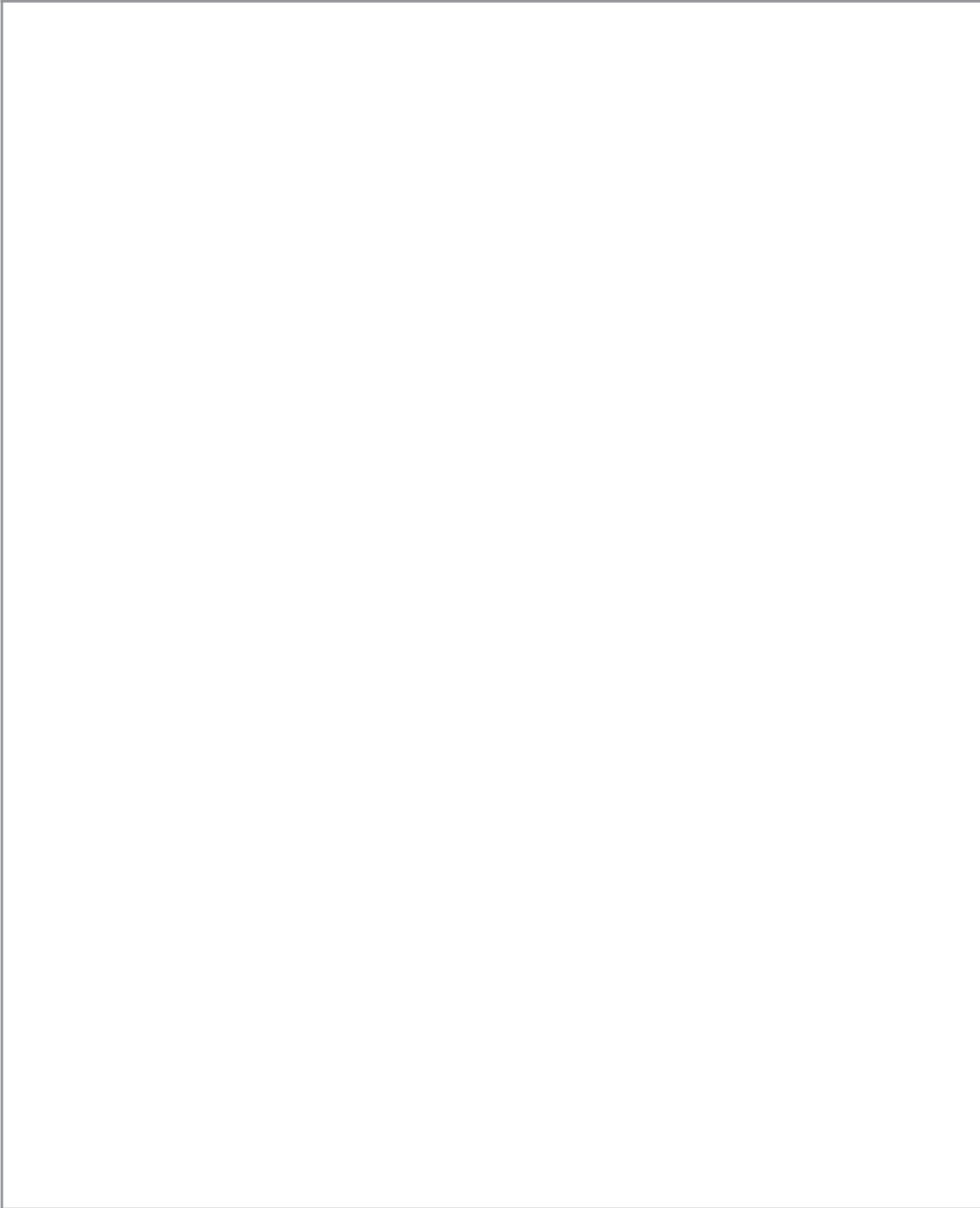


members' guide to disciplinary procedures





Introduction

The aim of this guide is to help you in the event of a complaint being made against you. All references to 'you' should be read to include members, firms, registered students and affiliates, unless the contrary is indicated.

This guide summarises the investigative and disciplinary structure and procedures of ACCA which are detailed in bye-laws 8 to 11, The Chartered Certified Accountants' Disciplinary Regulations 2001 and The Chartered Certified Accountants' Appeal Regulations 2006, which are set out at the back of this guide. It is intended to be a general summary only and in case of doubt you should refer to the bye-laws/regulations themselves. In the event of any conflict between the content of this guide and the content of the ACCA Rulebook, the latter shall at all times take precedence. The ACCA Rulebook can be found on our website at www.accaglobal.com.

If you have any questions in connection with your case, please contact the investigating officer handling your case. Please note, however, that he/she is not authorised or able to give you legal advice; you should seek this from an independent source, if required.

This guide is published annually and is up to date as at 1 January 2008. The next edition is scheduled to be issued on 1 January 2009.

ACCA's disciplinary structures

The bye-laws and regulations of ACCA bind members, firms, registered students and affiliates and include provisions relating to disciplinary action. In addition, certain non-members expressly agree to be bound by, and be subject to, ACCA's disciplinary regime and consequently ACCA firms may be disciplined for the conduct of a non-member.

The disciplinary process may be initiated by an external complaint made to ACCA, for example from a client or another accountant. Alternatively, it may be initiated from within ACCA itself, for example as a result of a monitoring visit to a practice. In all instances, ACCA's professional conduct department investigates the complaint.

LAY OBSERVER

The lay observer is an independent solicitor, who is responsible for monitoring fairness and impartiality in ACCA's investigative and disciplinary procedures. The lay observer attends Committee meetings and reports annually to ACCA's Council.

CONFIDENTIALITY

As a general rule, ACCA's disciplinary procedures are private and confidential. This means that the correspondence and documentation which you or your representative exchange with ACCA may not be disclosed to or discussed with third parties.

