



Disciplinary Committee (Settlement Order) Regulations

EFFECTIVE FROM 1 JANUARY 2020

Authority and commencement

1. These **regulations** are made by the Disciplinary Committee under paragraph 1.4 of the Schedule to the **Disciplinary Bye-laws** and come into force on 1 January 2020.

Notices and service

2. Any notice or document required to be served on ICAEW under these **regulations** shall be served on:

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

3. Any notice, decision, order or other document which needs to be served under these **regulations** on the respondent / respondent firm, ICAEW or any other person may be sent by post or email in accordance with the procedure laid out in **Disciplinary Bye-laws** 1.6 – 1.8 and service will take effect on the dates and times specified in those bye-laws.

Interpretation

4. Except where express reference is made in these **regulations**, words and phrases used have the same meaning as in the **Disciplinary Bye-laws**:
 - a) **Business day** means a day when banks are open for business in England and Wales.
 - b) **Disciplinary Bye-laws** means the Disciplinary Bye-laws of ICAEW for the time being in force.
 - c) **Disciplinary record** means any previous (adverse) disciplinary findings or orders whether made by the Investigation Committee, the Disciplinary Committee, the Appeal Committee, or by a Joint Disciplinary tribunal or Appeal Committee of the Joint Disciplinary Scheme or by a Disciplinary or Appeal tribunal of the Actuarial Discipline Board or a regulatory or Practice Assurance penalty as defined in the Audit Regulations, the DPB (Investment Business) Handbook, the Investment Business Regulations, the Probate Regulations, the Insolvency Licensing Regulations, the Licensed Practice Handbook or the Practice Assurance Regulations, but shall not include a finding of prima facie case coupled with an order of the Investigation Committee under **Disciplinary Bye-law** 15.2(d) that no further action be taken on the complaint(s).
 - d) **Notice** means notice in writing;
 - e) **Parties** means the respondent / respondent firm and the head of staff.

- f) **Provisional decision** means the written statement of the **SAC** which records their provisional view that the proposed settlement agreement and draft settlement order should not be approved, together with their reasons for this view.
 - g) **Regulations** means these Disciplinary Committee (Settlement Order) Regulations, as modified or amended from time to time.
 - h) **Representative** means a barrister, solicitor or ICAEW member or, with the agreement of the **SAC**, any other person.
 - i) **SAC** means a Settlement Agreement Chair who is appointed to consider a proposed settlement agreement and draft settlement order in accordance with **Disciplinary Bye-law** 18B.2.
5. In these **regulations** words importing the singular include the plural and vice versa.
6. Headings are included for convenience only and do not affect interpretation of the **regulations**.

The SAC's consideration of a proposed settlement agreement

7. These **regulations** supplement the procedure set out in **Disciplinary Bye-law** 18B concerning the consideration of a proposed settlement agreement and draft settlement order by a Settlement Agreement Chair (**SAC**).
8. Where, following settlement discussions, the head of staff wishes to request that a proposed settlement agreement be considered by a **SAC**, the head of staff shall provide to the PCD Committee Secretary:
- a) the report prepared for the Disciplinary Committee in accordance with **Disciplinary Bye-law** 15.6, together with any supporting documentation and/or evidence;
 - b) the proposed settlement agreement;
 - c) the draft settlement order;
 - d) any additional information, documentation and/or evidence in relation to the proposed settlement agreement, including any representations as to why the head of staff supports the proposed agreement; and
 - e) the respondent / respondent firm's **disciplinary record** (if any).
9. Where the PCD Committee Secretary receives a referral from the head of staff in accordance with **regulation** 8, the PCD Committee Secretary shall appoint a **SAC** in accordance with **Disciplinary Bye-law** 18B.2, save that no appointment shall be made until such time as it is approved by the Disciplinary Committee Chair (or, failing the Chair, any Vice-Chair of that Committee).

10. Following the appointment of a **SAC**, the PCD Committee Secretary shall write to the **parties** as soon as practicable to inform them of the appointment. The PCD Committee Secretary shall provide the respondent / respondent firm with a copy of the documents provided by the head of staff in accordance with **regulation 8**, except where such documents have been supplied previously to the respondent / respondent firm. The PCD Committee Secretary shall provide the respondent / respondent firm with at least 7 days from the date of service to respond with any additional written representations and/or evidence.
11. A copy of any representations and/or evidence received from the respondent / respondent firm shall be provided by the PCD Committee Secretary to the head of staff within 2 **business days** of receipt.
12. Once the PCD Committee Secretary has received the respondent / respondent firm's response, or the timescale for response has passed, the PCD Committee Secretary shall provide the **SAC** with copies of the following:
 - a) the proposed settlement agreement and draft settlement order;
 - b) any written representations, documentation and/or evidence received from the **parties**; and
 - c) the respondent / respondent firm's **disciplinary record** (if any).

The PCD Committee Secretary shall then request that the **SAC** consider whether, in accordance with **Disciplinary Bye-law 18B.4**, the proposed settlement agreement and draft settlement order should be approved.

