THE INSTITUTE OF CHARTERED ACCOUNTANTS OF SCOTLAND

DISCIPLINE AND APPEAL TRIBUNALS REGULATIONS

11 November 2016
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Council, in terms of Rule 12.3 of the ICAS Rules, hereby makes the following Regulations.

Arrangement of Regulations:

1. General
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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 the date they are approved by the Council.

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

- **Appeal Panel** means the Appeal Panel appointed by the Discipline Board of ICAS in terms of Regulations 2.5 to 2.7
- **Clerk** means an official appointed by ICAS who is responsible for the administrative arrangements for hearings of the Discipline and Appeal Tribunals
- **Chairman** means the person chairing the Discipline Tribunal or Appeal Tribunal
- **Committee** means the Investigation Committee of ICAS, as appointed under Rule 12.6 by the Regulation Board
- **Complaint** means the formal complaint within the meaning of Regulations 3.3 to 3.4 and is the summary of grounds for disciplinary action alleged and the outline of the evidence sent to the Discipline Panel by the Investigation Committee of ICAS and which the Committee offers to prove before the Discipline Tribunal
- **Conference Call** means a facility whereby a hearing may be conducted without the parties and the Discipline or Appeal Tribunal being physically present. This may include, but not be limited to, telephone conference calls, video conference calls, Skype facilities and other electronic means
- **Defender** means the person against whom proceedings are brought by The Committee.
- **Discipline Board** means the Discipline Board of ICAS, as appointed under Rule 12.1 of the Rules
- **Discipline Panel** means the Discipline Panel appointed by the Discipline Board of ICAS in terms of Regulation 2.1 to 2.4
- **Full Hearing** means a hearing at which evidence will be heard and which will be capable of determining some or all of the issues in a case.
- **Notice** means a notice in accordance with Regulation 3.2 and is a Notice sent to the Defender and to the Committee by the Clerk in terms of the procedure set out in Regulation 3.2 of these Regulations
- **Parties** means the Defender and the Committee
- **Representative of the Committee** means the person appearing at the Discipline Tribunal representing the Committee as appointed under Regulation 3.8
- **Regulatory Committee** means each of the Public Practice Committee, Audit Registration Committee, Insolvency Permit Committee and CPD Regulatory Committee
Rules means ICAS Rules dated 10 July 2012, or any subsequently amended version thereof

Tribunal means either the Discipline Tribunal appointed by the Chairman of the Discipline Panel in terms of Regulation 3.5 to 3.6 or the Appeal Tribunal appointed by the Chairman of the Appeal Panel in terms of Regulations 3.80 to 3.82

1.3 The Interpretation Act 1978 applies to these Regulations as it applies to an Act of Parliament.

2. **APPOINTMENT, REMUNERATION AND POWERS**

2.1 The Discipline shall appoint a Discipline Panel comprising no fewer than six Members of ICAS, no fewer than four Public Interest Members and no fewer than two legally qualified persons.

2.2 The Discipline Board shall appoint one of the legally qualified members to act as Chairman of the Discipline Panel.

2.3 In the absence of the Chairman any of the legally qualified members shall have the powers of the Chairman in these Regulations.

2.4 Three members of the Discipline Panel, including one Member of ICAS and one Public Interest Member and one legally qualified member, shall comprise a quorum.

2.5 The Discipline Board shall appoint an Appeal Panel comprising no fewer than two Members of ICAS, no fewer than two Public Interest Members and no fewer than two legally qualified persons.

2.6 The Discipline Board shall appoint one of the legally qualified members to act as Chairman of the Appeal Panel. In the absence of the Chairman any of the legally qualified members shall have the power of the Chairman in these Regulations.

2.7 Three members of the Appeal Panel, including one Member of ICAS, one Public Interest Member and one legally qualified member, shall comprise a quorum.

2.8 Appointments to the Discipline Panel and the Appeal Panel shall be for a period of not less than five years.

2.9 The Council may pay remuneration to and the reasonable expenses of the Discipline Panel and the Appeal Panel.

2.10 The Chairman of the Discipline Panel and the Appeal Panel shall, in the case of an equality of votes, have a second or casting vote.

2.11 The Discipline Board may from time to time draw up guidance for the making of orders by the Discipline Tribunal and Appeal Tribunal. Any such guidance shall be published to Members, CA Student Members, Affiliates and Firms in such manner as the Council thinks fit.

2.12 The Discipline Tribunal and Appeal Tribunal shall have regard in making orders under these Regulations to any guidance drawn up under Regulation 2.11, but the making of any order in any individual case shall be at the sole discretion of the Tribunal as the case may be.

2.13 Except as provided in these Regulations, the Discipline and Appeal Tribunals and their members shall not be subject to the direction or guidance of the Council or of any other person.
3. DISCIPLINE AND APPEALS PROCESSES

Relief from failure to comply with the Regulations
3.1 The chairman of the Discipline or Appeal Panel or, once appointed, the chairman of the Discipline or Appeal Tribunal, may relieve a party from the consequences of failure to comply with a provision in these Regulations which is shown to be due to mistake, oversight or other excusable cause, on such conditions as such chairman thinks fit.

