

Disciplinary Committee Regulations

1 These Regulations were made by resolution of the Disciplinary Committee on 4 December 2007 and came into force on that date. Regulations 20 and 27 were amended and came into force on 10 March 2008.

2 Except where express reference is made in these Regulations, words and phrases used in these Regulations have the same meaning as in the Disciplinary Bye-laws;

- (a) 'ICAEW' means the Institute of Chartered Accountants in England and Wales;
- (b) 'the Director' means the person holding the office which is responsible for the operation of the Institute's disciplinary arrangements in the Professional Standards Department.
- (c) 'the Investigation Committee representative' means the person appointed by the Investigation Committee to represent that committee before the disciplinary tribunal and to present the formal complaint;
- (d) 'Legal Assessor' means the solicitor or barrister appointed to act as Legal Assessor under Disciplinary Bye-law 19(5);
- (e) 'Tribunal' means any tribunal of the Disciplinary Committee appointed to hear the formal complaint or a pre-hearing review;
- (f) 'Tribunal Chairman' means a member of the Disciplinary Committee appointed to be a Chairman of a tribunal under Disciplinary Bye-law 19(1)(b);
- (g) '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 Accountancy and Actuarial Discipline Board or any regulatory penalty as defined in the Audit Regulations, the DPB Handbook, Investment Business Regulations or the Insolvency Licensing 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 or on any specified part of it.
- (h) 'Hearing' means the substantive hearing when the tribunal appointed in accordance with Disciplinary-Bye-law 19(1) meets to consider the merits of a formal complaint and does not include a pre-hearing review;
- (i) 'Parties' means the defendant or his representative and the Investigation Committee or its representative;
- (j) 'written record of decision' means the document prepared by the Legal Assessor and approved by the Chairman of the tribunal which records in writing a summary of the reasons for the finding and the order of the tribunal, including any term or condition on which the order was made.

3 Subject to Regulation 4, the defendant shall, unless he agrees to waive or vary any requirement for notice, as soon as practicable after the referral of

a formal complaint to the Disciplinary Committee be given not less than 42 days written notice of the date, time and place of the hearing and of the terms of the formal complaint preferred against him.

4 Where the formal complaint comprises an allegation of breach of Disciplinary Bye-law 13(2) the defendant shall, unless he agrees to waive or vary any requirement for notice, be given not less than 21 days written notice of the date, time and place of the hearing and of the terms of the formal complaint preferred against him.

5 Notice of the hearing as required by Regulations 3 and 4 shall unless previously provided be accompanied by a copy of the formal complaint together with a summary of the complaint and the Investigation Committee submission and copies of any documents and/or any other material which the Investigation Committee intends to adduce in evidence.

6 Subject to Regulation 7, the hearing shall be in public.

7 The Tribunal (including a tribunal at a pre-hearing review) or, where regulation 8 below applies, the Tribunal Chairman, may decide that the press and public shall be excluded from the whole or any part of the hearing where it appears desirable to do so in the interests of justice or for any other special reason provided always:

- (a) the particular circumstances of the case outweigh the public interest in holding a public hearing; and
- (b) the chairman or tribunal making the decision is satisfied that the parties have had an opportunity to make representations.

8 Except in a case proceeding under Regulation 4, if a party wishes to apply before the start of the hearing for the whole or part of any hearing to be held in private, that application must be made in writing to the Tribunal Chairman and must be received by the Institute within 14 days of the date when notice of the hearing is given in accordance with regulation 3. A copy of any written application made under this regulation will be sent to the other party or parties to the proceedings, who will be invited to make written representations to be received by the Institute within 7 days of the date on which the copy of the application was sent. A written application may thereafter be determined by a Tribunal Chairman sitting alone subject always to the requirements of regulation 7. The Tribunal Chairman shall give in writing to the parties the principal reason or reasons for allowing or dismissing any application made under this regulation. Notwithstanding any decision of the Tribunal Chairman made under this Regulation or Regulation 9 below, a Tribunal (including a Tribunal at a pre-hearing review) may at any stage of a hearing consider an oral application relating to the proper exercise of its discretion under Regulation 7.

9 On written application to the Tribunal Chairman, the 14 day limit in regulation 8 above may be extended by a maximum of a further 14 days to permit an application to be made for a hearing or part of a hearing to be held

in private. An extension shall not be given unless the Tribunal Chairman is satisfied that the defendant could not reasonably be expected to have made an application within the period of 14 days originally allowed. If an extension is refused, the Tribunal Chairman shall give in writing to the party his principal reason or reasons for the refusal. If an extension is granted, the application shall proceed as if it had been made in accordance with regulation 8.

