



Disciplinary Bye-laws (Legal Services)

EFFECTIVE FROM 14 OCTOBER 2019

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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. They shall come into force on **14 October 2019**.
- 1.2 In these bye-laws, unless the context otherwise requires

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

authorised firm means a firm regulated by ICAEW in its capacity as

- a. a designated professional body under the Financial Services and Markets Act 2000, or
- b. an approved regulator and licensing authority under the Legal Services Act 2007, or
- c. in any comparable capacity under any legislation, wherever in force, for the time being designated in regulations;

bye-laws means all the bye-laws of ICAEW for the time being in force;

CFAB student is someone who is registered to study for ICAEW CFAB and no more than three years have elapsed since the date of the last attempt at a CFAB examination.

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 or matters which constitute a complaint or complaints;
- b. any person, who, before the Investigation Committee has under bye-law 15 decided whether in its opinion the complaint discloses, or the complaints disclose, a prima facie case, has made written representations to the head of staff on any of those facts or matters; and
- c. if the person mentioned in paragraph (a) of this definition, being an individual, dies before the complaint or complaints have been finally disposed of under these bye-laws, their personal representative.

complaint, except in bye-law 11, has the meaning given by bye-law 9.3;

contracted firm means a sole practice, partnership, limited liability partnership or a body corporate which is not a member firm but which has contracted with ICAEW to be subject to ICAEW disciplinary bye-laws and/or to the ICAEW Code of Ethics;

Council means the Council of ICAEW;

director (save in paragraph (d) 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 the person or body 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 which is a regulated firm, or was a regulated firm at, or at any time since, 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 the head of staff's attention, as indicating a possible liability to disciplinary action;

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

Fitness Panel means a panel of the Fitness Committee;

formal complaint means any complaint referred by the Investigation Committee in whole or in part 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;

Foundation Qualification Holder is someone who holds the ICAEW Foundation Qualification and is registered to use the relevant designatory letters;

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

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

ICAEW means the Institute of Chartered Accountants in England and Wales;

insolvency licence means an authorisation issued by ICAEW 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;

interim review hearing means a hearing to review an order made under DBL 40, and in accordance with DBLs 42, 43, 44 and 45, which is held as the result of a respondent's application for a review of a decision made by a Fitness Panel, occurring after the expiration of the 'recommended period';

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

Investigation and discipline scheme means any scheme in which ICAEW 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;

legal services work comprises any work that is considered under the jurisdiction of the Legal Ombudsman under the definitions set out by the ombudsman in accordance with section 164(10) of the Legal Services Act 2007;

member means a member of ICAEW 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;

PCD Committee Secretary means the Professional Conduct Department (PCD) Committee Secretary appointed to that role by the head of staff;

physical or mental health includes bodily or mental ill health, disability and any mental or behavioural disorder included in the International Classification of Diseases (ICD-10 Classification of Mental and Behavioural disorders) produced by the World Health Organisation and includes an episodic or relapsing condition which is in remission;

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 them to engage in public practice;

prima facie case means a prima facie case for disciplinary action under these bye-laws;

principal means a sole practitioner, a partner in a partnership or a director of a body corporate;

Principal Bye-laws means the Principal Bye-laws of ICAEW;

Professional Standards Department committee means any of the following:

- a. Audit Registration Committee;
- b. Investment Business Committee;
- c. Insolvency Licensing Committee;
- d. Probate Committee;
- e. Review Committee;
- f. Practice Assurance Committee;
- g. Professional Indemnity Insurance Committee;
- h. Investigation Committee;
- i. Disciplinary Committee; and
- j. Appeal Committee.

proposed settlement agreement means a formal agreement prepared by the head of staff with the agreement of the respondent / respondent firm that sets out:

- a. the facts or matters giving rise to the formal complaint(s) against the respondent / respondent firm;
- b. the formal complaint(s) and those that are admitted by the respondent / respondent firm;
- c. the proposed sanction(s) in relation to the formal complaint(s) and the reasons for those sanctions;
- d. any costs that are proposed be paid by the respondent / respondent firm to ICAEW concerning the costs of the investigation and/or the settlement discussions and/or the disciplinary proceedings in relation to the formal complaint(s); and
- e. any facts or matters that are agreed by the respondent / respondent firm to be included in the settlement order for publication.

Provisional Foundation Qualification Holder is someone who is registered to study for the ICAEW Foundation Qualification.

Provisional member means for the purposes of these bye-laws a person who, at the time a matter is determined to be a 'complaint' for the purposes of bye-law 9.3, has not been admitted to full membership of ICAEW and;

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

Recommended period means the period set down by a Fitness Panel as the period before the expiry of which no interim review application can be made;

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 ICAEW 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, provisional member, foundation qualification holder, provisional foundation qualification holder or a CFAB student, the address registered by them with ICAEW;
- c. in the case of a former member, former foundation qualification holder, former member firm, former regulated firm or former firm the latest address registered with or notified to ICAEW by the person or body in question.

Registered auditor means a firm registered as a registered auditor at the instance of ICAEW (in its capacity as a recognised supervisory body under the Companies Act 2006 and the Local Audit & Accountability Act 2014 and as a recognised accountancy body and prescribed accountancy body under the Irish Companies Act 2014 or in any comparable capacity under any legislation, wherever in force, for the time being designated in regulations);

registered email address means the email address registered with ICAEW by the member, provisional member, foundation qualification holder, provisional foundation qualification holder, CFAB student, member firm, contracted firm or regulated firm and, if more than one email address is registered, the one registered as the principal email address.

regulated activities means:

- a. audit activities for which authorisation by a recognised supervisory body is required under the Companies Act 2006 or Local Audit & Accountability Act 2014, or by a recognised accountancy body under the Irish Companies Act 2014;
- b. accountancy activities for which authorisation by a prescribed accountancy body is required under the Irish Companies Act 2014;
- c. insolvency activities for which a licence by a recognised professional body is required under the Insolvency Act 1986 or by a recognised professional body or competent authority under the Insolvency (Northern Ireland) Order 1989;
- d. activities for which authorisation by the Financial Conduct Authority is required under the Financial Services and Markets Act 2000;
- e. exempt regulated activities for which authorisation by a designated professional body is required under the Financial Services and Markets Act 2000; or
- f. reserved legal activities for which authorisation by an approved regulator or licensing authority is required under the Legal Services Act 2007.

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 ICAEW to act as a regulator or to exercise any regulatory or disciplinary function.

Representative, in relation to the respondent / respondent firm in any proceedings under these bye-laws, means:

- a. a barrister, solicitor or member appointed by the respondent / respondent firm to represent them in those proceedings; or
- b. any person permitted under regulations to represent the respondent / respondent firm in those proceedings, and represented shall be construed accordingly;

respondent means any member, provisional member, foundation qualification holder, provisional foundation qualification holder and CFAB student who is subject to ICAEW Disciplinary bye-laws;

respondent firm means a member firm, regulated firm or a contracted firm which is subject to ICAEW Disciplinary bye-laws;

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

review hearing means a hearing to review an order made under bye-law 40, and in accordance with bye-laws 44 and 46, which is held as a result of a direction of a Fitness Panel under bye-law 40.4;

Settlement Agreement Chair means a member of the Disciplinary Committee who is either a barrister or solicitor and has been approved to act as chair of tribunals by the Regulatory Appointments Panel and has been appointed to act as such by the PCD Committee Secretary.

settlement order means an order which has been approved and signed on behalf of the Disciplinary Committee by a Settlement Agreement Chair in accordance with bye-law 18B.6 which specifies:

- a. the formal complaint(s) against the respondent/respondent firm and those that are admitted;
- b. the sanctions and orders as to costs; and
- c. any facts or matters agreed by the respondent/respondent firm to be included in the settlement order for publication.

Training contract means a contract of approved training registered with ICAEW 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 one or more formal complaints or a tribunal appointed to hear a referral under bye-laws 30 or 30A (interim orders);

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

written referral means a referral made under bye-laws 37.1 or 37.2.

- 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 **formal complaints** or the appeal in question;
 - c. references to the date of an **order** made by a **tribunal** under **bye-law** 30 (interim orders) refer to the date on which the **order** was announced at the **hearing** of the referral;
 - d. references to the date of an **order** by a **Fitness Panel** refer to the date on which the **order** was announced at the **hearing** of the referral under **bye-law** 37.1 or 37.2, or the **interim review hearing** or **review hearing** (as appropriate).
- 1.5A For the purposes of these **bye-laws**:
- a. the liability of a person or body to disciplinary action under these **bye-laws** on a **complaint** or **complaints**, whether the **complaint** or **complaints** came to the attention of the **head of staff** before or after the amendment of these **bye-laws**, is to be determined in accordance with the provisions of the **bye-laws** and **regulations** in force at the time when the facts or matters complained of occurred; but
 - b. with the exception of **bye-laws** 4, 5 or 6, all disciplinary proceedings under these **bye-laws** are to be conducted in accordance with the provisions of the **bye-laws** and **regulations** in force at the time of the proceedings.
- 1.6 Subject to paragraph 1.6A, any **notice** or other document required to be served for the purposes of these **bye-laws** on a **respondent** or a **respondent firm** may be sent by pre-paid post addressed to the **respondent / respondent firm** at their **registered address** or, if none, at their last known or usual place of residence or business, or may be sent by electronic mail to the **respondent / respondent firm's registered email address**.
- 1.6A If at any time the **respondent / respondent firm** makes a written request to **ICAEW** that an alternative postal or email address be used to their **registered address** or **registered email address**, that alternative postal or email address shall be used for the purposes of service of **notices** or other documents under these **bye-laws**.
- 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 **ICAEW's** principal London address for the time being or such other address of **ICAEW** as may be prescribed by **regulations** or may be sent by electronic mail to an address at which the **head of staff** has agreed to receive **notices** and documents under these **bye-laws**.

- 1.8 Service of a document sent as mentioned in paragraphs 6, 6A 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. Service of a document served by electronic mail shall be deemed to be served at 09:00 on the next business day following that on which it was transmitted.
- 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, Appeal and Fitness 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, Appeal and Fitness 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, provisional members, foundation qualification holders, provisional foundation qualification holders, CFAB students, member firms** and **contracted firms** in accordance with the terms of that scheme and these **bye-laws**.

Liability of members, provisional members, foundation qualification holders, provisional foundation qualification holders and CFAB students to disciplinary action

- 4.1 A **member, provisional member, foundation qualification holder, provisional foundation qualification holder** or **CFAB student** (all referred to in these **bye-laws** as '**respondents**') shall be liable to disciplinary action under these **bye-laws** in any of the following cases, whether or not the **respondent** was a **member, provisional member, foundation qualification holder, provisional foundation qualification holder** or **CFAB student** at the time of the occurrence giving rise to that liability:
- a. if they have committed misconduct; by committing any act or default, whether in the course of carrying out professional work or otherwise, likely to bring discredit on themselves, **ICAEW** or the profession of accountancy, or so as to fall significantly short of the standards reasonably expected of a **member, provisional member, foundation qualification holder, provisional foundation qualification holder** or **CFAB student**;
 - b. if they have demonstrated professional incompetence; by performing professional work, whether as a principal, director, employee or as an individual, incompetently, to such an extent, or on such a number of occasions, as to fall significantly short of the standards reasonably expected of a **member, provisional member, foundation qualification holder, provisional foundation qualification holder** or **CFAB student**;
 - c. if they have committed a breach of the **bye-laws** or of any **regulations** or have failed to comply with any **order**, direction or requirement made, given or imposed under them;

- d. if they have failed to comply with any **order** of the **Investigation Committee**, **Disciplinary Committee** or **Appeal Committee**, or of any **tribunal** or **panel**, otherwise than by failing to pay any fine or costs;
- e. if they have, in a court of competent jurisdiction, been convicted of an indictable offence (or have, before such a court outside England and Wales, been convicted of an offence corresponding to one which is indictable in England and Wales);
- f. if they have had a disqualification order made against them or have given a disqualification undertaking which has been accepted by the Secretary of State under the Company Directors Disqualification Act 1986 (or if they have had orders made against them or have given undertakings under legislation of equivalent effect in jurisdictions outside England and Wales where the courts are of competent jurisdiction);
- g. if, at any time, they have carried on any **regulated activities** when not duly authorised;
- h. if any of the circumstances set out in paragraph 2 exist with respect to them.

4.2 The circumstances referred to in paragraph 1(h) are:

- a. that the **respondent** has failed in a personal capacity to satisfy a judgment debt, or is a **principal** of a **firm** that has failed to satisfy a judgment debt;
- b. that the **respondent** has made, in a personal capacity or as a **principal** of a **firm**, an assignment by reason of insolvency of some or all of their assets for the benefit of their or the **firm's** creditors;
- c. that the **respondent** has made any arrangement or entered into a composition with their creditors to satisfy their debts, whether by resolution of their creditors or court order or under any deed or other document by reason of insolvency;
- d. that the **respondent** has made a proposal to enter into a voluntary arrangement on grounds of insolvency, or has entered into such a voluntary arrangement;
- e. that the **respondent** is a **principal** in a **firm**, or has been a **principal** in a **firm** at any time during the 6 months prior to the event specified in paragraphs (i) – (v) below:
 - i. which has had a winding-up order made against it on grounds of insolvency or
 - ii. which, in the case of a body corporate, has been the subject of an effective resolution passed by the shareholders or the members for it to be wound up on grounds of insolvency; or
 - iii. which has made a proposal to enter into a voluntary arrangement on grounds of insolvency, or has entered into such a voluntary arrangement; or
 - iv. in respect of which an administrator has been appointed on grounds of insolvency; or
 - v. in respect of which a receiver has been appointed by a creditor or by a court on the application of a creditor.

Liability of member firms and contracted firms to disciplinary action

5.1 A **member firm** or **contracted firm** (both referred to in these **bye-laws** as '**respondent firms**') shall be liable to disciplinary action under these **bye-laws** in any of the following cases

- a. if it has committed misconduct; by committing any act or default, whether in the course of carrying out professional work or otherwise, likely to bring discredit on

- itself, **ICAEW** or the profession of accountancy, or so as to fall significantly short of the standards reasonably expected of a **member firm** or **contracted firm**;
- b. if it has demonstrated professional incompetence; by performing professional work incompetently to such an extent, or on such a number of occasions, as to fall significantly short of the standards reasonably expected of a **member firm** or **contracted firm**;
 - 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 Committee**, **Disciplinary Committee** or **Appeal Committee**, or of any **tribunal** or **panel**, otherwise than by failing to pay any fine or costs;
 - e. if it is a **firm** to which any of paragraphs (i) to (v) of **bye-law** 4.2(e) applies;
 - f. if it has, in a court of competent jurisdiction, been convicted of an indictable offence (or has, before such a court outside England and Wales, been convicted of an offence corresponding to one which is indictable in England and Wales);
 - g. if, at any time, it has carried on any **regulated activities** when not duly authorised.

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 any **complaint** arising by virtue of this **bye-law** for a **respondent 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** or **complaints**.
- 5.3 The fact that one or more **principals** have joined or left a **respondent 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 **respondent 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** (hereinafter referred to also as a '**respondent 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 **ICAEW** in its capacity as a designated professional body under the Financial Services and Markets Act 2000, as an approved regulator and licensing authority under the Legal Services Act 2007 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 Committee**, **Disciplinary Committee** or **Appeal Committee**, or of any **tribunal** or **panel**, otherwise than by failing to pay any fine or costs.

- 6.2 A **registered auditor** (hereinafter referred to also as a '**respondent 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 **ICAEW** in its capacity as a recognised supervisory body under the Companies Act 2006 and the Local Audit & Accountability Act 2014 and as a recognised accountancy body and prescribed accountancy body under the Irish Companies Act 2014, 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 Committee**, **Disciplinary Committee** or the **Appeal Committee**, or of any **tribunal** or **panel**, otherwise than by failing to pay any fine or costs.