Service of documents
3.2 In these Regulations:

- 3.2.1 Any reference to the sending of a Notice to a Defender is a reference to the sending of the Notice by pre-paid recorded delivery post to the Defender’s place of business, or, where the Defender is no longer in business, to the Defender’s last known address as recorded or known by ICAS.

- 3.2.2 Where service of the Notice of preliminary hearing or notice of hearing is by pre-paid recorded delivery post, it shall be treated as having been served 48 hours after the date on which it was posted.

Receipt of a Formal Complaint and Service on a Member
3.3 Where the Committee decides to make a formal complaint against a Member, Affiliate, Firm or a CA Student Member it shall send that complaint to the Clerk.

3.4 Within 21 days of the receipt of a formal complaint from the Committee, the Clerk shall serve the formal complaint on the Member, Affiliate, Firm or CA Student Member notifying them of the complaint by the Committee. The service of the complaint may include Notice of a preliminary hearing in terms of Regulation 3.14 to 3.22 or notice of a hearing in terms of Regulation 3.36 to 3.40 below.

Appointment of a Discipline Tribunal
3.5 Upon receiving a formal complaint from the Committee in accordance with the ICAS Investigation Regulations, the Chairman of the Discipline Panel shall appoint from among the Panel a Discipline Tribunal to hear the complaint. The Discipline Tribunal shall comprise at least three members of the Panel appointed under Regulation 2.1 to 2.4, including a legally qualified member as Chairman, not fewer than one Member of ICAS and not fewer than one Public Interest Member of the Panel.

3.6(a) Other than at a Full Hearing, the Chairman of the Discipline Tribunal may, at his or her discretion, sit alone.

3.6 The formal complaint may be heard in the absence of any one member of a Discipline Tribunal except the Chairman, provided that if the Defender is present, the hearing may proceed in the absence of such member only if the Defender consents. A member of the Discipline Tribunal who has not been present at a hearing of a formal complaint may not thereafter sit in judgement on that complaint save with the agreement of the Defender.

Representation before the Disciplinary Tribunal and the Appeal Tribunal
3.7 A Defender shall be entitled to be represented before a Discipline or Appeal Tribunal by a solicitor, advocate or barrister entitled to practice in any part of the United Kingdom or any member of a corresponding profession in any Member State of the European Union and a Defender so represented shall be deemed to be present. A defender may also be represented by a lay representative with leave of the Discipline or Appeal Tribunal.

3.8 The Committee shall be represented before a Discipline or Appeal Tribunal by any official of ICAS or may instruct a solicitor, advocate or barrister entitled to practice in any part of the United Kingdom or any member of a corresponding profession in any Member State of the European Union. If a Complaint is proved, such representative shall be entitled to invite the Discipline Tribunal to consider making any particular order or direction under these Regulations.
Non Attendance by Defender
3.9 If the Defender does not attend before the Discipline Tribunal or the Appeal Tribunal on the day and at the time fixed for the hearing then the Discipline Tribunal or Appeal Tribunal may proceed to hear the Complaint in the Defender’s absence if it is satisfied that notice of that hearing was properly served on the Defender in good time, in compliance with these Regulations, and that no adequate reason has been given for his non-attendance.

Notice of Hearings
3.10 Notice of the date, time and place of all hearings permitted in terms of these Regulations shall appear on ICAS’ Tribunals website.

Preliminary Challenges to the Complaint
3.11 Where the Defender wishes to challenge the relevancy or competency of the Complaint, the Defender or his representative shall lodge written arguments with the Clerk not later than 21 days prior to the preliminary hearing/or meeting.

3.12 Where the Defender challenges the relevancy or competency of the Complaint, the Representative of the Committee shall lodge written submissions in answer to such challenge within 14 days of receipt of the Defender’s challenge.

3.13 The Chairman of the Discipline Tribunal may, on the application of either party, vary any of said time periods.

Preliminary Hearings & Directions
3.14 Before the Complaint is considered by the Discipline Tribunal, the Chairman of the Discipline Tribunal shall hold a preliminary hearing, either at his own instance or on the application of either of the parties, if he considers such a meeting would assist the Discipline Tribunal in its functions.

3.15 A preliminary hearing shall be chaired by the Chairman of the Discipline Tribunal sitting alone and shall be held in public with the Parties and their representatives, and Notice of the preliminary hearing shall be given to any other person the Chairman considers is appropriate.

3.16 If the Defender does not attend or is not represented at the preliminary hearing then, provided that the Discipline Tribunal Chairman is satisfied that Notice of the preliminary hearing was served on the defender in accordance with these Regulations, the Discipline Tribunal Chairman may proceed with the preliminary hearing and make such orders in terms of Regulation 3.20 as are deemed by him to be appropriate.

