



The Association of Certified Public Accountants

Disciplinary Regulations

The Association of Certified Public Accountants
27, Old Gloucester Street, London, WC1N 3AX, United Kingdom
T: +442039875795 **E: info@InstituteGlobal.org**
www.icpaglobal.org

Adopted by the Institute of at its Meeting on 31st July 2021

The Association of Certified Public Accountants | Disciplinary Regulations

The Disciplinary Committees

The Board of the Institute shall delegate its powers of disciplinary action against any Member (as defined in section below) for any breach of the Institute's regulations to three Central Council member sub committees:

The Investigations Committee

The Disciplinary Director

The Appeal Committee

Collectively these committees may be described as the "Disciplinary Committees".

The Disciplinary Committees shall operate independently from board, and no current Member of the board shall be appointed to the Disciplinary Committees. Except CEO, as coordinating officer. All together shall not exceed 5 Members

The Institute reserves the right to proceed with a disciplinary referral, notwithstanding the withdrawal of an official complaint, if there is a prima facie matter which the Director of Disciplinary and Professional Standards believes should be considered.

If, at any time after an allegation has been received, or after a complaint has been put to a Member, circumstances arise which in the opinion of the Director of Disciplinary and Professional Standards make it clearly inappropriate to proceed, the case may be closed after consultation between the Director of Disciplinary and Professional Standards and the Chair of the Disciplinary Committee concerned. Such circumstances would include, but are not limited to, the death or extreme ill-health of the Member concerned.

Lay Members

A lay Member shall be a person who is not and has never been a Member of the Institute or its staff, but may include an accountant qualified by another professional body.

Reimbursement of Committee Members

All of those appointed to serve on the Disciplinary Committees shall be entitled to reimbursement of reasonable out of pocket expenses and remuneration at a daily rate to be agreed from time to time for attending the hearings.

General Provisions

No Institute Member or lay person may be a Member at the same time of more than one of the Disciplinary Committees. No Member may sit on an Appeal Committee if they were previously involved with the disciplinary process of the same case.

The Chairs, Institute Members and lay Members of all Disciplinary Committees will be required to submit a List of Interests to the Director of Disciplinary Standards on appointment and annually thereafter.

Any person known to, or connected with, either the Member about whom a complaint has been received or the person making the complaint, shall declare an interest and it is then for the Chair of the Committee to determine whether it is appropriate for such person to sit on the Committee for that particular case.

Committees dealing with disciplinary matters shall be formed from a list of individuals who meet pre-agreed objective criteria and who are selected jointly by the Director of Disciplinary and Professional Standards and the Chief Executive Officer, subject to ratification by the Institute's Central Council.

Object Clause of Memorandum and Articles & Various other Clauses in the Institute's Regulations sets out the circumstances when a Member may be liable to disciplinary action, and also sets out the principles of the disciplinary process.

Where a practising Member fails to renew their practising certificate but evidence shows that they have continued to practice, regulations provide that they shall be expelled from Membership. Central Council has delegated this decision to the Director of Disciplinary and Professional Standards. Such cases will not be reported to the Disciplinary Committee.

However, such Members shall not, on the first occurrence, be treated as having been disciplined if they respond within fourteen working days, and may ask to be re-instated to Membership on application and payment of a re-instatement fee in addition to any other fees owed, provided that they also then satisfy the conditions for award of the practising certificate. Any subsequent failure by the Member to renew their practising certificate will necessitate the Member being referred under these Disciplinary Regulations to the Investigations Committee to consider misconduct.

Issuing of Interlocutory Directions

The Director of Disciplinary and Professional Standards will have discretion to issue Interlocutory Directions (at any stage prior to the hearing) as guidance to the Parties to the Proceedings and any other Interested Party, for the efficient and equitable progress of the case.

The Disciplinary Committees

The Investigations Committee

The Investigations Committee shall consist of a Lay Chair who is legally qualified, an additional Lay person and a Member of the Institute (in the grade of Associate or Fellow or Academic). The quorum shall be 3. There may be a majority decision.

