paragraph 4, for '26.1' substitute '31.1'; e. in paragraphs 5 and 6 omit '<u>tribunal</u> or' (3 times).

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 the Institute 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 the Institute 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 the Institute 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 the Institute 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 the Institute 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 the Institute under this bye-law must be received by the Institute 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 the Institute 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 member firms

34.1 Where a member 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 member or former member 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 member or former member 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 the Institute, the Institute 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 the Institute 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 member 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 the Institute'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 the Institute 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.

Schedule - Bye-law 2 - Constitution of Investigation, Disciplinary 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 remuneration to, and the reasonable expenses of, the lay members of a Committee.
- 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 The Committee may co-opt other persons, being either members of the Institute or persons who are lay members, provided that the required number of lay members is maintained.
- 2.4 At a meeting of the Committee, a quorum shall consist of:
 - a. four members of the Committee, of whom two must be members of the Institute and two must be lay members; or
 - b. such other constitution as is prescribed or approved by a relevant authority if regulations so provide.

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.