3.17 The Clerk shall give the Parties not less than 42 days’ notice of the preliminary hearing. In every case the Clerk shall send to the Parties a Notice of preliminary hearing which shall state or enclose the following:

3.17.1 the date, time and venue of the preliminary hearing;
3.17.2 the Complaint;
3.17.3 the alleged facts which support the Complaint;
3.17.4 that the Parties have a right to attend or be represented at the preliminary hearing and to make oral submissions;
3.17.5 that the Chairman may direct that the preliminary hearing proceed in the Defender’s absence;
3.17.6 the aforesaid provisions regarding preliminary challenges to the Complaint.

3.18 Where the Defender makes a preliminary challenge to the Complaint under Regulation 3.11 to 3.13, the Chairman may decide:

3.18.1 that the preliminary hearing shall continue as previously intimated, or
3.18.2 that a Hearing by conference call shall be convened with the Parties to discuss further procedure subject to any party having the right to insist that the discussion take place in an open forum, or
3.18.3 adjourn the Preliminary Hearing and direct that a new date be set for a Preliminary Hearing to allow the submissions of the Parties on the challenge to be heard.

3.19 Parties should be in a position at the Preliminary Hearing to provide the following information to the Chairman:
3.19.1 an estimate of time for the duration of the Hearing;
3.19.2 the identity of any witnesses to be called;
3.19.3 any dates on which the parties or any witnesses would be unable to attend; and
3.19.4 whether or not the health of the Defender will be raised as an issue and, if so, whether or not a medical report is required.

3.20 At the Preliminary Hearing the Chairman will seek to secure the just and expeditious hearing of the Complaint and may make orders to achieve that end which may include but are not limited to the following:
3.20.1 that there be an exchange of witness statements;
3.20.2 that the reports of any expert witnesses are disclosed;
3.20.3 that any documents which might assist in the resolution of the issues be produced so far as these are within the possession or control of a party to the proceedings;
3.20.4 that there be a meeting of experts with a view to identifying the areas where they disagree with a report of the areas of disagreement being provided to the Discipline Tribunal;
3.20.5 that there be an agreed statement of facts;
3.20.6 that the Defender lodges answers to the Complaint;
3.20.7 that there be adjustment of the Complaint and answers within time-limits;
3.20.8 that there be a recording of the decision taken at the preliminary hearing;
3.20.9 that there be an adjournment of the preliminary hearing or that a further preliminary hearing should be held.

3.21 The Chairman shall record a note of any directions issued and shall send a copy of the note of any such directions to all the Parties.

3.22 The Notice of Preliminary Hearing shall be accompanied by a copy of the Rules and these Regulations.

Conjoinment of Complaints
3.23 Where a Complaint is pending before a Discipline Tribunal and the Committee receives a further Complaint involving the same Member, Affiliate, Firm or CA Student Member the Committee may apply to the Chairman of the Discipline Tribunal seeking consent for the Discipline Tribunal to conjoin the Complaints.

3.24 Where it is proposed that the Complaints be conjoined the Clerk shall:
3.24.1 serve the further Complaint on the Defender; and
3.24.2 afford the Defender the opportunity to make representations challenging the conjoinment of the Complaints. The Defender or his representative shall lodge written arguments with the Clerk not later than 14 days prior to the Preliminary Hearing.

3.25 The Tribunal may hear at the same time Complaints against two or more Defenders where those Complaints arise out of the same circumstances or, in the view of the Tribunal, a joint hearing is necessary and would not prejudice the fairness of the proceedings.

Burden and Standard of Proof
3.26 The burden of proving the facts shall rest on the Committee.

3.27 The standard of proof shall be the balance of probabilities (civil standard).
Evidence
3.28 Where the Defender has been convicted of a criminal offence in a UK court, an extract conviction or a copy of the conviction certified by a court officer at the relevant court shall be proof of that conviction.

Witnesses
3.29 The Parties are entitled to call witnesses.
3.30 Witnesses may be examined, cross examined and re-examined and it will be open to any member of the Discipline Tribunal to ask questions of the witnesses.

Procedure Preliminary to a Full Hearing
3.31 The Defender or the Committee shall inform the Clerk in writing not later than 21 days before the date upon which the hearing will take place whether or not they wish the hearing to take place in private.
3.32 The Defender shall inform the Clerk in writing not later than 14 days before the date upon which the hearing will take place whether or not the Defender intends to appear or be represented at the hearing and where he intends to be represented, give the name of that representative.
3.33 No later than 14 days before the date on which the hearing will take place the Parties shall send to the Clerk and to each other copies of all documents on which they intend to rely at the hearing and the names and addresses of any witnesses they intend to call.
3.34 Where no Preliminary Hearing has been held and the Defender wishes to challenge the competency or relevancy of the Complaint, the Defender shall lodge written arguments with the Clerk not later than 14 days before the date on which the hearing will take place.
3.35 The Chairman shall arrange a Preliminary hearing to determine any challenge by the Defender under Regulation 3.34 and Notice of this shall be in accordance with Regulation 3.17.1 to 3.17.5. In these circumstances the full hearing of the Complaint shall be adjourned by the Chairman.