An important exception to the general rule is that most Disciplinary and Appeal Committee hearings will be held in public, which anyone may attend

including you, the complainant and the press. Should a complaint against you be referred to such a Committee, copies of the report to the Committee will be given to you or your representative, the Committee members, the lay observer and the ACCA staff dealing with your case. Some documentation may also be given to any witnesses. Any other parties attending the hearing, including the complainant, will not be supplied with documentation.

Given that Committee members may refer to your affairs and/or your clients' affairs in public, you may wish to consider requesting that certain documents are treated in strict confidence or even that the hearing or part of it is conducted in private. This would mean that no members of the public, including the complainant, would be allowed to attend, but the Committee members, lay observer and ACCA staff would attend.

Please note that hearings are held in private only in certain circumstances. The Committee will consider the reasonableness of your request and you will be informed if it is accepted.

PUBLIC INTEREST CASES

The Accountancy and Actuarial Discipline Board (AADB) in the UK and the Irish Auditing and Accounting Supervisory Authority (IAASA) in Ireland have the power to take over the disciplinary process from ACCA if the complaint made appears to raise serious issues affecting the public interest. This will include, for example, complaints involving significant losses to a public limited company or other public organisation such as a national charity, or to a significant number of members of the public.

The investigation

An investigating officer will initiate the investigation by sending you a copy of the complaint and asking for your comments and explanations.

During the course of the investigation, unless a specific request is received to the contrary and that request is reasonable, it is the professional conduct department's usual practice to send to the complainant for comment copies of letters and documents received from you, and to send to you for comment copies of letters and documents received from the complainant. ACCA will not normally provide you with copies of letters and documents which it sends to the complainant, or vice versa, as they are private and confidential.

Although the time taken to investigate will depend on the circumstances and complexity of each complaint, the usual duration of an investigation is approximately six months. Where civil or criminal proceedings concerning a matter are pending, the investigation may be put on hold until they are resolved.

Once all the required information has been received, the investigating officer will consider the evidence and decide whether to refer allegations to an independent assessor.

If the investigating officer considers in all the circumstances that the investigation should be concluded without referral

to an assessor, you will be informed of the reasons for this decision. The complainant will be given an opportunity to request that the investigating officer's decision is reviewed by an assessor.

If the investigating officer decides to refer allegations to an assessor, a report will be prepared for the assessor's consideration. The assessor is responsible for deciding whether there is a case to answer and, if so, whether to refer the case to the Disciplinary Committee. A copy of the report to be considered by the assessor will be sent to you in advance in order to give you an opportunity to submit written representations for the assessor's consideration.

ACCA aims to ensure that members under investigation are treated fairly and that the investigation is impartial. If you are unhappy with the way the investigation has been handled you may request that a review of the professional conduct department's handling of an investigation is carried out by an assessor with no previous involvement in the case. Such a review is limited to the handling of the investigation and is not a way of appealing against another assessor's decision.

ACCA will not accept any notice of resignation or notice seeking removal from the student, affiliate or membership register where there is a complaint against you or your firm, until such time as the matter has been concluded. This is in accordance with Membership Regulation 10(3).

The professional conduct department's address and telephone number are set out below:-

ACCA
29 Lincoln's Inn Fields
London WC2A 3EE
tel: +44 (0)20 7059 5993
fax: +44 (0)20 7059 5998

The assessors

The independent panel of assessors is comprised of individuals with a wide range of expertise, including insolvency, accountancy and law. Assessors are appointed by the Appointments Committee.

Each assessor's role is to consider the cases referred to him/her and to decide whether the evidence against you is sufficiently strong that you should be called on to answer it.

The Assessor may direct the professional conduct department to carry out further investigations before reaching a decision, including calling for further information. In these circumstances, consideration of your case will be adjourned until the information sought by the assessor is received.

NO CASE TO ANSWER

If the assessor finds there is no case to answer, you and the complainant will be informed of the reasons for this decision. If the complainant is unhappy with the decision, he will have the right to request that it is reviewed by a second assessor. If the decision of no case to answer is upheld, that is the end of the matter and no record of it for disciplinary purposes will be retained on your file.

A CASE TO ANSWER

If the assessor determines that there is sufficient evidence to support the allegations (i.e. that there is a case to answer) the assessor has two alternative courses of action:

- i to refer the matter to the Disciplinary Committee for a formal hearing; or
- ii to rest the matter on your file.

In addition, the assessor may refer the matter to ACCA's practice monitoring department.

REFERRAL TO DISCIPLINARY COMMITTEE

If the assessor refers allegations to the Disciplinary Committee, you will be informed of the date of the hearing. You will also be given the opportunity to contact the Clerk to the Disciplinary and Regulatory Committees. The Clerk is not part of the professional conduct department and does not take part in the investigative process. The Clerk is not able to give you legal advice, but can provide assistance to you on procedural matters and help you understand the allegations against you.

REST ON FILE

This option is reserved for allegations which the assessor considers render you liable to disciplinary action but are not serious. Whilst no action will be taken on this occasion, the allegations may subsequently be referred to the Disciplinary Committee in the event of a further matter concerning you being brought to ACCA's attention.

If the assessor decides to rest the allegations on your file, you and the complainant will be informed of the reasons for this decision. If you are unhappy with the decision, you will have the right to request that the allegations are referred to the Disciplinary Committee for consideration in open hearing. If the complainant is unhappy with the decision, he will have the right to request that it is reviewed by a second assessor.

Disciplinary Committee

The Disciplinary Committee is independent of ACCA. It has a minimum of four members, but usually comprises five or six members, of which at least one must be an accountant (there are usually two) and the majority must be non-accountants including at least one lawyer. The non-accountants are known as lay members of the Committee. The Committee's function is to hear cases referred to it by the assessors. It will assess your conduct and determine whether the allegations against you have been made out. If the Committee finds the allegations proved, it will impose the appropriate sanction(s) by reference to the published Guideline Disciplinary Sanctions, which can be found on ACCA's website at www.accaglobal.com/members/professionalstandards/committees.