10 The name of a defendant and the terms of the formal complaint will be published 7 days in advance of the hearing, but if an application has been made under regulation 8 or regulation 9 by either of the parties, the name of a defendant and the terms of the formal complaint will not be made public unless or until the Tribunal chairman has dismissed any written application.

11 Where an oral application is made to a tribunal to hold the hearing or part of the hearing in private, that application will be heard in private. Where the application is successful, or where the tribunal otherwise decides of its own motion to exercise its power under regulation 7, the principal reason or reasons for holding the hearing or part of the hearing in private will be given by the tribunal in public on the day that the decision is made provided always that such reasons as are given shall not in the opinion of the tribunal unreasonably undermine the purpose of proceeding in private. In the event of an adverse finding being made following the hearing of the complaint, the tribunal's reasons for having proceeded in private will be published, provided always that such reasons as are given shall not in the opinion of the tribunal unreasonably undermine the purpose of having proceeded in private. If the complaint is not proved such reasons will only be published if the defendant so requests.

12 The Director shall decide, in his absolute discretion whether an application for a postponement of a hearing which has not commenced should be granted.

13 Not less than 28 days before the date fixed for the hearing the Director may require the defendant to state in writing within 14 days of service of notice of such a requirement:

- (a) whether he accepts the complaint and if not on what grounds he denies the complaint;
- (b) whether he accepts the facts as stated in the summary and if not the grounds for challenge;
- (c) if he accepts the complaint whether he has any explanation in mitigation;
- (d) whether or not he intends to attend and/or be represented at the hearing.

14 At least 21 days before the day fixed for the hearing the defendant shall serve on the Director 8 copies of paginated and indexed bundles of all documents on which he intends to rely unless the documents have been included amongst the documents served in accordance with Regulation 5 above.

15 Regulations 13 and 14 above and 17 below shall not apply to any formal complaint which has been served in accordance with Regulation 4 above.

16 After the Investigation Committee has resolved to prefer a formal complaint but before any hearing the Director may require a defendant to provide such further information and documents relating to the complaint as the Director thinks necessary for the just, expeditious and economic disposal of the case and may require the defendant to supply such further copies of any document as he considers necessary.

17 Not less than 21 days before the hearing each party shall serve on the other a written Statement of any oral evidence which will be given by or on behalf of that party. Any such Statement shall be signed, dated and include the name and address of the maker. Within the same period each party shall serve on the other a copy of any document which will be relied upon at the hearing and provide sufficient copies for use at the hearing (8 copies). Nothing in this regulation shall prevent either party waiving wholly or in part the time period specified in this regulation or the tribunal by order directing such alternative time period as it may specify.

18 Prior to the commencement of the hearing of the formal complaint, any preliminary issues on procedure or any application for directions which are necessary or desirable for securing the just, expeditious and economical disposal of a formal complaint may be determined by a Pre-hearing Review Tribunal (which may or may not be the Tribunal appointed in accordance with Disciplinary Bye-law 19(1)). Any matters falling within this Regulation, except matters which fall to be determined under regulation 7 (hearing or part of the hearing proceeding in private) may be decided by agreement between the parties without a hearing.

19 The Director, Chairman or Vice Chairman of the Disciplinary Committee or the Chairman of any tribunal or any tribunal may direct that there be a Pre-hearing Review on the application of either party or act on their or its own volition.

20 Any notice or document may be served by the defendant by sending the notice or document addressed to the Director at Metropolitan House, 321 Avebury Boulevard, Milton Keynes, MK9 2FZ by first class post. Any notice or document required to be served on the defendant may be served personally or by first class post to the defendant at his last known place of business appearing in the register or his last known home address. Where documents are served by post, service is deemed to have been effected 48 hours after posting.

21 Subject to Regulations 8, 14 and 17 above, the defendant is entitled to make written representations to or to appear in person before a tribunal or be represented by a barrister or solicitor or any other member of the Institute or with the agreement of a tribunal, any person.

22 A tribunal may proceed in the defendant's absence where it is satisfied that Regulations 3 or 4, and 5 have been observed. A defendant is deemed present when he appears by his representative.

23 The Investigation Committee may be represented by a member of the secretariat or may instruct a barrister or solicitor.

24 At the commencement of the hearing the legal assessor shall read out the formal complaint, or with the defendant's consent the complaint can be taken as read, and invite the defendant to state whether he accepts or denies the complaint.

25 The representative of the Investigation Committee shall outline the case against the defendant and subject to Regulations 14 and 17 produce any document or call any witness.

26 The defendant shall be entitled to address a tribunal and subject to Regulations 14 and 17 to give evidence and to produce any document or call any witness.

27 A witness for one party (including the defendant) may be questioned by or on behalf of the other party. A witness so questioned may be re-examined by or on behalf of the party calling him. Members of a tribunal may ask questions of a witness. The Investigation Committee representative and the defendant or his representative may make a closing address. The defendant or his representative will have the final opportunity to address the tribunal. The tribunal may on the application of a party agree that the identity of a witness should not be revealed to the public.

