

Date: 1 January 2023



ICAS Discipline and Appeal Tribunals Regulations

The Institute of Chartered Accountants of Scotland

Index

Council, in terms of Rules 12.3 of the ICAS Rules, hereby makes the following Regulations.

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1. General

Citation and commencement

- 1.1 These Regulations may be cited as the ICAS Discipline and Appeal Tribunals Regulations and shall come into force on 1 January 2023.

Definitions

- 1.2 In these Regulations words and phrases have the same meaning as in the ICAS Rules and, unless the context requires otherwise:

Appeal – an appeal against a decision of Council, a Discipline Tribunal, the Committee, or a Regulatory Committee, which is made and determined under these Regulations.

Appellant – the individual or entity making an Appeal.

Clerk – an official appointed by ICAS, who is responsible for the administrative arrangements for Discipline and Appeal Tribunals under these Regulations.

Chair – the person chairing a Discipline or Appeal Tribunal.

Committee – the Investigation Committee of ICAS, as appointed by the Regulation Board under the General Regulations.

Complaint – a formal complaint intimated to the Clerk by the Committee under these Regulations, including Complaints which are conjoined.

Defender – the person or entity who is the subject of a Complaint or an Interim Order Application under these Regulations.

Disciplinary Action – a finding under the Rules as follows: (i) for a Member, CA Student Member or Affiliate, a finding of guilt under Rule 13.1, (ii) for a Firm, a finding of guilt under Rule 13.7.

Discipline Board – the Discipline Board of ICAS, as appointed under the Rules.

Discipline & Appeal Panel – the Discipline & Appeal Panel appointed by the Disciplinary Appointments Committee under the General Regulations.

Disciplinary Appointments Committee – the Disciplinary Appointments Committee established by Council under the General Regulations.

Hearing – a hearing, other than a Preliminary Hearing, at which a Discipline or Appeal Tribunal considers, assesses and/or determines a Complaint, Appeal, Interim Order Application, or Joint Order Application.

Interim Order Application – an application for a Discipline Tribunal to make an Interim Order under Regulation 6.10.

Joint Order Application – an application for a Discipline Tribunal to make an Order under Regulation 8.1.

Order – means as follows: (i) an order made by a Discipline or Appeal Tribunal under Regulations 3.23 or 3.24, (ii) a direction made by a Discipline or Appeal Tribunal under Regulations 3.30, 3.31, or 3.34 and (iii) an interim order made by a Discipline Tribunal under Regulation 6.10.1.

Parties – means as follows: (i) for a Complaint, the Committee and the Defender, (ii) for an Appeal, the Appellant and the Respondent, (iii) for an Interim Order Application,

the Defender and either the Committee, or a Regulatory Committee, and (iv) for a Joint Order Application, the Committee and the Member, CA Student Member, Affiliate or Firm.

Preliminary Hearing – a hearing at which the Chair of a Discipline Tribunal will make directions to achieve a fair and expeditious hearing of a Complaint.

Regulatory Committee – a Committee appointed by the Regulation Board under the General Regulations to discharge functions connected to the regulation of permits, licences, certificates or other authorisations issued by ICAS.

Respondent – the individual or entity responding to an Appeal.

Service of notices and other documents

- 1.3 Subject to Regulations 3.12, 4.1 and 6.3, a notice or other document which is sent under these Regulations may be delivered electronically, by hand, or by post. It must be sent to the address that the Member, CA Student Member, Affiliate, or Firm has given to ICAS for this purpose.
- 1.4 Delivery of a notice or other document shall be deemed to have occurred:
 - 1.4.1 for emails, facsimile, and other electronic means, when sent;
 - 1.4.2 by hand, when delivered;
 - 1.4.3 by post, 48 hours after posting.

Application

- 1.5 An Appeal, Complaint or Interim Order Application shall be heard and determined in accordance with the version of these Regulations which was in force on the date on which the Appeal, Complaint or Interim Order Application was lodged with the Clerk.

2. The Discipline & Appeal Panel

The Discipline & Appeal Panel

- 2.1 The Disciplinary Appointments Committee shall appoint a Discipline & Appeal Panel comprising no fewer than:
 - 2.1.1 four Members; and
 - 2.1.2 eight Lay Members, four of whom shall be legally qualified persons with appropriate experience to act as Chair of a Discipline or Appeal Tribunal.
- 2.2 The Disciplinary Appointments Committee shall appoint one of the legally qualified Lay Members to act as Chair of the Discipline & Appeal Panel.

Appointments

- 2.3 Appointments to the Discipline & Appeal Panel shall be for a term of three years, renewable for two further terms of three years at the discretion of the Disciplinary Appointments Committee.
- 2.4 The length and number of terms referred to may be extended or varied in exceptional circumstances, at the sole discretion of the Disciplinary Appointments Committee.

Remuneration

- 2.5 Where performing duties under these Regulations, members of the Discipline & Appeal Panel are entitled to receive from ICAS:
 - 2.5.1 reasonable remuneration; and
 - 2.5.2 payment of any reasonably incurred expenses.

