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Tribunal processes: helpsheet for witnesses



Purpose

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

Definitions

This helpsheet uses the term "witness(es)" to cover individuals who have been asked to provide evidence to an ICAS Discipline or Appeal Tribunal, which includes the following:

- Individuals who have submitted complaints to ICAS, whether ICAS members or not.
- Individuals who are otherwise involved in the matters relevant to a complaint.
- Expert witnesses.

The terms "Defender(s)" and "Appellant(s)" are used to cover members, firms, students, and affiliates who are:

- The subject of a formal complaint being considered by a Discipline Tribunal.
- Appealing against a decision.

For ease of use, these processes are collectively referred to in this helpsheet as "Tribunal process(es)".

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

Contents

There are three sections in this helpsheet as follows:

- [Section 1](#) – the parties involved in the process
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Section 1: the parties involved in the process

Tribunal Clerk

The role of the Tribunal Clerk is set out 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 aims to ensure the smooth running of hearings, providing assistance to the Tribunal members and other parties, including witnesses. The Clerk may be contacted using the email address: tribunalsclerk@icas.com

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.

Defender / Appellant

This is the member, student, firm, or affiliate who is the subject of the Tribunal proceedings (whether a formal complaint or appeal process). ICAS will be seeking to take either disciplinary or regulatory action against this person or entity, and they are opposing the action.

ICAS

ICAS will be the other party in the Tribunal process. While most processes are raised by ICAS' Investigation Committee, appeals against some regulatory decisions (e.g. taking away a licence) 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 representatives

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 – 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.

A Defender / Appellant may also choose to represent themselves in a Tribunal process.

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 damage or prejudice which could be caused by holding the hearing in public. Such requests must be made in writing at least 14 days before the hearing, and will only be granted if the Tribunal is satisfied that a private hearing is appropriate. Witnesses will still need to appear to provide evidence at hearings held in private.

The discussions of the Tribunal members following the hearing will always be held in private, with no-one else present.

Independence

It is important to emphasise the independence of the Tribunal members and the Clerk. In performing their duties, they are not acting for or against any of the parties involved in a Tribunal process, with a general duty to ensure fairness in the process. 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.

Section 2: the role of witnesses

Role of witnesses

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

The contribution / purpose of the witness will depend on the nature of their evidence.

- Individuals who were involved in the matters being considered by the Tribunal and can assist the Tribunal in establishing the facts of the case (e.g. individuals who submitted complaints to ICAS).
- 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, and assessing if a finding should be made.

Witnesses are crucial to the effective hearing of a complaint or appeal. By providing evidence, they help the Tribunal reach the best possible decision, allowing ICAS to fulfil its public interest role.

Calling witnesses

Before a case is heard by a Tribunal, the parties will be given an opportunity to confirm whether they wish to have witnesses provide evidence in support of their position. In most cases, the witnesses will have already been involved in ICAS' investigation and are unlikely to be surprised at being called to appear.

Once the list of witnesses has been confirmed to the Tribunal, it is the responsibility of the relevant party to contact their witnesses to confirm their attendance at a hearing (e.g. if an expert witness is being called by ICAS, it will be ICAS employees who contact the witness to make arrangements).

While the Regulations do not state how much time must be allowed between agreeing the list of witnesses and the date of the hearing, it is likely to be more than four weeks, meaning that witnesses should have enough time to make sure they are able to attend.

A witness who cannot attend a hearing on the date advised should contact ICAS or the Defender / Appellant (as appropriate) as soon as possible. The Tribunal may then be asked to make new arrangements, including a rearranged hearing date.

Witnesses who are not Chartered Accountants cannot be forced to appear at hearings or provide evidence to a Tribunal process.

Witness evidence

In most cases, witness statements – a document which sets out in writing what the witness has to say about the case – will be included as part of the papers for a hearing. This ensures that there is a clear record of the witness' evidence which is available to all parties. Taking statements is the responsibility of the party calling the witness (i.e. ICAS or the Defender / Appellant).

In some cases, the witness' evidence – as recorded in the statement – will not be challenged, and the parties will agree that the witness does not need to appear at the hearing (with their evidence being accepted). If this happens, the witness' role in the process may be at an end.

If some or part of the evidence is not accepted, the witness will be called to appear at the hearing to allow them to give their evidence and to offer all parties a chance to ask the witness questions.

What happens before the hearing

Information about the hearing will be given to the witness before it takes place. including:

- The date of the hearing.
- The time at which the witness must attend.
- Where the hearing will take place (likely to be CA House, 21 Haymarket Yards, Edinburgh).
- How much time is expected to be needed for the witness' evidence.

As noted above, this information will be provided by the party calling the witness. However, a witness may contact the Clerk directly if they need more information. Witnesses are asked to follow instructions to avoid any delays to the process.

Special considerations

There may be some instances where a witness would like the Tribunal to make adjustments to assist them in giving evidence. This may include the following:

- Reasonable adjustments required in respect of a disability, e.g. providing documents in larger print, using a British Sign Language (BSL) interpreter, or providing an ergonomic chair.
- An interpreter if English is not the witness' first language.
- Measures to reduce stress in certain kinds of cases, including complaints involving allegations of a sexual nature or intimidation – such measures might include the use of a shield to prevent the witness from being seen, pre-recorded evidence, additional breaks and/or support.