28 The hearing shall be informal and the strict rules of evidence shall not apply. Subject to these regulations the tribunal may adopt any method of procedure which it may consider fair and which gives each party an opportunity to have his case presented. The tribunal may at its discretion consider evidence which has not been provided in accordance with regulations 14 and 17 above. Subject to regulation 7, the hearing will be in public. Evidence will not be taken on oath.

29 The Tribunal may deliberate in camera, in the absence of the parties and of their representatives, at any time.

30 Without prejudice to any other powers it may have, a tribunal may exclude from the hearing or part of it any person or persons whose conduct has disrupted or, in the opinion of the tribunal, is likely to disrupt the hearing.

31 A tribunal may in its discretion hear two or more formal complaints against a defendant at the same hearing.

32 A tribunal may in its discretion hear complaints against two or more defendants in the same hearing.

33 A tribunal may adjourn its proceedings from time to time as it thinks fit of its own volition or upon application by either party.

34 An application for further adjournment made before a hearing is resumed may be determined by the Chairman of the Tribunal or in his absence the Chairman or Vice Chairman of the Disciplinary Committee.

35 Where a formal complaint or part of a complaint is found proved, a tribunal may adjourn the proceedings before making an order.

36 If the Tribunal decides to exercise its powers under Disciplinary Bye-law 21, (temporary suspension of activities of regulated firm) it shall serve a notice on the defendant firm in a form approved by the Disciplinary Committee.

37 The Legal Assessor will prepare the notice referred to in regulation 36 for approval by the Chairman of the Tribunal and a copy of the notice will be sent to the Chairman of the Investment Business Committee.

38 On a finding that a formal complaint has been proved in whole or in part, the representative of the Investigation Committee shall inform the tribunal of any disciplinary record of the defendant.

39 The defendant or his representative shall be allowed to address the tribunal before any order is made.

40 A tribunal on finding a complaint not proved or proved in part only may, on the defendant's application, order that the Institute pay a specified sum in respect of the defendant's costs. In deciding whether such an order should be made, the Tribunal shall have regard to all the facts and matters it considers relevant including the conduct of the defendant and the conduct of the Institute. The sum payable by the Institute shall be in the amount determined by the Tribunal in its absolute discretion. The Tribunal shall give opportunity to the representative of the Investigation Committee to be heard.

41 For the purposes of Regulation 40, the defendant's costs shall be limited to costs reasonably incurred by the defendant since the date of the referral of the Formal Complaint by the Investigation Committee to the Disciplinary Committee.

42 If the Tribunal cannot deal fairly with the issue of costs against the Institute at the hearing, it will make such decisions of principle and detail as it can and the final order will be made by the Chairman of the Tribunal on considering any other material considered relevant.

43 If for any reason the Tribunal considers that it would be inappropriate for it to make a final order, the order will be made by the Chairman or failing him the Vice Chairman of the Disciplinary Committee.

44 Unless a Tribunal orders an extended period, any costs to be paid by the Institute will be paid within 28 days of the Institute authorising payment of the sum ordered.

45 A shorthand or stenograph note of the proceedings may be taken or a tape recording of them made on behalf of the tribunal.

46 No objection shall be upheld to any technical fault in the complaint or in the procedure adopted by a tribunal provided that the proceedings are fair and the relevant Bye-laws and Regulations have been complied with.

47 Where a formal complaint (or part of the complaint) has been found proved, the Director shall send to the defendant, as soon as reasonably practicable, notice of the decision of the tribunal and any order made.

48 A written record of the decision of the tribunal shall be prepared by the Legal Assessor for approval by the tribunal.

49 The Director shall send to the defendant a copy of the written record of decision where a formal complaint (or part of the complaint) has been found proved as soon as reasonably practicable after it has been approved by the tribunal.

50 All written material and information provided by either the ICAEW or the defendant in connection with any disciplinary proceedings, shall at all times remain confidential and no such material or information shall be disclosed (directly or indirectly) except:

- (i) any advance notice of the name of the defendant and the terms of the formal complaint;
- (ii) to legal advisers for the purposes of the disciplinary proceedings;
- (iii) where the defendant is a partner in or employed by a member firm to a partner in that firm;
- (iv) to any other person to whom disclosure is necessary for the purposes of obtaining evidence, information or assistance in connection with the disciplinary proceedings; and
- (v) to an insurer where disclosure is required under the terms of any policy or in connection with any application for insurance cover.
- (vi) where information is disclosed indirectly to members of the public in the course of a public hearing.

This Regulation does not apply to the written record of decision published in accordance with Disciplinary Bye-law 35(1) and 35(5).