The sanctions available to the Disciplinary Committee are set out in regulation 5(9) of the Chartered Certified Accountants' Disciplinary Regulations 2001. In respect of members, the sanctions include:

- that you be excluded from membership;
- that you be severely reprimanded, reprimanded or admonished;
- that you be fined a sum not exceeding £50,000;
- that you pay compensation to the complainant of up to £5,000 to reflect any inconvenience suffered; and
- that your fees to the complainant be waived or reduced.

In considering whether to make an order that you compensate the complainant, the Disciplinary Committee will consider any inconvenience suffered by the complainant as a result of your failure to observe proper standards.

In respect of registered students, the sanctions include:

- that you be removed from the student register;
- that you be severely reprimanded, reprimanded or admonished;
- that a specified period shall not be reckoned as part of your approved accountancy experience;
- that you are ineligible to sit examinations for a specified period; and
- that you are disqualified from an examination(s).

In respect of firms and affiliates, the sanctions are slightly different from those above and you are advised to consult regulation 5(9).

Disciplinary investigations are time consuming. The Disciplinary Committee has the power pursuant to regulation 5(10) to order you to pay the costs

of ACCA and will normally do so if an allegation against you is found proved. In determining the amount to be paid, the Committee will take into account any effect your actions, in relation to the conduct of the case, have had upon the costs of dealing with the case, whether beneficial or otherwise. Where no allegations against you are found proved, ACCA can be ordered to pay some or all of your costs, if you have incurred any.

One of the purposes of disciplinary proceedings is to reassure the public and the profession that ACCA regulates its members effectively. Accordingly, the orders of the Disciplinary Committee are normally published by issuing a press release to the professional, national and local press referring to you by name. In exceptional circumstances, the Committee may agree not to refer to you by name in the press release.

PROCEDURE BEFORE THE DISCIPLINARY HEARING

At least three weeks prior to the hearing, the committee officer will provide you with a copy of the papers which will be presented to the Disciplinary Committee, including a copy of the Guideline Disciplinary Sanctions. You are strongly recommended to familiarise yourself with the guideline sanctions applicable to the allegations against you.

If you wish to admit the allegations made against you, you should formally notify the investigating officer handling your

case of your admission. You may also make a written submission to be taken into account by the Committee when it decides the sanction(s) and other orders to be made against you.

You are encouraged to attend the hearing, whether or not you have admitted the allegations. The Committee finds it very helpful to hear from the member, student or firm personally at a hearing, particularly if questions arise on the day. It would also enable you to respond to any points that arise during the hearing. If in doubt as to whether attending would be advantageous for you, you should consult your own professional adviser. If you do not attend, or in addition to attending, you may make a written submission for the Committee to consider.

If you decide to attend the hearing you are recommended to telephone the committee officer prior to the hearing date in order to ascertain the likely time your case will be heard. You may also be asked to give an indication as to how long your evidence and representations may take. If you live outside the UK and Ireland, you may attend by telephone conference call.

You may submit any additional documentary evidence that you wish to be drawn to the Disciplinary Committee's attention. Such additional evidence and any written submissions must be submitted not less than 7 days prior to the hearing of your case.

Disciplinary Committee

If you wish to request an adjournment of the hearing you should do so at the earliest possible opportunity, giving reasons with supporting documentary evidence. Your request will be considered by the Chairman of the Disciplinary Committee. If the adjournment is refused by the Chairman, it will be considered by the remaining members of the Committee at the outset of the hearing. If an adjournment is granted, you will be informed in due course of the new hearing date.

Where a case is of particular interest to a specific government or government agency, or primarily affects persons resident in a specific country, either the Disciplinary Committee or the Secretary (ACCA's Chief Executive Officer) may direct that the hearing before the Disciplinary Committee take place in that country. In the absence of any such direction, hearings before the Disciplinary Committee shall take place in London or, where the hearing primarily affects members resident in Ireland, in Dublin.

PROCEDURE AT THE DISCIPLINARY HEARING

If neither you nor your representative attend the hearing, the case will be heard in your absence unless an adjournment is granted at your request or at the Committee's own volition.

The Committee does not operate like a court but as a tribunal where a member's conduct is assessed. The Committee is not bound by the strict rules of evidence

that apply in courts of law and may consider any relevant evidence brought to its attention.

Hearings are generally held in public, which means that anyone may attend. The Committee may, in an appropriate case, decide to go into closed session for all or part of the proceedings and for documentary evidence to be received without being read aloud.

You should arrive at the hearing venue at least 20 minutes before it is due to start, in order to meet with the Clerk to the Disciplinary and Regulatory Committees. The Clerk will check that you understand the allegations against you and will answer any procedural queries you may have.

When the Committee is ready, the Committee members will enter the hearing room. Once seated, the Chairman of the Disciplinary Committee will introduce the Committee members, the Lay Observer (if attending), ACCA staff and the Case Presenter, who is the individual responsible for presenting the case against you.

The Chairman will then briefly explain the procedure of the hearing, and that the proceedings are recorded to provide an accurate record of the proceedings.

The Chairman will ask the Clerk to confirm your identity and particulars. The Clerk will read out the allegations and ask you whether you admit or deny

them. The Case Presenter then presents the case by reference to the documents and evidence before the Committee and may call witnesses.

When the Case Presenter has concluded his/her presentation, the Committee may ask questions of him/her, if it requires clarification on any point. It may also ask questions of any witnesses. You may also ask the Case Presenter for any clarification and may ask questions of any witnesses.

If you have denied the allegations against you, you will then be asked to present your case. You are not obliged to give evidence and may present your case either verbally or by way of written representations. You may call witnesses to support your case and the Case Presenter and members of the Committee may ask questions of them.

On completion of your presentation, members of the Committee and the Case Presenter may ask you questions. You are not obliged to answer, but usually the Committee finds it helpful to obtain additional information in this way. After any questioning has finished, the Case Presenter and then you or your representative will be given an opportunity to make further representations upon any matter raised during the questioning.

The Committee will then withdraw, accompanied by the Lay Observer (who does not take part in the Committee's

deliberations), to consider its decision. You will remain in the hearing room until the Committee members have reached their decision. When the Committee reconvenes, the Chairman will announce its findings. The Committee will first decide whether the facts set out in each allegation are proved and second decide whether those facts engage the disciplinary bye-law referred to in the allegation.

