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Tribunal processes: helpsheet for Defenders and Appellants



Purpose

This helpsheet has been prepared by the Discipline Board to provide information to Defenders and Appellants in relation to ICAS' Discipline and Appeal Tribunal processes.

Application

For ease of use, this helpsheet uses the term "Defender(s)" and "Appellant(s)" to cover, as appropriate, members, firms, students, and affiliates who are:

- The subject of a formal complaint being considered by a Discipline Tribunal.
- The appellant in an appeal process.

These processes are collectively referred to in this helpsheet as "Tribunal process(es)".

This helpsheet should be read alongside the full detail on the Tribunal processes as set out in ICAS' Discipline and Appeal Tribunals Regulations ("the Regulations"), which are available on the ICAS website [here](#). There are aspects of Tribunal processes which are explained in the Regulations which are not referenced in this helpsheet.

The interim order process is not covered by this helpsheet as ICAS has a standalone helpsheet published for this Tribunal process (available [here](#)), although some of the general content here may be relevant.

Contents

There are five sections in this helpsheet as follows:

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Section 1: the parties involved in the process

Tribunal Clerk

The role of the Tribunal Clerk is based in the Regulations and is defined as follows: "*an official appointed by ICAS, who is responsible for the administrative arrangements for Discipline and Appeal Tribunals under these Regulations*". While appointed by ICAS, the Clerk is not an ICAS employee.

The Clerk is likely to be a Defender or Appellant's first and ongoing contact in relation to a Tribunal process, using the email address: tribunalsclerk@icas.com They aim to ensure the smooth running of hearings, providing assistance to the Tribunal members.

The Tribunals

Using an independent process, ICAS appoints a Discipline & Appeal Panel from which individuals are selected by the Chair of the Panel to form Discipline and Appeal Tribunals, as and when required.

Tribunals are normally made up of three individuals (although larger Tribunals may be appointed if appropriate):

- A legally-qualified Chair (i.e. a qualified solicitor with experience of court / tribunal proceedings).
- A Chartered Accountant (an ICAS member).
- A lay person who is not a Chartered Accountant.

While each member of the Tribunal has an equal say in the decision-making process, the Chair will be expected to guide the other members in relation to matters of law, process, evidence, etc, based on their legal knowledge, skills, and experience.

ICAS

ICAS will be the other party in the Tribunal process. While most processes are initiated by ICAS' Investigation Committee, appeals against some regulatory decisions (e.g. licence withdrawals) may involve ICAS' Authorisation Committee. While members of either Committee may attend the hearing, it is likely that they will be represented by one or more ICAS employees.

External agents

Both ICAS and the Defender / Appellant may choose to be represented at a hearing, meaning that someone else may present their position on their behalf. While this will be legal representation in most cases, with the Regulations referring to representation by solicitors, advocates, and barristers, there are two other possibilities:

- ICAS' case may be presented by an ICAS employee, usually a member of the Investigations Team.
- With the prior approval of the Tribunal, a Defender / Appellant may be represented by someone who is not a solicitor, advocate or barrister, with the expectation that this would be someone who can appropriately represent the Defender / Appellant's interests.

While a Defender / Appellant may choose to represent themselves in a Tribunal process, it is recommended that careful consideration is given to engaging an external agent, as they are likely to have better knowledge of the rules involved in the process (e.g. the facts that need to be proved, what evidence can or cannot be used etc). Legal representation may be covered as part of a Defender / Appellant's PII policy, with the Law Societies providing 'find a solicitor' search facilities [here](#) and [here](#).

Independence

It is important to emphasise the independence of the Tribunal members and the Clerk. In discharging their duties, they are not acting for or against any of the parties involved in a Tribunal process, with an overarching duty to ensure due process and fairness. They are not ICAS employees.

ICAS publishes guidance [here](#) which explains how potential conflicts of interest are identified and resolved as part of the Tribunal process, as well as a [commitment](#) to fair processes.

Witnesses

Both ICAS and the Defender / Appellant may involve witnesses in a Tribunal process (although they are less common at Appeal Tribunals). These are likely to be either:

- Individuals who were involved in the matters being considered by the Tribunal and can assist the Tribunal in establishing the facts of the case.
- Experts who have been instructed to provide a view on specialist / technical matters. They won't have been personally involved in the case, but are helpful in assisting the Tribunal in understanding what did or should have happened.

More information on the process for calling witnesses is included below.