Notice of Hearing
3.36 Where the Chairman of the Discipline Panel has appointed a Discipline Tribunal to hear the Complaint in terms of Regulation 3.5 to 3.6, the Clerk shall send to the Parties a Notice of Hearing.
3.37 Where a Preliminary Hearing in terms of Regulation 3.14 to 3.22 has taken place the Notice of Hearing shall be sent to the Parties as soon as reasonably practicable after that Preliminary Hearing.
3.38 In every case the Notice of Hearing shall be sent to the Parties no later than 28 days before the date on which the hearing will be held.
3.39 The Notice of Hearing shall state or enclose the following:
   3.39.1 the date, time and venue of the hearing;
   3.39.2 the Complaint;
   3.39.3 the alleged facts which support the Complaint;
   3.39.4 the orders which may be imposed by the Discipline Tribunal in terms of Regulation 3.47;
   3.39.5 the right of the Parties to be represented at the hearing in terms of Regulation 3.7 to 3.8;
   3.39.6 the power of the Discipline Tribunal in terms of Regulation 3.9 to proceed with the hearing in the Defender’s absence;
   3.39.7 the right of the Parties to call witnesses.
3.40 The Notice of Hearing shall be accompanied by a copy of the Rules and these Regulations.
Public Hearing
3.41 Hearings before the Discipline and Appeal Tribunal shall be heard in public.

3.42 Notwithstanding the provisions of Regulation 3.41 either of the Parties may apply to the Discipline or Appeal Tribunal to have the hearing or part of it in private. Before deciding whether or not to hold the hearing or part of it in private, the Tribunal shall hear representations from the Parties. The Tribunal shall grant a request to hold the hearing or part of it in private where it is satisfied that it is necessary to do so having regard to any unfairness to any party or prejudice to the interests of any other person that might result from a hearing in public.

3.43 Notwithstanding the decision that a Complaint shall be heard in public, the Discipline and Appeal Tribunal shall deliberate and reach its decisions in private, although its decisions shall be pronounced in public.

Postponements & Adjournments
3.44 The Chairman of the Discipline or Appeal Tribunal at his or her discretion, or upon the application by either of the Parties, may postpone or adjourn the hearing on cause shown, but before any postponement or adjournment is granted shall have regard to:
   3.44.1 the public interest in the expeditious disposal of the case;
   3.44.2 any inconvenience to the Parties and to witnesses;
   3.44.3 fairness.

3.45(a) Any party may request the Clerk to assign a hearing to regulate further procedure in a case before the Discipline or Appeal Tribunal or to deal with any motion a party may wish to make.

3.45.1 Upon such a request being made, the Clerk will ascertain the availability of the Chairman and will assign a hearing as soon as is reasonably practicable but on at least 48 hours’ notice being given to other parties.

3.45.2 On cause shown, the requirement to give 48 hours’ notice may be dispensed with by the Tribunal

3.45.3 The Clerk may put a case out by-order of the Discipline or Appeal Tribunal on reasonable notice being given to the parties.

3.45.4 The Discipline or Appeal Tribunal may continue such a hearing to a future date.

3.45.5 Any hearing assigned under this Rule may be conducted by conference call always providing the parties and the Chairman so agree.

3.45.6 In the event that the Committee determines not to proceed with a complaint before the Discipline Tribunal after it has been served, the Committee shall enrol a motion to allow the proceedings to be dismissed.

3.45.7 The Discipline Tribunal will have the power to grant decree of dismissal subject to making an award of expenses in relation to the proceedings to be dismissed, as it sees fit.

3.45.8 In the event that proceedings are dismissed, the Committee will only be entitled to raise a further complaint against the same defender on substantially the same grounds with leave of the Discipline Tribunal.

Procedure at Discipline Tribunal Hearings
3.46 The order of proceedings at the hearing of a Complaint before the Discipline Tribunal shall be as follows:
   3.46.1 The Chairman shall ask the Defender if the Complaint or any part of it is admitted. Where the Complaint is admitted or a partial admission acceptable to the Representative of the Committee is tendered, the Representative shall place before the Tribunal an agreed statement of facts.
3.46.2 Where an admission as described in 3.45.1 supra is tendered and there is no agreed statement of facts, the representative of the Committee and the representative of the Defender or Defenders shall be entitled to address the Discipline Tribunal and if, thereafter, the Discipline Tribunal considers the relevant facts are materially in dispute to an extent that the dispute may affect the order to be imposed, the Tribunal may allow the parties to adduce evidence in support of their respective positions.

3.46.3 Where the Defender does not admit the Complaint, or admits part of the complaint but this is not acceptable to the Representative of the Committee, the Representative of the Committee shall lead evidence in support of the Complaint.