If the Committee has not found any allegations proved, the proceedings are terminated, subject only to any order for costs that might be made in your favour, and no record of the matter for disciplinary purposes will be retained on your file.

If the Committee has found one or more of the allegations proved, or you have admitted them and the Committee has found them proved, you will then be invited to make submissions in mitigation and in relation to costs and publicity.

The Clerk will then inform the Committee whether any disciplinary orders have previously been made against you. The Committee will then withdraw to consider the sanction(s) and other orders to be made against you.

The Committee may request clarification of its powers from the Clerk but the Clerk does not take part in the decision-making. The Committee will return to announce:

Disciplinary Committee

- the content of any advice received from the Clerk;
- the sanction(s) imposed;
- the costs to be awarded against you; and
- the order for publicity of its decision.

In exceptional circumstances, where there is a clear public interest in the decision being reviewed, ACCA may apply for permission to appeal the decision of the Disciplinary Committee.

If members of the press attend the hearing, ACCA cannot prevent any subsequent publicity given to the matter.

PROCEDURE AFTER THE DISCIPLINARY HEARING

When the hearing has concluded, the Clerk will explain to you the next steps. You will be formally notified by letter of the decision of the Disciplinary Committee. Shortly thereafter, you will receive written reasons for the decision and a form of application notice for permission to appeal.

You have a right to apply for permission to appeal within 30 days after receiving the written reasons for the decision. The decision of the Disciplinary Committee will normally not take effect until the appeal period has expired, or until the outcome of any application for permission to appeal which you have lodged. However, in certain circumstances the Committee may order that its decision takes effect immediately.

Appeal Committee

The Appeal Committee is independent of ACCA. It has a minimum of four members, but usually comprises five or six members, of which at least one must be an accountant (there are usually two) and the majority must be non-accountants including at least one lawyer. The chairman and deputy chairman must be lawyers.

APPLICATION FOR PERMISSION TO APPEAL

If you wish to appeal, you will need to submit a formal notice of application for permission to appeal, setting out clearly which parts of the decision of the Disciplinary Committee you disagree with and the grounds upon which you disagree. You must select one or more of the following grounds which are set out in regulation 5(2) of the Chartered Certified Accountants' Appeal Regulations 2006:

- error of fact or law, which would have altered one or more of the findings or orders;
- misinterpretation of bye-laws or regulations or any relevant guidance or technical standards, which would have altered one or more of the findings or orders;
- failure to take into account certain relevant evidence, which would have altered one or more of the findings or orders;
- new evidence not previously available, which would have altered one or more of the findings or orders;
- order is disproportionate and/or unreasonable in light of the findings;

- findings and/or order are unjust because of a serious procedural irregularity in the proceedings before the Disciplinary Committee.

Your application for permission to appeal will be considered by the Chairman of the Appeal Committee, who may grant permission or may direct that your application for permission shall be considered by the Appeal Committee. Permission will only be granted if:

- the appeal would have a real prospect of success on at least one of the grounds you have put forward; or
- there is some other compelling reason why the appeal should be heard on at least one of the grounds under regulation 5(2).

If permission is granted (whether by the Chairman or by the Appeal Committee), the appeal will be heard by the Appeal Committee.

Note that it is not possible to apply for permission to appeal solely against an order for costs. However, if you appeal against any other order, you may also appeal against an order for costs. It is not possible to be granted permission to appeal solely against an order for costs.

PROCEDURE BEFORE THE APPEAL HEARING

The procedure before an Appeal Committee hearing is very similar to the procedure before a Disciplinary Committee hearing. At least three weeks prior to the hearing, the committee officer will provide you with a copy of the papers which will be presented to the Appeal Committee.

You may submit any additional documentary evidence that you wish to be drawn to the Disciplinary Committee's attention. Such additional evidence and any written submissions must be submitted not less than 7 days prior to the hearing of your case.

If you wish to request an adjournment of the hearing you should do so at the earliest possible opportunity, giving reasons with supporting documentary evidence. Your request will be considered by the Chairman of the Disciplinary Committee. If the adjournment is refused by the Chairman, it will be considered by the remaining members of the Committee at the outset of the hearing. If an adjournment is granted, you will be informed in due course of the new hearing date.

PROCEDURE AT THE APPEAL HEARING

The appeal is not a re-hearing of the case. It is a review of the Disciplinary Committee's decision with specific reference to the grounds of appeal

submitted by you. The orders which the Appeal Committee may make are set out in regulation 11:

- affirm, vary or rescind the decision (or part of the decision) of the Disciplinary Committee;
- substitute any other order which the Disciplinary Committee could have made
- order that the case be heard afresh by the Disciplinary Committee.

It is important to realise that the Appeal Committee, in reviewing the case, can impose its own decision, finding/s and/or order/s. This may include a more severe sanction, if appropriate, than that imposed by the Disciplinary Committee. It may also order that you bear the costs of the appeal.

The Appeal Committee procedure is essentially the same as that before the Disciplinary Committee. The main difference is that because it is your appeal, the hearing begins with a presentation from you or your representative, to which ACCA's Case Presenter will respond. You will then have an opportunity to reply.

Like the Disciplinary Committee, hearings are generally held in public and orders of the Appeal Committee are published.

PROCEDURE AFTER THE APPEAL HEARING

The Appeal Committee's decision is effective immediately it is announced. When the hearing has concluded, the Clerk will explain the steps you need to take in order to comply with the Committee's decision.

You will be formally notified by letter of the decision of the Appeal Committee. Shortly thereafter, you will receive written reasons for the decision.