The purpose of the Investigations Committee is to investigate the alleged breach by the Member (as defined below) of Regulations of the Institute Regulations and determine if there appears to be a case to answer with consequent liability to disciplinary action.

The Investigations Committee will receive evidence and submissions in each case referred

From the Regulation Manager (Director Discipline), the Member having been given no less than 21 working days in which to respond.

If the Investigations Committee is of the opinion that there is prima facie evidence that facts or may warrant a more severe penalty than the Investigations Committee is empowered to impose, then it the last notified address of the Member within 14 working days of the decision setting out a summary of the facts and circumstances to be considered by the Disciplinary Committee.

Where the Investigations Committee is of the opinion that there is sufficient evidence that

facts or circumstances have occurred or arisen which constitute a breach of Regulations but do not warrant a more severe penalty than the Investigations Committee is empowered to impose, and, in addition, the Investigations Committee considers that a referral to the Disciplinary Committee is not otherwise appropriate (for example, as a matter of general application or interest), the Investigations Committee may impose by way of a "consent order" one or more of the following sanctions if the Member so consents:

- a. Entry on Record**
- b. Reprimand**

In considering what sanction to offer by way of a consent order upon the Member, the Investigations Committee shall have regard to any previous breaches of Regulations, and any facts, admissions and decisions relating to any current Entry on Record against the Member. The Committee may offer a consent order in respect of the matter under consideration, and/or may combine it with other disciplinary matters relating to the Member. The Investigations Committee has the authority to keep consent order decisions confidential.

If the Member or Student concerned does not accept in writing within 21 working days a consent order when offered by the Investigations Committee, the Case must automatically be referred to the Disciplinary Committee.

Where the Investigations Committee is of the opinion that there is no sufficient evidence that fact or circumstances have occurred or arisen which constitute a breach of the said regulations the Investigations Committee shall dismiss the case against the Member. In this event, no further action will be taken and there will be no record made against the Member's name.

The Disciplinary Directorate

The Disciplinary Board shall consist of a Lay Chair who is legally qualified, an additional Lay person and an appropriately qualified Member of the Institute (in the grade of Associate or Fellow or Academic). The quorum shall be 3. There may be a majority decision.

The terms of reference of the Disciplinary Committee shall be to consider those matters in respect of a Member (as defined in below) referred to the Disciplinary Committee by the Investigations Committee.

Complaints which arise from the conviction of a Member in a court of law shall always be referred in the first instance to the Director of Disciplinary and Professional Standards who may direct the case to the Disciplinary Committee without preliminary consideration by the Investigations Committee. A prima facie case will be presumed to exist.

The Member will be informed (by Special Delivery sent to the last notified address of the Member at least 21 working days before the meeting) of the particulars of the meeting of the Disciplinary Committee convened to consider their case – date, time, venue etc. The notice of hearing which is sent to the Member shall set out the particulars of the alleged breach against the Member and be accompanied by copies of all documents upon which the Presenting Officer intends to rely.

The Member will have a right to attend the hearing and should inform the Institute of their intention to attend, and any witnesses they intend to bring on their behalf. The Member shall at least 10 working days before the hearing provide the Disciplinary Committee with copies of all documents upon which they intend to rely in evidence.

The Member may be accompanied at the hearing by a Representative or arrange for a Witness to attend to give evidence. The Member may elect to send a Representative of their choice to attend on their behalf if the Member is not attending in person.

All fees and expenses of the Representative/Witness must be met in full by the Member. These are not the responsibility of the Institute. Further, the Member must instruct the Representative/Witness of the date, time, venue etc. of the hearing. Again, this is not the responsibility of the Institute.

The Presenting Officer may invite a Complainant and any individual who in the opinion of the Presenting Officer is an Interested Person to attend the hearing to give evidence.

Where facts relating to the particulars are in dispute, the burden of proving such facts shall rest on the Presenting Officer, and the standard of proof required is the balance of probabilities, such that the Committee considers that the facts are more likely than not to have happened.

