



# ICAEW Regulatory Board

## TERMS OF REFERENCE: JUNE 2023

### Authority

1. The ICAEW Regulatory Board (IRB) derives its authority from Council.
2. ICAEW is a unitary body. However, to ensure a greater degree of independence, both in substance and appearance, Council has delegated the regulatory and disciplinary functions of ICAEW to the IRB, to separate them from the other activities of ICAEW. In discharging its role and responsibilities the IRB will discuss significant matters with the ICAEW Board and relevant departmental Boards.
3. The IRB will have regard to the objectives of the profession, as set out in ICAEW's Royal Charter, subject to a primary consideration of the public interest.

### Composition

4. The IRB comprises up to twelve members including the chair and, if the chair is legally qualified, an alternate chair.<sup>1</sup>
5. For non-legal services matters the IRB will be formed of a parity of lay<sup>2</sup> and non-lay members. The quorum for a meeting will be four: two lay and two non-lay members. In the event that there is not parity, the chair will use their discretion as to whether matters of gravity or public interest will be delayed to another meeting and or taken to vote at that meeting. If there is equality of votes, the chair will have a casting vote.
6. For legal services matters the IRB will be formed of a lay<sup>3</sup> majority and a lay chair. If a decision on regulatory functions relating to legal services is taken at a meeting where there is either not a lay majority or not a lay chair (or both), this decision will be ratified at the next IRB meeting when there is both a lay majority and a lay chair. Ratification will however take place out of

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<sup>1</sup> The Chair for legal services related matters

<sup>2</sup> 'Lay' for non-legal services matters means someone who is not and never has been a member, affiliate or employee of the ICAEW or any other accountancy body and such further relevant restrictions as may be appropriate to enhance public confidence in the regulatory process. In making lay appointments, the focus will normally be on consumers of accountancy services and stakeholder organisations rather than those who have more general experience of regulation of other professional services.

<sup>3</sup> 'Lay' for legal services matters means someone who is not and never has been -

- (a) an authorised person in relation to an activity which is a reserved legal activity under the Legal Services Act 2007, for example, a solicitor or barrister
- (b) a person authorised to provide services which are regulated claims management services under the Compensation Act 2006
- (c) an advocate in Scotland;
- (d) a solicitor in Scotland;
- (e) a member of the Bar of Northern Ireland;
- (f) a solicitor of the Court of Judicature of Northern Ireland.

meeting if waiting for the next IRB meeting when there is both a lay majority and lay chair would cause unnecessary delay.

7. The chair and alternate chair of the IRB may not be a member of the ICAEW Board or Council or any other ICAEW Committee. They can attend the ICAEW Board or Council by invitation as agreed by the respective chair.
8. The chair of the IRB will be appointed on the basis of being the person best suited for the job, judged on merit without regard to whether they have a lay or accountancy background. The alternate chair of the IRB will also be appointed on the basis of being the best suited for the job, judged on merit but must be lay for all matters including legal services.
9. The chairs and members of the IRB and the Committees which it has oversight of are appointed by independent panels of the Regulatory and Conduct Appointments Committee.
10. In accordance with the Regulatory Appointments Policy, members of the ICAEW Board or Council may not be members of IRB and there will be a period of at least one year between ceasing to be a member of Council or ICAEW Board and taking up membership of IRB. IRB members may not be members of other ICAEW regulatory committees.

### **Council Delegations**

11. Council has delegated the following responsibilities to the IRB:

- a) development of proposals for ICAEW's professional standards strategy and policies, after consultation with the ICAEW Board and with the relevant departmental Boards as appropriate.
- b) approving policies and guidelines that are relevant to the discharge of the functions of the IRB and the committees which it has oversight of, including sanctions.
- c) developing proposals for funding and resources required for professional standards activities as part of the budget preparation process having regard to the high level budgeting principles set at Appendix A.
- d) developing and monitoring performance criteria and performance measures for ICAEW's professional standards activities.
- e) general oversight of the performance of the Audit Registration Committee, the Insolvency Licensing Committee, the Investment Business Committee, the Review Committee, the Legal Services Committee, the Conduct Committee, the Fitness to Practise Committee, the Tribunals Committee, the Appeal Committee, the Practice Assurance Committee, and the Professional Indemnity Insurance Committee (or their successors) subject to these committees **not** being answerable to the IRB for their decisions in individual cases.
- f) considering and, where appropriate, amending, the recommendations of the specialist advisory and operational committees (the Joint Audit, Joint Insolvency, Joint Professional Indemnity Insurance Committee, the Practice Assurance Committee and the Professional Indemnity Insurance Committee and the Board of the Chartered Accountants' Compensation Scheme Ltd) or their successors.
- g) the submission to the ICAEW Board of any recommendations for additions, deletions or amendments to the Charter and bye-laws in relation to professional conduct and regulatory matters for recommendation to Council for approval.
- h) the setting of the level of regulatory fees, Compensation Scheme contributions and the Practice Assurance fee, provided that it may not approve any increase in these fees above the level of inflation used by ICAEW for employment cost inflation, or any increase

which represents a change in policy or any change by ICAEW to the budgeting principles as outlined at Appendix A without discussing with the ICAEW Board.