3. General Provisions for Discipline and Appeal Tribunals

Appointment of a Discipline Tribunal

- 3.1 A Complaint which is intimated to the Clerk by the Committee shall be sent to the Chair of the Discipline & Appeal Panel, who shall appoint a Discipline Tribunal to hear and determine the Complaint in accordance with these Regulations.
- 3.2 A Discipline Tribunal shall comprise at least three members of the Discipline & Appeal Panel, and shall include:
 - 3.2.1 not less than one Member; and
 - 3.2.3 not less than two Lay Members, one of whom shall be a legally qualified person with appropriate experience to act as Chair of a Discipline Tribunal.
- 3.3 A legally qualified Lay Member with appropriate experience shall act as Chair of a Discipline Tribunal. The majority of persons appointed to a Discipline Tribunal shall be Lay Members.

Appointment of an Appeal Tribunal

- 3.4 An Appeal which is intimated to the Clerk by an Appellant shall be sent to the Chair of the Discipline & Appeal Panel, who shall appoint an Appeal Tribunal to hear and determine the Appeal in accordance with these Regulations.
- 3.5 An Appeal Tribunal shall comprise at least three members of the Discipline & Appeal Panel, and shall include:
 - 3.5.1 not less than one Member; and
 - 3.5.2 not less than two Lay Members, one of whom shall be a legally qualified person with appropriate experience to act as Chair of an Appeal Tribunal.
- 3.6 A legally qualified Lay Member with appropriate experience shall act as Chair of an Appeal Tribunal. The majority of persons appointed to an Appeal Tribunal shall be Lay Members.
- 3.7 No member of the Discipline & Appeal Panel shall be appointed to an Appeal Tribunal under Regulation 3.4 if they were a member of the Discipline Tribunal which made the decision or decisions which are now subject to Appeal.

Quorum

- 3.8 Three members of a Discipline or Appeal Tribunal shall constitute a quorum, of whom one shall be the Chair, one shall be a Member, and one shall be a Lay Member.
- 3.9 If a member of a Discipline or Appeal Tribunal is unable to attend part of a Hearing, and the Discipline or Appeal Tribunal is no longer quorate, the Hearing shall be adjourned.
- 3.10 Where, in accordance with Regulation 3.9, a member of a Discipline or Appeal Tribunal has been unable to attend part of a Hearing, and the Hearing has proceeded, that member shall no longer form part of the Discipline or Appeal Tribunal.
- 3.11 A new Discipline or Appeal Tribunal shall be appointed to re-hear a Complaint or Appeal where:
 - 3.11.1 a member of a Discipline or Appeal Tribunal is unable to attend the remainder of a Hearing; and
 - 3.11.2 the Discipline or Appeal Tribunal is no longer quorate

Hearings

- 3.12 Not less than 28 days before the date of a Hearing, the Clerk shall send to the Parties, by email or pre-paid recorded delivery post, a notice confirming the following:
- 3.12.1 the date, time and location of the Hearing;
 - 3.12.2 the location of the Rules and Regulations on the ICAS website;
 - 3.12.3 the right of representation under Regulation 3.17; and
 - 3.12.4 the possible consequences of non-attendance at the Hearing under Regulation 3.20.
- 3.13 A Hearing or Preliminary Hearing may be conducted in person, by email, telephone or other electronic or video conferencing.
- 3.14 The Clerk shall publish a notice of the date, time and location of a Hearing or Preliminary Hearing, in such manner as they deem fit, not less than seven days before the date of the Hearing or Preliminary Hearing.
- 3.15 Subject to Regulation 3.16, Hearings and Preliminary Hearings shall be held in public; providing always that Discipline and Appeal Tribunals shall deliberate in private.
- 3.16 On application of one or more of the Parties, submitted not less than 14 days before the date of the Hearing or Preliminary Hearing, a Discipline or Appeal Tribunal may, at its discretion, hold a Hearing or Preliminary Hearing in private, but only if:
- 3.16.1 it is satisfied that the circumstances are exceptional; and
 - 3.16.2 it considers that it is necessary to do so, having regard to any prejudice that might result from holding the Hearing or Preliminary Hearing in public.

Representation

- 3.17 A Defender or Appellant has the right to be represented before a Discipline or Appeal Tribunal by:
- 3.17.1 a solicitor, advocate or barrister; or
 - 3.17.2 subject to Regulation 3.18, a representative who is not a solicitor, advocate or barrister.
- 3.18 A Defender or Appellant who wishes to be represented before a Discipline or Appeal Tribunal by an individual under Regulation 3.17.2 shall, not later than 14 days before a Preliminary Hearing or Hearing, seek prior approval of the Discipline or Appeal Tribunal, which may grant such approval at its sole discretion.
- 3.19 A solicitor, advocate, barrister, or employee of ICAS may appear before a Discipline or Appeal Tribunal as follows:
- 13.19.1 representing the Committee or the Regulatory Committee before a Discipline Tribunal;
 - 13.19.2 representing Council, the Committee, or the Regulatory Committee before an Appeal Tribunal.

Non-attendance at a Hearing

- 3.20 If a Defender or Appellant does not attend a Hearing, the Discipline or Appeal Tribunal may proceed to hear the Complaint or the Appeal in the absence of the Defender or Appellant, if it is satisfied that:
- 3.20.1 notice of the Hearing was served on the Defender or Appellant in accordance with these Regulations;
 - 3.20.2 no adequate reason has been given for the Defender or Appellant's non-attendance;
 - 3.20.3 it is otherwise fair and reasonable to proceed in the absence of the Defender or Appellant.