Where a Member has been convicted of a criminal offence, a copy of the certificate of conviction, certified by a competent officer of that Court in country of residence of that member, shall be conclusive proof of the conviction. The findings of fact upon which the conviction is based shall be admissible as proof of those facts. The findings of fact set out in a final judgment of a Judge of a Court in country of residence of member shall be admissible as conclusive proof of those facts.

If the Disciplinary Committee concludes that a complaint against a Member has been upheld wholly, or in part, it shall state a finding to that effect. In the event of such a finding, it may make any one, or more, of the following orders against the Member, having regard to the case stated by the Member, and the committee's view as to the nature and seriousness of the complaint or any other circumstances, which the committee considers relevant. The orders that may be made by the Disciplinary Committee against a Member whom they agree is guilty of misconduct are that:

- a. They be admonished
- b. They be reprimanded
- c. They be severely reprimanded
- d. Not being a holder of a practising Certificate, they be deemed ineligible for the award of a practising certificate in future (or for a stated number of years)
- e. If in practice, their practising certificate be withdrawn
- f. They be suspended from Membership, with their re-instatement being subject to conditions as decided by the Disciplinary Committee
- g. They be expelled from the Institute and/or other entities of the Institute Group.

More than one sanction may be imposed, at the discretion of the committee. In deciding the appropriate sanction(s) the Disciplinary Committee may take into account previous disciplinary sanctions imposed by the Institute against the Member.

A fine and/or costs may be levied on the Member by the Disciplinary Committee, in addition to any sanction imposed, if the committee believes it to be appropriate to do so. There shall be no maximum fine and additionally or instead (as the Committee decides) unlimited costs shall be recoverable. Due regard, in setting the level of fines, will be given to formal guidelines on sanctions, the severity of the case and statutory limits. All fines and costs imposed shall be payable within 30 calendar days and late payments shall be subject to interest at a reasonable rate (normally 1% over the banks base rate). An unpaid fine or costs shall be a debt enforceable before the courts by any remedy available for contract debt, and non-payment after a period of three calendar months shall cause the Member to be liable to further disciplinary action.

In considering whether to impose a fine and the amount of any fine, the Disciplinary Committee (inter alia) may consider the nature and seriousness of the breach, any other sanction and/or costs order to be made against the Member, and the personal/financial circumstances of the Member.

Where the Disciplinary Committee is of the opinion that there is no, or insufficient, evidence that facts or circumstances have occurred or arisen which constitute a breach of Regulations , the Disciplinary Committee shall dismiss the case against the Member, without requiring the Member to give evidence.

The Member will be informed in writing (by Special Delivery sent to the last notified address of the Member) within 10 working days of the decision of the Disciplinary Committee.

If the Member wishes to exercise their right to appeal, they must notify the Institute in writing, Stating the grounds for the appeal, within 21 working days of receiving the decision of the Disciplinary Committee.

Any sanctions, costs and/or fines levied against the Member will be effective from the date of the notice of communicating (by Special Delivery) the same to him/her, subject to these being postponed in the event of the right of appeal being exercised in above until that appeal has been abandoned or determined by the Appeal Committee.

The proceedings of the Disciplinary Committee are in public (subject to below). All deliberations of the Chair and Members of the committee are not in the public domain.

The Presenting Officer shall be entitled to be present at the hearing of the Disciplinary Committee, and shall be given a reasonable opportunity to present the case against the Member.

A Legal Assessor may be appointed at the discretion of the Director of Disciplinary and Professional Standards, and shall be present at the hearing of the Disciplinary Committee unless their presence is not required by the Committee The Legal Assessor will advise the Committee on any legal points which arise and all advice must be given and/or repeated in the presence of the parties in

attendance. The Legal Assessor does not form part of the decision making process pertaining to the outcome of the hearing.

The Disciplinary of the proceedings within the Disciplinary Committee is entirely at the discretion of the Chair.

The Appeal Committee

The Appeal Committee shall consist of a Lay Chair who shall be legally qualified, an additional Lay Member and a suitably qualified Member of the Institute (in the grade of Associate or Fellow or Academic). The quorum shall be 3. There may be a majority decision. The grounds upon which a Member, as defined in below, may appeal are a perceived error of the application of the Disciplinary Regulations, either as to findings of fact or sanction, including costs and/or a perceived procedural irregularity.