13. In determining whether the proposed settlement agreement should be approved, the **SAC** shall have regard, among other matters, to:
 - a) the seriousness of the formal complaint(s) compared with the nature and extent of the respondent / respondent firm's admissions;
 - b) the degree to which the respondent / respondent firm has displayed insight into the conduct giving rise to the formal complaint(s);
 - c) the strength of the documentary evidence in relation to the formal complaint(s) and the potential benefits in a tribunal hearing additional oral evidence;
 - d) the public interest in achieving an earlier conclusion to the case;
 - e) the degree to which the respondent / respondent firm has put in place safeguards to prevent similar issues arising in the future; and
 - f) any remedial action taken by the respondent / respondent firm in relation to the formal complaint(s).
14. If the **SAC** approves the proposed settlement agreement in accordance with **Disciplinary Bye-law 18B.6**, the **SAC** shall sign the draft settlement order on behalf of the Disciplinary Committee and request that the PCD Committee Secretary provide a copy of the finalised order to the **parties** as soon as practicable. The PCD Committee Secretary shall, at the same time, provide a copy of the finalised order to any person or body who or which is the subject of one or more complaint(s) arising from the same or similar facts or matters as the formal complaint(s).

15. If the **SAC** considers provisionally that the draft settlement order should not be approved, they may notify the PCD Committee Secretary of their **provisional decision** and request that the PCD Committee Secretary provide copies of such **provisional decision** to the **parties** as soon as reasonably practicable. The **parties** shall have at least 7 days following the date of service of the **provisional decision** to notify the PCD Committee Secretary of their intention to make verbal representations on the **provisional decision**. If the **parties** intend to make verbal representations, they shall provide the PCD Committee Secretary with details of their availability for a hearing over the next 28 days.
16. If the **parties** do not indicate within this period that they wish to make verbal representations on the **provisional decision**, the **SAC** shall confirm their decision, and the reasons for their refusal to make the settlement order, in writing to the PCD Committee Secretary and the PCD Committee Secretary shall provide a copy of such reasons to the **parties** within 7 days of receipt.
17. If either or both **parties** indicate that they wish to make verbal representations on the **provisional decision**, the PCD Committee Secretary shall arrange for the **parties** to appear before the **SAC** as soon as practicable either in person or via teleconference; the **SAC** shall have an absolute discretion in determining whether the appearance shall be in person or by teleconference.
18. In making any verbal representations in accordance with **regulation 17**, the **parties** may appear by their **representative**.
19. If, following receipt of verbal representations, the **SAC** remains unwilling to approve the proposed settlement agreement, they shall refuse to make the settlement order and shall provide written reasons for their decision to the PCD Committee Secretary who shall provide a copy of such reasons to the **parties** within 7 days of receipt.
20. If, following receipt of verbal representations, the **SAC** is willing to approve the proposed settlement agreement, they shall sign the draft settlement order on behalf of the Disciplinary Committee and the procedure set out in **regulation 14** shall apply.

Publicity

21. A **party** or other person on whom a copy of the settlement order was served may, within 7 days beginning with the date of service of the order on them, file with the PCD Committee Secretary written representations on the timing of publication of the settlement order, or **notice** of their intention to make verbal representations on the same.
22. If, within the time period referred to in **regulation 21** above, the PCD Committee Secretary receives written representations from a **party** and/or other person on the timing of publication, they shall provide a copy of such representations to the **SAC** as soon as practicable following receipt.
23. If the PCD Committee Secretary receives **notice** that a **party** or other person wishes to make verbal representations on the timing of publication, they shall arrange for such representations to be made to the **SAC** in private by the person or their **representative** as soon as reasonably practicable. Such verbal representations shall be made via

telephone conference unless the **SAC**, in their absolute discretion, determines that they should be made in person.

24. The **SAC** shall make a direction as to the manner and timing of publication of the settlement order after the expiry of 7 days beginning with the date of service of the settlement order on the **parties**. Having had regard to any representations of the **parties** or other persons made in accordance with regulations 22 – 23 above, the **SAC** may order that publication be delayed where, in the opinion of the **SAC**, delay is necessary in the public interest.
25. In determining whether a delay in publication is necessary in the public interest for the purposes of **regulation 24**, the **SAC** shall have regard, among other matters, to:
 - a) the potential impact of publication on disciplinary and/or regulatory proceedings concerning any other person, not being the respondent / respondent firm;
 - b) the potential impact on any criminal investigation or proceedings concerning the facts or matters giving rise to the formal complaint(s); and
 - c) the public interest in ensuring the swift publication of disciplinary sanctions for:
 - i. the protection of the respondent / respondent firm's clients and the wider public; and
 - ii. the protection of ICAEW's reputation as a statutory and non-statutory regulator.

Disclosure

26. All written material and information provided by the **parties** or other persons under these **regulations** shall at all times remain confidential and no such material or information shall be disclosed (directly or indirectly) except:
 - a. to legal advisers for the purposes of the proceedings;
 - b. to any other person to whom disclosure is necessary for the purposes of obtaining information or assistance in connection with proceedings;
 - c. to an insurer where disclosure is required under the terms of a policy or in connection with any application for insurance cover;
 - d. where the disclosure to any person or body undertaking regulatory, disciplinary or law enforcement responsibilities is for the purpose of assisting that person or body to undertake those responsibilities required or allowed by law.

This **regulation** does not apply to the publication of the settlement order in accordance with regulation 24.