- i) making and amending regulations in the professional conduct area (including those governing appeals), provided that it may not approve any such regulations or amendments without discussing with the ICAEW Board where these represent new, or changes to, policy.
- j) making and amending regulations governing the work of the Fitness to Practise Committee (and its successor) in determining fitness to practise cases and certain applications for re-admission to membership, re-registration of 'foundation qualification holder' status and provisional membership (and appeals in such cases).
- k) making and amending regulations in respect of insolvency, exempt regulated investment business, audit, professional indemnity insurance, regulatory reviews and appeals, clients' money, corporate practice, use of the description 'Chartered Accountant', membership (cessation, readmission and resignation of members only), the Chartered Accountants Compensation Scheme and Practice Assurance and legal services areas provided that it may not approve any such regulations or amendments without discussing with the ICAEW Board where these represent new, or changes to, policy.
- l) amending the Practice Assurance standards and guidance provided that it may not approve any amendments to the standards without discussing with the ICAEW Board where these represent new or changes to policy.
- m) amending the guidance on the duty to report misconduct; the duty on firms to investigate complaints; and publicity for the disciplinary and regulatory processes, provided that it may not approve any such amendments without discussing with the ICAEW Board where these represent new, or changes to policy.
- n) approving amendments to the ICAEW statement on engaging in public practice after consultation with the ICAEW Board and with the relevant departmental Boards as appropriate for recommendation to Council.
- o) commenting to the Technical Strategy Board/ Ethics Standards Committee on issues relating to ethical standards generally including proposed amendments to the Code of Ethics.
- p) approval of Statements of Insolvency Practice (SIPs), changes to SIPs and changes to the Insolvency Code of Ethics after taking into account the views of the Insolvency Committee and the Ethics Standards Committee as appropriate, but if any ethical guidance to be produced contains a prohibition (and so does not follow the general system of threats and safeguards) and the Insolvency Committee or Ethics Standards Committee as appropriate does not agree with the prohibition or does not otherwise agree with the approach, the IRB will refer the matter to the Liaison Group, and then if necessary to ICAEW Board and then if necessary to Council.
- q) commenting to the Education and Training Board on proposals for requirements for: continuing professional development, practising certificate eligibility, and the audit qualifications.
- r) maintaining liaison with other parts of ICAEW whose work affects the quality of professional practice (including the work of members in business through the ICAEW Board and relevant departmental Boards).

- s) approving, on recommendation from the ICAEW Board<sup>4</sup> memoranda of understanding in relation to Professional Conduct activities with other bodies with which ICAEW has a relationship provided, in the opinion of the IRB, these are appropriate in assisting ICAEW fulfil its functions.
  - t) oversight of ICAEW's supervisory relationship with the Financial Reporting Council (FRC) and its subsidiary Boards, Legal Services Board (LSB), Insolvency Service (IS), Financial Conduct Authority (FCA) and the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) (including related links with other participating accountancy bodies) with respect to ICAEW's regulatory responsibilities to these bodies excluding the RQB responsibility under the Companies Act which remains with the Education and Training Board.
  - u) ICAEW's regulatory functions as an approved regulator and licensing authority for legal services under the Legal Services Act 2007 (the Act). However, as the approved regulator, ICAEW will retain the right to request that the Legal Services Board intervene into the IRB's arrangements if it is considered that the IRB is failing to discharge its functions in accordance with the Legal Services Regulations or the Act.
  - v) the development of ICAEW policy in relation to legal services practitioners, in consultation with the Legal Services Committee and other key stakeholders.
  - w) rule setting and any amendments to the Legal Services Regulations and Probate Compensation Scheme Regulations in consultation with the LSB, the Legal Services Committee and the other stakeholders.
  - x) all matters relating to the IRB, Professional Standards committees and other regulatory appointments.
  - y) in undertaking its activities the IRB will maintain close cooperation with the relevant corresponding functions of ICAS and CAI as appropriate.
  - z) to approve an annual regulatory plan that takes into account ICAEW's operational plan and strategy.
12. The IRB has no role in relation to any Professional Standards activity that does not directly relate to the regulation and discipline of ICAEW members or those authorised by ICAEW to undertake regulation activities.
13. The IRB has delegated the following powers to the Legal Services Committee as they pertain to probate activities;
- a) ICAEW's functions as an approved regulator and licensing authority as set out more fully in the Legal Services Regulations, which include:
    - i. considering and determining applications for probate accreditation;
    - ii. considering and determining applications for authorised individual, Head of Legal Practice, Head of Finance and Administration, non-authorised owner or probate affiliate status;
    - iii. monitoring compliance with the Legal Services Regulations;
    - iv. taking regulatory action as required to secure compliance with the Legal Services Regulations;
    - v. referring matters to ICAEW's disciplinary committees as required;