3.46.4 After the Committee has closed its case the Defender shall be entitled to make a motion of ‘no case to answer’. Where that submission is made, the Representative of the Committee shall be entitled to reply to that submission.

3.46.5 Where the Defender does not make a motion of ‘no case to answer’, or where the Tribunal has heard a motion of ‘no case to answer’ but has refused it, the Defender may lead evidence in support of his defence.

3.46.6 When both Parties have closed their respective cases the Tribunal shall invite the Representative of the Committee and the Defender each to make a closing address based on the evidence presented to the Tribunal.

3.46.7 Where the Tribunal finds the Complaint proved, or where the Complaint has been admitted, the Defender may address the Tribunal on any mitigating circumstances and adduce references and testimonials prior to the Tribunal reaching its decision on the imposition of any order in terms of Regulation 3.46.

3.46.8 Before making an award of costs in terms of Regulation 3.88 to 3.89, the Tribunal shall allow the Parties to make submissions on whether such an award should be made and the amount thereof.

3.46.9 The Tribunal may reserve its decision and issue it in writing at a later date.

3.46.10 The Tribunal shall give reasons for its decisions.

Powers of Discipline Tribunal

3.47 Upon finding a formal Complaint proved in whole or in part, a Discipline Tribunal may make any one or more of the following orders concerning the Defender as it considers appropriate in all the circumstances.

3.47.1 A Defender who is a Member may:
   i. be excluded from Membership of ICAS;
   ii. be suspended from Membership of ICAS for such period, not exceeding one year, as the Tribunal thinks fit;
   iii. have their practising certificate withdrawn or have specified conditions attached to such certificate;
   iv. be ineligible for a practising certificate;
   v. have any insolvency permit or entitlement held under the Audit Regulations withdrawn;
   vi. be severely reprimanded;
   vii. be reprimanded;
   viii. be admonished;
   ix. be required to pay a penalty, to ICAS, in such amount as the Tribunal may determine.

3.47.2 A Defender who is a CA Student Member may:
   i. be declared unfit to become a Member of ICAS and the registration of their training contract be cancelled;
   ii. be ineligible, for such period as the Tribunal thinks fit, to apply for admission as a member of ICAS;
   iii. be ineligible, for such period as the Tribunal thinks fit, to exercise all or any of the following rights:
   iv. entry for all or part of ICAS’ Examinations;
   v. continuance of service under a training contract;
   vi. be ineligible to use ICAS’ premises;
   vii. be reprimanded.
3.47.3 A Defender who is an Audit Affiliate or that is a Registered Auditor may:
   i. have any registration granted by ICAS under the Companies Act 2006 withdrawn;
   ii. be severely reprimanded;
   iii. be reprimanded;
   iv. be required to pay a penalty, to ICAS, in such amount as the Tribunal may determine.

3.47.4 A Defender who is an Affiliate may:
   i. be excluded from Affiliate status;
   ii. have any licences or permits withdrawn;
   iii. be severely reprimanded;
   iv. be reprimanded;
   v. be admonished;
   vi. be required to pay a penalty, to ICAS, in such amount as the Tribunal may determine.

3.48 Any order, under Regulation 3.47, may be made upon such terms and conditions, if any, as the Discipline Tribunal thinks fit.

3.49 Any order, under Regulation 3.47, may include a direction that a Defender obtains advice from such a source as the Tribunal may prescribe and the Member, Affiliate, Firm or CA Student Member shall follow any such advice. For the avoidance of doubt, a failure without reasonable excuse to comply with a direction under this paragraph shall be professional misconduct.

3.50 If the Discipline Tribunal dismisses a Complaint and the Defender has incurred costs under Regulation 5.1 of ICAS Investigation Regulations the Tribunal may order the reimbursement by ICAS of all or part of the monies paid under that Regulation.

3.50.1 In the event that neither the Discipline Tribunal nor the Committee makes such an order, a Member, Affiliate, Firm (if such cost was borne by the Firm) or CA Student Member may appeal to the Appeal Tribunal to recover such monies.

3.51 An order of a Discipline Tribunal shall take effect from such date as the Discipline Tribunal shall determine or, failing such a determination, upon the expiry of the time permitted for an appeal to be lodged or the date of disposal of any appeal, whichever is the later. For the avoidance of doubt, the Discipline Tribunal may, whether the time permitted for an appeal to be lodged has expired or any appeal has been disposed of, cause the findings and order to be publicised under Regulation 3.95 to 3.97.

3.52 If, notwithstanding its finding that a formal Complaint has been proved, a Discipline Tribunal is of the opinion that no order under this Regulation is appropriate, it may, instead of making an order under Regulation 3.46 take no further action on the complaint.

**Interim Orders**

3.53 Any one of the Committee or Regulatory Committees may make an interim order application to the Discipline Tribunal where they consider there is sufficient evidence available concerning a Member or Affiliate to justify the Discipline Tribunal to make an interim order under Rule 13.18.