The Member will be informed (by Special Delivery sent to the last notified address of the Member at least 21 working days before the meeting) of the particulars of the meeting of the Appeal Committee convened to consider their case – date, time, venue etc.

The Member will have the right to attend the hearing and should inform the Institute of their intention to attend, and any witnesses they are bringing on their behalf at least 10 working days before the meeting.

The Member may send a Representative of choice to attend on their behalf or elect to send such Representative in their stead. All fees and expenses of the Representative must be met in full by the Member. These are not the responsibility of the Institute. Further, the Member must instruct the Representative of the date, time, venue etc. of the hearing. Again, this is not the responsibility of the Institute.

The Appeal Committee may decide:

- a. to uphold the findings and sanctions of the Disciplinary Committee wholly or partly.
- b. to overturn the findings and sanctions of the Disciplinary Committee wholly or partly
- c. to uphold the findings of the Disciplinary Committee and to impose more or less severe sanctions.
- d. make an award of costs against the Member in respect of the appeal.
- e. The decision of the Appeal Committee shall be final and there shall be no further right of appeal. (There shall be no right of appeal to Central Council)
- f. The Member will be informed in writing of the decision of the Appeal Committee within 10 working days of the hearing.
- g. Any sanctions, fines and/or costs made against the Member will be effective from the date of the notice communicating (by Special Delivery) the same to him/her.
- h. A fine and/or costs may be levied on the Member by the Appeal Committee, in addition to any sanction imposed, if the committee believes it to be appropriate to do there shall be no maximum fine and additionally or instead (as the Committee decides) unlimited costs in respect of the appeal shall be recoverable. Due regard, in setting the level of fines, will be given to formal guidelines on sanctions, the severity of the case and statutory limits. All fines and costs imposed shall be payable within 30 calendar days and late payments shall be subject to interest at a reasonable rate (normally 1% over the banks base rate). An unpaid fine or costs shall be a debt enforceable before the courts by any remedy available for contract debt, and non-payment after a period of three months shall cause the Member to be liable to further disciplinary action.

The proceedings of the Appeal Committee are in public (subject to below). All deliberations of the Chair and Members of the Committee are not in the public domain.

The Presenting Officer shall be entitled to be present at the hearing of the Appeal Committee and shall be given a reasonable opportunity to present the case against the Member.

The appeal is considered as a complete re-hearing. The standard of proof is the balance of probabilities, with the onus of proving the allegations resting on the Institute.

A Legal Assessor may be appointed at the discretion of the Director of Disciplinary and Professional Standards, and shall be present at the hearing of the Appeal Committee unless their presence is not required by the Committee. The Legal Assessor will advise the Committee on any legal points which arise and all advice must be given and/or repeated in the presence of the parties in

attendance. The Legal Assessor does not form part of the decision making process pertaining to the outcome of the hearing. The Legal Assessor must not have been the Legal Assessor for the Disciplinary Committee in the same case.

The Disciplinary of the proceedings within the Appeal Committee is entirely at the discretion of the Chair.

Attendance of the Director of Disciplinary and Professional Standards

The Director of Disciplinary and Professional Standards has a right to attend all meetings of the Disciplinary Committees – including the committee deliberations and the hearing itself – as an observer only, taking no part in any discussions or proceedings. The Director is not a Member of any Disciplinary committee.

Member's Duty to Co-operate with Investigations and Hearings of Disciplinary Committees

Any Member or Student requested to do so shall provide their full and prompt co-operation to the Presenting Officer of the Institute (or any person acting on behalf of the Presenting Officer) and any Disciplinary Committee in connection with an investigation or committee hearing involving the Member or Student. Failure to co-operate shall constitute a breach of these Regulations and may render the Member or Student liable to disciplinary action.

Publicity

The outline details of decisions against named Members or Students made at the Disciplinary Committee hearings (provided that after a Disciplinary Committee meeting an appeal has not been made within the requisite time) and the Appeal Committee hearings shall be published in the Institute's magazine and on the Institute's website.