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<sup>4</sup> Delegated by ICAEW Board to the Chief Officer, Professional Standards on 26 January 2017

- vi. compiling and maintaining a register of licensed firms and supplying this information to the Legal Services Board (LSB) as required.
  - b) ICAEW's functions under the Probate Compensation Scheme Regulations in determining applications for grants;
14. The IRB delegates responsibility for detailed work on the co-ordination of policy on:
- a) the regulation of audit to the Joint Audit Committee
  - b) the maintenance, improvement, development and promotion of insolvency standards and guidance and the facilitation of discussions between the authorising bodies to the Joint Insolvency Committee
  - c) professional indemnity insurance to the Joint Professional Indemnity Insurance Committee subject to these joint committees having no executive powers.
15. The IRB delegates responsibility for the operation of the Practice Assurance Scheme to the Practice Assurance Committee.
16. ICAEW owns shares in a limited company, Chartered Accountants Compensation Scheme Ltd, which decides on claims for compensation arising from investment business transactions by authorised firms and from exempt regulated investment business transactions by licensed firms. This relationship is governed by the memorandum and articles of the company and also by various shareholders' agreements. The purpose of this body is to provide services under an agency agreement with each of the participating bodies. The Board of this company (described in this Scheme as an 'operational committee') is accountable to the IRB, for the management of these joint activities.
17. The IRB delegates to the Director, Regulatory Practice and Policy authority to consider dispensation applications and applications for general affiliate status under the Regulations governing the use of the description 'Chartered Accountants' and ICAEW general affiliates.
18. The IRB delegates to the Regulatory and Conduct Appointments Committee responsibility for dealing with all matters relating to the appointment, performance evaluations and remuneration of chairs and members of the ICAEW Regulatory Board and Professional Standards Committees and the Case File Reviewer(s).

### **Operation of the IRB**

19. The IRB will carry out its responsibilities within the framework of general duties and procedural requirements for Committees as set out in the governance handbook.
20. If any contentious issues arise between the ICAEW Board and the IRB which cannot be resolved through initial dialogue, the issue will be referred to the Liaison Group. Contentious issues would include matters relating to the budget principles outlined in Appendix A, proposals for bye-law amendments and changes in process.
21. The Liaison Group consists of the ICAEW President and Chief Executive and the IRB Chair and Alternate Chair and Chief Officer, Professional Standards Department. In the event that the Liaison Group cannot reach agreement on an issue, it will be referred to Council for decision after consultation with ICAEW Board.
22. The IRB normally meets up to five times a year or as otherwise necessary to conduct its business.
23. The IRB will communicate on its regulatory activity to ICAEW Board and Council annually.
24. The IRB will take account of inclusion and diversity in relation to its activities.

25. As part of the IRB's responsibility for quality assurance, all members of the IRB and its Committees, both professional and lay, should be provided with appropriate training upon appointment and, as appropriate, thereafter.
26. Members of the IRB and the committees which it has oversight of should also be subject to annual appraisal and, where necessary, performance management and effectiveness review. These activities have been delegated to the Regulatory and Conduct Appointments Committee.
27. The IRB will keep under review, in consultation with the Regulatory and Conduct Appointments Committee the structure and membership of the IRB and the committees which it has oversight of their training and their competence.

## **Definitions**

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- (e) a member of the Bar of Northern Ireland;
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## ***IRB budget principles***

1.	Regulatory activities of ICAEW are overseen by IRB, whose role is derived from Council. ICAEW acts as a unitary professional body.
2.	As part of its role, IRB will recommend a budget for regulatory activities including the fees required to discharge its responsibilities. This budget will be subject to the agreement of the ICAEW Board, for integration within ICAEW's overall budget.
3.	The basis for recovering costs through regulatory fees should be confirmed from time to time between the ICAEW Board and IRB. Professional standards activities should normally be self-financing.
4.	The number and scope of regulated services may vary from time to time subject to approval of business cases by both the ICAEW Board in the first instance and IRB.
5.	Regulatory and disciplinary costs to be met will include both direct costs of those activities and a reasonable and proportionate share of ICAEW's overhead costs derived on a consistent basis across ICAEW.
6.	IRB will be provided with key details of the budgetary framework, constraints and assumptions in order to assist with understanding and approval.
7.	Exceptional changes to costs or income encountered during a budget year should be discussed between PS and the Finance Director in order to make proposals to IRB and the ICAEW Board for managing the event.
8.	In the event of disagreement over budget proposals, the matter should be referred to the Liaison Group.