3.54 The Discipline Tribunal is justified in making an interim order under these Regulations if satisfied that the order is justified in all the circumstances having regard to the public interest.

3.55 The Discipline Tribunal upon such a summary being laid before it, and if satisfied that the Member or Affiliate is present or represented or reasonable steps have been taken to serve a copy of the summary upon the Member or Affiliate and that notice of the hearing and of his right to appear or be represented before the Tribunal and to make representations at that hearing was properly served on the Member in good time, and that no adequate reason was given to his non-attendance, may, having heard any submissions which the Committee or Regulatory Committee and the Member or Affiliate (if the Member or Affiliate or his representative be present) may wish to make, make an order under Rule 13.18.
3.55.1 Any order made under Rule 13.18 may be made for such period as the Tribunal may determine.
3.55.2 An interim order shall take effect from the date it is made by the Tribunal or from such other date as the Tribunal shall direct.

3.56 A Member or Affiliate may appeal against an interim order made under this Regulation in the same manner as against any finding or decision of the Tribunal.

3.57 Unless the Discipline Tribunal otherwise orders, an interim order shall take effect immediately and notwithstanding any appeal under Regulation 3.56.

3.58 The Discipline Tribunal shall review any interim order which has not expired within twelve months from the date of the said order and shall take all reasonable steps to give the Member or Affiliate (or person who but for such an order would have been a Member or Affiliate) notice on each occasion that the said order is to be reviewed and a reasonable opportunity of appearing or being represented before it and of making representations.

3.59 A Member or Affiliate (or person who but for such an order would have been a Member or Affiliate) may apply for an order made under this Regulation to be reviewed on the grounds of a change in circumstances since the order was made. Any application for review shall be in writing to the Clerk to the Discipline Tribunal. The Tribunal shall consider the said application within three months of receiving the application. The Tribunal shall take all reasonable steps to give the Member or Affiliate (or person who but for such an order would have been a Member or Affiliate) notice of that meeting and an opportunity of appearing or being represented before it and of making representations.

Additional Powers of the Discipline Tribunal

3.60 The Discipline Tribunal on application by the Council, the Public Practice Committee or the Committee, shall have power, subject to appeal to the Appeal Tribunal in terms of Regulation 3.67, to suspend a Member’s [or Affiliate’s] practising certificate or Membership if his fitness to conduct or continue in practice is seriously impaired by reason of either his physical or mental condition and it appears necessary to do so as an interim measure for the protection of the public or if it is in ICAS’ or the Member’s interests. This power is in addition to the powers contained in Regulations 3.52 to 3.58.

3.61 The Discipline Tribunal, on application by either the Council, the Committee, or a Regulatory Committee shall have power to compel a Member to attend for independent medical examination in order to determine whether in the opinion of an independent medical examiner the Member is fit to participate in the proceedings set out below.

3.61.1 A Member or his representative has indicated that the Member is unable to respond or otherwise participate in an enquiry, investigation or interview being conducted by one of the Committees in Regulation 3.60 above on account of his physical or mental condition; or

3.61.2 A Member or his representative has indicated that the Member is unable to tender a plea in respect of a formal complaint before the Discipline Tribunal or otherwise take part in a hearing before the Discipline Tribunal on account of his physical or mental condition; or

3.61.3 A Member or his representative has indicated that the Member is unable to take part in a hearing before the Appeal Tribunal on account of his physical or mental condition.

3.62 The independent medical examination shall be carried out by a medical practitioner of the Discipline Tribunal’s choice.

3.63 The medical practitioner shall be required to prepare a report on the Member’s physical or mental condition which shall express:

3.63.1 an opinion as to whether the Member is fit to take part in the proceedings referred to in Regulation 3.60; or
3.63.2 an opinion when the Member will be fit to do so if the opinion is that the Member is not fit to take part in the proceedings referred to in Regulation 3.60; and
3.63.3 any recommendations as to the management of the case

Effect of orders
3.64 Any order of the Discipline Tribunal shall take effect from such date as the Discipline Tribunal shall determine in accordance with Regulation 3.50.

3.65 Where the Tribunal considers that it may be appropriate that any order should have immediate effect, it shall invite the Parties to make representations before reaching its decision.

Notice of Decision
3.66 Within seven days of the Tribunal’s decision, the Clerk shall send to the Parties a Notice of decision.

3.67 The Notice of decision shall:
3.67.1 set out the decision of the Tribunal;
3.67.2 set out the reasons for that decision;
3.67.3 set out the right to appeal the decision of the Tribunal in terms of Regulation 3.67;
3.67.4 state that any Notice of appeal shall be in accordance with Regulations 3.73 to 3.77;
3.67.5 enclose a copy of these Regulations.