Members of the public

Tribunal hearings are public hearings, which means that members of the public (including journalists) may attend. The Regulations require ICAS to publish a notice of a hearing (usually on the ICAS website) seven days before it takes place.

Both ICAS and the Defender / Appellant can ask the Tribunal to hold a hearing in private if they believe that there are exceptional circumstances, having regard to any prejudice which might result from holding the hearing in public. Such requests must be submitted in writing at least 14 days before the hearing, and will only be granted if the Tribunal is satisfied that a private hearing is necessary in the circumstances.

The deliberations of the Tribunal members will always be held in private.

Section 2: the Discipline Tribunal process

Serving the relevant papers

At the outset of this process, the Clerk will send the Defender copies of relevant papers to ensure that they have fair notice of what is being alleged against them, which is likely to include:

- The formal complaint, confirming the charge(s) directed against the Defender, with an explanation of the case and the facts which ICAS seeks to prove.
- Copies of the productions, which is the evidence which ICAS will be relying on (e.g. letters, emails, reports, witness statements).
- A link to the Regulations and relevant guidance and helpsheets.
- The data and location of the first hearing, which will normally be a preliminary hearing.

Responding

The Defender will be advised of what they need to do to respond to the formal complaint, with the Regulations requiring them to confirm the following:

- Whether the complaint is admitted (in whole or in part).
- Whether they intend to challenge the relevancy or competency of the complaint – i.e. arguing that the complaint is sufficiently flawed in a specific way as to mean it should not proceed to a full hearing.
- Whether they will be represented in the process.

It is important that the Defender confirms each of these points within the stated timescale. If they fail to do so then it is likely that the process will take additional time to complete, which might increase the amount of a cost award at the end of the process.

All correspondence here should be sent by the Defender to the Clerk.

Preliminary hearings

Preliminary hearings are different from 'full hearings' in that they don't involve the leading or consideration of evidence (including witnesses). They are held to give parties a chance to deal with certain practical matters, hopefully ensuring that a full hearing will run more efficiently. The Tribunal Chair will usually sit on their own, with the hearing likely to be held remotely (e.g. using Microsoft Teams).

At the end of a preliminary hearing, the Chair will arrange for a written note to be shared with the parties confirming any decisions or directions (this note is usually referred to as an interlocutor). This note may cover some or all of the following:

- A date by which the Defender should submit formal answers to the complaint (i.e. a written explanation of the Defender's response to each of the charges and the facts which ICAS intends to prove).
- A period following the submission of answers in which ICAS and the Defender will be able to alter their written positions.
- Dates by which productions (i.e. evidence) should be lodged, including witness statements.
- A direction for parties to try and agree a statement of facts which are not in dispute, thereby reducing the time required for the hearing.

Again, where there are directions for documents to be lodged as part of the Tribunal process, these should be sent by email to the Clerk.

Full hearings

These are hearings where ICAS and the Defender will present their positions, allowing the Tribunal to reach a decision. In most cases they will be held in CA House, Edinburgh, although other locations may be used. Hearings could be held online (for some or all of the participants), with guidance on remote hearings published by ICAS [here](#).

The Chair of the Discipline Tribunal will explain the format of the hearing at the beginning, with it likely to involve the following:

- Confirmation of the charges directed against the Defender.
- Confirmation from the Defender whether any of the charges are admitted.
- The leading of evidence by ICAS to support any charges / evidence which are not admitted.
- The leading of witnesses, with an opportunity for all parties to ask relevant questions.
- The leading of evidence by the Defender to support their position.

If the Defender is not represented then they should ask the Chair to explain any part of the hearing process which is not clear to them. In general terms, the Tribunal is trying to give each party a reasonable opportunity to explain their position on the facts in question, while at the same time trying to ensure that the hearing runs efficiently in accordance with the Regulations.

Submissions

Once both ICAS and the Defender have presented their evidence to the Tribunal, they will each be given an opportunity to summarise their arguments by way of final submissions. The Tribunal will confirm how it wishes such submissions to be made, with the Regulations providing that they could be in writing, or made in person (whether at the present hearing or on a future date).

These submissions are a good opportunity for the parties to emphasise the key points of their arguments, bearing in mind that the hearing may have involved a considerable amount of evidence for the Tribunal to review and consider.

Professional conduct

The Tribunal will expect ICAS and the Defender, and well as any representatives, to behave in a professional and appropriate manner throughout the hearing, which would include:

- Ensuring they are ready to start at the allocated time.
- Allowing parties to speak without improper interruptions.
- Using respectful language.
- Providing full answers to questions wherever possible.
- Restricting questions and answers to issues which are directly relevant to the case.