Liability of former members, former foundation qualification holders, former member firms, former regulated firms and former contracted firms to disciplinary action

- 6A.1 A person or body who, while they were a **member**, **foundation qualification holder**, **member firm**, **regulated firm** or **contracted 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 they have ceased to be a **member**, **foundation qualification holder**, **member firm**, **regulated firm** or **contracted firm**, as the case may be, as if they had not so ceased; and references in these **bye-laws** to **members**, **foundation qualification holders**, **member firms**, **regulated firms** and **contracted 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 **respondent** or a **respondent 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**, former **foundation qualification holder**, former **member firm**, former **regulated firm** or former **contracted 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 **foundation qualification holder**, former **member firm**, former **regulated firm** or former **contracted firm**, and a breach of **bye-law** 13 shall render the former **member**, former **foundation qualification holder**, former **member firm**, former **regulated firm** or former **contracted 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 or matters which occurred while the person or body concerned was actually a **member**, **foundation qualification holder**, **member firm**, **regulated firm** or **contracted 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 **ICAEW** in its capacity as a recognised professional body under the Insolvency Act 1986.

Proof of certain matters

- 7.1 The fact that a **respondent** or **respondent firm** has been the subject of an adverse finding (not set aside on appeal or otherwise) in respect of their conduct, being a finding in proceedings before a body which is for the time being listed in paragraph 3 or before a regulatory body performing its functions under the Financial Services and Markets Act 2000, the Insolvency Act 1986, the Companies Act 2006, the Irish Companies Act 2014, the Local Audit & Accountability Act 2014 and the Legal Services Act 2007 shall, for the purposes of these **bye-laws**, be conclusive evidence of the commission by the **respondent** / **respondent firm** 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 following shall be prima facie evidence of any facts found or unfit behaviour, as the case may be, for the purposes of these **bye-laws**:
- a. a finding of fact in any report of an inspector appointed under the Companies Act 2006;
 - b. a finding of fact in any civil or criminal proceedings before a court of competent jurisdiction in the **United Kingdom** or elsewhere, regardless of whether the **respondent** or **respondent firm** was a party to those proceedings;
 - c. a finding of fact in any proceedings before, or report by, any professional or regulatory body (whether in the **United Kingdom** or elsewhere provided that, if the body is outside the **United Kingdom**, the country in which the body is based has courts of competent jurisdiction);
 - d. a finding of fact in any proceedings which result in an accountant being notified by the Solicitors Regulation Authority that they are not qualified to give an accountant's report within the meaning of section 34 of the Solicitors Regulation Authority Rules or are unfit to be involved in a legal practice under section 43 of the Solicitors Act 1974; or
 - e. the details set out in a conduct notice issued under Schedule 38 of the Finance Act 2012 (not set aside on appeal or otherwise) that specify the grounds on which the determination of HM Revenue and Customs is made.
- 7.3 The bodies referred to in paragraph 1 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.
- 7.4 The ICAEW Regulatory Board may at any time by **regulations** add any body (other than **ICAEW**) to, or remove any body listed in paragraphs 1 or 3.
- 7.5 Nothing in paragraph 2 shall affect the evidential status of any report or other document not falling within that paragraph.

Relevance of codes of practice, regulations etc.

- 8.1 In discharging their 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 **respondent** or **respondent firm** 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 (referred to in this **bye-law** as a 'referrer') may bring to the attention of the **head of staff** any facts or matters indicating that a **respondent** or **respondent firm** 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 them to do so, to report to the **head of staff** any such facts or matters of which they are 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 ICAEW Regulatory Board.
- 9.3 Subject to paragraph 6, 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 **respondent** or **respondent firm** may have become liable to disciplinary action under these **bye-laws** or an **investigation and discipline scheme**

are referred to as **complaints**. A **respondent** or **respondent firm** may be subject to one or more **complaints** arising from the same facts or matters, and where a **complaint** is brought under different paragraphs of **bye-laws** 4, 5 or 6 such **complaint** will comprise parts.

- 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 the **head of staff** 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** subject to paragraph 5.

- 9.5 The **Investigation Committee** shall not consider a dispute under paragraph 4 if more than 28 days have passed since the date of the letter notifying the person who disputes the decision or opinion of the **head of staff**, unless:
- a. the **head of staff** is satisfied that the person who disputes the decision or opinion could not reasonably have been expected to respond to the letter within 28 days; or
 - b. there is, in the opinion of the **head of staff**, fresh evidence justifying reconsideration of the decision or opinion;

The opinion of the **head of staff** as to whether any further information amounts to new evidence shall be final.

- 9.6 If a referrer brings facts or matters to the attention of the **head of staff** in accordance with paragraph 1, and more than 3 years has elapsed since:
- a. the date on which those facts or matters first occurred; or, if later
 - b. the date on which those facts or matters first came, or ought reasonably to have come, to the attention of that person

the **head of staff** shall take no further action with respect to those facts or matters unless the **head of staff** considers, despite the expiry of the time limits in (a) and (b) above that an investigation is necessary for the protection of the public or otherwise necessary in the public interest, in which case the facts or matters shall constitute a **complaint** or **complaints** under paragraph 3.

- 9.7 If the **head of staff** decides not to investigate the facts or matters in accordance with paragraph 6, the referrer may, within 28 days of the date of service of the **notice** of the **head of staff's** decision, request that the **PCD Committee Secretary** refer the **head of staff's** decision to the **Investigation Committee** for review.
- 9.8 In considering a referral under paragraph 7, the **Investigation Committee** shall consider in accordance with **regulations** whether the facts or matters were brought to the attention of the **head of staff** after the expiry of the time limits in paragraph 6, and, if so, whether an investigation is necessary for the protection of the public or otherwise necessary in the public interest. If the **Investigation Committee** determines that an investigation should take place, it shall request the **head of staff** to treat the facts or matters as a **complaint** or **complaints** for the purposes of paragraph 3.
- 9.9 If the **Investigation Committee** considers that an investigation should not be commenced, it shall ask the **PCD Committee Secretary** to inform the referrer of its decision which will be final.
- 9.10 A sub-committee of the **Investigation Committee** shall be responsible for determining whether the **head of staff** should investigate facts or matters which are the subject of a referral under paragraph 7.

Processing of complaints by head of staff

- 10.1 If the **head of staff** is of the opinion that one or more **complaints** are to be dealt with by an **investigation and discipline scheme**, they shall lay it or them before the **Investigation**

Committee.

- 10.2 If, in the case of one or more **complaints** not laid before the **Investigation Committee** under paragraph 1, the **head of staff** is of the opinion that it is appropriate to do so, they shall attempt to resolve the **complaint** or **complaints** by conciliation or in some other way not involving disciplinary action under these **bye-laws**; and if the attempt is successful, the **head of staff** shall take no further action with respect to the **complaint / complaints**.
- 10.3 Where an attempt under paragraph 2 is made but fails, the **head of staff** shall review the **complaint** or **complaints** in the light of any further relevant facts or matters which have come to their attention since they initiated the attempt; and
- a. if, as a result of that review, the **head of staff** remains of the opinion that the **respondent** or **respondent firm** concerned may have become liable to disciplinary action under these **bye-laws**, the **head of staff** shall proceed to investigate the **complaint** or **complaints**;
 - b. if, as a result of that review, the **head of staff** is no longer of that opinion, they shall take no further action with respect to the **complaint** or **complaints**.
- 10.4 If, as regards a **complaint** or **complaints** 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, they shall proceed to investigate the **complaint** or **complaints**.
- 10.5 If, having investigated a **complaint** or **complaints** under paragraph 3 or 4, the **head of staff** is no longer of the opinion that the **respondent** or **respondent firm** concerned may have become liable to disciplinary action under these **bye-laws**, they shall take no further action with respect to the **complaint** or **complaints**, unless the **complainant** insists on it / them 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** or **complaints** before the **Investigation Committee**.
- 10.6 The **Investigation Committee** shall not consider a **complaint** or **complaints** under paragraph 5 if
- a. more than 28 days have passed since the date of the letter notifying the **complainant** that the **head of staff** is no longer of the opinion that the **respondent** or **respondent firm** concerned may have become liable to disciplinary action unless the **head of staff** is satisfied that the **complainant** could not reasonably have been expected to respond to the letter within 28 days or, in the opinion of the **head of staff**, there is fresh evidence justifying reconsideration of their opinion. The opinion of the **head of staff** as to whether any further information amounts to new evidence shall be final
- or
- b. there is an outstanding referral to the **Fitness Committee** against the **respondent**, or the **Fitness Committee** has accepted the **respondent's** resignation from membership or resignation of their registration, or the **Fitness Committee** has made an **order** that the **complaint** or **complaints** against the **respondent** should be closed.
- 10.7 It shall be the duty of every **respondent** and **respondent firm** (or other person or body subject to these **bye-laws**) to cooperate promptly and in full with the **head of staff** and the **Investigation Committee** in discharging their or its functions under these **bye-laws**.

- 10.8 The **respondent** or **respondent firm** shall not charge a **complainant** for time spent, or costs incurred, in responding to a **complaint** or **complaints**.

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 **ICAEW**.
- 11.2 If a **firm** receives a complaint or complaints concerning any services it has provided or failed to provide to a client or former client, it shall forthwith cause the complaint / complaints to be investigated by a **principal**.
- 11.2A A **firm** shall not charge a client or former client for investigating a complaint or complaints in accordance with paragraph 2, but, if a **firm** has previously concluded its investigation of the complaint/complaints, and has explained to the client or former client that it has provided its full and final response in relation to the matter, the **firm** may charge the client/former client for time spent in responding to any subsequent correspondence raised in accordance with the **firm's** internal complaints procedure.
- 11.3 If, as a result of an investigation under paragraph 2, the **firm** is of the opinion that the complaint is, or the complaints are, wholly or partly justified, it shall take whatever steps are appropriate to resolve the complaint / complaints, 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** or **complaints** against a **firm**, not being a **complaint** or **complaints** to which paragraph 1 of **bye-law** 10 applies, they may, if it appears appropriate to do so, refer the **complaint/complaints** to the **firm** for investigation under paragraph 2 of this **bye-law** instead of dealing with the **complaint / complaints** as provided in paragraphs 2 to 5 of **bye-law** 10.
- 11.5 The fact that a complaint is, or complaints are, 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 **respondent** or **respondent firm** 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**.

Power to reopen complaints / cases

- 11A.1 The **head of staff** may, at any time, reopen a matter which has been previously closed following assessment or investigation where the **head of staff** has reason to believe that:
- a. the decision not to proceed with the matter may have been materially flawed (for any reason); or
 - b. there is new information which may have led, wholly or partly, to a different decision;
- or

- c. the **respondent** or **respondent firm** may have previously withheld information; or
- d. the **respondent** or **respondent firm** may have previously misled the **head of staff**

but only if one or more of the grounds in paragraph 2 are also satisfied.

11A.2 In the opinion of the **head of staff** further consideration is necessary:

- a. for the protection of the public; or
- b. otherwise necessary in the public interest.

11A.3 Where the **head of staff** decides to reopen a matter they shall, as soon as reasonably practicable notify the following, setting out their reasons for the decision in writing:

- a. the **respondent** or **respondent firm**; and
- b. the person who brought the matter to the attention of the **head of staff**; and
- c. any other person who, in the opinion of the **head of staff**, has a legitimate interest in the matter.

COMPLAINTS LAID BEFORE INVESTIGATION COMMITTEE

Initial consideration of complaints so laid

12.1 This **bye-law** applies where one or more **complaints** are 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** or **complaints** be 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 the **complaint** or **complaints** to an **investigation and discipline scheme** under **bye-law** 12A.1, it shall either

- a. refer the **complaint / complaints** back to the **head of staff** to be processed under paragraphs 2 to 5 of **bye-law** 10 as if the **complaint(s)** had not been laid before the **Investigation Committee** under paragraph 1 of that **bye-law**; or
- b. proceed to deal with the **complaint / complaints** under **bye-laws** 14A, 14B or 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** or **complaints** to be referred to an **investigation and discipline scheme**, it shall make a written referral of the **complaint / complaints** 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 **complaint(s)** back to the **head of staff** to be processed under paragraphs 2 to 5 of **bye-law** 10; or
- b. proceed to deal with the **complaint(s)** under **bye-laws** 14A, 14B or 15.

12A.3 If following an enquiry under an **investigation or discipline scheme**, the **complaint(s)** are referred to **ICAEW**, the **Investigation Committee** shall either

- a. refer the **complaint(s)** back to the **head of staff** to be processed under paragraphs 2 to 5 of **bye-law** 10; or

- b. proceed to deal with the **complaint(s)** under **bye-laws** 14A, 14B or 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 one or more **complaint(s)** be dealt with under the terms of that scheme, then with immediate effect
- a. the investigation of the **complaint(s)** 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, one or more **formal complaints** have been referred under **bye-law** 15.2a, the **Disciplinary Committee**) shall cease to have responsibility for it or them.

Power of Investigation Committee to call for information, etc.

- 13.1 The **Investigation Committee** shall have power by **notice** served on any **respondent** or **respondent firm** (or other person or body subject to these **bye-laws**) to call for such information, explanations, books, records and documents as the Committee considers necessary to enable the Committee or the **head of staff** to perform its or their functions under these **bye-laws**, as are available to the **respondent, respondent firm** or other person or body, whether or not in the physical possession of the **respondent, respondent firm** or other person or body at the time of service of the **notice**.
- 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** or **complaints** laid before it indicates that the **practice** of any **firm** may have been conducted inefficiently, it may require any **respondent** or **respondent firm** concerned (at their or its 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 **respondent** or **respondent firm** concerned to prove that they or it 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 dealt with by way of fixed penalty

- 14A.1 The **Investigation Committee** may delegate the exercise of its functions under this **bye-law** to the **head of staff** in respect of suitable **complaints** or categories of **complaint** as designated (and revised from time to time) by the ICAEW Regulatory Board.
- 14A.2 Where the **head of staff**, acting on behalf of the **Investigation Committee**, finds that one or more designated **complaints** disclose a **prima facie case**, and this finding is accepted by the **respondent** or **respondent firm**, they shall propose to the **respondent** or

respondent firm the fixed penalty, as prescribed from time to time by the ICAEW Regulatory Board, in respect of the **complaint** or **complaints**.

14A.3 If the **head of staff** decides to propose the fixed penalty in accordance with paragraph 2 they shall serve on the **respondent** or **respondent firm** a notice specifying:

- a. the nature of the breach or breaches of these **bye-laws**;
- b. the terms of the proposed penalty;
- c. the period for compliance with the proposed penalty; and
- d. the extent to which the proposed penalty may be published by **ICAEW**.

14A.4 If, within the period stated in the notice, the **respondent** or **respondent firm** confirms their or its acceptance of the penalty in writing, the **head of staff** shall as soon as practicable confirm the agreement in writing.

14A.5 The penalty may be published in any way that the **Investigation Committee** decides.

14A.6 If the **respondent** or **respondent firm** does not:

- a. agree that a breach of these **bye-laws** has been committed; or
- b. agree to the terms of the proposed penalty; or
- c. respond to the notice served under paragraph 3; or
- d. comply with the terms of the penalty

the **complaint** or **complaints** will be dealt with by the **Investigation Committee** in accordance with **bye-law** 15.

14A.7 Any financial penalty agreed under paragraph 4 may be paid by the **respondent** or **respondent firm** by way of instalments with the agreement of the **head of staff**.

Referral of certain types of criminal conviction complaints directly to the Disciplinary Committee

14B.1 The **Investigation Committee** may delegate the exercise of its functions under this **bye-law** to the **head of staff** in respect of suitable **complaints** or categories of **complaint** as designated (and revised from time to time) by the ICAEW Regulatory Board.

14B.2 The ICAEW Regulatory Board may, from time to time, determine that certain **complaints** or categories of **complaint** concerning criminal convictions ('designated criminal conviction complaints') be referred directly by the **head of staff** to the **Disciplinary Committee** following investigation.