Adjournments

- 3.21 Subject to Regulation 3.22, the Chair of a Discipline or Appeal Tribunal may adjourn a Hearing or Preliminary Hearing; either at their discretion, or upon the application of either of the Parties. In the absence of the Chair, a decision to adjourn may be taken by the remaining members of the Discipline or Appeal Tribunal.
- 3.22 When considering whether to adjourn a Hearing or Preliminary Hearing, regard shall be had to:
- 3.22.1 the public interest;
 - 3.22.2 the desirability of an expeditious disposal of the Complaint or Appeal;
 - 3.22.3 any inconvenience to the Parties, or other third parties;
 - 3.22.4 the views of other members of the Discipline or Appeal Tribunal; and
 - 3.22.5 the requirement for fairness.

Orders

- 3.23 On finding a Member, CA Student Member, Affiliate, or Firm liable to Disciplinary Action, a Discipline or Appeal Tribunal may make one or more of the following orders:
- 3.23.1 to caution;
 - 3.23.2 to reprimand;
 - 3.23.3 to severely reprimand;
 - 3.23.4 to have any permit, licence, certificate or other authorisation granted by ICAS withdrawn or made subject to conditions;
 - 3.23.5 to be declared ineligible for any permit, licence, certificate or other authorisation;
 - 3.23.6 to require the giving of one or more undertakings;
 - 3.23.7 to impose conditions on continued Membership or regulation by ICAS;
 - 3.23.8 to be suspended from Membership or other association with ICAS for such period, not exceeding one year;
 - 3.23.9 to be excluded from Membership or regulation by ICAS; and/or
 - 3.23.10 to be required to pay ICAS a financial penalty.
- 3.24 In addition to any order made under Regulation 3.23, where the Defender is a CA Student Member, a Discipline or Appeal Tribunal may further declare that the Defender is unfit to become a Member of ICAS and that the Defender's Training Contract is cancelled.
- 3.25 An order under Regulation 3.23 may be made upon such terms and conditions as a Discipline or Appeal Tribunal thinks fit, and may include a direction to remedy a default within such period as the Discipline or Appeal Tribunal may specify.
- 3.26 A failure to comply with any terms and conditions applied by a Discipline or Appeal Tribunal under Regulation 3.25, without reasonable excuse, shall constitute professional misconduct.
- 3.27 An Order made by a Discipline Tribunal, which has not been appealed in accordance with these Regulations, shall take effect from such date as the Discipline Tribunal shall determine.
- 3.28 An Order made by an Appeal Tribunal shall take effect from such date as the Appeal Tribunal shall determine.
- 3.29 Notwithstanding a finding that a Member, CA Student Member, Affiliate, or Firm is liable to Disciplinary Action, a Discipline or Appeal Tribunal may decide not to make an order under Regulations 3.23 or 3.24, if it considers that there are compassionate or other exceptional circumstances.

Costs

- 3.30 An Order made by a Discipline or Appeal Tribunal, or a decision under Regulation 3.29, may include a direction that the Member, Affiliate, Firm or CA Student Member shall pay to ICAS such amount by way of costs as shall be specified in the direction.
- 3.31 A direction under Regulation 3.30 may include reasonable costs in respect of one or more of the following, to be determined in such manner as the Discipline or Appeal Tribunal considers appropriate:
- 3.31.1 the investigation costs incurred by the Committee under the Investigation Regulations;
 - 3.31.2 the costs incurred by the Committee in preparing and presenting a Complaint to a Discipline Tribunal;
 - 3.31.3 the costs incurred by the Committee or the Regulatory Committee in responding to an Appeal;
 - 3.31.4 the costs of a Discipline and/or Appeal Tribunal.
- 3.32 Any costs directed to be paid under Regulation 3.31 shall be paid to ICAS within 21 days from the date of the order of the Discipline or Appeal Tribunal; or by such later date as the Discipline or Appeal Tribunal may direct.
- 3.33 If a Discipline Tribunal dismisses a Complaint in whole or part, it may direct ICAS to pay a specified sum towards the costs incurred by the Defender in defending the Complaint.
- 3.34 An Appeal Tribunal may direct ICAS to pay a specified sum towards the costs incurred by a Member, Affiliate, Firm or CA Student Member where it has:
- 3.34.1 dismissed an Appeal by the Committee under Regulation 5.10;
 - 3.34.2 upheld, in whole or part, an Appeal by a Member, Affiliate, Firm or CA Student Member.
- 3.35 In deciding whether a direction should be made under Regulations 3.30 to 3.34, a Discipline or Appeal Tribunal shall have regard to such facts and matters as it considers relevant; including the conduct of the Parties.

Publicity

- 3.36 The following shall be publicised at the instance of the Discipline Board, in such manner as the Discipline Board deems appropriate:
- 3.36.1 a decision of a Discipline Tribunal under Regulation 4.32, notwithstanding a submission of an Appeal by a Defender;
 - 3.36.2 a decision of an Appeal Tribunal under Regulation 5.15;
 - 3.36.3 any Orders made by a Discipline or Appeal Tribunal; and
 - 3.36.4 a direction made by a Discipline or Appeal Tribunal under Regulations 3.33 or 3.34.
- 3.37 The Discipline Board may, if it believes that it is necessary to maintain public confidence in the disciplinary and appeal processes of ICAS, at any time, make such public statement as it thinks fit concerning the performance of the Discipline or Appeal Tribunals' functions, including their consideration of particular facts or matters.