If a witness would like the Tribunal to consider applying adjustments in respect of special considerations, it is important that they contact the Clerk, ICAS, or the person they have been dealing with, as soon as possible before the hearing to allow the Tribunal to properly consider the request and make appropriate directions. Witnesses should avoid making requests on the day of the hearing as this reduces the likelihood that adjustments can be made.

Witnesses should expect the Clerk and the Tribunal members – particularly the Chair – to do their best to help them participate fully during the hearing and to reduce the stress involved in giving evidence so far as possible.

Expenses

Witnesses may claim expenses from the party who called them to appear. This may include travel and subsistence expenses, which should be claimed at a reasonable level.

Section 3: the Tribunal experience

What to wear

While there are no rules as to what to wear, as Tribunal processes are important to the parties, witnesses may choose to dress smartly.

Unlike in some court processes, the parties involved in the hearing will not be wearing gowns or wigs.

Arriving at the hearing

Witnesses will normally be greeted on arrival by the Clerk and will be taken to somewhere they can sit before they are called into the room where the hearing is being held.

Discussing the case

Witnesses are likely to see and meet other people on the day of the hearing. It is important not to discuss the case with anyone except for the people who have called the witness to the hearing (i.e. the people with whom the witness has already discussed the case). This applies both before and after the witness has given their evidence at the hearing. Witnesses should not make any comments about the case on social media.

The room for the hearing

ICAS will make sure that the room is big enough to seat everyone attending the hearing. There will normally be four tables, one for each of the following:

- The members of the Tribunal (with the Clerk normally sitting with them).
- The Defender / Appellant and anyone acting for them.
- Whoever is presenting the case for ICAS.
- The witness.

The table for the witness will be positioned in such a way as to ensure that they can be seen and heard by everyone attending the hearing. Given the size of the room, it is unlikely that the witness will need to speak through a microphone.

Giving evidence remotely

In most instances, the Tribunal will prefer witnesses to give their evidence in person. However, witnesses may give their evidence by video-link (normally using Microsoft Teams) if it is reasonable in the circumstances (e.g. if they would have to travel a significant distance from the hearing location or are not physically able to travel).

The Clerk will discuss the arrangements for giving evidence in advance of the hearing to ensure that appropriate measures are in place.

To ensure that the process runs smoothly, witnesses should consider the following:

- The setting for their evidence – e.g. sitting alone in a well-lit and quiet room, with as little outside noise as possible (e.g. mobile phones should be switched to silent mode). Witnesses should avoid giving evidence in a public place.
- The camera should be kept stable, ensuring a good image of the witness. Ideally, lighting should be in front of or directly above the witness so that their face can be seen clearly.
- Any documents which may be needed during the interview should be kept close by.
- Most video-conference services will allow users to blur their backgrounds if they wish, to ensure that personal items (etc) are not visible to other users.
- Where possible, surrounding use of Wi-Fi should be reduced, as this is likely to improve the connection to the video-conference.

Giving evidence

The process for giving evidence at a hearing will be explained to the witness by the Tribunal Chair. While the process may be different from hearing to hearing, depending on the nature of the evidence, it is likely to involve the following:

- The representative for the party calling the witness will ask the witness to look over their written statement and confirm that they are happy for it to be accepted as their evidence.
- They may then ask questions about certain parts of the statement.
- Once they have no further questions, the representative for the other party will have a chance to ask questions in a similar manner.
- Finally, the members of the Tribunal may ask questions, which could include requests for further information in relation to questions already answered by the witness.

When giving evidence, witnesses may be asked to look at a document which has been included with the papers for the Tribunal hearing. If this happens, the witness will be given a copy of the document and directed to the part of it which relates to the questions being asked.

While it is unlikely that witnesses will be asked to swear an oath before giving their evidence, the Tribunal Chair may highlight the importance of telling the truth, and may also remind the witness of the value of their evidence in helping the Tribunal make a decision on the case.

Answering questions

The Tribunal expects all parties – including witnesses – to behave in a professional and appropriate manner throughout the hearing, helping the Tribunal to run effectively and efficiently. When answering questions, witnesses should consider the following:

- Answering questions based on their own recollections or with reference to documents.
- Being clear about what they do not know or can't remember.
- Asking to repeat or explain questions if what is being asked is not clear.
- Allowing parties to speak without interrupting them.
- Using respectful language.

Notes

If a witness wishes to bring their own notes into a hearing, they should ask the Clerk before the hearing if this will be allowed by the Tribunal.

Recording the hearing

ICAS will normally record the hearing to ensure that there is a clear record of everything that has been said. Witnesses should not record the hearing separately.

After giving evidence

Once the witness has given their evidence, and there are no further questions, they will be asked to leave the room. While they are unlikely to play any further part in the process, there is a small possibility that they could be asked to come back again to answer more questions.

Decision

A witness may ask ICAS to advise them of the outcome of the Tribunal matter. As fully explained in ICAS' publicity helpsheet [here](#), the default position is that a Tribunal's decision will be publicised, including details of any orders which the Tribunal has made.

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)