



ICAEW REGULATORY BOARD (26 JANUARY 2023)

Proposal for the creation of a Decision Review Group

STATUS

1. Confidential.
2. For discussion and approval.

EXECUTIVE SUMMARY

3. As part of our ongoing strategy to maintain high standards of decision-making and recording by our PSD Committees, this paper proposes the implementation of an ICAEW Decision Review Group (“DRG”) to be started on a pilot basis to consider decisions of the disciplinary committees with a possible extension, if the pilot is successful, into the decisions of the regulatory committees.
4. PSD senior management consider that a DRG is necessary to plug a hole which currently exists within the disciplinary processes where there are concerns about the rationale of decisions or the explanations provided and no other mechanism to appeal or review which may risk perpetuating poor practice.
5. The IRB is asked to approve the creation of the DRG and the start of a pilot to consider disciplinary decisions. It is proposed that the DRG should come into force in early 2023 when the Committee Development and Self Reflection framework (“the Framework”) will also come into effect. It is envisaged that the DRG will complement the training and evaluation/appraisal process of the committees and serve to promote the principles of good regulation.

RECOMMENDATION

- 1) That the IRB approve the formation of a DRG and provide comments on how it is proposed that the DRG operates so as to help shape the final Terms of Reference of the DRG.

BACKGROUND

6. Across the healthcare regulators, internal decision review groups operate to improve and enhance the standard of decision-making and recording (published records of decision) undertaken by their independent committees.
7. The General Medical Council for example operates a decision review group which is chaired by the Fitness to Practise Deputy Director and the DRG consists of senior management staff, an external representative and a panel member. The Nursing and Midwifery Council, The General Dental Council, the Health and Care Professions Council operate similar models based on the GMC. The purpose of the groups is to monitor decision making throughout all aspects of Fitness to Practise work, ensuring that it is in line with current operational guidance, legislation, and Council policy. Information gathered during the decision review process informs panel training and guidance and will also identify performance management issues.
8. These groups are also used as a mechanism to pre-empt challenges by their Oversight Regulator (The Professional Standards Authority) who has the power to lodge an appeal in the High Court against a decision where it is considered unduly lenient and/or insufficient to protect the public or the public interest.
9. At ICAEW, under Disciplinary Bye-Law (DBL) 26A.1, the Investigation Committee may appeal against an order of a tribunal dismissing a formal complaint or formal complaints if it considers that:
 - a) The tribunal erred in law or in its interpretation of any bye-law, any regulation (whether made by ICAEW or otherwise) or relevant technical standard or guidance; or
 - b) The tribunal based its findings of a material mistake of fact or a series of mistakes of fact;And provided also that it is satisfied that an appeal is in the public interest and is necessary to uphold the integrity of ICAEW's disciplinary and/or regulatory function.
10. Given the narrow parameters and the fact that it can only be used where the tribunal has dismissed a formal complaint/formal complaint, this bye-law has only been used once. It is noted that the new disciplinary framework will widen this scope, however, there are decisions where an appeal may not be necessary but there are clear deviations from standard procedures and/or operational guidance that could and should properly be addressed by way of learning points or feedback.
11. There is currently no official mechanism in place that permits, without the risk of appearing to interfere with the independence of a committee/panel, the scrutiny of disciplinary decisions to facilitate ongoing feedback, learning and improvement in the quality of decisions made and recorded by the PSD Committees.
12. The DRG will operate to bridge this gap. Examples of recent concerns which have been identified by the PSD Chief Officer and the Chairs of the Investigation Committee will be provided at the meeting.

THE PURPOSE AND OPERATION OF THE DRG

13. The main objectives of the DRG will be to:

- a) improve and enhance the standard and quality of decision-making and recording through learning points;
- b) support pro-active organisational learning which could include case management processes;
- c) ensure decisions are made in line with current operational guidance, legislation, case-law, regulations and the disciplinary framework;
- d) identify performance management issues; and
- e) highlight and promote good practice in decision-making whilst correcting and deterring poor practice

14. Where a referral is made (referrals are dealt with below), the DRG would review records of decision made by panels/tribunals where a referral has been received in order to ensure that they are in line with current operational guidance, legislation and ICAEW Policy. The group will also discuss any trends/themes arising from the referrals and/or learning points and/or feedback (which could be from an Oversight Body).