Evidence

- 3.38 The burden of proving the facts in a Complaint shall rest on the Committee.
- 3.39 The standard of proof shall be the civil standard; namely the balance of probabilities.
- 3.40 Where a Defender has been convicted of a criminal offence, either an extract conviction, or a certified copy of the conviction, shall constitute proof of that conviction and of the facts giving rise to the offence to which the conviction relates.

Guidance

- 3.41 The Discipline Board may produce and publish guidance for the making of Orders by Discipline and Appeal Tribunals under these Regulations.
- 3.42 While Discipline and Appeal Tribunals shall have regard to any guidance produced under Regulation 3.41, an Order which is made shall be at the sole discretion of the Discipline or Appeal Tribunal.
- 3.43 Except as provided for in Regulation 3.42, Discipline and Appeal Tribunals shall not be subject to the direction or guidance of Council, the Discipline Board or any other person.

Relief and variation

- 3.44 At their sole discretion, and on such conditions as they think fit, the Chair of a Discipline or Appeal Tribunal may:
- 3.44.1 relieve one or more of the Parties from the consequences of a failure to comply with a provision in these Regulations;
 - 3.44.2 relieve the Clerk from the consequences of a failure to comply with a provision in these Regulations;
 - 3.44.3 vary the timescales set out in these Regulations; and/or
 - 3.44.4 vary, alter or correct any Order of a Discipline or Appeal Tribunal to the extent required to remedy any clerical mistake or other error or omission in a decision, direction or any document produced by it.

Overriding objective

- 3.45 The overriding objective of these Regulations is to enable Discipline and Appeal Tribunals to discharge their functions fairly and justly, which includes:
- 3.45.1 dealing with all matters in ways which are proportionate to their importance, the complexity of the issues, the anticipated costs, and the resources of the parties;
 - 3.45.2 avoiding unnecessary formality and seeking flexibility in the proceedings;
 - 3.45.3 ensuring, so far as practicable, that the parties can participate fully in the proceedings;
 - 3.45.4 using any special expertise of the Tribunal members effectively; and
 - 3.45.5 avoiding delay, so far as compatible with proper consideration of the issues.
- 3.46 Discipline and Appeal Tribunals must seek to give effect to the overriding objective when they discharge any function under these Regulations, and when interpreting the Rules, Regulations, and other standards.

4. Provisions for Discipline Tribunals

Service of a Complaint

- 4.1 A Complaint which has been intimated to the Clerk under Regulation 3.1 shall, within 21 days, be served on the Defender, to the address that the Defender has given to ICAS for this purpose.

- 4.2 When serving a Complaint under Regulation 4.1, the Defender shall be notified of the following:
- 4.2.1 the location, time and date of the Preliminary Hearing, which date shall not be less than 42 days after the date of service of the Complaint;
 - 4.2.2 the location of the Rules and Regulations on the ICAS website;
 - 4.2.3 the right of representation under Regulation 3.17;
 - 4.2.4 the requirement to respond under Regulation 4.4; and
 - 4.2.5 the possible consequences of non-attendance at the Preliminary Hearing under Regulation 4.12.
- 4.3 At the same time as serving the Complaint under Regulation 4.1, the Clerk shall notify the Committee of the location, time and date of the Preliminary Hearing.

Requirement for the Defender to respond

- 4.4 At least 21 days before the date of the Preliminary Hearing, the Defender shall inform the Clerk in writing:
- 4.4.1 if the Complaint, or any part of it, is admitted;
 - 4.4.2 if the relevancy or competency of the Complaint is to be challenged; and
 - 4.4.3 if the Defender intends to be represented in accordance with Regulation 3.17.
- 4.5 The Clerk shall provide the Committee with copies of any documents received from the Defender under Regulation 4.4.

Preliminary Hearings

- 4.6 Before a Complaint may be heard and determined by a Discipline Tribunal, the Chair of the Discipline Tribunal shall hold a Preliminary Hearing, at which they shall sit alone, in the absence of the other members of the Discipline Tribunal.
- 4.7 At the commencement of a Preliminary Hearing, the Chair of the Discipline Tribunal shall:
- 4.7.1 ask everyone present at the Preliminary Hearing if they require the reading out of the charges in the Complaint, and if they do not, the reading of the charges shall be dispensed with; and
 - 4.7.2 ask the Defender to confirm the responses submitted under Regulation 4.4.
- 4.8 At a Preliminary Hearing, the Chair will make directions to achieve a fair and expeditious hearing of the Complaint, which directions may include, but are not limited to, the following:
- 4.8.1 the lodging of answers to the Complaint by the Defender;
 - 4.8.2 a period of adjustment within which the Complaint and answers may be amended;
 - 4.8.3 the production of documents;
 - 4.8.4 the lodging of witness statements;
 - 4.8.5 the lodging of an agreed statement of facts; and
 - 4.8.6 attendance at one or more further Preliminary Hearings, as may be specified.
- 4.9 At the Preliminary Hearing, the Parties will be expected to be able to provide such information to the Chair as they may reasonably require for directions to be issued under Regulation 4.8.
- 4.10 Any challenge to the Complaint which has been submitted by the Defender under Regulation 4.4.2 will be considered by the Chair at the Preliminary Hearing, with the Parties having the right to make submissions.