14B.3 Where the **head of staff**, acting on behalf of the **Investigation Committee**, identifies one or more such designated criminal conviction **complaints**, the **head of staff** shall request the **PCD Committee Secretary** to appoint a **tribunal** in accordance with **bye-law** 19.1 and the **complaint(s)** shall be treated for the purposes of these **bye-laws** as if it or they had been referred formally by the **Investigation Committee** to the **Disciplinary Committee** in accordance with **bye-law** 15.2(a).

Complaints not referred to or referred back from an investigation and discipline scheme

- 15.1 Where one or more **complaints** laid before the **Investigation Committee** are:
- 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 **ICAEW** 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** or **complaints** disclose a **prima facie case** and it shall dismiss any **complaints** for which it finds no **prima facie case**.

- 15.2 If the **Investigation Committee** finds that the **complaint** or **complaints** disclose a **prima facie case** against a **respondent** or **respondent firm** it may do one of the following:
- a. refer the **complaint** or **complaints** (or such parts of the **complaint / complaints**) as disclose a **prima facie case** to the **Disciplinary Committee** as a **formal complaint / formal complaints**; or
 - b. deal with the **complaint** or **complaints** (or such parts of the **complaint / complaints**) as disclose a **prima facie case** under **bye-law** 16 (consent orders); or (bb) deal with the **complaint** or **complaints** (or such parts of the **complaint / complaints**) as disclose a **prima facie case** under **bye-law** 16A (cautions); or
 - c. order that further consideration of the **complaint** or **complaints** 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** or the **complaints** is the existence of any of the circumstances set out in sub-paragraphs (b) to (e) 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 **complaints**.

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 **respondent** or **respondent firm** concerned has been given an opportunity to make written representations to the Committee, shall give the **respondent / respondent firm** such an opportunity; and
 - b. may, if it thinks fit, give the **respondent / respondent firm** or its or their **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 refer a **complaint** or **complaints** (the current **complaint(s)**) 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 **respondent** or **respondent firm** 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 referred 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 refer the current **complaint** or **complaints** (or parts of any **complaint(s)**) to the **Disciplinary Committee** as a **formal complaint / formal complaints**, it may also refer to that Committee any **formal complaints** which it could have referred on that previous occasion and, if there were two or more such previous occasions, may refer separate **formal complaints** against the **respondent / respondent firm** in respect of some or all of them.

- 15.6 If the **Investigation Committee** refers one or more **complaints** as **formal complaints** to the **Disciplinary Committee**, it shall send to the **Disciplinary Committee** and to the **respondent** or **respondent firm** a summary of the material facts and matters which were considered by the **Investigation Committee** together with:
 - a. a summary or copy of any written representations made to it by the **respondent** or **respondent firm**; and
 - b. if the **respondent** or **respondent firm** 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 one or more **complaints** disclose a **prima facie case** but **orders** that no further action be taken on it or them, it shall serve a **notice** to that effect on the **respondent** or **respondent firm** concerned; and if within the period of 28 days beginning with the date of service of that **notice** the **respondent** or **respondent firm** concerned serves **notice** on the **head of staff** that it or they are 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 refer the **complaint** or **complaints** (or parts of those **complaints**) 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, or the **complaints** disclose, a **prima facie case**; and
 - b. after considering all the relevant circumstances (including the past **disciplinary record**, if any, of the **respondent** or **respondent firm** concerned) the Committee is of the opinion that it is appropriate to deal with the **complaint** or **complaints** under this **bye-law**, the following provisions of this **bye-law** shall apply.
- 16.2 The **Investigation Committee** may with the agreement of the **respondent** or **respondent firm** concerned make
 - a. any one or more of the **orders** which, on finding a **formal complaint** or **formal complaints** proved, the **Disciplinary Committee** would have power to make against the **respondent** or **respondent firm** by virtue of paragraphs i) to vii) below

according to whether the person concerned is a **member, member firm, contracted firm, authorised firm, registered auditor, provisional member, foundation qualification holder, provisional foundation qualification holder** or **CFAB student**,

- 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 (a), (b) or (c); or
 - iv. **bye-law** 22.6 (b) or (c) or (d); or
 - v. **bye-law** 22.7 (f) or (g),
 - vi. **bye-law** 22.8 (c), (d) or (e),
 - vii. **bye-law** 22.9 (e) or (f).
- b. any **order** which, on finding a **formal complaint** or **formal complaints** proved, the **Disciplinary Committee** would have power to make against the **respondent** or **respondent firm** under **bye-law** 23, 24 or 24A;
- c. an **order** that the **respondent** or **respondent firm** concerned shall pay to **ICAEW** a sum by way of costs.
- 16.3 Before making any **order** under paragraph 2 the **Investigation Committee** shall serve on the **respondent** or **respondent firm** concerned a **notice** describing the action which it proposes to take if the **respondent** or **respondent firm** agrees, and specifying the **order** which it would make in that event.
- 16.4 A **notice** under paragraph 3 must
- a. explain the extent to which the finding of the **Investigation Committee** would be communicated to others;
 - b. state that, if the **respondent** or **respondent firm** concerned does not agree in writing to the proposed action within a stated period, a **formal complaint** or **formal complaints** may be referred to the **Disciplinary Committee** which, in the event of its finding that **complaint** or those **complaints** proved either wholly 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 **respondent** or **respondent firm** 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 **respondent** or **respondent firm** 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 refer the **complaint** or **complaints** as a **formal complaint** or **formal complaints** 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 If the **Investigation Committee** makes an **order** in accordance with paragraph 2 of this **bye-law**, the **order** shall take effect after 7 days following the date of service of the **order** on the **respondent / respondent firm** and a copy of the **order** shall be served on any other person or body who or which is the subject of complaints under these **bye-laws** arising from the same or similar facts or matters as the **complaints** against the **respondent / respondent firm**.
- 16.8 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).
- 16.9 Where any provision of **bye-law** 32 or 33 applies by virtue of paragraph 8 of this **bye-law**, it shall do so with the modification that any reference to the date of service of the **tribunal's** written record of decision on the **respondent / respondent firm** is to be taken to refer to the date of the relevant **order** under this **bye-law**.
- 16.10 Subject to paragraph 11, where the **Investigation Committee** makes an **order** under this **bye-law**, it shall cause to be published, 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(s)**. A report published in accordance with this paragraph shall be published as soon as practicable once the **order** has taken effect under paragraph 7.
- 16.11 The **Investigation Committee** may order that publication of the **order** be delayed where, in the opinion of the **Investigation Committee**, delay is necessary in the public interest. In determining the timing of publication, the **Investigation Committee** may have regard to any written representations of the **respondent / respondent firm** or any person or body who or which has been served with a copy of the **order** under paragraph 7, filed within 7 days beginning with the date of service of the **order**, and the **Investigation Committee** shall make a decision on publicity once the period for representations has passed.
- 16.12 Except in so far as the **Investigation Committee** in its absolute discretion otherwise directs, a report published under paragraph 10 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 the person or body and state that they were made with their or its agreement,
- but need not include the name of any other person or body concerned in the **complaint** or **complaints**.

Cautions

- 16A.1 If
- a. under **bye-law** 15 the **Investigation Committee** finds that a **complaint** discloses, or the **complaints** disclose, a **prima facie case**; and
 - b. after considering all the relevant circumstances (including the past **disciplinary record**, if any, of the **respondent** or **respondent firm** concerned) the Committee is of the opinion that it is appropriate to deal with the **complaint** or **complaints** 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 **respondent** or **respondent firm** concerned ('the subject of the **complaint** or **complaints**') a **notice**
- a. stating that the Committee finds that the **complaint** discloses, or the **complaints** disclose, a **prima facie case**; and
 - b. informing the subject of the **complaint / complaints** that the Committee proposes to make an **order** under this **bye-law**
 - i. that they be cautioned; or
 - ii. that they be cautioned and pay to **ICAEW** a fixed sum by way of costs, as the case may be; and

in this paragraph 'a fixed sum' means the fixed sum for the time being so prescribed for such costs.

- 16A.3 A **notice** under paragraph 2 must explain the extent to which, in accordance with **regulations**, the proposed **order**, if made, would be communicated to others.
- 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 / complaints** serves **notice** on the **head of staff** that they are 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 refer the **complaint** or **complaints**, either wholly or in part, 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 35 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 **ICAEW** under this **bye-law** as it applies to costs payable under **bye-law** 33.
- 16A.7 Except with the consent of the subject of the **complaint / complaints** in question, this **bye-law** shall not apply to a **complaint** or **complaints** 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** or **complaints** laid before it do not disclose a **prima facie case** against the **respondent** or **respondent firm** concerned.

- 17.2 A **complainant** may apply in writing to the **PCD Committee Secretary** for a review of the finding, and the **PCD Committee Secretary** 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 **PCD Committee Secretary** after the end of the period of 28 days 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, they shall remit the application to the **Investigation Committee** with a recommendation that the **complaint** or **complaints** 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** or **complaints** 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** or **complaints**, and the Committee's consideration of the **complaint / complaints** 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 **complaint(s)** 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, they shall so inform the **complainant** and the **Investigation Committee** and provide reasons in writing for being of that opinion.
- 17.7 **The reviewer** may request the **head of staff** to provide them with such technical assistance as **the reviewer** considers necessary to enable them to perform their 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 they consider necessary for the performance of their 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 complaints after review

- 18.1 If under **bye-law** 17.4 **the reviewer** remits the application to the **Investigation Committee** with a recommendation that the **complaint** or **complaints** be reconsidered, the **complaint**

or **complaints** shall be treated by the Committee as if it or they had then been newly laid before the Committee 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** or **complaints** 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** or **complaints** under paragraphs 1 to 3 of **bye-law** 15 until the **respondent** or **respondent firm** 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** or **complaints** as required by paragraph 1, that there is still no **prima facie case** against the **respondent** or **respondent firm** 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 they are so informed, or such longer period as the Committee may allow, send the Committee such comments, if any, on the proposed finding as they think 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, or the **complaints** disclose, a **prima facie case**.

18.4 If

- a. within the period allowed by or under paragraph 2 **the reviewer** informs the **Investigation Committee** that they have 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, or the **complaints** disclose, a **prima facie case**.

18.5 If under paragraph 3 or 4, the **Investigation Committee** finds that the **complaint** or **complaints** do not disclose a **prima facie case**, it shall inform the **complainant** and **the reviewer** in writing of its reasons for so finding.

POWER TO RECALL REFERRALS

18A.1 At any time following the referral of one or more **formal complaint(s)** by the **Investigation Committee** to the **Disciplinary Committee**, but prior to the first hearing of a **tribunal** appointed under **bye-law** 19.1, the **Investigation Committee** may consider recalling the referral where it is of the view that:

- a. it is appropriate and fair to re-consider whether a **prima facie case** should have been found in relation to any of the **formal complaints** or whether the **complaint(s)** should be dealt with under another paragraph of **bye-law** 15; or
- b. the wording of one or more of the **formal complaints** does not reflect accurately the available evidence and / or its concerns about the conduct of the **respondent** or **respondent firm**; or

- c. an additional **complaint** or **complaints** should be considered in relation to the conduct of the **respondent** or **respondent firm** arising out of the same facts or matters, and / or one or more of the **formal complaints** should be brought under a different or additional paragraph of **bye-laws** 4, 5 or 6 based on the available evidence,

and for the purposes of this paragraph 'available evidence' includes any new information or evidence of a material nature that has been identified since the referral of the **formal complaint(s)** to the **Disciplinary Committee**.

- 18A.2 If the **Investigation Committee** has decided to recall the referral under paragraph 1(a), it shall request the **PCD Committee Secretary** to notify the **head of staff**, the **respondent** or **respondent firm** and the Chair of the **Disciplinary Committee** of that decision and the reasons for it. The **PCD Committee Secretary** shall then request any representations from the **head of staff** within 28 days beginning with the date of the notification. When the **PCD Committee Secretary** receives representations from the **head of staff**, the **PCD Committee Secretary** shall then notify the **respondent** or **respondent firm** of the date of the meeting when the **Investigation Committee** intends to re-consider the recalled **complaints**, which will be no less than 30 days beginning with the date of notification, and provide a copy of any representations received from the **head of staff**, and shall request that any representations from the **respondent** or the **respondent firm** should be received no later than 14 days before that meeting.
- 18A.3 At the meeting when the **Investigation Committee** re-considers the recalled **complaint(s)**, the **Investigation Committee** shall deal with the recalled **complaint** or **complaints** in accordance with **bye-law** 15.
- 18A.4 If the **Investigation Committee** has decided to recall the referral under paragraph 1(b) and / or (c), it shall request the **PCD Committee Secretary** to notify the **head of staff**, the **respondent** or **respondent firm** and the Chair of the **Disciplinary Committee** of that decision and the reasons for it, and shall request the **head of staff** to conduct a review to determine whether any additional and/or alternative **complaints** should be considered by the **Investigation Committee**.
- 18A.5 If, following a review, the **head of staff** considers that any additional and/or alternative **complaints** relating to the same facts or matters should be considered by the **Investigation Committee**, they shall provide to the **PCD Committee Secretary** a report setting out any additional and/or alternative **complaints** and the reasons why they should be considered by the **Investigation Committee**.
- 18A.6 Once the **PCD Committee Secretary** receives the report referred to in paragraph 5 from the **head of staff**, the report shall be provided by the **PCD Committee Secretary** to the **respondent** or **respondent firm**, stating the date when the report will be considered by the **Investigation Committee**, which will be no earlier than 30 days beginning with the date of service of the report, and requesting any written representations from the **respondent** or the **respondent firm** be received at least 14 days before the date of that meeting.
- 18A.7 At the meeting when the **Investigation Committee** re-considers the recalled **complaints** and / or considers any additional and/or alternative **complaints** in the **head of staff's**

report pursuant to paragraph 6, the **Investigation Committee** shall deal with the **complaint(s)** in accordance with **bye-law** 15.

SETTLEMENT ORDERS

- 18B.1 At any time following the referral of one or more **formal complaint(s)** by the **Investigation Committee** to the **Disciplinary Committee**, but prior to the commencement of the substantive **hearing** in relation to the **formal complaint(s)**, the **respondent / respondent firm** and the **head of staff** may enter into settlement discussions at the initiation of either party in respect of the **formal complaint(s)**.
- 18B.2 Where, following settlement discussions, terms of settlement are agreed between the **head of staff** and the **respondent / respondent firm** in relation to the **formal complaint(s)**, the **head of staff** shall prepare a **proposed settlement agreement** and draft **settlement order** and deliver a copy of the proposed agreement and draft **order** to the **PCD Committee Secretary** with a written request that the **PCD Committee Secretary** appoint a **Settlement Agreement Chair** to determine whether the **proposed settlement agreement** should be approved.
- 18B.3 A **proposed settlement agreement** may specify by way of sanction in relation to the **formal complaint(s)**:
- a. any one or more of the **orders** which, on finding a **formal complaint** or **formal complaints** proved, the **Disciplinary Committee** would have the power to make against the **respondent / respondent firm** under these **bye-laws** according to whether the **respondent / respondent firm** is a **member, member firm, contracted firm, authorised firm, registered auditor, provisional member, foundation qualification holder, provisional foundation qualification holder or CFAB student**;
 - b. any **order** which, on finding a **formal complaint** or **formal complaints** proved, the **Disciplinary Committee** would have power to make against the **respondent / respondent firm** under **bye-laws** 23, 24 or 24A;
 - c. an **order** that the **respondent / respondent firm** pay to **ICAEW** a specified sum by way of costs.
- 18B.4 The **PCD Committee Secretary** shall as soon as reasonably practicable following the appointment of a **Settlement Agreement Chair** provide the **Settlement Agreement Chair** with copies of the **proposed settlement agreement** and draft **settlement order** and all relevant information and documentation required for the **Settlement Agreement Chair** to consider whether, in accordance with **regulations**, the **proposed settlement agreement** should be approved.
- 18B.5 In determining a referral under paragraph 4, the **Settlement Agreement Chair** may, if they are minded to refuse to approve the **proposed settlement agreement**, notify the **head of staff** and **respondent / respondent firm** of their provisional views and provide the parties with an opportunity to make verbal representations on the proposed agreement.
- 18B.6 If the **Settlement Agreement Chair** approves the **proposed settlement agreement** they shall sign the draft **settlement order** on behalf of the **Disciplinary Committee** and the

order will be final. The **PCD Committee Secretary** shall then provide a copy of the finalised **settlement order** to the **respondent / respondent firm** and the **head of staff**, and to any other person or body who or which is the subject of one or more complaints under these **bye-laws** arising from the same or similar facts or matters as the **formal complaint(s)** against the **respondent / respondent firm**. The **settlement order** will take effect after 7 days beginning with the date of service of the **order** on the parties.