Rights of appeal
3.68 A Defender may appeal to the Appeal Tribunal against a finding or order of a Discipline Tribunal on the following grounds only:
3.68.1 the Tribunal erred in law or in the interpretation of ICAS’ Rules or Regulations;
3.68.2 the hearing was not conducted fairly;
3.68.3 significant fresh evidence is available that was not available to the Defender at the time of the hearing and which he could not at that time have been expected with reasonable diligence to have obtained;
3.68.4 an order of exclusion or suspension or, in the case of a CA Student Member, a declaration of unfitness for Membership, was manifestly excessive in all the circumstances; or
3.68.5 In terms of Regulation 3.49, where the Defender seeks to recover monies paid under the requirement imposed by Regulation 4.2 of The ICAS Investigation Regulations.

3.69 The Committee, on behalf of the Regulation Board, may appeal against an order of a Discipline Tribunal on the ground that it is too lenient in all the circumstances of the case.

Process for Lodging an Appeal
3.70 An order made by the Discipline Tribunal which disposes of the whole merits of the case may be appealed within 21 days of the date of the order.

Appeals from Decisions of ICAS Committees
3.70(a) The procedure set out in Regulations 3.73 to 3.100 shall apply to any appeal that may be made in terms of any other Rules or Regulations made by or applying to members of ICAS subject only to (a) any specific provision made in such Rules or Regulations and (b) the following:
3.70.1(a) Any reference to “Discipline Tribunal” shall be deemed to be a reference to the relevant ICAS committee or other body in respect of whose decision the appeal is made;
3.70.2(a) In Regulation 3.85, the Respondent in an appeal by a member of ICAS shall be the committee or other body in respect of whose decision any appeal is made.

3.71 Any other order made by the Discipline Tribunal may be appealed but only with leave of the Discipline Tribunal.

3.72 Where leave to appeal is required, application for leave to appeal against an order shall be made within 10 days after the date of the order against which it is sought to appeal.
3.73 Where leave to appeal has been granted, an appeal shall be made within 7 days after the date on which leave was granted.

3.74 An appeal to the Appeals Tribunal shall be marked by lodging a notice of appeal.

3.75 A notice of appeal shall:

3.75.1 be signed by the appellant or his solicitor;
3.75.2 bear the date on which it is signed;
3.75.3 where a notice of decision has not been provided by the Discipline Tribunal request that the Discipline Tribunal write a notice of decision setting out the reasons for its decision; and
3.75.4 specify the grounds of appeal.

3.76 The notice of appeal shall consist of brief specific numbered propositions stating the grounds on which it is proposed that the appeal should be allowed.

3.77 On an appeal being lodged, and if there be any subsequent amendment thereto, the Clerk of the Appeal Tribunal shall forthwith send a copy of the notice of appeal, or any amendment thereto, to every other party.

3.78 An appellant may amend the grounds of appeal at any time up to 21 days after receipt by the appellant of the notice of decision from the Discipline Tribunal.

3.79 Where any party wishes to cross appeal it shall lodge a note of the grounds of appeal not more than 21 days after receipt by the Parties of the notice of decision from the Discipline Tribunal.

3.80 The Chairman of the Appeal Panel or, once appointed in terms of Regulations 3.81 and 3.82, the Chairman of the Appeal Tribunal, shall have the power on cause shown to shorten or dispense with any of the time limits in Regulations 3.70 to 3.79. In addition and without prejudice to the foregoing generality the Chairman of the Appeal Panel or once appointed the Chairman of the Appeal Tribunal shall have the power to make any direction that may be considered appropriate or to secure the just and expeditious hearing of the appeal.

Appointment of an Appeal Tribunal

3.81 Upon receiving a notice of appeal the Chairman of the Appeal Panel shall appoint from among the Panel an Appeal Tribunal to hear the appeal.

3.82 The Appeal Tribunal shall comprise a legally qualified person as Chairman, a Member of ICAS and a Public Interest Member.

3.83 An appeal may be heard in the absence of any one member of an Appeal Tribunal other than the Chairman, provided that if the appellant is present the appeal may be heard in the absence of such member only if the appellant consents. A member of an Appeal Tribunal who has not been present at the hearing of that appeal may not thereafter sit on judgement on that appeal save with the agreement of the appellant.

3.84 Should the respondent to an appeal consider that the appeal is unarguable, he may apply to the Chairman of the Appeal Tribunal for summary dismissal of the appeal. Upon such an application being made a hearing will be convened to dispose of the application. Such an application will be heard by the Chairman sitting alone. All parties will be entitled to address the Chairman at the hearing.

The hearing of the appeal

3.85 Subject to these Regulations and the rules of the ICAS committee or other body whose decision is being appealed and the requirements of fairness, an Appeal Tribunal has power to determine its own procedure. The Committee shall act as respondent to an appeal by the Defender. The
Defender shall act as the respondent to an appeal by the Committee.

The powers of an Appeal Tribunal

3.86 On an appeal, an Appeal Tribunal may affirm, vary or rescind any decision of a Discipline Tribunal and may substitute for any order of the Discipline Tribunal any other order or orders (on such terms and conditions, if any, as it thinks appropriate) which the Discipline Tribunal might have made on the Complaint or may, if the Appeal Tribunal considers it appropriate, order that the Complaint be heard afresh by a differently constituted Discipline Tribunal. In an appeal from an ICAS committee or other body in respect of whose decision any appeal is made, the Appeal Tribunal may remit the case back to such ICAS committee or other body with specific directions.