Register

A permanent register shall be kept of all proceedings and outcomes of disciplinary cases.

Minutes

Minutes shall be kept of the proceedings of the Disciplinary Committees including the names of those present and the decisions reached.

Liability of Member for subscriptions owed following disciplinary action

A person who shall have ceased to be a Member or Student by virtue of disciplinary action shall be liable for all subscriptions or other sums due from him/her to the Institute at the date of cessation of their Membership. A Member cannot resign from the Institute whilst Disciplinary proceedings are continuing.

General Note

These Regulations should be read in conjunction with the Institute Regulations and Articles of Association.

Fees disputes will not be dealt with through the disciplinary process.

There is no provision in the Disciplinary Regulations or the Institute Regulations to order compensation of any kind or costs to the Complainant or any Interested Party.

There is no provision for the Complainant or any Interested Party to make an appeal against the outcome of a Disciplinary committee.

These Regulations apply to all complaints received after 31st July 2021.

Definitions and Interpretations

In these Regulations, unless the context or the Regulations otherwise require, the following expressions shall have the following meanings:

“Regulations” means the Regulations of the Institute as amended from time to time; Includes Memorandum and Articles

“Complainant” means a person(s) making a bona fide complaint against a Member (as defined) that is not in relation to a fees dispute. For the avoidance of doubt, the Complainant is not a Party to the Proceedings;

“Central Council” means the Independent Members Committee of the Institute constituted as per articles of the association

“Costs Order” means an award of costs to be paid by the Member so as wholly or partly to reimburse the Institute such reasonable costs and expenses as are incurred in connection with the investigation and determination of the disciplinary action including any appeal;

“Director” unless otherwise stated, shall, for the avoidance of doubt, mean the Director of Disciplinary and Professional Standards of the Institute.

“Entry on Record” means an entry placed on the Membership record of the Member for a period not exceeding two years that no further action will be taken under the disciplinary scheme in respect of a matter, unless further bona fide complaints or allegations, regarding the Member are received within the specified period, in which case the original matter may be reconsidered alongside any new matter and taken into account by a Disciplinary Committee in deciding what if any sanction to impose on the Member;

“Expulsion” means, in relation to a Member or Student, expulsion from Membership or Studentship of the Institute indefinitely, and, in relation to a former Member or former Student means an order that if the former Member or former Student at any time applies to be re-admitted to Membership or Studentship the application shall be treated in accordance with Regulations;

“Interested Person” means an individual or body with a proper interest in the outcome of any Proceedings under these Disciplinary Regulations. For the avoidance of doubt the interested person is not a Party to the proceedings:

“Legal Assessor” means a person appointed by the Director of Disciplinary and Professional Standards to provide legal advice to the Disciplinary and/or Appeal Committees and who shall Be independent from those committees.

“Member” means for the purpose of these Regulations only, a person registered (as appropriate) in accordance with Articles of the Association, and includes (inter alia) a Member (as defined in the Regulations), of any category, and also to Members of entities within the Institute Group. For the avoidance of doubt, the term “Member” shall, where appropriate, include a Student registered with the Institute.

“Practising Certificate” means a certificate issued to a Member under the Institute’s practice regulations.

“Presenting Officer” means a person appointed by the Institute to represent the Institute at a hearing of a Disciplinary committee.

“Suspension” means, in relation to a Member or Student, suspension of Membership or Studentship of the Institute for a definite period of time, and, in relation to a former Member or Student of the Institute, means an order that any application received from that former Member or Student for re-admittance to Membership or Studentship during the definite period shall be rejected.

“Professional Misconduct” includes any departure from observing “Code of Ethics for Professional Accountants” or “Practice Regulations” adopted by the Central Council, amongst other circumstances explained in the Regulations.

By Order of Board of The Association of Certified Public Accountants

31st July 2021

A formal complaint against any member should be filed by writing to us including supporting evidences by post or through mail to complaint@icpaglobal.org

The Association of Certified Public Accountants | Disciplinary Regulations