- 18B.7 If the **Settlement Agreement Chair** does not approve the **proposed settlement agreement**, they shall refuse to make a **settlement order** and shall provide written reasons for the refusal to the **PCD Committee Secretary** who shall provide a copy of such reasons to the **respondent / respondent firm** and the **head of staff** within 7 days of receipt.
- 18B.8 If the **Settlement Agreement Chair** approves the **proposed settlement agreement** they shall, subject to paragraph 9, direct that the **settlement order** be published in such manner as they think fit after 7 days beginning with the date of service of the **order** on the parties.
- 18B.9 The **Settlement Agreement Chair** may order that publication of the **settlement order** be delayed where, in the opinion of the **Settlement Agreement Chair**, delay is necessary in the public interest. In determining the timing of publication, the **Settlement Agreement Chair** may have regard to any written or verbal representations of the parties or any person or body who or which has been served with a copy of the **settlement order** under paragraph 6, filed within 7 days beginning with the date of service of the **order** on the parties, and the **Settlement Agreement Chair** shall make a decision on publicity once the period for representations has passed.
- 18B.10 Paragraphs 1, 4 and 5 of **bye-law** 32 (time limits for payment of fines) shall apply in relation to any fine imposed by a **settlement order** made under paragraph 6 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 a **settlement order** made under paragraph 6 of this **bye-law** as they apply in relation to costs payable by virtue of an **order** made under **bye-law** 33(1).
- 18B.11 Where any provision of **bye-law** 32 or 33 applies by virtue of paragraph 10 of this **bye-law**, it shall do so with the modification that any reference to the date of service of the **tribunal's** written record of decision on the **respondent / respondent firm** is to be taken to refer to the date of the relevant **settlement order** under this **bye-law**.
- 18B.12 The fact that the **head of staff** and **respondent / respondent firm** have entered into settlement discussions in accordance with this **bye-law** shall not delay the appointment of a **tribunal** in accordance with **bye-law** 19.1 to hear the **formal complaint(s)**.
- 18B.13 The content of any settlement discussions between the **head of staff** and the **respondent / respondent firm** or procedures carried out under this **bye-law** shall be confidential and shall not be admissible as evidence in:
- a. any subsequent proceedings against the **respondent / respondent firm** before a **tribunal** or **panel** appointed to hear the **formal complaint** or **formal complaints**;
- or

- b. any proceedings under these **bye-laws** concerning complaints against another person or body which arise from the same or similar facts or matters as the **formal complaints** that form the basis of the **settlement order**,

save that the fact that settlement discussions are taking place shall not be confidential and may be brought to the attention of any tribunal appointed under these **bye-laws**.

DISCIPLINARY PROCEEDINGS

Tribunals

- 19.1 Subject to paragraph 6, on receipt by the **Disciplinary Committee** of one or more **formal complaints**, the Chair of that Committee or, failing the Chair, any Vice-Chair of that Committee
- a. shall appoint three of its members, one of them being a **member of ICAEW** and the remaining two being **lay members** as a **tribunal** to hear that **formal complaint** or **formal complaints**; and
 - b. shall appoint one of the two **lay members** as Chair of the **tribunal**,
- provided that no person may be appointed as a member of the **tribunal** if they were previously appointed as a **Settlement Agreement Chair** and considered a **proposed settlement agreement** in relation to the **formal complaint(s)**.
- 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 **formal complaints**; 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 at any time during the **hearing** of a **formal complaint** or **formal complaints** the Chair 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**, they shall so inform the Chair or, failing the Chair, any Vice-Chair of the **Disciplinary Committee**, who shall thereupon direct that the **formal complaint** or **formal complaints** be re-heard by a new **tribunal** so appointed.
- 19.4 The **Disciplinary Committee** may appoint a barrister or a solicitor to act as legal assessor at the **hearing** of a **formal complaint** or **formal complaints**.
- 19.5 Where a new **tribunal** is appointed pursuant to paragraph 2 or 3, 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 **formal complaint** or **formal complaints**.
- 19.6 **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 complaints

- 20.1 As soon as practicable after the appointment of a **tribunal** to hear a **formal complaint** or **formal complaints**, the **PCD Committee Secretary** shall serve on the **respondent** or **respondent firm** a **notice** stating the terms of the **formal complaint(s)** and the time and place fixed for the **hearing**.
- 20.2 The **respondent** or **respondent firm** may appear before the **tribunal** in person or by a **representative**.
- 20.3 The **tribunal** shall give the **respondent** or **respondent firm**, or their **representative**, a reasonable opportunity of being heard before it.
- 20.4 If the **respondent** or **respondent firm** 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 the **respondent / respondent firm**, the **tribunal** may hear the **formal complaint** or **formal complaints** in their absence.
- 20.5 The **Investigation Committee** may appoint the **head of staff** or any **member** of **ICAEW**, or may instruct a barrister or solicitor, to present the **formal complaint** or **formal complaints** before the **tribunal**.

Temporary suspension of activities of authorised firm

- 21.1 If, at any time while a **tribunal** is considering a **formal complaint** or **formal complaints** 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(b) of that **bye-law**).

Powers of tribunal

- 22.1 If the **tribunal** is of the opinion that one or more **formal complaints** have 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 **formal complaint(s)**.
- 22.2 If the **tribunal** finds that the **formal complaint** or **formal complaints** have 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 **respondent** or **respondent firm** one or more of the **orders** available under the following provisions of these **bye-laws**, namely
- a. paragraph 3, 4, 5, 6, 7, 8 or 9 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 **respondent** or **respondent firm**, the **tribunal's** views as to the nature and seriousness of

the **formal complaint** or **formal complaints** (so far as proved), and any other circumstances which the **tribunal** considers relevant.

- 22.3 If the **respondent** is a **member**, the **orders** available are:
- a. that they be excluded from membership;
 - b. that their **practising certificate** be withdrawn either indefinitely or for a specified period;
 - c. that any **Insolvency Licence** held by the **member** be withdrawn;
 - d. that they be ineligible for an **Insolvency Licence**;
 - e. that they be ineligible for a **practising certificate**, either indefinitely or for a specified period;
 - f. that they be severely reprimanded;
 - g. that they be reprimanded;
 - h. that they be fined a specified sum.
- 22.4 If the **respondent firm** is a **member firm** or a **contracted firm**, the **orders** available 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 **respondent firm** is an **authorised firm**, the **orders** available are:
- a. that it be severely reprimanded;
 - b. that it be reprimanded;
 - c. that it be fined a specified sum.
- 22.6 If the **respondent firm** is a **registered auditor**, the **orders** available are:
- a. that its registration or registrations granted at the instance of **ICAEW** 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 **respondent** is a **provisional member**, the **orders** available are:
- a. that they be declared unfit to become a **member** and/or a **Foundation Qualification Holder**;
 - b. that they 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 their **training contract** be suspended for a period not exceeding two years;
 - d. that, for a specified period not exceeding two years, they be ineligible to sit for such one or more of **ICAEW's** examinations as may be specified or for any specified part of any of those examinations;
 - e. that they be disqualified from such one or more of **ICAEW'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 the **respondent** by **ICAEW** before the date of the **order**;
 - f. that they be severely reprimanded;
 - g. that they be reprimanded.

- 22.8 If the **respondent** is a **Foundation Qualification Holder** the **orders** available are:
- a. that their **Foundation Qualification** status be removed;
 - b. that they be declared unfit to become a **member**;
 - c. that they be severely reprimanded;
 - d. that they be reprimanded;
 - e. that they be fined a specified sum.
- 22.9 If the **respondent** is a **Provisional Foundation Qualification Holder** or **CFAB Student** the **orders** available are:
- a. that they be declared unfit to become a **member** and/or **Foundation Qualification Holder** or holder of the **ICAEW** CFAB qualification;
 - b. that they cease to be a **Provisional Foundation Qualification Holder** or **CFAB Student** and be ineligible for re-registration as a **Provisional Foundation Qualification Holder** or **CFAB Student** for a specified period not exceeding two years;
 - c. that, for a specified period not exceeding two years, they be ineligible to sit for such one or more of **ICAEW's** examinations as may be specified or for any specified part of those examinations;
 - d. that they be disqualified from such one or more of **ICAEW's** examinations as may be specified or from any specified part of those examinations, not being an examination or part the result of which was duly notified to the **respondent** by **ICAEW** before the date of the **order**;
 - e. that they be severely reprimanded;
 - f. that they be reprimanded.
- 22.10 An **order** under this **bye-law** may include such terms and conditions (if any) as the **tribunal** considers appropriate including:
- a. in the case of an **order** for exclusion from membership made against a **member**, a recommendation that no application for their readmission be entertained before the end of a specified period; and
 - b. in the case of an order that a **member's practising certificate** be withdrawn indefinitely, a recommendation that no application for a **practising certificate** be entertained before the end of a specified period.
- 22.11 An **order** under this **bye-law** against a **respondent** or **respondent firm** may include a direction requiring them (at their own expense) to obtain advice from a specified source and to implement the advice obtained.
- 22.12 An **order** under this **bye-law** may include a direction that, if the **respondent** has previously been the subject of an **order** in accordance with **bye-law** 30, that interim **order** shall remain in place until such time as the period set out for appeal under **bye-law** 26.1 has passed or, in the case of an appeal, until the appeal has been finally determined.
- 22.13 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 one or more **formal complaints** against a **respondent** or **respondent firm** engaged in **public practice** or against a **regulated firm** finds one or more **formal complaints** proved in whole or in part, it may make one or more of the following **orders** against the **respondent** or **respondent firm** namely:
- a. that they shall waive the whole or part of any fee which has been agreed by or invoiced to a client;
 - b. that they shall pay to **ICAEW** the whole or part of any fee which the client has paid;
 - c. that they shall pay to **ICAEW** the whole or part of any sum of money which has been retained by the **respondent** or **respondent firm** in or towards payment of a fee by a client;
 - d. that they shall pay to **ICAEW** a sum assessed by the **tribunal** as the value (in whole or in part) of any commission to which the **respondent / respondent firm** has become entitled (whether or not it has been received by them) in connection with the facts or matters which are the subject of the **formal complaint** or **formal complaints**.

- 23.2 Before making an **order** under paragraph 1 the **tribunal**
- a. if the **respondent** or **respondent firm** is present or represented before it, shall give the **respondent / respondent firm** or their **representative** an opportunity to make representations to the **tribunal** with regard to the proposed **order**;
 - b. if the **respondent** or **respondent firm** is neither present nor represented before it, shall
 - i. adjourn the **hearing** for a reasonable period;
 - ii. serve on the **respondent / respondent firm** a **notice** describing the **order** it proposes to make under paragraph 1; and
 - iii. at the resumed **hearing** give the **respondent / respondent firm** or their **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 ICAEW Regulatory Board.

- 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 one or more **formal complaints** against a **respondent** or **respondent firm** engaged in **public practice** or against a **regulated firm** finds one or more **formal complaints** proved in whole or in part, it may make one or more of the following **orders** against the **respondent** or **respondent firm** namely

- a. that they 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, they shall provide the client with such particulars as may be specified;
- c. that they 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** or **formal complaints**.

24.2 If the **tribunal** finds one or more of **formal complaints** 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 **respondent** or **respondent firm** to undertake or complete any work which the **respondent / respondent firm** had been engaged to perform for a client; and
- b. if it does so, shall order the **respondent** or **respondent firm** 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 **respondent** or **respondent firm** 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 **tribunal** 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 **tribunal**.

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 **respondent** or **respondent firm** against whom an **order** has been made under paragraph 1 of **bye-law** 23 requiring them 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 one or more **formal complaints** against a **respondent** or **respondent firm** finds one or more **formal complaints** proved in whole or in part, it may make an **order** that the **respondent / respondent firm** shall pay a sum to **ICAEW** 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 or matters which constitute the **complaint(s)**; or
- b. making written representations to the **head of staff** on any of those facts or matters before the **Investigation Committee** has under **bye-law** 15 decided whether in its opinion the **complaint** or **complaints** disclose 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 sterling or such other sum as may from time to time be fixed for the purposes of this paragraph by the direction of the ICAEW Regulatory Board.

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 or matters which constitute the **complaint** or **complaints**.

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 one or more **formal complaints** shall, unless the **tribunal** otherwise directs, take effect at the end of the period of 28 days beginning with the date of service of the written record of the **tribunal's** decision on the **respondent / respondent firm** and the **Investigation Committee**.

25.2 If within the period referred to in paragraph 1 (or such longer period as may be allowed for service of the **notice** by the Chair or Vice-Chair of the **Appeal Committee** under **bye-law** 26.1) the **respondent / respondent firm** 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 **respondent / respondent firm**,

then, subject to paragraph 5, the **order** shall take effect, if at all, only after the appeal has been determined in accordance with these **bye-laws**.

25.3 If within the period referred to in paragraph 1, or such longer period as may be allowed for service of the application under **bye-law** 26A.3, the **Investigation Committee** applies for permission to appeal the decision of the **tribunal** and permission to appeal is granted by the Chair of the **Appeal Committee** (or Vice-Chair as the case may be) then, subject to paragraph 5, the **order** shall take effect, if at all, only after the appeal has been determined in accordance with these **bye-laws**.

25.4 If permission to appeal is not granted to the **Investigation Committee**, the **order** shall take effect at the end of the period of 14 days beginning with the date on which the **notice** of the Chair's (or Vice-Chair's) decision is served on the **Investigation Committee** and the **respondent / respondent firm**.

- 25.5 If, before the appeal has been so determined, the **respondent / respondent firm** or the **Investigation Committee** (as the case may be) by **notice** withdraws its 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 **PCD Committee Secretary**, 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.
- 25.6 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 of the respondent / respondent firm

- 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 a **respondent** or **respondent firm**, they may, within the period of 28 days beginning with the date of service of the **tribunal's** written record of decision on the **respondent / respondent firm** and the **Investigation Committee**, or such longer period as the Chair of the **Appeal Committee** or, failing the Chair, its Vice-Chair may allow, serve on the **PCD Committee Secretary** **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 **respondent / respondent firm**.
- 26.2 The **notice** of appeal shall be accompanied by a statement of the **respondent / respondent firm's** grounds of appeal, which shall comprise one or more of the following only:
- a. that 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. that the hearing was not conducted fairly due to a serious procedural irregularity; or
 - c. that significant, new evidence is available which was not available to the **respondent / respondent firm** at the time of the hearing, and which the **respondent / respondent firm** could not, with reasonable diligence, have been expected to obtain; or
 - d. that the **tribunal** based its findings or any **order** on a material mistake of fact or a series of mistakes of fact; or
 - e. that the **order** (including any **order** for the award of costs) was unreasonable having regard to all the circumstances made known to the **tribunal** at the hearing.
- 26.3 The grounds on which the **respondent / respondent firm** may appeal against an **order** include the ground that the amount of any costs ordered by the **tribunal** to be paid by the **respondent / respondent firm** is excessive (but not the ground that the amount of any costs ordered by the **tribunal** to be paid by **ICAEW** is too small).