15. It is proposed that the group will meet on a quarterly basis and consist of both members of the Senior Management Team (or their nominated deputies) and Committee Chairs (or vice-chairs). Quorum for a meeting will be 3 members, 2 ICAEW representatives and 1 Chair of an independent Committee.

16. It is proposed that the DRG should initially be piloted for disciplinary decisions and that it should consist of:

- a) The Director, Regulatory and Conduct [redacted]
- b) The Head of Committees and Tribunals [redacted]
- c) The Investigation Committee Chair
- d) The Disciplinary Committee Chair

and possibly also the Appeal Committee Chair with a wider pool being drawn on in case one of the committee members was part of the decision-making panel of a decision under review.

17. The pool will be expanded to include regulatory committee chairs, should the process be extended after the pilot to cover decisions of regulatory committees.

18. The Secretary of the DRG will be a member of the Committees and Tribunals team and that an annual report be provided to the IRB on the number of decisions reviewed, the conclusions of the DRG and any learning points (with any urgent learning points or process issues being escalated to be considered real time by the IRB).

GROUNDS FOR REFERRALS

19. It is proposed that a decision of the Investigation Committee or a Disciplinary Tribunal or of an Appeal Panel could be referred to the DRG if it is considered that:

- The Committee has erred significantly in reaching the conclusion that there was a realistic prospect of the allegations being upheld by the Disciplinary Tribunal
- The Tribunal/Appeal Panel has deviated from the guidance/ procedure/ law; and/or
- The Tribunal /Appeal Panel has not provided adequate reasoning to explain its decisions on its findings on facts and/or sanction and/or costs and/or publicity; and/or
- There are public protection and/or public interest concerns raised by a decision;
- There is adverse media attention resulting from a decision
- There is adverse feedback from an oversight regulator reviewing a case
- There is a successful judicial review challenge to a disciplinary decision; and/or
- The decision is of a high quality and well-reasoned and as an example of good practice.

WHO CAN MAKE A REFERRAL

20. It is proposed that referrals can be made by:

- a) the PSD Chief Officer (after evaluating concerns raised to him by the Head of Investigation / Joint Lead Conduct Counsel / Director, Regulatory & Conduct or the Head of Committees and Tribunals)
- b) Chairs of the Investigation Committee/Disciplinary Committee/Appeal Committee (from their own knowledge or on report from one of their committee members)
- c) Chairs of the regulatory committees (when they are added into the DRG)

DRG OUTCOMES

21. The following outcomes may arise from a review by the DRG:

- Feedback in the form of learning points directly to the Investigation Committee/Tribunal/Appeal Panel and legal assessor; and/or
- Circulation of learning points and/or additional guidance to all members of a committee or committees; and/or
- Feedback to PCD (investigation/legal/committees & tribunals); and/or
- Recommendation to the IRB that guidance on sanction/policy/DBLs/IDRS/Regulations need amending; and/or
- Recommendation to the PSD Chief Officer and/or the IRB that a process should be changed; and/or
- Identification of specific training needs for staff or committee members (or both) and a recommendation for topics to be added at future training sessions for committee members and/or ICAEW staff
- A recommendation that a report should be made to RACAC if the review identifies concerns relating to a member's competence

22. The DRG may also consult on the production of guidance notes, determination tools and any other material relevant to enhancing the quality of decision-making.
23. A DRG tracker would be in place where any actions agreed following DRG are logged and followed up on to ensure that all follow up action is taken and reported back to the DRG.

TERMS OF REFERENCE

24. If the IRB supports the formation of a DRG for a pilot period to review disciplinary decisions, it is proposed that formal Terms of Reference for the DRG should be created based on the above elements for approval by the IRB Chair and that the first meeting should be convened before the end of Q1 2023, if possible, on diaries.

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