- 4.11 Following consideration under Regulation 4.10, the Chair may take the following action in respect of a challenge under Regulation 4.4.2:
- 4.11.1 reject the challenge, with the Complaint to proceed in accordance with any directions made by the Chair under Regulation 4.8;
 - 4.11.2 direct that the challenge should be heard and determined by the Discipline Tribunal at the start of a Hearing, or at an appropriate point thereafter; or
 - 4.11.3 request further information from the Parties to allow a decision to be taken.
- 4.12 If the Defender does not attend a Preliminary Hearing, the Chair of the Discipline Tribunal may proceed with the Preliminary Hearing in the absence of the Defender, if they are satisfied that:
- 4.12.1 notice of the Preliminary Hearing was served on the Defender in accordance with these Regulations,
 - 4.12.2 no adequate reason has been given for the Defender's non-attendance; and
 - 4.12.3 it is otherwise fair and reasonable to proceed in the absence of the Defender.
- 4.13 The outcome of a Preliminary Hearing shall be recorded in a note from the Chair, which the Clerk shall issue to the Parties within 14 days of the Preliminary Hearing.

Further directions

- 4.14 At their sole discretion, the Chair may grant requests from one or more of the Parties at any time to make directions to achieve a fair and expeditious hearing of the Complaint, which directions may include, but are not limited to, the directions listed in Regulation 4.8.

Conjoinder of Complaints

- 4.15 Where a Complaint is pending before a Discipline Tribunal, and the Committee wishes to intimate one or more further Complaints involving the same Defender, the Committee may apply to the Chair of the Discipline Tribunal for consent to conjoin the Complaints.
- 4.16 Where it is proposed that the one or more Complaints be conjoined, the Clerk shall:
- 4.16.1 serve the further Complaint or Complaints on the Defender; and
 - 4.16.2 notify the Defender that any objections to the conjoinder of the Complaints shall be lodged in writing within 14 days.
- 4.17 The Chair shall decide whether to conjoin the Complaints, taking account of the following:
- 4.17.1 any representations made by the Parties;
 - 4.17.2 fairness, including the potential for prejudice to the Defender;
 - 4.17.3 the public interest;
 - 4.17.4 the desirability of an expeditious disposal of one or all the Complaints; and
 - 4.17.5 any inconvenience to the Parties or other third parties.
- 4.18 The Chair of a Discipline Tribunal may decide that Complaints against two or more Defenders may be heard and determined by one Discipline Tribunal by way of a joint Hearing, where the Chair is satisfied that:
- 4.18.1 the Complaints arise out of the same circumstances; and
 - 4.18.2 a joint Hearing would not prejudice the fairness of the proceedings.
- 4.19 The decision of the Chair under Regulations 4.17 and 4.18 shall be issued to the Parties by the Clerk within 14 days.

Withdrawal of a Complaint

- 4.20 If the Committee decides not to proceed with a Complaint after it has been served on the Defender in accordance with these Regulations, the Committee shall request that the Complaint be dismissed by the Discipline Tribunal.
- 4.21 The Discipline Tribunal shall agree to dismiss the Complaint subject to consideration of a direction for payment to the Defender by ICAS under Regulation 3.33.
- 4.22 If a Complaint is dismissed under Regulation 4.21, the Committee shall only be entitled to raise a further Complaint against the same Defender, on substantially the same grounds, with leave of the Chair of the Discipline & Appeal Panel.

Hearing of a Complaint

- 4.23 At the commencement of a Hearing, the Chair of the Discipline Tribunal shall ask everyone present at the Hearing if they require the reading out of the charges in the Complaint, and if they do not, the reading of the charges shall be dispensed with.
- 4.24 Where the Complaint is admitted, or where a partial admission acceptable to the Committee is tendered, the Tribunal shall give each of the Parties an opportunity to make representations on the facts of the Complaint, following which the Tribunal shall proceed in accordance with the provisions in Regulations 4.32 to 4.36. Where facts which the Discipline Tribunal considers may be material to its decision are not agreed, the Discipline Tribunal may direct that evidence should be led in order to establish those facts prior to issuing a Decision under Regulations 4.32 to 4.36.
- 4.25 Where the Complaint is not admitted, or where a partial admission tendered is not acceptable to the Committee, the Committee shall present the evidence in support of its case.
- 4.26 Once the Committee has presented its evidence, the Defender shall be entitled to make a motion of 'no case to answer', to which the Committee shall be offered an opportunity to make representations in response.
- 4.27 In determining a 'no case to answer' motion, the Discipline Tribunal may:
- 4.27.1 exercise its power to dismiss the Complaint under Regulation 4.32.1; or
 - 4.27.2 reject the motion.
- 4.28 In the absence of 'no case to answer' motion, or in the event of such a motion being rejected under Regulation 4.27.2, the Defender may present evidence in support of the defence.
- 4.29 Once the Committee and the Defender have presented evidence, the Parties shall be given an opportunity to make submissions in support of their respective positions. The Discipline Tribunal may direct that such submissions are made:
- 4.29.1 in writing; and/or
 - 4.29.2 in person, at either the present, or a further Hearing.
- 4.30 Once the Parties have been given an opportunity to make submissions under Regulation 4.29, the Discipline Tribunal shall retire to deliberate in private.
- 4.31 The procedure set out in Regulations 4.23 to 4.30 may be varied by the Discipline Tribunal having regard to the views of the parties and the requirements of justice and fairness.