- 26.4 The **respondent / respondent firm** shall not, following service of the **notice** of appeal on the **PCD Committee Secretary**, amend the grounds of appeal specified under paragraph 2, except with the permission of the **panel** appointed under **bye-law 27** to hear the appeal.
- 26.5 The **panel** may, at any time and of its own volition, amend the statement of grounds of appeal set out in the **respondent / respondent firm's notice** of appeal.
- 26.6 A **respondent / respondent firm** may withdraw a **notice** of appeal by serving on the **PCD Committee Secretary notice** to that effect.
- 26.7 If, following the period allowed for service of the **notice** of appeal under paragraph 1, the **respondent / respondent firm** serves on the **PCD Committee Secretary** a written application (in the prescribed form) for permission to serve **notice** of appeal under that paragraph notwithstanding the expiration of that period, then
- a. the Chair of the **Appeal Committee** or, failing the Chair, its Vice-Chair 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 **respondent / respondent firm** permission 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 the **respondent / respondent firm** at an address specified in the **respondent / respondent firm's** application.
- 26.8 Permission shall not be given under paragraph 7(b) unless the panel is satisfied that the **respondent / respondent firm** could not reasonably have been expected to serve **notice** of appeal within the period originally allowed by paragraph 1.
- 26.9 Where, in the case of an **order** made by a **tribunal** against a **respondent / respondent firm**, permission 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 **respondent / respondent firm** 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 permission, 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 permission.
- 26.10 In this **bye-law** 'prescribed' means prescribed by **regulations**.

Right of appeal of the Investigation Committee

- 26A.1 The **Investigation Committee** may appeal against an **order** of a **tribunal** dismissing a **formal complaint** or **formal complaints** if it considers either 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 on 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.

- 26A.2 A sub-committee of the **Investigation Committee** shall be responsible for determining whether an application for permission to appeal may be made in accordance with the grounds set out in paragraph 1.
- 26A.3 The **Investigation Committee** may, within 28 days beginning with the date on which the written record of the **tribunal's** decision is served on the **Investigation Committee** and the **respondent / respondent firm** (or such longer period as the Chair of the **Appeal Committee** or, failing the Chair, the Vice-Chair may within that period allow) serve on the **PCD Committee Secretary** an application seeking permission to appeal the **order** of the **tribunal**.
- 26A.4 If the **PCD Committee Secretary** receives an application for permission to appeal in accordance with paragraph 3, the **PCD Committee Secretary** shall notify the **respondent / respondent firm** of the application within 5 days beginning with the date of receipt of the application for information only. The **PCD Committee Secretary** shall forward a copy of the application and any supporting evidence and/or documentation to the Chair of the **Appeal Committee** (or, failing the Chair, the Vice-Chair of that committee) within the same period.
- 26A.5 If **Investigation Committee** does not apply for permission to appeal the **order** of the **tribunal** within the period specified in paragraph 3, the **tribunal's order** shall take effect in accordance with **bye-law** 25.1.
- 26A.6 An application for permission to appeal in accordance with paragraph 3 shall be determined by the Chair of the **Appeal Committee** (or, failing the Chair, the Vice-Chair) within 14 days beginning with the date of receipt of the application for permission to appeal. The **Appeal Committee** Chair (or, where relevant, the Vice-Chair) shall only grant the application for permission to appeal if they are satisfied that the appeal may be brought on one or more of the grounds set out in paragraphs 1(a), (b) or (c). It shall not be necessary for the **Appeal Committee** Chair (or, where relevant, the Vice-Chair) to decide whether the appeal is in the public interest and necessary to uphold the integrity of **ICAEW's** disciplinary and/or regulatory function.
- 26A.7 If a **panel** is appointed to hear an appeal in accordance with **bye-law** 27.1, the grounds on which the appeal is being brought by the **Investigation Committee** may only be amended with the **panel's** permission or at its direction.
- 26A.8 The **Investigation Committee** may at any time serve on the **PCD Committee Secretary** a **notice** withdrawing the application for permission to appeal or its appeal.

Panels

- 27.1 As soon as practicable after the receipt by the **PCD Committee Secretary** of a **notice** and grounds of appeal from the **respondent** or **respondent firm** under **bye-law** 26, or a decision is made to grant permission to the **Investigation Committee** to appeal under **bye-**

law 26A.6, the Chair of the **Appeal Committee** or, failing the Chair, its Vice-Chair shall appoint a **panel** to hear the appeal.

- 27.2 Subject to paragraph 7, a **panel** so appointed shall consist of
- a. a chair, being either the Chair or the Vice-Chair 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 ICAEW**; 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 Chair or the Vice-Chair 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 chair
- 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 2.
- 27.4 If at any time during the **hearing** of an appeal the chair 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**, they shall so inform the Chair or, failing the Chair, the Vice-Chair of the **Appeal Committee** who shall thereupon direct that the appeal be re-heard by a new **panel** so appointed.
- 27.5 The **Appeal Committee** may appoint a barrister or solicitor to act as legal assessor at the **hearing**.
- 27.6 Where a new **panel** is appointed pursuant to paragraphs 3 or 4, 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.
- 27.7 **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 **PCD Committee Secretary** shall serve on the **respondent / respondent firm** and the **Investigation Committee** a **notice** stating the time and place fixed for the **hearing**.
- 28.2 The **respondent / respondent firm** may appear before the **panel** in person or by a **representative**.
- 28.3 The **panel** shall give the **respondent / respondent firm** or their **representative**, and the representative of the **Investigation Committee**, a reasonable opportunity of being heard before it.

- 28.4 If the **respondent / respondent firm** 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 the **respondent / respondent firm**, the **panel** may hear the appeal in their absence.
- 28.5 If the **respondent / respondent firm** or their **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 **ICAEW**, 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-laws** 26.1 or 26A.3 against an **order** made in relation to one or more **formal complaints**, the **panel** appointed to hear the appeal
- shall consider any **formal complaints** (or parts of any **formal complaints**) which were found proved or disproved by the **tribunal**, as the case may be;
 - shall consider the record of the evidence given before, and the documents produced to, the **tribunal** at the **hearing**;
 - may, if it thinks fit, re-hear any witness who gave oral evidence before the **tribunal**; and
 - 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**
- affirm, vary or rescind the finding of the **tribunal** in relation to any **formal complaint** or any part of any **formal complaint**;
 - affirm, vary or rescind any **order** of the **tribunal**;
 - substitute for any **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** or **formal complaints**;
 - 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 the person's readmission be entertained before the end of a period specified in the **order**;
 - direct that the record of the **tribunal's** decision to be published under **bye-law** 35 shall not include the name of the **respondent / respondent firm**;
 - direct that the **formal complaint** or **formal complaints** 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-laws** 26.1 or 26A.3 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**.

INTERIM ORDERS

- 30.1 If, at any time, the Chair of any **Professional Standards Department committee** (excluding the **Disciplinary Committee**, the **Appeal Committee** and the **Fitness Committee**) or the **head of staff** considers that there are reasonable grounds to believe that one or more of the circumstances set out in paragraph 2 may exist, the Chair of the committee or the **head of staff** may make a written request to the **PCD Committee Secretary** that the **respondent** be referred to the **Disciplinary Committee** which will determine whether an interim **order** in relation to the **respondent** is required.
- 30.2 The circumstances referred to in paragraph 1 are that the **respondent**:
- a. has appeared before a court of competent jurisdiction charged with an indictable offence;
 - b. has been excluded from membership of any body (other than **ICAEW**) mentioned or referred to in **bye-law 7.1**;
 - c. is a sole practitioner who has abandoned their **practice**; or
 - d. is a **principal** of a **firm** whose **principals** have all abandoned the **practice**.
- 30.3 For the purposes of paragraph 2, a **respondent** shall, unless the contrary is proved, be presumed to have abandoned the **practice** of which they are a **principal** if they have:
- a. without reasonable explanation, been continuously absent from all offices of the **firm** for at least 30 days; or
 - b. persistently failed to respond to efforts by **ICAEW** to contact them at their **registered address** and **registered email address**.
- 30.4 Where the **PCD Committee Secretary** receives a request in accordance with paragraph 1, the **PCD Committee Secretary** shall refer the matter to the Chair of the **Disciplinary Committee** or, failing the Chair, the Vice-Chair, who shall as soon as practicable:
- a. appoint a **tribunal** to determine the referral comprised of three members of the **Disciplinary Committee**, one of whom is a **member** of **ICAEW** and the other two being **lay members**; and
 - b. appoint one of the two **lay members** as chair of the **tribunal**
- save that **regulations** may provide that a **tribunal** be constituted other than as required by this paragraph if a different constitution is prescribed or approved by a **relevant authority**.
- 30.5 As soon as practicable after the appointment of a **tribunal** in accordance with paragraph 4, the **PCD Committee Secretary** shall serve on the **respondent** and the **head of staff**:
- a. a copy of the referral received under paragraph 1;
 - b. copies of any documentation and/or evidence submitted in support of the referral; and
 - c. **notice** of the time and place fixed for the **hearing** of the **tribunal**.
- 30.6 The **respondent** shall be given reasonable notice of the **hearing** and an opportunity to respond in writing to the referral to the **PCD Committee Secretary**. Copies of any submissions and/or evidence received from the **respondent** shall be served by the **PCD Committee Secretary** on the **head of staff** prior to the **hearing** who shall in turn be given a reasonable opportunity to respond.

- 30.7 Upon application by either party in advance of the date fixed for the **hearing**, the **tribunal** Chair may make such directions as they deem necessary to ensure that the **respondent** has access to the **hearing** including, but not limited to:
- a. a direction that the **hearing** take place in a specific location;
 - b. a direction that the **respondent** be permitted to attend via videolink or telephone;
 - c. a direction that an interpreter can be used;
 - d. a direction that a hearing loop be used.
- 30.8 The **hearing** of the **tribunal** appointed under this **bye-law** may be conducted in person or by way of teleconference.
- 30.9 The **head of staff** may appoint a barrister or solicitor to represent **ICAEW** before the **tribunal** and the **respondent** may appear in person or be represented by a **representative**.
- 30.10 At the **hearing**, the **tribunal** shall give the **respondent** or their **representative** a reasonable opportunity of being heard before it, including the opportunity to provide written representations if the **respondent** and/or their **representative** are unable to attend the **hearing**.
- 30.11 If the **respondent** does not attend the **hearing**, and is not represented by a **representative**, then, provided that the **tribunal** is satisfied that the **notice** required by paragraph 5 was served on the **respondent**, the **tribunal** may hear the referral in the **respondent's** absence.
- 30.12 In determining a referral in accordance with paragraph 1, the **tribunal** may determine the procedure to apply to the **hearing** provided that procedure is just and fair. The **tribunal** shall consider any written or oral representations from the **respondent** (or their **representative**) and **ICAEW**, together with any documentary evidence or written or oral representations of other persons (not being the **respondent** or **ICAEW**) in relation to the referral.
- 30.13 The **hearing** of the **tribunal** shall take place in public, save where the **tribunal** orders that the **hearing** (or part of the **hearing**) shall be in private in accordance with **regulations**.
- 30.14 If the **tribunal** considers that:
- a. one or more of the circumstances set out in paragraph 2(a) – (d) exist; and
 - b. an interim order is necessary for the protection of the public or otherwise in the public interest;
- it shall make a finding to that effect and may make one or more of the **orders** specified in paragraph 15 on an interim basis:
- 30.15 The **orders** referred to in paragraph 14 are:
- a. that any certificate, licence or registration issued to the **respondent** by **ICAEW** be suspended or be subject to conditions;
 - b. that the **respondent's** membership be suspended;

- c. that the **respondent** appoint an alternate for the period of suspension and notify the **head of staff** and their clients of the identity and contact details of the alternate within a specified period;
- d. that the **respondent** notify their clients in writing of the suspension within a specified period, copying this notification to the **head of staff**;
- e. that the **respondent**, if they are employed or working in business, notify their employer of the suspension within a specified period, copying this notification to the **head of staff**;
- f. that the **respondent** provide **ICAEW** within a specified period with written confirmation that they have informed the **firm's** professional indemnity insurers of the suspension.

30.16 An **order** made under this **bye-law** may include such terms and conditions as the **tribunal** thinks fit and shall remain in force until such time as:

- a. it is discharged by the **tribunal** in accordance with **bye-law** 30A;
- b. it is discharged following an appeal by the **respondent** in accordance with **bye-law** 31; or
- c. an **order** of a **tribunal** appointed under **bye-law** 19.1 (or, on appeal, a **panel** appointed under **bye-law** 27.1) takes effect in relation to any **formal complaint(s)** arising from the same facts or matters as have led to the referral under paragraph 1 of this **bye-law**.

30.17 As soon as practicable following the making of an **order** under this **bye-law** the **PCD Committee Secretary** shall serve on the **respondent** a copy of the **order** and the **tribunal's** record of decision and the **order** shall take effect upon service on the **respondent**.

30.18 An **order** of the **tribunal** under this **bye-law** shall be published as soon as practicable, unless the **tribunal** of its own volition, or upon the application of either party at the time of the **hearing**, considers that there are reasonable grounds for believing that to publish the **order** would:

- a. prejudice any current proceedings or investigation;
- b. prevent a party from having a fair hearing before a tribunal; or
- c. be not otherwise in the public interest.

30.19 Except insofar as the **tribunal** in its absolute discretion otherwise directs, a statement published under paragraph 18 shall

- a. state the name of the **respondent** against whom the **order** was made; and
- b. describe the **order** or **orders** made against them, but need not include the name of any other person or body concerned.

30.20 In this **bye-law**, 'specified' means specified in the interim **order** of the **tribunal**.

Review of interim order

30A.1 Subject to paragraph 2, where an **order** is made against a **respondent** in accordance with **bye-law** 30.14, a **hearing** shall, if requested by the **respondent**, be held every 3 months

from the date of the **order** to enable the **tribunal** to conduct a review and determine whether:

- a. the **order** should remain in force;
- b. the terms of the **order** should be varied; or
- c. the **order** should be discharged.

30A.2 A review **hearing** may be held before 3 months on application of a **respondent** or **ICAEW** where the applicant can demonstrate that new evidence exists to support the application, which was not available at the time of the original **hearing** (or, where one or more review **hearing** has taken place subsequently, the date of the last review **hearing**). An application under this paragraph shall be made in accordance with **regulations** and shall be determined by the **tribunal** chair in their absolute discretion.

Costs (interim orders)

- 30B.1 In any **hearing** conducted in accordance with **bye-laws** 30 or 30A, the **tribunal** may, in its absolute discretion, make an **order** in respect of costs payable by either the **respondent** or **ICAEW** and paragraphs 1 – 4 of **bye-law** 33 shall apply in relation to such **orders** as if:
- a. references in those paragraphs to '**formal complaints**' or to a finding by a **tribunal** in relation to the **formal complaints** were, respectively, references to a referral or to a finding by the **tribunal** on a referral under **bye-law** 30 or a review application under **bye-law** 30A (as the case may be); and
 - b. in paragraph 3, the reference to **bye-law** 26.1 (specifying the period for appeal) is replaced with **bye-law** 31.1.