3.87 A decision of an Appeal Tribunal shall take effect as from the date thereof unless the Appeal Tribunal directs that it shall take effect as from some other date (not being earlier than the date of the finding or order appealed against) as shall be specified in the decision.

Costs

3.88 Any order made by a Discipline Tribunal or an Appeal Tribunal, including a decision that no further action be taken, 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. For the avoidance of doubt, allowable costs for the purposes of such a direction shall include:

- 3.88.1 the expenses of an investigation under The ICAS Investigation Regulations;
- 3.88.2 the costs of preferring a formal Complaint to, and of conducting the case before, the Discipline Tribunal;
- 3.88.3 of preparing an appeal to the Appeal Tribunal and of conducting the case before such Tribunal; and
- 3.88.4 the costs of the Discipline Tribunal and the Appeal Tribunal.

3.89 Any costs directed to be paid under Regulation 3.88 shall be paid to ICAS within twenty-one 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.

3.90 If the Tribunal appointed to hear a formal Complaint dismisses the Complaint as wholly unproved or finds that the Complaint has been proved in part only, it may order ICAS to pay to the Defendant by way of costs such sum as the Tribunal may (subject to and in accordance with Regulations) in its absolute discretion determine.

Non-payment of penalty or costs

3.91 If a Member, Affiliate, or CA Student Member fails to comply with an order, including a consent order, for the payment of a penalty or a direction for the payment of costs (or any instalment thereof) made by a Discipline Tribunal or an Appeal Tribunal by the date upon which the same fall due, he shall thereupon, by virtue of that fact, cease to be a Member, Affiliate or CA Student Member. Where an order, including a consent order, for the payment of a penalty or a direction for the payment of costs (or any instalment thereof) made by a Discipline Tribunal or an Appeal Tribunal has no due date and a Member, Affiliate or CA Student Member has not made payment within two months from the date of the making of the order he shall cease to be a Member, Affiliate or CA Student Member.

3.92 If a person ceases to be a Member, Affiliate or CA Student Member under the provisions of Regulation 3.91 any Firm of which he was at the relevant time a member shall be liable to pay such penalty or costs upon written demand from ICAS. If a Firm fails to comply forthwith with such a demand all its partners who are Members of ICAS shall be jointly and severally liable for payment of the sums due under the demand. In this paragraph "the relevant time" means the date of any act or default resulting in the Member, Affiliate or CA Student Member becoming liable to disciplinary action.

3.93 Cessation of Membership of ICAS under Regulation 3.91 shall not extinguish the right of ICAS to sue for the recovery of such penalty or costs or to cause the name and particulars of the former Member concerned, and the circumstances giving rise to the order, to be published in
the manner provided for in Regulations 3.95 to 3.97 below.

3.94 Failure by a Firm to comply with an order, including a consent order, for the payment of a penalty or a direction for the payment of costs (or any instalment thereof) made by a Discipline Tribunal or an Appeal Tribunal by the date upon which the same fall due (or before the expiry of two months from the making of the order, if no date is stipulated) shall render all Members of that Firm who are Members of ICAS jointly and severally liable to pay such sum and, in addition, liable to disciplinary action.

Publication of findings and orders

3.95 If a Discipline Tribunal makes an interim order against a Member or Affiliate under Regulations 3.52 to 3.58 or finds a formal Complaint proved in whole or in part against a Member, Affiliate, Firm or CAS Student Member, in terms of Regulations 3.46 to 3.51, it shall cause such a finding, and any order made thereon to be publicised in such manner as it thinks fit.

3.96 If an Appeal Tribunal varies or rescinds an order of a Discipline Tribunal it shall cause its decision on the appeal to be publicised in like manner and subject to the same proviso as if it were a finding of the Discipline Tribunal.

3.97 Notwithstanding anything in the preceding provisions, the chairman of a Discipline Tribunal and an Appeal Tribunal may cause a report of its decision to be published at any time if in his opinion publication is desirable in view of any statement or comment made in the public domain.

Certificates and permits

3.98 An order suspending a Member from Membership shall have the effect, among others, of cancelling any practising certificate, insolvency permit or entitlement to audit.

3.99 An order suspending a Member from membership or an order withdrawing or attaching conditions to a practising certificate or withdrawing an insolvency permit or an entitlement to audit shall not disqualify a Member from applying to the appropriate committee of ICAS of the renewal of such certificate, permit or entitlement or for any conditions attached thereto to be varied or removed on cause shown.

3.100 When an order is made by a Discipline Tribunal or an Appeal Tribunal affecting a certificate or permit, the Defender shall forthwith deliver up to the Secretary the relevant certificate and permits affected by the order.