Decision

- 4.32 On determining a Complaint, a Discipline Tribunal may:
- 4.32.1 dismiss the Complaint in its entirety, finding that the Defender is not liable to Disciplinary Action under the Rules; or

- 4.32.2 uphold the Complaint in whole or part, finding that the Defender is liable to Disciplinary Action under the Rules.
- 4.33 Where a Discipline Tribunal upholds a Complaint in whole or part, it shall offer the Parties an opportunity to make representations as to:
 - 4.33.1 the Orders and directions which may be made; and
 - 4.33.2 disposal in accordance with Regulation 3.29.
- 4.34 Where a Discipline Tribunal dismisses a Complaint in whole, it shall offer the Parties an opportunity to make representations as to whether it should make a direction under Regulation 3.33.
- 4.35 A Discipline Tribunal may direct that representations under Regulations 4.33 or 4.34 are made:
 - 4.35.1 in writing; or
 - 4.35.2 in person, at a further Hearing.
- 4.36 A Discipline Tribunal shall ensure that its decisions in respect of the Complaint, and any Orders or directions which follow, are issued in writing to the Parties, with supporting reasons, within a reasonable timescale. The Tribunal may supply, in confidence, a copy of the draft judgment to the Parties two working days before handing down, or at such other time as the Tribunal may direct. Unless the Parties are told otherwise when the draft judgment is circulated, any proposed corrections to the draft judgment should be sent to the Clerk.

5. Provisions for Appeal Tribunals

Rights of appeal

- 5.1 Subject to Regulation 5.2, a Member, CA Student Member, Affiliate, or Firm may appeal to the Discipline & Appeal Panel against a decision, finding and/or Order of:
 - 5.1.1 a Discipline Tribunal; or
 - 5.1.2 Council, the Committee, or a Regulatory Committee, where provided for in the applicable Regulations.
- 5.2 An Appeal shall be submitted on one or more of the following grounds:
 - 5.2.1 the Discipline Tribunal, Council, the Committee, or a Regulatory Committee erred in law or fact, or in its interpretation of the Rules or Regulations;
 - 5.2.2 a Hearing or regulatory process was not conducted fairly;
 - 5.2.3 significant fresh evidence is available that was not available to the Appellant at the time of a Hearing or regulatory process, and which the Appellant could not at that time have been expected with reasonable diligence to have obtained; or
 - 5.2.4 an Order or other outcome applied under the Rules or Regulations was manifestly excessive in all the circumstances.
- 5.3 The Committee, on behalf of the Regulation Board, may appeal against an Order made by a Discipline Tribunal on the ground that it is unduly lenient in all the circumstances of the case.

Making an Appeal

- 5.4 An Order or Interim Order made by a Discipline Tribunal may be appealed within 28 days of the date of the Order or Interim Order.
- 5.5 A finding or order made by Council, the Committee, or a Regulatory Committee, may be appealed within the timescales provided in the applicable Regulations.

- 5.6 An Appeal shall be submitted to the Clerk in writing, and shall include confirmation of the grounds of appeal under Regulations 5.2 or 5.3, and supporting reasons.
- 5.7 The Clerk shall ensure that the Chair of the Discipline & Appeal Panel and the Respondent receive a copy of the Appeal within seven days of receipt under Regulation 5.6.

Directions

- 5.8 The Chair of the Appeal Tribunal appointed under Regulation 3.4 may issue directions to achieve a fair and expeditious hearing of the Appeal, which directions may include, but are not limited to, the following:
- 5.8.1 the submission of further information from the Appellant;
 - 5.8.2 the lodging of answers to the Appeal by the Respondent;
 - 5.8.3 a period of adjustment within which the Appeal and answers may be amended;
 - 5.8.4 the production of documents; and
 - 5.8.5 a submission from the Chair of the Discipline Tribunal to provide information in respect of one or more of the grounds of Appeal.

Withdrawal of an Appeal

- 5.9 If an Appellant decides not to proceed with an Appeal after it has been served on the Respondent in accordance with these Regulations, the Appellant shall request that the Appeal be dismissed by the Appeal Tribunal.
- 5.10 The Appeal Tribunal shall agree to dismiss the Appeal subject to consideration of a direction for payment of costs to the Respondent under Regulations 3.31.3 or 3.34.

Hearing of an Appeal

- 5.11 At the commencement of the Hearing of an Appeal, the Chair of the Appeal Tribunal shall:
- 5.11.1 ask everyone present at the Hearing if they require the reading out of the grounds of Appeal, and if they do not, the reading of the grounds shall be dispensed with; and
 - 5.11.2 shall give the Appellant an opportunity to make submissions in support of the Appeal.
- 5.12 Once the Appellant has made submissions to the Appeal Tribunal, the Respondent shall be given an opportunity to make submissions in opposition to the Appeal.
- 5.13 Once the Appellant and the Respondent have presented their submissions to the Appeal Tribunal, the Appeal Tribunal shall retire to deliberate in private.
- 5.14 The procedure set out in Regulations 5.11 to 5.13 may be varied with the agreement of the Parties, subject to the underlying requirement for fairness.