Appeals against interim orders

- 31.1 If a **tribunal** makes an **order** against a **respondent** under **bye-law** 30 (interim orders), the **respondent** may, within the period of 28 days beginning with the date of service of the written record of the **tribunal's** decision on the **respondent**, serve on the **PCD Committee Secretary notice** of appeal
- a. against the **order**; or
 - b. where applicable, against the **tribunal's** omission to direct that the statement required to be published under **bye-law** 30.18 not include the name of the **respondent**.
- 31.2 The provisions of these **bye-laws** mentioned in column 1 of the table set out in paragraph 6 (concerning appeals against **orders** made by **tribunals** in relation to **formal complaints**) shall apply in relation to appeals under paragraph 1 of this **bye-law** as if references in those provisions to an **order** made by a **tribunal** (on a **formal complaint** or **formal complaints**) and to the **respondent / respondent firm** were respectively references to an **order** made by a **tribunal** under **bye-law** 30, and to the **respondent** 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 make an **order** in respect of costs and paragraphs 6, 6A and 7 of **bye-law** 33 shall apply in relation to such **orders** as if references in those paragraphs to '**formal complaints**' were a reference to a referral under **bye-law** 30.
- 31.5 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 by the **respondent** 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 bye-law 1.2 | - |
| bye-law 26.2 - 26.10 | |
| bye-law 27 | - |
| bye-law 28.1 – 28.5 | <ul style="list-style-type: none"> a. in paragraph 1, omit 'and the Investigation Committee'; b. in paragraph 3, omit 'and the representative of the Investigation Committee'. |
| Bye-law 29 | <ul style="list-style-type: none"> a. in paragraph 1, omit 'against an order made in relation to one or more formal complaints,' and omit paragraph 1(a); b. in paragraph 2(a), for 'any formal complaint or any part of any formal complaint' substitute 'a referral under bye-law 30.1'; c. in paragraph 2(c), for 'on the formal complaint or formal complaints' substitute 'under bye-law 30'; d. for paragraph 2(f) substitute 'direct that the matter shall be referred back to the tribunal for reconsideration'. |
| bye-law 35 | <ul style="list-style-type: none"> a. in paragraph 2, for the words from 'Where' to 'in part' substitute 'Where, on an appeal, a panel rescinds an order made under bye-law 30'; b. in paragraph 3, omit 'the tribunal or, as the case may be,'; c. in paragraph 4, for '26.1' substitute '31.1'; |

| | |
|--|---|
| | d. in paragraphs 5 and 6 omit ' <i>tribunal</i> _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 one or more **formal complaints** shall, unless a longer period for payment (whether by instalments or not) is allowed by the **order**, be paid within the period of 35 days beginning with the date of service of the **tribunal's** written record of decision on the **respondent / respondent firm**.
- 32.2 If the **respondent / respondent firm** 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
- which is imposed by an **order** of a **panel** under these **bye-laws**; or
 - 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 **ICAEW** 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 fine imposed by these **bye-laws** is payable by instalments; and
 - any instalment is not duly received by **ICAEW** 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** finds that one or more **formal complaints** have been proved in whole or in part, it may order the **respondent** or **respondent firm** to pay to **ICAEW** by way of costs such sum as the **tribunal** may determine.

- 33.1A If the **tribunal** dismisses all **formal complaints** as unproved, it may order **ICAEW** to pay to the **respondent** or **respondent firm** by way of costs such sum as the **tribunal** may, in its absolute discretion, determine, up to such limit as prescribed from time to time in **regulations**. If the **respondent** or **respondent firm's** costs exceed the prescribed limit, a **tribunal** may order **ICAEW** to pay a higher amount if it finds that either:
- a. the **formal complaint** has, or the **formal complaints** have, been brought in bad faith; or
 - b. no reasonable person would have brought or pursued that **formal complaint** or those **formal complaints**.
- 33.1B If the circumstances in paragraphs 1A(a) and (b) do not apply, but the **tribunal** considers that the **respondent** or **respondent firm's** costs have been significantly increased as a result of one or more **formal complaints** being very poorly handled, it may order **ICAEW** to pay to the **respondent** or **respondent firm** by way of costs a sum which, in the opinion of the **tribunal**, reflects the additional costs which should not have been incurred by the **respondent** or **respondent firm**.
- 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 35 days beginning with the date of service of the **tribunal's** written record of decision on the **respondent / respondent firm**.
- 33.3 If, within the period allowed by **bye-law** 26.1, the **respondent / respondent firm** 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**, 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 **respondent / respondent firm** 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 **PCD Committee Secretary**; 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 **respondent** 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 Chair of the **Appeal Committee** or, failing the Chair, by its Vice Chair, on the written application of the **respondent**) 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 by a **respondent** or **respondent firm** against an **order** made by a **tribunal**, the **panel** appointed to hear the appeal may:
- a. by **order** reduce or cancel the amount of any costs ordered by the **tribunal** to be paid by the **respondent / respondent firm**;

- b. if the appeal is unsuccessful, order the **respondent / respondent firm** to pay to **ICAEW** by way of costs of the appeal such sum as the **panel** may in its absolute discretion determine;
- c. if it finds all **formal complaints** unproved, order **ICAEW** to pay to the **respondent** or **respondent firm** by way of costs such sum as the **panel** may, in its absolute discretion, determine, up to such limit as prescribed from time to time in **regulations**.
- d. if it dismisses all **formal complaints** as unproved and it finds that either:
 - i. the **formal complaint** has, or the **formal complaints** have, been brought in bad faith; or
 - ii. no reasonable person would have brought or pursued that **formal complaint** for those **formal complaints**,

order **ICAEW** to pay to the **respondent / respondent firm** a sum by way of costs in excess of the prescribed limit.

- 33.6A If the circumstances in paragraphs 6(d)(i) and (ii) do not apply, but the **panel** considers that the **respondent** or **respondent firm's** costs have been significantly increased as a result of one or more **formal complaints** being very poorly handled, it may order **ICAEW** to pay to the **respondent** or **respondent firm** by way of costs a sum which, in the opinion of the **panel**, reflects the additional costs which should not have been incurred by the **respondent** or **respondent firm**.
- 33.6B On an appeal by the **Investigation Committee** against an **order** made by a **tribunal**, the **panel** shall, if the appeal is unsuccessful, order **ICAEW** to pay to the **respondent** or **respondent firm** by way of costs a sum which, in the opinion of the **panel**, reflects the additional, reasonable costs incurred by the **respondent** or **respondent firm** in defending the appeal.
- 33.6C On an appeal by the **Investigation Committee** against an **order** made by a **tribunal**, the **panel** may, if the appeal is successful, order the **respondent** or **respondent firm** to pay to **ICAEW** by way of costs such sum as reflects the reasonable costs incurred by **ICAEW** up to and including the **tribunal** hearing only.
- 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 **ICAEW** under this **bye-law** must be received by **ICAEW** 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 **ICAEW** 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 respondent firms

- 34.1 Where a **respondent 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 **respondent** or former **respondent** 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, themselves 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 **respondent** or former **respondent** fails to pay on demand any amount which they are 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 the **respondent** or former **respondent** 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 complainants

- 34B When any sum of which payment is ordered under **bye-law** 23.1 or **bye-law** 24A.1 is paid to **ICAEW**, **ICAEW** shall pay the same sum to the client (if ordered under **bye-law** 23.1) or to the **complainant** (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 all **formal complaints**, or, on an appeal, a **panel** decides that all **formal complaints** have been proved neither in whole nor in part, it shall only cause a record of its decision to be published if the **respondent / respondent firm** 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 **respondent / respondent firm** and describe the finding and the other **order** or **orders** (if any) made against them, but need not include the name of any other person or body concerned in the **formal complaint(s)** 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 **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** if, at any time, the **Investigation Committee** considers a public statement is necessary to maintain public confidence in **ICAEW's** disciplinary and/or statutory function, the **Investigation Committee** may make such public statements as it thinks fit concerning:
- a. any matter relating to or connected with the performance by **ICAEW** of any of its disciplinary or statutory functions; or
 - b. the reasons why any facts or matters brought to the attention of the **head of staff** in accordance with **bye-law** 9.1, or any **complaints**, do not give rise to a potential liability or liability to disciplinary action under the **bye-laws**; or
 - c. any matter relating to or connected with the performance by a **tribunal** of its functions under **bye-law** 30 (interim orders).
- 36.2 The power to make statements under paragraph 1 shall be exercised in accordance with such guidelines as the ICAEW Regulatory Board may issue from time to time.
- 36.3 The Chair of the **Investigation Committee** may authorise the disclosure to a **complainant** 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 Chair of the **Investigation Committee** thinks appropriate.
- 36.5 A **hearing** of a **formal complaint(s)** or appeal may be held in public if the ICAEW Regulatory Board 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 ICAEW Regulatory Board 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 **respondent / respondent firm** or their **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 chair of the **tribunal** or **panel** may exclude the press and public from all or part of the proceedings if it appears to them desirable to do so in the interests of justice or for any other special reason.
- 36.8 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**.

THE FITNESS PROCESS

Referral

- 37.1 If, at any time, the Chair of any **Professional Standards Department committee**, the Chair of any **tribunal** or **panel** or the **head of staff** considers that there are reasonable grounds to believe that the **respondent's** fitness to participate in disciplinary proceedings and/or professional competence might be seriously impaired through their **physical or mental health**, that Chair or the **head of staff** shall make a written request to the **PCD Committee Secretary** that the **respondent** be referred to the **Fitness Committee** which will determine whether the **respondent** is so impaired.
- 37.2 At any time after the **head of staff** has decided that a matter is a **complaint** or **complaints** as defined in **bye-law** 9.3 and the **respondent** has been notified of the commencement of an investigation of that **complaint** or those **complaints**, the **respondent** may request, by written **notice** to the **PCD Committee Secretary**, a referral to the **Fitness Committee** if they believe that their fitness to participate in disciplinary proceedings and/or professional competence might be seriously impaired through their **physical or mental health**. A current medical report must be provided with the request for a referral to the **Fitness Committee**. The **PCD Committee Secretary** will serve **notice** of acknowledgement of the request for a referral on the **respondent** or their **representative** within 7 days of receipt.
- 37.3 Where the **PCD Committee Secretary** receives a request in accordance with paragraph 1, the **PCD Committee Secretary** shall notify the **respondent** that a referral to the **Fitness**

Committee has been made and shall provide the **respondent** with the facts and evidence relied on for the referral and shall request that the **respondent**:

- a. indicate in writing within 14 days of receipt of the **notice** whether they agree or object to the referral to the **Fitness Panel** and give the **respondent** the opportunity to make representations on the matters raised;
- b. attend a medical examination by a suitably qualified medical expert instructed by **ICAEW** to prepare a report for the **Fitness Panel** (such examination to be paid for by **ICAEW**) and that the **respondent** provide consent for the medical expert to access their medical records to assist with that examination.

- 37.4 Where the **PCD Committee Secretary** receives a request in accordance with paragraph 2, and the **PCD Committee Secretary** considers it appropriate for an additional medical report to be provided, the **PCD Committee Secretary** shall request that the **respondent** attend a medical examination by a suitably qualified medical expert instructed by **ICAEW** to prepare a report for the **Fitness panel** (such examination to be paid for by **ICAEW**) and that the **respondent** provide consent for the medical expert to access their medical records to assist with that examination.
- 37.5 Upon the service of a **notice** under paragraphs 1 or 2 the investigation or prosecution of the **complaint** or **complaints** will be automatically suspended until a decision is made concluding the fitness proceedings.
- 37.6 After the expiry of 14 days from the service of the **notice** under paragraphs 1 or 2, the **PCD Committee Secretary** shall provide the facts and evidence supporting the referral to the **Fitness Committee** Chair together with any representations received from the **respondent**.
- 37.7 When the **PCD Committee Secretary** receives the report from the medical expert appointed under paragraph 3(b) (“the medical report”), they shall provide a copy of this report to the **respondent** and ask for comments and/or representations on this report within 14 days from service of the report. Once 14 days have expired from the service of the report, the **PCD Committee Secretary** shall send a copy of the medical report and any representations made by the **respondent** to the **Fitness Committee** Chair for the purpose of determining whether a **Fitness Panel** should be convened.
- 37.8 The **PCD Committee Secretary** shall have the discretion to extend the time for representations to be received from the **respondent** under both paragraphs 3(a) and 7 if they consider such an extension of time is reasonable in the circumstances.
- 37.9 If the **respondent** has either confirmed in writing their refusal to attend a medical examination, or does not attend for a medical examination within a reasonable period (which shall not exceed 3 months), the **PCD Committee Secretary** shall ask the **Fitness Committee** Chair to consider whether the **respondent** should be referred to the **Fitness Panel** without the benefit of a medical report.
- 37.10 If, upon consideration of the documents and **notices** provided by the **PCD Committee Secretary** under paragraphs 6, 7 and 9, and any medical report provided by the **respondent**, the **Fitness Committee** Chair is of the opinion that there are no reasonable grounds for believing that the **respondent’s** fitness to participate in disciplinary proceedings and/or professional competence is seriously impaired through their **physical**

or mental health, the **Fitness Committee** Chair must make such a finding. Upon notification of such a finding, the **PCD Committee Secretary** shall notify such a finding to the **respondent** and the **head of staff**.

- 37.11 Upon a finding being made by the **Fitness Committee** Chair under paragraph 10, the suspension of the investigation/prosecution of the **complaint** or **complaints** will end and the **head of staff** shall re-start the investigation/prosecution of the **complaint(s)**.
- 37.12 If, after reviewing the documents and **notices** provided by the **PCD Committee Secretary** under paragraphs 6, 7 and 9, and any medical report provided by the **respondent**, the **Fitness Committee** Chair is of the opinion that there are reasonable grounds to believe that the **respondent's** fitness to participate in disciplinary proceedings or professional competence may be seriously impaired by their **physical or mental health**, the **Fitness Committee** Chair shall request the **PCD Committee Secretary** to convene a **Fitness Panel** to consider the matter. The **PCD Committee Secretary** shall notify the **respondent** and the **head of staff** of the decision to convene a **Fitness Panel** and the date when the **Fitness Panel** will meet to consider the matter.
- 37.13 There shall be no publicity regarding the decision to convene a **Fitness Panel** or the date when the **Fitness Panel** shall meet to consider the matter, but the **head of staff** shall be entitled to inform the **complainant** that the matter has been referred to the **Fitness Panel** for consideration and that the investigation/prosecution of the **complaint** or **complaints** has been suspended until a decision has been made concluding the fitness proceedings.
- 37.14 If the **respondent** disputes the determination made by the **Fitness Committee** Chair under paragraph 10, they must inform the **PCD Committee Secretary** in writing within 14 days of the date of receiving **notice** of the decision. If such written **notice** is received within the 14 day period, the **PCD Committee Secretary** shall convene a **hearing** of a **Fitness Panel** to consider whether the **respondent's** fitness to participate in disciplinary proceedings and/or professional competence is seriously impaired by their **physical or mental health**.
- 37.15 When the **Fitness Committee** Chair receives the facts and evidence under paragraph 6 of a referral, the **Fitness Committee** Chair shall have the power, by **notice** served on the **respondent**, to call for such information and explanations as they consider necessary to enable them to carry out their functions under this **bye-law**. It shall be the duty of any **respondent** on whom such a **notice** is served, to cooperate with the **Fitness Committee** Chair, or persons to whom the Chair has delegated their powers under these **bye-laws**, and to comply with the **notice** within 14 days of receipt or such longer period as the **Fitness Committee** Chair may allow.
- 37.16 The **Fitness Committee** Chair may consider the **respondent's** resignation of their membership, provisional membership or registration instead of appointing a **panel** in accordance with **bye-law** 38, if the resignation is made in writing.
- 37.17 When accepting a resignation from a **respondent** under paragraph 16, the **Fitness Committee** Chair may:
- a. order that any future application by the **respondent** for re-registration as a **provisional member, provisional foundation qualification holder** or **CFAB student** be considered by the **Fitness Committee** so that it can make an initial

- determination as to whether the **respondent's** professional competence is seriously impaired through their **physical or mental health**.
- b. impose such conditions as the **Fitness Committee** Chair considers appropriate, including a recommendation that no application for readmission or re-registration be considered before the end of a recommended period.
 - c. order that the investigation or prosecution of the **complaint** or **complaints** lay on file.