Failure to attend

The Regulations allow the Tribunal to proceed with the hearing in the absence of the Defender if three conditions are satisfied:

- The Defender has been appropriately notified of the hearing.
- No adequate reason has been provided for non-attendance.
- It is otherwise fair and reasonable to proceed in the Defender's absence.

If the hearing proceeds without the Defender, they will lose their opportunity to present their case to the Tribunal, which is likely to increase the chances of the charges being upheld. It is therefore important that Defenders attend hearings, providing full explanations (and supporting evidence) to the Clerk in advance if there is a valid reason why they can't attend.

Section 3: Discipline Tribunal decisions

Deliberations

Once the parties have presented their submissions, the Discipline Tribunal members will retire to discuss the case in private. Through these discussions, the Tribunal will decide whether or not any of the charges should be upheld, and whether or not the Defender is guilty of professional misconduct, professional incompetence, or unsatisfactory professional conduct (as defined in the ICAS Rules).

The length of these deliberations will largely depend on the complexity of the case. For more straightforward cases, the Tribunal may be able to confirm its decision on the day of the hearing. For other cases, the parties may be told that the decision will be confirmed by email (which could take weeks or months).

Decision on the charges

At this stage in the process, the Tribunal is only deciding whether the charges should be upheld or rejected, and whether the Defender is guilty of one or more of the three grounds in the ICAS Rules.

The Tribunal's decision on each of the charges will be confirmed in a written judgement. This will explain whether the charge has been upheld or rejected, with an appropriate analysis of the evidence on which the Tribunal relied in making its decision (e.g. this may say whether witnesses were deemed to be credible or reliable, whether one expert was preferred over another etc).

Sanction process

If a Defender has been found guilty on the basis of one or more charges, the Tribunal will give both parties an opportunity to make submissions on what action (if any) the Tribunal should take next.

The Regulations provide a list of orders which a Tribunal could make and include the following:

- Orders for caution, reprimand, and severe reprimand.
- The suspension or withdrawal of a regulatory licence.
- Exclusion from ICAS membership.
- Financial penalties.

Full details on the decision-making process and the orders available can be found in the Regulations and in ICAS' Sanctions Guidance (available [here](#)). If a Defender wishes the Tribunal to take account of mitigating factors (including ill-health and financial hardship), they should ensure that appropriate evidence is provided to the Tribunal.

Decision on orders

As with the decision on the charges, a decision to apply one or more orders will be formally confirmed in writing to the parties. This will include any relevant details on the application of the orders, e.g. the timescales within which a financial penalty must be paid.

Cost awards

Costs may be awarded in one or more party's favour at the end of a hearing. The Discipline Board has published a helpsheet [here](#) which explains when and how such awards are made.

Publicity of outcomes

As fully explained in ICAS' publicity helpsheet [here](#), the default position is that a Discipline Tribunal's decision to uphold or reject a formal complaint will be publicised, including details of any orders which the Tribunal has made.

Section 4: the Appeal Tribunal process

Appeal Tribunal process

Much of the information provided above applies equally to Discipline and Appeal Tribunal processes.

Decisions which may be appealed

The appeal process is mostly used in response to decisions made by (i) Discipline Tribunals, as set out in the previous sections, and (ii) ICAS' Authorisation Committee in relation to regulatory licences. If a decision made by ICAS carries a right of appeal then this will be confirmed in the correspondence to the member, firm, student, or affiliate.

Grounds of appeal

It is important to emphasise that decisions can only be appealed on the basis of certain grounds which are set out in the Regulations.

- The decision-maker erred in law or fact, or in its interpretation of ICAS' Rules or Regulations.
- A hearing or regulatory process was not conducted fairly.
- 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.
- An order or other outcome applied under the Rules or Regulations was manifestly excessive in all the circumstances.

A decision should not be appealed simply because the member, firm, student, or affiliate disagrees with the outcome. An Appeal Tribunal will avoid re-hearing the original issue and will restrict its attention to these four grounds of appeal.

Submitting an appeal

Appeals must be submitted to the Tribunal Clerk within the applicable timescale. The communication should clearly explain the basis of the appeal, linking it to the ground(s) in the Regulations. Appropriate evidence should be included where relevant.