Decision

- 5.15 On determining the Appeal, the Appeal Tribunal may:
- 5.15.1 dismiss the Appeal in its entirety, affirming the decision of the Discipline Tribunal, Council, the Committee, or the Regulatory Committee;
 - 5.15.2 uphold the Appeal in whole or part, varying the decision of the Discipline Tribunal, Council, the Committee, or the Regulatory Committee; or
 - 5.15.3 uphold the Appeal in whole or part, quashing the decision of the Discipline Tribunal, Council, the Committee or the Regulatory Committee.
- 5.16 A decision under Regulation 5.15.3 may include a direction as follows:
- 5.16.1 that the Complaint or Interim Order Application be heard and determined afresh by a differently constituted Discipline Tribunal; or

- 5.16.2 that the matter be reconsidered and determined by Council, the Committee, or the Regulatory Committee, in accordance with the applicable Regulations.
- 5.17 On determining an Appeal, an Appeal Tribunal shall offer the Parties an opportunity to make representations as to whether it should make a direction under Regulations 3.30 or 3.34.
- 5.18 An Appeal Tribunal may direct that representations under Regulation 5.17 are made:
- 5.18.1 in writing; or
- 5.18.2 in person, at a further Hearing.
- 5.19 An Appeal Tribunal shall ensure that its decisions in respect of the Appeal, and any Orders, recommendations, or directions which follow, are issued in writing to the Parties, with supporting reasons, within a reasonable timescale. The Tribunal may supply, in confidence, a copy of the draft judgment to the Parties two working days before handing down, or at such other time as the Tribunal may direct. Unless the Parties are told otherwise when the draft judgment is circulated, any proposed corrections to the draft judgment should be sent to the Clerk.

6. Interim Orders

Interim Order Application

- 6.1 The Committee, or a Regulatory Committee, may make an Interim Order Application where it considers that there is sufficient evidence available concerning a Member, CA Student Member, Affiliate or Firm to justify an interim order under Rule 13.18.
- 6.2 An Interim Order Application shall be submitted to the Clerk in writing, and shall include confirmation of the interim order sought under Rule 13.18, and supporting reasons.
- 6.3 The Clerk shall ensure that the Defender receives a copy of the Interim Order Application within seven days of receipt under Regulation 6.2.

The process for determining an Interim Order Application

- 6.4 An Interim Order Application received by the Clerk under Regulation 6.2 shall be sent to the Chair of the Discipline & Appeal Panel, who shall appoint a Discipline Tribunal to hear and determine the application in accordance with these Regulations.
- 6.5 The following provisions of these Regulations shall be deemed to apply to the consideration and determination of an Interim Order Application by a Discipline Tribunal:
- 6.5.1 Regulations 3.2 and 3.3; and
- 6.5.2 Regulations 3.8 to 3.22.
- 6.6 Subject to the provisions of these Regulations, and the underlying requirement for fairness to the Parties, the Discipline Tribunal has the power to determine the procedure to be followed at the Hearing of an Interim Order Application.
- 6.7 At the commencement of the Hearing of an Interim Order Application, the Chair of the Discipline Tribunal shall read out the Interim Order Application, and ask the Defender if the application is opposed.
- 6.8 The Parties shall each be given an opportunity to make submissions in respect of the Interim Order Application, following which the Discipline Tribunal, the Discipline Tribunal shall retire to deliberate in private.

Decision

- 6.9. A Discipline Tribunal shall be justified in making an interim order under these Regulations if it is satisfied that the interim order is:
- 6.9.1 necessary for the protection of the public; and/or
 - 6.9.2 justified in all the circumstances.
- 6.10 On determining an Interim Order Application, a Discipline Tribunal may:
- 6.10.1 make an order under Rule 13.18; or
 - 6.10.2 reject the Interim Order Application.
- 6.11 At the discretion of the Discipline Tribunal, an interim order made under Regulation 6.10.1 shall stipulate:
- 6.11.1 the period for which the interim order shall be in place, providing always that an interim order shall be for no longer than an initial period of 12 months;
 - 6.11.2 the date upon which the interim order shall take effect; and/or
 - 6.11.3 any terms or conditions which shall apply to the interim order.

Appeal

- 6.12 A Defender may appeal against an interim order made under Regulation 6.10.1 in accordance with the appeal process set out in Regulation 5. An interim order shall remain in place pending completion of the appeal process.

Review

- 6.13 An interim order made under Regulation 6.10.1 shall be subject to review by a Discipline Tribunal as follows:
- 6.13.1 on or within 28 days before the expiry date of the interim order; and/or
 - 6.13.2 upon application by the Defender, the Committee, or a Regulatory Committee.
- 6.14 Subject to the underlying requirement for fairness to the Parties, a Discipline Tribunal has the power to determine the procedure to be followed when undertaking a review of an interim order under Regulation 6.13.
- 6.15 Following a review of an interim order under Regulation 6.13, a Discipline Tribunal may:
- 6.15.1 reaffirm the interim order for such period as the Discipline Tribunal may determine;
 - 6.15.2 vary the interim order; or
 - 6.15.3 rescind the interim order.

Decision

- 6.16 A Discipline Tribunal shall ensure that decisions made under Regulations 6.10 and 6.15 are issued in writing to the Parties, with supporting reasons, within a reasonable timescale.