Convening a Fitness Panel

- 38.1 When the **Fitness Committee** Chair requests the **PCD Committee Secretary** to convene a **Fitness Panel** under paragraph 12 of **bye-law** 37 the Chair, or failing the Chair, the Vice-Chair of the **Fitness Committee** shall:
- a. appoint three members of the **Fitness Committee**, one of them being a **member of ICAEW** and two not being accountants, as a **Panel** of the **Fitness Committee** to hear that matter; and
 - b. appoint one of the three, being a non-accountant, as Chair of the **Fitness Panel**.
- 38.2 If, in the case of the **Fitness Panel** so appointed, any member of the **Fitness Panel**:
- a. is for any reason unable to attend the **hearing** or any adjourned **hearing** of the referral; or
 - b. is in the course of the **hearing** unable to continue to so attend
- then the **hearing** shall either be adjourned until the **Fitness Panel** member can attend or the referral shall be heard or re-heard by a new **Fitness Panel** appointed under paragraph 1.
- 38.3 If at any time during the **hearing** of a referral, the Chair of the **Fitness 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, they shall inform the **Fitness Committee** Chair or, failing the Chair, the **Fitness Committee** Vice-Chair, who shall thereupon direct that the referral be re-heard by a new **Fitness Panel** appointed under paragraph 1.
- 38.4 The **Fitness Panel** shall appoint an independent suitably qualified medical expert to act as a medical assessor at the hearing of the **Fitness Panel**. The medical assessor shall be independent of **ICAEW** and shall not have produced any of the reports which are to be considered by the **Fitness Panel** at the **hearing**.
- 38.5 If the decision of the **Fitness Panel** is likely to be contested, the **Fitness Panel** shall appoint a barrister or solicitor to act as legal assessor at the **hearing** of a referral.
- 38.6 Where a new **Fitness Panel** is appointed pursuant to paragraphs 2 and 3, no member of the previous **Fitness Panel** may be appointed as a member of the new one; but a person appointed as a medical or legal assessor may continue to act at the re-hearing.
- 38.7 Regulations may provide for a **Fitness Panel** to be constituted other than as required by paragraph 1 if a different constitution is prescribed or approved by a **relevant authority**.

Hearing of Fitness Panel

- 39.1 As soon as practicable after the appointment of a **Fitness Panel**, the **PCD Committee Secretary** shall serve on the **respondent** and the **head of staff** the bundle of papers

considered by the **Fitness Committee** Chair in reaching their decision under **bye-law** 37.12 and a **notice** of the time and place fixed for the **hearing** of the **Fitness Panel** which shall not be earlier than 28 days after service of the **notice** of referral.

- 39.2 Upon application by either party in advance of the date fixed for the **hearing**, the Chair of the **Fitness Panel** may make such directions as they deem necessary to ensure that the **respondent** has access to the **hearing** including, but not limited to:
- a. a direction that the **hearing** take place in a specific location;
 - b. a direction that the **respondent** be permitted to attend via videolink or telephone;
 - c. a direction that an interpreter can be used;
 - d. a direction that a hearing loop be used.
- 39.3 The **respondent** may appear before the **Fitness Panel** in person or by a **representative**.
- 39.4 The **Fitness Panel** shall give the **respondent** or their **representative** a reasonable opportunity of being heard before it, including the opportunity to provide written representations if the **respondent** is not able to attend in person or by a **representative**.
- 39.5 If the **respondent** does not attend, and is not represented at the **hearing**, then, provided the **Fitness Panel** is satisfied that the **notice** required by paragraph 1 was served on the **respondent**, the **Fitness Panel** may hear the referral in their absence.
- 39.6 The **head of staff** may appoint a barrister or solicitor to represent **ICAEW** before the **Fitness Panel**.
- 39.7 In determining under this **bye-law** whether or not a **respondent's** fitness to participate in disciplinary proceedings and/or professional competence is seriously impaired through their **physical or mental health**, the **hearing** will take place on an inquisitorial (not adversarial) basis and the **Fitness Panel** may consider written representations from the **respondent** and the **head of staff**, written reports and hear oral evidence, as it deems appropriate, including oral evidence from the **respondent**, from an expert witness relied upon by the **respondent** or from a medical examiner appointed under paragraph 3(b) or 4 of **bye-law** 37. However, the absence of a medical report or evidence shall not prevent the **Fitness Panel** from reaching a determination on the basis of the **respondent's** conduct.
- 39.8 The **Fitness Panel hearing** shall take place in private.

Powers of the Fitness Panel

- 40.1 If the **Fitness Panel** is of the opinion that the **respondent's** fitness to participate in disciplinary proceedings and/or professional competence is not seriously impaired through their **physical or mental health**, it shall make a finding to that effect and shall, save for exceptional circumstances, direct that the **head of staff** re-start the investigation or prosecution of the **complaint** or **complaints** as soon as practicable.
- 40.2 If the **Fitness Panel** is of the opinion that the **respondent's** fitness to participate in disciplinary proceedings and/or professional competence is seriously impaired through their **physical or mental health**, it shall make a finding to that effect and shall, unless it is of the opinion that in the circumstances it is inappropriate to do so, make one or more of the **orders** set out in paragraph 3.

- 40.3 If the **Fitness Panel** makes a finding as set out in paragraph 2, it may make one or more of the following **orders**:
- a. that any certificate, licence or registration issued to the **respondent** by **ICAEW** be suspended or be subject to conditions for up to a period of 24 months or until further order of the **Fitness Panel**; and/or
 - b. that the **respondent's** membership be suspended for a period of up to 24 months or until further order of the **Fitness Panel**; and/or
 - c. that the **respondent** appoint an alternate for the period of the suspension and notify the **head of staff** and their clients of the identity and contact details of the alternate within a time period set by the **Fitness Panel**; and/or
 - d. that the **respondent** notify their clients in writing of the suspension within a time period set by the **Fitness Panel** copying this notification to the **head of staff**; and/or
 - e. that the **respondent**, if they are employed or working in business, notify their employer of the suspension by the **Fitness Panel** within a time period set by the **Fitness Panel** copying this notification to the **head of staff**; and/or
 - f. that the **respondent** provide ICAEW within a time period set by the **Fitness Panel** with written confirmation that their professional indemnity insurer is aware of the suspension.
 - g. that the investigation or prosecution of the **complaint** or **complaints** against the **respondent** continues to be suspended concurrent with the period of suspension ordered under a and b above.
- 40.4 An **order** made under paragraph 3 must:
- a. set a date not more than 24 months from the date of the order of suspension for a **review hearing** to be convened to review the suspension; and
 - b. set out the nature of the impairment the **Fitness Panel** considers the **respondent** to be suffering from and what steps the **respondent** would need to take in order to be considered to be sufficiently recovered or rehabilitated for the suspension to be lifted; and
 - c. set a minimum period (recommended period) based on all of the circumstances including the medical evidence and the steps outlined under b, before which an application for the convening of an interim review **hearing** cannot be made with the recommended period starting on the date of the **order** or the date of any unsuccessful appeal against the **order** made under **bye-law** 49.
- 40.5 The **Fitness Panel** may accept the **respondent's** resignation of their membership, provisional membership or registration instead of making an **order** under paragraph 3, if the resignation is made in writing.
- 40.6 When accepting a resignation from a **respondent** under paragraph 5, the **Fitness Panel** may:
- a. order that any future application by the **respondent** for re-registration as a **provisional member, provisional foundation qualification holder** or **CFAB student** be considered by the **Fitness Committee** so that it can make an initial determination as to whether the **respondent's** professional competence remains seriously impaired through their **physical or mental health**.
 - b. impose such conditions as the **Fitness Panel** considers appropriate, including a recommendation that no application for readmission or re-registration be considered before the end of a recommended period.

- c. order that the investigation or prosecution of the **complaint** or **complaints** lay on file.

40.7 Any **order** made under paragraph 3 shall be published unless there are exceptional circumstances which justify no publicity. Such publicity shall not state more than the name of the **respondent**, what (if any) suspension or conditions have been imposed upon them and the length of any suspension or conditions.

Consent orders

- 41.1 At any time after a request for a referral is received under paragraph 1 or 2 of **bye-law** 37, the **respondent** may request the **PCD Committee Secretary** to enter into a consent **order** to conclude the fitness proceedings. However, no consent **order** can be entered into without prior approval of the terms of the consent **order** by the **Fitness Committee** Chair (or **Panel** Chair if so appointed) having considered all available facts and evidence.
- 41.2 Upon receipt of a request under paragraph 1, the **PCD Committee Secretary** shall provide a copy of that request to the **head of staff** and, provided they agree to the request, the **head of staff** may propose a draft consent **order** to conclude the fitness proceedings. Such a consent **order** can propose any or all of the **orders** available to a **Fitness Panel** under **bye-law** 40.3
- 41.3 When the **PCD Committee Secretary** has received the draft consent **order** from the **head of staff**, they shall provide it to the **respondent** making it clear that, even if the **respondent** accepts the terms of the draft consent **order**, it cannot be finalised unless, and until, it is approved by the **Fitness Committee** Chair or **Panel** Chair as appropriate.
- 41.4 If the **respondent** confirms their agreement in writing to the terms of the draft consent **order** by signing and returning one copy of the draft consent **order**, the **PCD Committee Secretary** shall provide a copy of the draft consent **order** to the **Fitness Committee** Chair or **Panel** Chair (as appropriate) together with all available facts and evidence relating to the conduct or medical condition of the **respondent**.
- 41.5 If, on a review of the draft consent **order** and all available facts and evidence, the **Fitness Committee** Chair or **Panel** Chair approves the consent **order** then they shall sign the consent order on behalf of the **Fitness Committee** and that **order** will be final and the **PCD Committee Secretary** shall provide a copy of the final consent **order** to the **respondent** and to the **head of staff**.
- 41.6 If, on a review of the draft consent **order** and all available facts and evidence, the **Fitness Committee** Chair or **Panel** Chair does not approve the consent **order** then they shall refuse to make the **order** and shall provide written reasons for their refusal to the **PCD Committee Secretary**, who shall send them to the **head of staff** and the **respondent**.
- 41.7 The fact that a request for a consent **order** has been made shall not delay the processing of the referral or the convening of a **Fitness Panel** to hear an interim or substantive matter under these **bye-laws**.

Applications for interim review

- 42.1 The **respondent** may apply to the **PCD Committee Secretary** for a review of the suspension, condition or other **order** made by the **Fitness Panel** under paragraph 3 of **bye-law** 40 earlier than 24 months after the date of the **order**, provided:
- a. the recommended period has expired; and
 - b. no **interim review hearing** has taken place in the previous 6 months; and
 - c. the application is accompanied by a current medical report confirming that, in the opinion of a suitably qualified medical expert, the **respondent's** fitness to participate in disciplinary proceedings and professional competence is no longer seriously impaired through their **physical or mental health**.

The convening of interim review and review hearings

- 43.1 Where an **order** is made under paragraph 3 of **bye-law** 40, the **PCD Committee Secretary** must convene a **Fitness Panel** for a **review hearing** no later than 24 months after the date of the **order**.
- 43.2 When the **PCD Committee Secretary** determines that an application has been made in accordance with paragraph 1 of **bye-law** 42, they shall convene a meeting of the **Fitness Panel** for an **interim review hearing** as soon as is practicable to do so.
- 43.3 The **Fitness Panel** convened for an **interim review hearing** or a **review hearing** should comprise the same members who made the original **order** except where one or more members of the original **Fitness Panel** are no longer members of the **Fitness Committee** or where convening the same **Fitness Panel** members would lead to an unreasonable delay in holding the **interim review hearing** or the **review hearing**.
- 43.4 If new **Fitness Panel** members need to be appointed, the **Fitness Committee** Chair shall appoint replacement members of the **Fitness Panel**, ensuring that the **Fitness Panel** is comprised of one **member** of **ICAEW** and two non-accountant members and that the Chair of the **Fitness Panel** should be one of the non-accountant members.
- 43.5 If, in the case of a **Fitness Panel** appointed under paragraphs 1 and 2, any member of the Panel:
- a. is for any reason unable to attend the **interim review hearing** or the **review hearing**; or
 - b. is, in the course of the **hearing**, unable to continue to so attend
- then the **hearing** shall either be adjourned until the **Fitness Panel** member can attend or, if this would lead to an unreasonable delay, a replacement **Fitness Panel** should be appointed under paragraph 4.
- 43.6 If, at any time, during an **interim review hearing** or a **review hearing**, the Chair of the **Fitness Panel**, appointed under paragraphs 1 and 2, is for any reason of the opinion that it is impracticable or would be contrary to the interests of justice for the **interim review hearing** or the **review hearing** to be completed by that **Fitness Panel**, they shall inform the **Fitness Committee** Chair or, failing the Chair, any Vice-Chair of the **Fitness Committee**, who shall appoint a new **Fitness Panel** to conduct the **interim review hearing** or the **review hearing** under paragraph 4.
- 43.7 The **Fitness Panel** shall appoint an independent suitably qualified medical expert to act as medical assessor at an **interim review** or **review hearing**. The medical assessor shall be

independent of **ICAEW** and shall not have produced any of the reports which are to be considered by the **Fitness Panel** at the **hearing**.

- 43.8 The **Fitness Panel** may appoint a barrister or solicitor to act as legal assessor at the **hearing** of an interim review or review application.
- 43.9 Regulations may provide for the **Fitness Panel** to be constituted other than as required by paragraph 3 or 4 if a different constitution is prescribed or approved by a relevant authority.
- 43.10 As soon as is practicable after the convening of a **Fitness Panel** for an **interim review hearing** or a **review hearing**, and no later than 28 days before the date of the **interim review hearing** or a **review hearing**, the **PCD Committee Secretary** shall serve on the **respondent** and the **head of staff**:
- a. a **notice** specifying the time and place fixed for the **interim review hearing** or **review hearing**;
 - b. a copy of the original **order** and directions made by the **Fitness Panel** under paragraph 3 of **bye-law** 40;
 - c. a copy of any interim review application and order and directions made by the **Fitness Panel**;
 - d. a full copy of the papers considered by the **Fitness Panel** when making the original **order** under paragraph 3 of **bye-law** 40 and in considering any interim review application.

Interim review and review hearings

- 44.1 The **respondent** may appear before the **Fitness Panel** in person or by a **representative**.
- 44.2 The **Fitness Panel** shall give the **respondent** or their **representative** a reasonable opportunity of being heard before it, including the opportunity to provide written representations if the **respondent** is not able to attend in person or by a **representative**.
- 44.3 If the **respondent** does not attend, and is not represented at the hearing, then, provided that the **Fitness Panel** is satisfied that the **notice** required by paragraph 10 of **bye-law** 43 was served on the **respondent**, the **Fitness Panel** may conduct the **interim review hearing** or the **review hearing** in their absence.
- 44.4 Upon application by either party, the Chair of the **Fitness Panel** may make such directions as they deem necessary to ensure that the **respondent** has access to the **hearing** including, but not limited to;
- a. a direction that the **hearing** take place in a specific location;
 - b. a direction that the **respondent** be permitted to attend via video link or telephone;
 - c. a direction that an interpreter can be used;
 - d. a direction that a hearing loop be used.
- 44.5 The **head of staff** may instruct a barrister or solicitor, to represent ICAEW before the **Fitness Panel**.

- 44.6 In determining under this **bye-law** whether or not a **respondent's** fitness to participate in disciplinary proceedings/professional competence remains seriously impaired through their **physical or mental health**, the **interim review hearing** and the **review hearing** will take place on an inquisitorial (not adversarial) basis and the **Fitness Panel** may hear oral evidence as it deems appropriate, including oral evidence from the **respondent**, oral or written evidence from an expert witness relied upon by the **respondent** or a medical examiner appointed by **ICAEW** and written representations from the **respondent**. However, the absence of a recent medical report or evidence shall not prevent the **Fitness Panel** from reaching a determination on the basis of the **respondent's** conduct.
- 44.7 All **interim review** and **review hearings** shall take place in private.