Byelaws 8-11

Liability to disciplinary action

8. (a) A member, relevant firm or registered student shall, subject to bye-law 11, be liable to disciplinary action if:
- (i) he or it, whether in the course of carrying out his or its professional duties or otherwise, has been guilty of misconduct;
 - (ii) in connection with his or its professional duties, he or it has performed his or its work, or conducted himself or itself, or conducted his or its practice, erroneously, inadequately, inefficiently or incompetently;
 - (iii) he or it has committed any breach of these bye-laws or of any regulations made under them in respect of which he or it is bound;
 - (iv) in the case of a relevant firm, any person has in the course of the business of that firm committed any breach of these bye-laws or of any regulations made under them in respect of which that person is bound;
 - (v) he is a specified person in relation to a relevant firm against which a disciplinary order has been made and which has become effective or which

has been disciplined by another professional body or pursuant to some other disciplinary process;

- (vi) he or it has been disciplined by another professional body or pursuant to some other disciplinary process;
- (vii) he or it has made an assignment for the benefit of creditors, or has made an arrangement for the payment of a composition to creditors, or has had an interim order made by the court in respect of him, or is a specified person in relation to a relevant firm which has made such an assignment or composition or been wound up as an unregistered company, or entered into a voluntary arrangement, administration or liquidation, in each case where applicable under the Insolvency Act 1986, or other similar or analogous event has occurred in relation to him or it under applicable legislation; or
- (viii) he or it has failed to satisfy a judgment debt without reasonable excuse for a period of two months (and the fact that he or it did not have sufficient funds to discharge the debt

- shall not be a reasonable excuse for this purpose) whether or not the debt remains outstanding at the time of the bringing of the disciplinary proceedings hereunder.
- (b) Each of the paragraphs in bye-law 8(a) shall be without prejudice to the generality of any of the other paragraphs therein.
- (c) For the purposes of bye-law 8(a), misconduct includes (but is not confined to) any act or omission which brings, or is likely to bring, discredit to the individual or relevant firm or to the Association or to the accountancy profession.
- (d) For the purposes of bye-law 8(a), in considering the conduct alleged (which may consist of one or more acts or omissions), regard may be had to the following:
- (i) whether an act or omission, which of itself may not amount to misconduct, has taken place on more than one occasion, such that together the acts or omissions may amount to misconduct;
 - (ii) whether the acts or omissions have amounted to or involved dishonesty on the part of the individual or relevant firm in question;
 - (iii) the nature, extent or degree of a breach of any code of practice, ethical or technical, adopted by the Council, and to any regulation affecting members, relevant firms or registered students laid down or approved by Council.
- (e) The following shall be conclusive proof of misconduct:
- (i) the fact that a member, relevant firm or registered student has pleaded guilty to, or been found guilty of, any offence discreditable to him or, as the case may be, it, or derogatory to the Association or the accountancy profession, before a court of competent jurisdiction in the United Kingdom or before a court of competent jurisdiction in any other country where such court's judgments are in the opinion of Council (or relevant committee of Council) relevant;
 - (ii) the fact that a member, relevant firm or registered student has been found to have acted fraudulently or dishonestly in any civil proceedings before any court of competent jurisdiction in the United

Kingdom or before a court of competent jurisdiction in any other country where such court's judgments are enforceable in the United Kingdom.

Disciplinary process

9. The Council shall, from time to time, prescribe in regulations the procedures (including relating to the hearing of appeals) whereby a person subject to bye-law 8 may be disciplined and as to all other matters pertaining thereto. Such regulations shall provide that such a person shall have the right to be given notice of any disciplinary proceedings which it is proposed should be brought against him or it, the right to be represented at any such disciplinary proceedings, the right to call and cross-examine any witness at such disciplinary proceedings and a right of appeal against any disciplinary order made against him or it. In addition, such regulations shall provide that any committee able to make or confirm a disciplinary order shall include a person or persons who are not members of the Association and shall not be quorate in the absence of such a person. Where the Association participates with other professional accountancy bodies in such a scheme as is referred to in Article 4(s) of the Charter, such regulations shall provide for the referral of relevant cases by the Association to and in accordance with such scheme and all other matters relevant thereto.

In particular (but without limitation) such regulations may prescribe or provide for:

- (a) the committees (consisting of members and/or other persons) to whom Council may delegate the responsibility of determining whether or not a person subject to bye-law 8 is to be disciplined, the making of disciplinary orders (including consent orders) against persons who it is found are liable to disciplinary action and the making of intervention orders in appropriate circumstances, the method, timing and terms of appointment, constitution, quorum, powers, and responsibilities of each such committee, and whether any such committee is to be empowered to make any further regulations concerning any such matter or any of the other matters mentioned in this bye-law;
- (b) the procedures to be followed by each such committee and in the preparation of cases to be heard by any of them, the manner in which cases may be presented to them and the circumstances in which matters are to be referred to them for consideration, which may include (without limitation) procedures for the hearing of cases in an expedited manner;
- (c) the orders ("disciplinary orders") which may be made against a

person in respect of whom a complaint is found proved in whole or in part, which without limitation may include an order that a person be excluded from membership, that any certificate issued by the Association to the person be withdrawn and that a fine be imposed on the person, which may be unlimited in amount, or be up to such maximum amount as may from time to time be prescribed by such regulations, and the times at which such disciplinary orders are to become effective;

- (d) the making of certain types of disciplinary orders as specified in the regulations with the consent of the person concerned (“consent orders”), and the making in circumstances where it appears to be urgent for the protection of the public or members or both an order on a person requiring him to take such action as is specified in the order (“intervention orders”), which orders may be made without conducting the full disciplinary procedures which would apply in other circumstances;
- (e) subject to bye-law 8(c), guidance as to the meaning of misconduct or other expression used in bye-law 8 and the relevance for disciplinary purposes of a person subject to bye-law 8 being found guilty of a criminal offence or

having any matter found against him in any civil proceedings or being subject to discipline from a tribunal or other body in any such case whether in the United Kingdom or elsewhere;

- (f) disciplinary proceedings (including the hearing of appeals) in respect of students where the alleged misconduct relates to examinations;
- (g) the circumstances in which appeals against a disciplinary order may be brought and the procedures for dealing with such appeals;
- (h) the making of orders as to costs, which may provide for different orders in respect of individuals and firms; and
- (i) the publication of disciplinary orders in those cases where a complaint is found proved in whole or in part.