7. Independent Medical Examination

Requirement for independent medical examination

- 7.1 A Discipline or Appeal Tribunal shall have the power to make a direction requiring a Member, CA Student Member, or Affiliate to attend for independent medical examination to determine whether, in the opinion of an independent medical examiner, the Member CA Student Member, or Affiliate is fit to participate in any of the following:
- 7.1.1 the process for hearing and determining a Complaint under these Regulations;
 - 7.1.2 the process for hearing and determining an Appeal under these Regulations;
 - 7.1.3 the process for hearing and determining an Interim Order Application under these Regulations;
 - 7.1.4 the process for investigating and determining a complaint under the Investigation Regulations; or
 - 7.1.5 the processes set out in Regulations for the regulation of permits, licences, certificates or other authorisations issued by ICAS.
- 7.2 A direction made under Regulation 7.1 shall state the name of an independent medical examiner.
- 7.3 In making a direction under Regulation 7.1, a Discipline or Appeal Tribunal shall state the questions which the independent medical examiner will be asked to answer, which questions may include, but are not limited to, the following:
- 7.3.1 an opinion as to whether the Member CA Student Member, or Affiliate is fit to participate in the processes listed in Regulation 7.1;
 - 7.3.2 when the Member CA Student Member, or Affiliate is likely to be fit to participate in the processes listed in Regulation 7.1; and/or
 - 7.3.3 whether the processes listed in Regulation 7.1 could be subject to reasonable modification to allow the Member CA Student Member, or Affiliate to participate.
- 7.4 A direction under Regulation 7.1 may be made by a Discipline or Appeal Tribunal on its own initiative, or in response to an application from the Committee or a Regulatory Committee.

8. Joint Order Application

Application

- 8.1 By operation of Regulation 3.41 of the Investigation Regulations, the Parties may submit a Joint Order Application to the Clerk, where the following conditions are satisfied:
- 8.1.1 the Parties have agreed that the Member, CA Student Member, Affiliate or Firm is liable to disciplinary action on the basis of one or more charges; and
 - 8.1.2 the Parties have agreed the grounds for disciplinary action under Rule 13.1 or 13.7; and
 - 8.1.3 the Member, CA Student Member, Affiliate or Firm has rejected an order offered by an Adjudication Committee under Regulation 3.38.2 of the Investigation Regulations.
- 8.2 A Joint Order Application shall be in writing and signed by both Parties, including at least the following information:
- 8.2.1 the charge or charges which have been agreed by the Parties;
 - 8.2.2 an agreed statement of facts;
 - 8.2.3 the order or orders which were offered by an Adjudication Committee under Regulation 3.38.2 of the Investigation Regulations; and
 - 8.2.4 submissions from each of the Parties in respect of the Order or Orders which they would invite the Discipline Tribunal to make under Regulations 8.8 and 8.9.

The process for determining a Joint Order Application

- 8.3 A Joint Order Application received by the Clerk under Regulation 8.1 shall be sent to the Chair of the Discipline & Appeal Panel, who shall appoint a Discipline Tribunal to determine the application in accordance with these Regulations.
- 8.4 The following provisions of these Regulations shall be deemed to apply to the consideration and determination of a Joint Order Application by a Discipline Tribunal:
- 8.4.1 Regulations 3.2 and 3.3; and
 - 8.4.2 Regulations 3.8 to 3.22.
- 8.5 Subject to the provisions of these Regulations, and the underlying requirement for fairness to the Parties, the Discipline Tribunal has the power to determine the procedure to be followed for the determination of a Joint Order Application.
- 8.6 Further to Regulation 8.5, the Chair may make directions to achieve a fair and expeditious determination of the Joint Order Application, which directions may include, but are not limited to, the following:
- 8.6.1 the lodging of additional written submissions by one or both of the Parties;
 - 8.6.2 the production of documents; or
 - 8.6.3 attendance at a Hearing.
- 8.7 Once the Discipline Tribunal is satisfied that it has sufficient information from the Parties to enable it to determine the Joint Order Application, it shall deliberate in private (whether in person, by email, telephone or other electronic or video conferencing).

Decision

- 8.8 On determining a Joint Order Application, a Discipline Tribunal shall find the Member, CA Student Member, Affiliate or Firm liable to Disciplinary Action on the basis of the charges set out in the Joint Order Application, and shall make:
- 8.8.1 an Order or Orders (subject to such terms, conditions or directions as may be applied under Regulation 3.25), to take effect from such date as the Discipline Tribunal shall determine, or
 - 8.8.2 a decision under Regulation 3.29.
- 8.9 An Order made by a Discipline Tribunal under Regulation 8.8, may include a direction that the Member, Affiliate, Firm or CA Student Member shall pay to ICAS the reasonable costs of the investigation and the Joint Order Application process, to be determined in such manner, and paid by such date, as the Discipline Tribunal considers appropriate.
- 8.10 A Discipline Tribunal shall ensure that its decisions in respect of the Joint Application Order, and any Orders or directions which follow, are issued in writing to the Parties, with supporting reasons, within a reasonable timescale.
- 8.11 There shall be no right of appeal against a decision made by a Discipline Tribunal under Regulations 8.8 or 8.9.

Publicity

- 8.12 The outcome of a Joint Order Application shall be publicised at the instance of the Discipline Board, in such manner as the Discipline Board deems appropriate.



CA House, 21 Haymarket Yards, Edinburgh, UK, EH12 5BH

+44 (0) 131 347 0100


connect@icas.com

icas.com

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