Powers of the Fitness Panel on an interim review hearing

- 45.1 If the **Fitness Panel** hearing an interim review application is of the opinion that the **respondent's** fitness to participate in disciplinary proceedings and/or professional competence remains seriously impaired through their **physical or mental health**, it shall make a finding to that effect and **order** that all of the original **orders** made under paragraph 3 of **bye-law** 40 continue until a **review hearing** is convened in accordance with paragraph 1 of **bye-law** 43, or may vary any of the original **orders** made under paragraph 3 of **bye-law** 40, or make additional **orders** available under paragraph 3 of **bye-law** 40 as it thinks appropriate in the circumstances.
- 45.2 If the **Fitness Panel** is of the opinion that the **respondent's** fitness to participate in disciplinary proceedings and/or professional competence is no longer seriously impaired by their **physical or mental health**, it shall make a finding to that effect and it may:
- a. discharge or vary any or all of the original **orders** made under paragraph 3 of **bye-law** 40;
 - b. make such **orders** as it considers appropriate, for example, in relation to the **respondent's** continuing professional development.
- 45.3 If an **order** is made to end the suspension of a **respondent's** membership or provisional membership, licence, certificate or registration, the **Fitness Panel** must determine in all of the circumstances of the case whether the investigation or prosecution of the original **complaint** or **complaints** against the **respondent** should be re-started or whether the **complaint** or **complaints** should be closed and should make such directions or **orders** as are appropriate to give effect to that determination.

Powers of the Fitness Panel on a review hearing

- 46.1 If the **Fitness Panel** is of the opinion that the **respondent's** fitness to participate in disciplinary proceedings and/or professional competence remains seriously impaired through their **physical or mental health**, it shall make a finding to that effect and it may:
- a. order that the suspension of the **respondent's** membership or provisional membership and/or any licence, certificate or registration be continued indefinitely or that any conditions imposed be extended indefinitely or until such time that a successful interim review application is made;
 - b. set a recommended period before the expiry of which no interim review application can be made;

- c. accept the **respondent's** resignation of their membership, provisional membership or registration and, in the case of a **provisional member, provisional foundation qualification holder** or **CFAB student**, order that any future application by the **respondent** for re-registration be considered by the **Fitness Committee** so that it can make an initial determination as to whether the **respondent's** professional competence remains seriously impaired through their **physical or mental health**.
- 46.2 If the **Fitness Panel** is of the opinion that the **respondent's** professional competence is no longer seriously impaired by their **physical or mental health**, it shall make a finding to that effect and it may:
- a. discharge or vary any or all of the original **orders** made under paragraph 3 of **bye-law** 40;
 - b. make such **orders** as it considers appropriate, for example, in relation to continuing professional development.
- 46.3 If an **order** is made to end the suspension of a **respondent's** membership or provisional membership, licence, certificate or registration, the **Fitness Panel** must determine in all of the circumstances of the case whether the investigation or prosecution of the original **complaint** or **complaints** against the **respondent** should be re-started or whether the **complaint** or **complaints** should be closed.
- 46.4 An **order** made under paragraph 1 must contain details of the nature of the impairment the **Fitness Panel** considers the **respondent** to be suffering from and what steps the **respondent** would need to take in order to be sufficiently recovered or rehabilitated for the **orders** made under that paragraph to be discharged or varied.
- 46.5 Any **order** made under paragraphs 1 or 2 shall be published unless there are exceptional circumstances which justify no publicity. Such publicity shall not state more than the name of the **respondent** and whether any suspension or conditions continue or whether the suspension and conditions have been terminated or varied.

Expedited order procedure

- 47.1 If, at any time after a request for a referral is made under paragraphs 1 or 2 of **bye-law** 37, the **Fitness Committee** Chair is of the opinion that it is necessary for the protection of the public or is otherwise in the public interest or is in the interests of the **respondent** for a **Fitness Panel** to be convened urgently to consider making an expedited **order** to suspend the **respondent's** membership, provisional membership, practising certificate or other certificate, licence or registration, the **Fitness Committee** Chair shall request the **PCD Committee Secretary** to convene an expedited **order hearing**.
- 47.2 A **Fitness Panel** convened to consider making an expedited **order** shall be appointed in the same way as, and in accordance with, paragraphs 1-7 of **bye-law** 38 except that the **Fitness Committee** Chair shall have a discretion as to whether a medical assessor is appointed.
- 47.3 Not less than 7 days before an expedited **order** hearing, the **PCD Committee Secretary** shall serve upon the **respondent** a **notice** stating the time and place fixed for the expedited **order** hearing and copies of all of the documents considered by the **Fitness Committee** Chair under paragraph 1 above.

- 47.4 Upon application by either party prior to the expedited **order hearing**, the **Fitness Panel Chair** may make such directions as they deem necessary to ensure that the **respondent** can participate at the **hearing** including, but not limited to the following directions:
- a. that the **hearing** take place in a specific location;
 - b. that the **respondent** be permitted to attend via video link or telephone;
 - c. that an interpreter can be used;
 - d. that a hearing loop can be used;
 - e. that the **respondent** be permitted to make written representations.
- 47.5 If the **respondent** does not attend and is not represented at the expedited **order hearing** then, provided that the **Fitness Panel** is satisfied that the notice required by paragraph 3 was served on the **respondent**, the expedited **order hearing** can continue in their absence.
- 47.6 In determining under this **bye-law** whether an expedited **order** should be made, the hearing shall take place on an inquisitorial (not adversarial) basis and the **Fitness Panel** may consider written representations and reports and hear oral evidence if it deems it appropriate, including oral evidence from the **respondent** or their **representative**, from any medical expert instructed by the **respondent** and from any medical examiner instructed by **ICAEW** if a medical examination has already taken place. However, the absence of any medical evidence shall not prevent the **Fitness Panel** from reaching a determination on the basis of the evidence and facts before them.
- 47.7 If, after considering all of the evidence referred to in paragraph 6, the **Fitness Panel** is of the opinion that there are reasonable grounds for believing that the **respondent** may be suffering from a serious impairment of their **mental or physical health** and it is necessary for the protection of the public or is otherwise in the public interest or in the interests of the **respondent** for an expedited **order** to be made, the **Fitness Panel** can make an expedited order suspending the **respondent's** membership, provisional membership, practising certificate, certificate, licence or registration for the period until a full **hearing** can be held.
- 47.8 An expedited **order** made under paragraph 7 can last for a maximum of 3 months, before the expiry of which the **PCD Committee Secretary** must convene a **Fitness Panel** under **bye-law** 38 whether or not any more evidence, medical or otherwise, becomes available during that period.
- 47.9 Where the **respondent** applies for, and is granted, an adjournment of a **hearing** convened under **bye-law** 38 by way of paragraph 8, the **Fitness Panel Chair** may grant an extension of the expedited **order** until the adjourned **hearing** takes place.
- 47.10 If the **Fitness Panel** is of the opinion at an expedited **order hearing** that no expedited **order** should be made, then the **PCD Committee Secretary** shall convene a full **Fitness Panel** in accordance with **bye-law** 38, as if it had been requested by the **Fitness Committee Chair**, under paragraph 12 of **bye-law** 37.
- 47.11 Any expedited **order** made by the **Fitness Panel** will be published by the **PCD Committee Secretary** unless there are exceptional circumstances which justify no publicity. Such publicity shall not state more than the name of the **respondent**, what (if any) suspension or conditions have been imposed upon them and the length of any suspension or conditions.

Costs of the fitness process

- 48.1 If a **Fitness Panel** is convened as a result of a written referral by a **respondent** under paragraph 2 of **bye-law 37**, and the **Fitness Panel** finds that the **respondent** is fit to participate in disciplinary proceedings and/or that the **respondent's** professional competence is not seriously impaired, then the **Fitness Panel** may order the **respondent** to pay to **ICAEW** by way of costs such sum as the **Fitness Panel** may determine to be appropriate.
- 48.2 If the **Fitness Panel**, convened as a result of a written referral under paragraph 1 or 2 of **bye law 37**, is of the opinion that the **respondent's** fitness to participate in disciplinary proceedings and/or professional competence is seriously impaired by their physical or mental health, then it shall not make an order relating to costs against the **respondent**.
- 48.3 Any costs ordered under paragraph 1 shall, unless a longer period for payment is allowed in the **order**, be paid within the period of 35 days beginning with the date of service of the **Fitness Panel's** written record of decision on the **respondent**.
- 48.4 If, within the period allowed by **bye-law 26.1**, the **respondent** serves **notice** of appeal against an **order** for payment of costs made under this **bye-law**, those costs shall not become payable until the appeal has been determined under these **bye-laws** or withdrawn by the **respondent**, and shall then be payable, if at all, in accordance with the following provisions of this **bye-law** and **bye-law 49**.
- 48.5 Any instalment of costs payable to **ICAEW** under this **bye-law** must be received by **ICAEW** 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).
- 48.6 Where
- a. any costs ordered by these **bye-laws** are payable by instalments; and
 - b. any instalment is not duly received by **ICAEW** as required by paragraph 5
- 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 5 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.

Right of appeal against orders of the Fitness Committee

- 49.1 The provisions of these **bye-laws** mentioned in column 1 of the table set out in paragraph 5 (which relate to appeals against **orders** made by **tribunals**) shall apply in relation to appeals under this paragraph as if references in those provisions to a **tribunal**, to an **order** made by a **tribunal** (on a **formal complaint** or **formal complaints**) and to the **respondent / respondent firm** were respectively references to the **Fitness Panel** of the **Fitness Committee**, to an **order** made by it under **bye-laws 37, 40, 45, 46 or 47** and to the **respondent** against whom the **order** was made.

- 49.2 In their application by virtue of paragraph 1 the provisions mentioned in column 1 of that table shall have effect subject to any further modifications specified in column 2 of the table.
- 49.3 On an appeal under paragraph 1 of **bye-law** 26 (as amended by paragraph 49.5 below) the **panel** appointed to hear the appeal may, whether the appeal is successful or not, **order** the **respondent** concerned to pay **ICAEW** by way of costs of the appeal such sum as the **panel** may in its absolute discretion determine.
- 49.4 Any costs ordered under paragraph 3 shall, unless a longer period for payment (whether by instalments or not) is allowed by **order** of the **Appeal Committee**, 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.

49.5 The following is the table referred to above:-

| | |
|------------------------------|--|
| <p>Bye-law 26</p> | <p>In paragraph (1) delete the words ‘Subject to bye-law 33(5) in the case of an order for exclusion from membership’ and replace ‘respondent / respondent firm and the Investigation Committee’ with ‘respondent’.</p> <p>In paragraph (1) delete the entirety of sub-paragraph (b). Delete paragraph (3)</p> |
| <p>Bye-law 27</p> | <p>Add a further sub-paragraph (8) reading: ‘The Appeal Committee may appoint an independent suitably qualified medical expert to act as medical assessor at the hearing. If appointed, the medical assessor shall be independent of ICAEW and shall not have produced any of the reports which are to be considered by the Fitness Panel at the hearing.’</p> |
| <p>Bye-law 28</p> | <p>In paragraphs (1), (3) and (6) for ‘Investigation Committee’ substitute ‘Fitness Committee’.</p> <p>In paragraph (2) add the words ‘or may provide written representations if they are not able to attend in person or by representative.’</p> |
| <p>Bye-law 29</p> | <p>Delete paragraph 1(a) in paragraph 1(b) for ‘the tribunal at the hearing substitute ‘the Fitness Panel’.</p> <p>In paragraph 2(c) for ‘which the tribunal might have made on the formal complaint or formal complaints’ substitute ‘which the Fitness Panel may have made at the time of the original hearing’.</p> <p>In paragraph 2(d) remove the words ‘including, in the case of an order for the exclusion of a member from membership, a recommendation that no application for the person’s readmission be entertained before the end of the period specified in the order.’ Paragraph 2(e) shall not apply.</p> |

In paragraph 2(f) for '19(1)' substitute '38.1 or 43.1 or 47.2' and for '**formal complaint** or **formal complaints**' substitute 'matter' or 'review'.

- 49.6 Any **order** made under paragraphs 1 or 2 shall be published unless there are exceptional circumstances which justify no publicity. Such publicity shall not state more than the name of the **respondent** and whether any suspension or conditions continue or whether the suspension and conditions have been terminated or varied.

SCHEDULE - BYE-LAW 2 - CONSTITUTION OF INVESTIGATION, DISCIPLINARY, FITNESS 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 pay reasonable expenses of the members of a Committee. The **Council** will also pay remuneration to members of a Committee in accordance with the payment policies approved and revised from time to time by the **ICAEW** Regulatory Board.
- 1.4 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. Approval of such **regulations** (and amendments thereto) shall be by a majority of the Committee members.

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:
- one half of the total number of members of the Committee; or
 - 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
 - such higher number as regulations may provide if a different constitution is prescribed or approved by a **relevant authority**.
- 2.3 Where the required number for the Committee under 2.2 differs when **legal services work** is to be considered, the Committee will delegate from their members to a Legal Services Sub-committee whose members meet the required number for this purpose.

- 2.4 The **Investigation Committee** may co-opt other persons, being either **members** of **ICAEW** or persons who are **lay members**, provided that the required number of **lay members** is maintained.
- 2.5 At a meeting of the **Investigation Committee**, a quorum shall consist of:
- a. four members of the **Investigation Committee** (or in the case of **legal services work**, of the Legal Services Sub-committee), of whom two must be **members** of **ICAEW** and two must be **lay members**; or
 - b. such other constitution as is prescribed or approved by a **relevant authority** if **regulations** so provide.
- 2.6 A meeting includes any consideration by the **Investigation Committee** through the medium of conference telephone, video conference or similar form of communication provided that all persons participating in the meeting are able to communicate simultaneously with each other throughout the meeting. A member of the **Investigation Committee** participating in any meeting in this way is deemed to be present in person at the meeting and is counted in the quorum. Such a meeting shall be deemed to take place where the largest group of those participating is assembled or, if there is no such group, where the chair of the meeting is.

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 The **Disciplinary Committee** may co-opt other persons, being members of the **Appeal Committee** or the **Fitness Committee**, to deal with specific cases, provided that:
- a) no person shall be appointed to a **tribunal** and take part in a decision concerning a case if, while as a member of the **Investigation Committee**, **Appeal Committee** or **Fitness Committee**, they took part in a decision concerning that case or the **respondent / respondent firm**; and
 - b) the required number of **lay members** is maintained.

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 Chair and Vice-Chair of the **Appeal 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** they shall with immediate effect cease to be a member of the **Appeal Committee**.

- 4.5 The **Appeal Committee** may co-opt other persons, being members of the **Disciplinary Committee** or the **Fitness Committee**, to deal with specific cases, provided that:
- a) no person shall be appointed to a **panel** and take part in a decision concerning a case if, while as a member of the **Investigation Committee, Disciplinary Committee** or **Fitness Committee**, they took part in a decision concerning that case or the **respondent / respondent firm**; and
 - b) the required number of **lay members** is maintained.

Reviewers of complaints

- 5.1 The **Council** shall appoint one or more **reviewers of complaints** who shall be lay persons.
- 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 each **reviewer of complaints** against any civil liability incurred by them 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.
- 5.5 For the purposes of paragraph 5.1 of this Schedule a lay person shall mean someone who is not and never has been a member, affiliate or employee of **ICAEW** or another accountancy body. Furthermore solicitors and those with legal training shall not be regarded as lay persons when considering **complaints** about legal services work in accordance with **bye-laws** 17 and 18.

The Fitness Committee

- 6.1 The **Fitness Committee** shall consist of the same persons, of whom at least the required number must be **lay members**, as the **Disciplinary Committee**.
- 6.2 Paragraph 2.2 of this Schedule (meaning of 'required number') applies for this purpose.
- 6.3 The **Fitness Committee** may co-opt other persons, being members of **Appeal Committee**, to deal with specific cases, provided that:
- a) no person shall be appointed to a **Fitness Panel** and take part in a decision concerning a case if, while a member of the **Investigation Committee, Disciplinary Committee** or **Appeal Committee**, they took part in a decision concerning that **respondent**, and
 - b) the required number of **lay members** is maintained.
- 6.4 The **Fitness Committee** may make such **regulations** (not inconsistent with the provisions of these **bye-laws**) as it considers necessary for the performance of its functions. Approval of such **regulations** (and amendments thereto) shall be by a majority of **Fitness Committee** members.