Obligation to co-operate and inform

- 10.** (a) Every member, relevant firm and registered student shall, and every member shall use his best endeavours to ensure that every firm (whether or not a relevant firm) in relation to which he is a specified person shall, at all times, co-operate with the Council and the committees appointed by it under bye-law 9 in the administration of the Association’s disciplinary process.

(b) It shall be for every member and for any person to bring to the attention of the Secretary any facts or matters indicating that a member or relevant firm or registered student may have become liable to disciplinary action: and in any such case the Secretary shall lay the facts and matters before the relevant committee of Council if he or she is of the opinion that the complaint ought to be investigated by that committee.

Application and interpretation

11. Bye-laws 8 to 10 shall apply and be interpreted as follows:

- (a) A member, relevant firm and registered student shall be liable to disciplinary action whether or not he was a member or registered student or (as the case may be) it was a relevant firm at the time of the occurrence giving rise to such liability.
- (b) A member, relevant firm and registered student shall continue to be liable to disciplinary action after his or its ceasing to be a member, relevant firm or registered student in respect of any matters which occurred whilst he was actually a member, relevant firm or registered student and in respect of which a complaint is referred to the committee responsible for hearing

the complaint, or disciplinary action is otherwise commenced, within five years of his or its so ceasing to be a member, relevant firm or registered student (as the case may be).

- (c) For the avoidance of doubt, a person shall be liable to disciplinary action in accordance with the bye-laws and regulations in force at the time the matters complained of took place. All disciplinary proceedings, however, shall (for the avoidance of doubt) be conducted in accordance with the bye-laws and regulations in force at the time of such proceedings.
- (d) Bye-laws 8 to 10 shall, so far as they are capable of doing so, apply to a specified person (not being a member in public practice) in relation to a relevant firm in respect only of the undertakings given by that specified person to, and agreements made by that specified person with, the Association.
- (e) In the case of a relevant firm in relation to which there is a specified person or specified persons other than members in public practice, the provisions of bye-laws 8 to 10 shall apply to that relevant firm in respect only of the undertakings which have been given to the Association and agreements which have been

made with the Association by it or by each such specified person who is not a member in public practice, but this paragraph shall not in any way restrict the application of those bye-laws to a member in public practice who is a specified person in relation to such relevant firm.

- (f) The Council may from time to time by regulation prescribe the persons (additional to partners in a firm which is a partnership and directors of a firm which is a body corporate) who are in these bye-laws to be specified persons in relation to a firm and such regulations may prescribe different persons as specified persons for different purposes.
- (g) For the purposes of this bye-law and bye-laws 8 to 10, "member" includes an individual (not being a member as defined in bye-law 1) who has undertaken to be bound by, inter alia, such bye-laws and such bye-laws shall apply to such an individual insofar as the same are capable of doing so, mutatis mutandis, as they apply to a member as defined in bye-law 1.

Disciplinary Regulations

THE CHARTERED CERTIFIED ACCOUNTANTS' DISCIPLINARY REGULATIONS 2001

Amended 1 January 2008

The Council of the Association of Chartered Certified Accountants, in exercise of the powers conferred on it by bye-law 9 of the Association's bye-laws and all other powers enabling it, hereby makes the following regulations:

1. Citation, commencement and application

(1) These regulations may be cited as The Chartered Certified Accountants' Disciplinary Regulations 2001.

(2) These regulations as amended as set out herein shall come into force on 1 January 2008.

(3) These regulations shall apply to all persons subject to bye-laws 8 to 11.

2. Interpretation

(1) In these regulations, unless the context otherwise requires:

AADB means the Accountancy and Actuarial Discipline Board;

Admissions and Licensing Committee means the committee appointed by Council pursuant to regulations made under bye-law 28;

affiliate means a registered student who has passed or obtained exemptions from all papers of the

Association's examinations but has not progressed to membership;

allegations has the meaning ascribed to it in regulation 3(2);

Appointments Committee means the committee appointed by Council pursuant to bye-law 28 and referred to in these regulations;

assessor means an independent person so appointed by the Appointments Committee in accordance with The Chartered Certified Accountants' Committee Regulations 2001 and referred to in these regulations;

the Association means the Association of Chartered Certified Accountants incorporated by Royal Charter issued to it in 1974 as amended from time to time;

bye-laws means the bye-laws from time to time of the Association;

case presenter has the meaning ascribed to it in regulation 5(4)(c);

certificate means all or any of a practising certificate, auditing certificate, insolvency licence, and investment business certificate (Ireland);

complainant means any person or persons who bring to the attention of the Association any matters, acts or circumstances which appear to render a relevant person liable to disciplinary action;

Council means the Council of the Association from time to time and includes any duly authorised committee of Council;

Designated Professional Body Regulations means The Chartered Certified Accountants' Designated Professional Body Regulations 2001;

disciplinary bye-laws means bye-laws 8 to 11 as amended from time to time;

Disciplinary Committee and *Appeal Committee* mean the committees of Council appointed pursuant to regulations made under bye-law 28;

IAASA means the Irish Auditing and Accounting Supervisory Authority;

investigating officer means the Secretary or other officer of the Association charged with the responsibility of investigating matters and performing the other functions described in these regulations;

investment business certificate (Ireland) means the certificate referred to in the Practising Regulations issued in accordance with The Chartered Certified Accountants' Irish Investment Business Regulations 1999;

liable to disciplinary action means liable to disciplinary action under bye-law 8(a);

officer of the Association means any official, servant or agent of the

Association, whether employed by the Association or otherwise;

order means any order of the Disciplinary Committee made under regulation 5, and includes any direction as to the payment of a sum in respect of costs to or by the Association and as to the publicity to be given to such an order and shall include any finding, term or condition in consequence of or upon which the order is made and shall include where the context requires more than one such order;

practising certificate means a practising certificate issued by the Association and referred to in regulation 5(1) of the Chartered Certified Accountants' Global Practising Regulations 2003;

privileged material means communications between a legal adviser, his client or any person representing his client and any other person together with any enclosure or attachment with such communication created either (a) in connection with the giving of legal advice to the client, or (b) in connection with or in contemplation of legal proceedings and for the purposes of those proceedings: save that a communication or item shall not be privileged material if it is created or held with the intention of furthering a criminal purpose;