Process and hearing

The Chair of the appointed Appeal Tribunal will decide and explain the process which will be followed for the hearing and determination of the appeal. In most cases, it is likely to be similar to the process set out above for Discipline Tribunals, with regard to representation, hearings, non-attendance, submissions etc.

The Appeal Tribunal will be comprised of three or more members of the Discipline & Appeal Panel who have not previously been involved with the matters in question.

Outcome

Having considered the arguments advanced by the parties, an Appeal Tribunal will decide how to deal with the appeal, with three options:

- The appeal is dismissed in full, with the original decision standing.
- The appeal succeeds in part, with the Appeal Tribunal varying the original decision.
- The appeal succeeds in full, with the original decision being withdrawn.

This will be confirmed in writing to the parties in the same way as decisions of Discipline Tribunals.

Whatever the outcome, this marks the end of the Tribunal process, with no further rights of challenge available under ICAS' Rules and Regulations.

Section 5: other relevant points

Timescales

It is not possible to say how long a Tribunal process will last, as this will depend on the number and complexity of the issues under consideration. However, a process will generally take less time to complete where the parties are prepared, cooperative, and follow the Tribunal's instructions.

Health issues

If a Defender / Appellant wants a Tribunal to take health issues into account, they should inform the Tribunal Clerk of their circumstances at the earliest opportunity to ensure that proper consideration can be given to the impact which these might have on the process.

Defenders / Appellants should be able to provide evidence to demonstrate the extent to which health issues affect their ability to participate in a Tribunal process. The most common form of evidence requested would be a letter from a GP or other health practitioner. The Tribunal will expect that the evidence provides sufficient information on the health issue to allow it to understand the impact it has on the Defender / Appellant's ability to participate in the Tribunal process, which may include a likely prognosis, estimating the length of time they may be impacted.

It should not be assumed that Tribunal processes will always be placed on hold where there are enduring health issues. Each case will be considered on its own merits, with full consideration of the facts, with Tribunals balancing the Defender / Appellant's right to participate in the process with its duty to act in the public interest by progressing matters without unreasonable delays. This may involve consideration of the following:

- The seriousness of the allegations under consideration.
- The length of time for which the health issues are expected to last.
- Any reasonable adjustments which ICAS may be able to make to assist the Defender / Appellant's participation in the process.

Regulation 7 gives Tribunals the power to require a member, student, or affiliate to be medically examined by an independent person of the Tribunal's choosing. Such directions may be given in the absence of medical evidence of health issues, or where there is any doubt over the medical evidence provided by the Defender / Appellant.

Requests for adjournments

There may be other occasions (aside from health issues) where a Defender / Appellant wants a Tribunal process to be temporarily placed on hold (e.g. the rescheduling of a hearing). Such requests should be submitted to the Tribunal Clerk at the earliest opportunity, including supporting evidence where relevant.

While requests will be considered on a case-by-case basis, it should be anticipated that Tribunals will want the process to conclude without unnecessary delays. Given the importance of ICAS' disciplinary process, Defenders / Appellants will be expected to prioritise their involvement, with Tribunals unlikely to want to delay the process due to the general pressures of work.

Joint order applications

There is a process in the Regulations through which the Investigation Committee and a member, firm, student, or affiliate, can agree a liability to disciplinary action on the basis of one or more charges, but request that a Discipline Tribunal be appointed to determine an appropriate order(s).

This will involve the parties submitting an agreed statement of facts, with the Discipline Tribunal deciding what further process is required to allow it to reach a decision. This may include written submissions from the parties and/or a hearing.

At the end of the process, the Discipline Tribunal will determine the application in the same manner as at the end of a formal complaint. As such applications are made jointly by the parties, there is no right of appeal in respect of the outcome.

Support

While ICAS, usually through the Clerk, will try to answer any questions which a Defender / Appellant may have in respect of a Tribunal process, it would not be appropriate for advice to be provided (e.g. whether a Defender should plead guilty to a charge). A Defender should speak to a solicitor if they consider that such advice is required.

General support may be provided by ICAS' Practice Support team, which can be contacted by telephone +44 (0)131 347 0249, or by email practicesupport@icas.com. Alternatively, ICAS Cares (formerly the Scottish Chartered Accountants Benevolent Association) can offer assistance to CAs who are experiencing personal difficulties. In some cases, financial support may be available. Further information on ICAS Cares is available [here](#), or by email: manager@icas-cares.org.uk.

Further information

Further information in respect of Tribunal processes can be found in the Regulations, on the ICAS website, and by contacting the Tribunal Clerk (tribunalsclerk@icas.com)