Disciplinary regulations

registered student has the meaning ascribed to it in The Chartered Certified Accountants' Membership Regulations 1996;

relevant person means a member and any other person (whether an individual or a firm and (without limitation) including a registered student) who has undertaken with the Association to abide by and be bound by, inter alia, the bye-laws and these regulations;

report means a statement of the allegations together with a summary of the relevant facts and provisions of the rules, together with such documentary evidence in the possession of the investigating officer as he may consider to be relevant to the allegations;

Secretary means the Secretary of the Association (by whatever name known) or any other person acting in such capacity by the direction of the Council;

specified person means, in relation to a firm which is a partnership, any partner in that firm, in relation to a firm which is a limited liability partnership, any member in that firm, and in relation to a firm which is a body corporate, any director of that firm.

(2) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa.

References to "his" shall include "its" where the context requires.

(3) Headings and sub-headings are for convenience only and shall not affect the interpretation of these regulations.

3. Investigation of cases

(1) Investigation by investigating officer

The investigating officer shall consider and, if he considers it appropriate, investigate any matters, acts or circumstances that may come to his attention which appear to render a relevant person liable to disciplinary action. The investigating officer may seek such written legal, technical or other advice as may from time to time seem to him appropriate to assist him in his investigation and such advice may, if he so decides, be included as evidence in the case.

(2) Comments of the relevant person

In the event that the matter is investigated as described in regulation 3(1), the investigating officer shall notify the relevant person of the allegations he is minded to investigate in light of the matters, acts or circumstances that have come to his attention and invite the relevant person to comment in writing upon the allegations.

(3) Duty to co-operate

- (a) Every relevant person is under a duty to co-operate with the investigation into the allegations. Co-operation includes providing

promptly such information, books, papers or records as the investigating officer may from time to time request to assist him in the investigation. Failure to co-operate with the investigation shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.

- (b) A relevant person is not permitted to make a charge to the complainant for the cost of co-operating with the investigating officer.

(4) Privileged material

Nothing in these regulations shall require the relevant person to produce, disclose or permit inspection of privileged material.

(5) Deferral of investigation

The investigation of the matter may, if the investigating officer so decides, be deferred if the relevant person so requests or the investigating officer otherwise decides it is appropriate to do so, such as where criminal or civil proceedings concerning a relevant matter are pending to which a relevant person is a party.

4. The decision

(1) Decision of the investigating officer

- (a) If the investigating officer considers in all the circumstances that the investigation should be concluded without referral to an assessor, or direct to the

Disciplinary Committee, the investigating officer shall notify the relevant person and the complainant accordingly, giving reasons for his decision, and no record of the allegations for disciplinary purposes shall be retained on the relevant person's file after the expiry of the period for review under regulation 4(5).

- (b) Save as provided under regulation 4(1)(a), the investigating officer shall cause a report to be prepared in respect of any allegations against a relevant person and shall invite the relevant person to comment in writing upon the report.
- (c) Unless the investigating officer determines that it is in the public interest for the allegations to be adjudicated upon urgently, the report shall be sent by the investigating officer to an assessor. Where the investigating officer determines that it is in the public interest for the allegations to be adjudicated upon urgently, the investigating officer shall not provide the report to an assessor but shall provide the report direct to the Disciplinary Committee for consideration at the next available hearing for a substantive determination of the case, upon notice being given in accordance with regulation 5(1).

Disciplinary regulations

(2) *Decision of the assessor*

- (a) The assessor shall consider the report and shall determine whether or not there is a case to answer against the relevant person. The assessor may, in his discretion, amend, add to and/or delete any or all of the allegations made against the relevant person.
- (b) If the assessor is unable to determine whether there is a case to answer against the relevant person, the assessor may, if he so chooses, seek further evidence or such written legal, technical or other advice as may from time to time seem to him appropriate to assist him in his review, including advice from one or more other assessors, and may adjourn his review for that purpose.
- (c) The relevant person against whom the allegations are made is under a duty to co-operate with the assessor in his review of the allegations. Co-operation includes providing promptly such information, books, papers or records as the assessor may from time to time request to assist him in his review. Failure to co-operate with the assessor shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.
- (d) Before reaching his decision the assessor shall be satisfied that the relevant person has been invited

to comment in writing upon the allegations against him and upon the report prepared by the investigating officer.

(3) *No case to answer*

If the assessor determines that there is no case to answer against a relevant person, he shall give reasons for his decision and the relevant person and the complainant shall be notified accordingly and no record of the allegations for disciplinary purposes shall be retained on the relevant person's file after the expiry of the period for review under regulation 4(5).

(4) *Case to answer*

- (a) If the assessor determines that there is a case to answer against a relevant person, the assessor shall decide whether:
 - (i) the case should be referred to the Disciplinary Committee and, if so, what allegations should be proceeded with; or
 - (ii) the allegations should rest on the relevant person's file, in which case he shall give reasons for his decision.
- (b) In addition, the assessor may refer a case to the practice monitoring department of the Association, in which case he shall give reasons for his decision.
- (c) Without limitation, in reaching his decision, an assessor shall be

entitled to take into account any facts or matters which have been considered on previous occasions in relation to the relevant person concerned (in respect of which, although a case to answer had been found, no allegations were referred to the Disciplinary Committee) and if he decides to refer any allegations to the Disciplinary Committee, then the allegations may include all or any of the facts and matters which were previously considered.

- (d) The assessor's decision shall be notified to the relevant person and to the complainant.

(5) Complainant's right of review

- (a) Where the investigating officer, pursuant to regulation 4(1)(a), considers in all the circumstances that the investigation should be concluded without a referral to an assessor or direct to the Disciplinary Committee, the complainant shall have the right to have the investigating officer's decision reviewed by an assessor. The assessor may, if he so chooses, seek further evidence or such written legal, technical or other advice as may from time to time seem to him appropriate to assist him in his review, including advice from one or more other assessors, and may adjourn his review for that purpose. At the conclusion

of his review, the assessor shall give reasons for his decision. The assessor shall have the power to direct the Association to prepare a report for consideration by a second assessor in accordance with regulations 4(1)(b) and (c), in which case he shall specify the allegations which should be the subject of the report.

- (b) Where the assessor, pursuant to regulations 4(3) or 4(4)(a)(ii), decides that either there is no case to answer or there is a case to answer but the allegations should rest on file, the complainant shall have the right to have the decision reviewed by a second assessor. The second assessor shall be provided with a report, to include the first assessor's reasons for his decision, the complainant's grounds for review and any further documentary evidence that has been obtained. The second assessor shall consider the report in accordance with regulations 4(2) to 4(4).
- (c) If the complainant wishes to exercise his rights under subparagraphs (a) or (b) above, he shall notify the Association in writing within 30 days of receiving notification of the decision. Such notification shall include the complainant's detailed grounds for review, setting out which aspects

Disciplinary regulations

of the decision he disagrees with and why.

- (d) The investigating officer shall procure that the relevant person is notified that a review of the decision has been requested by the complainant and that accordingly the decision will be reviewed in accordance with this regulation 4(5).

(6) Referral to Disciplinary Committee

- (a) If an assessor decides to refer a case to the Disciplinary Committee, he shall procure that (1) a notice of the allegations and (2) a summary of the case setting out the relevant facts and matters relied on in support of the case and (3) a copy of the evidence are sent to the relevant person and placed before the Disciplinary Committee as soon as practicable.
- (b) In the event that new evidence is received in a case referred to the Disciplinary Committee, or for any other reason it is felt desirable by the case presenter for the assessor to reconsider a case referred to the Disciplinary Committee, the case may be referred back to the assessor for further consideration. In that event, the assessor shall have the same powers in relation to it as he had in respect of his initial consideration of the case.

- (c) The case presenter may at any time elect not to proceed with any of the allegations made against a relevant person, or defer proceeding with the allegations for a period of time, and shall endeavour to notify the relevant person of any such decision as soon as possible.

(7) Rest on file

If the assessor decides to rest a case on the relevant person's file, he shall notify the relevant person of the following:

- (a) the allegation(s) in respect of which he found a case to answer against the relevant person;
- (b) the fact that he has determined in all the circumstances not to refer the matter to the Disciplinary Committee but rather to rest the matter on the relevant person's file;
- (c) that the allegation(s) will be treated as rendering the relevant person liable to disciplinary action and that whilst no action in respect of the allegation(s) will be taken on this occasion, they may subsequently be referred to the Disciplinary Committee in the event of a further allegation concerning the relevant person being considered by an investigating officer and/or an assessor;

- (d) that the relevant person may request that the allegation(s) be referred to the Disciplinary Committee if he so wishes and notifies the assessor accordingly within 30 days of his being so notified, in which case the assessor will refer the allegation(s) to the Disciplinary Committee and the first paragraph of regulation 4(6) shall apply; and
- (e) that the matter will rest on the relevant person's file for three years from the date of the assessor's written decision, unless the allegation(s) are referred to the Disciplinary Committee in accordance with regulation 4(7)(d) or the allegation(s) are reviewed by a second assessor in accordance with regulation 4(5)(b) and the decision of the first assessor is overturned.

Where the allegation(s) are referred to a second assessor in accordance with regulation 4(5)(b) and the second assessor upholds the decision of the first assessor to rest the matter on file, the matter will rest on the relevant person's file for three years from the date of the written decision of the first assessor.

(8) Further enquiries

After any case has been referred to the Disciplinary Committee, an assessor or investigating officer may make such further enquiries as he/they shall consider appropriate in order to assist in the preparation of the case to the Disciplinary

Committee. It shall be the duty of the relevant person to co-operate with such enquiries and failure by the relevant person to do so shall constitute a breach of these regulations and may render him liable to disciplinary action.

5. Disciplinary Committee

(1) Provision of documents

On a case being referred to the Disciplinary Committee, the Association shall determine the date the case is to be heard and no later than 21 days before the date set the relevant person shall be provided with the following documents:

- (a) a notice describing the allegations against him and notifying him of the time and place fixed for the hearing of the case;
- (b) a summary of the case setting out the relevant facts and matters relied on in support of the case and a copy of the evidence to be relied on in the presentation of the case;
- (c) a paper summarising the procedure before the Disciplinary Committee and the Association's disciplinary process, in a form approved by the Disciplinary Committee; and
- (d) a letter inviting the relevant person to indicate whether or not he accepts all or any of the allegations made and whether or not he intends to attend the hearing and be represented

Disciplinary regulations

and, if he accepts any of the allegations, inviting him to make such statements in mitigation as he may wish to be drawn to the Disciplinary Committee's attention.

Such information may be provided at different times and supplemented as necessary from time to time.

In the event that the Association has not complied with the requirement to provide the relevant person with the documents no later than 21 days before the date set for the hearing, the Disciplinary Committee may, in its absolute discretion, provided that it is satisfied that the relevant person has received the documents and has not been prejudiced in the conduct of his case, order that the hearing shall proceed.

In exceptional circumstances, the Association may provide the documents above to the relevant person less than 21 days before the date set for the hearing ("an urgent hearing"). At an urgent hearing, the Disciplinary Committee shall consider at the outset the appropriateness of short notice and may in its absolute discretion, if it is of the view that it is justified in all the circumstances, order that the hearing proceed or be adjourned for such period and under such directions as it sees fit.

(2) Submission of documents

The relevant person may submit such documentary evidence as he may wish to

be drawn to the Disciplinary Committee's attention, provided that any such documentary evidence must be submitted not less than 7 days prior to the hearing of his case. Documents submitted less than 7 days prior to the hearing will only be considered by the Disciplinary Committee in exceptional circumstances.

(3) Technical defects

At any stage in the proceedings the Disciplinary Committee may order that technical defects in a complaint be amended provided that the relevant person is not prejudiced in the conduct of his defence.

(4) Hearings, representation and adjournments

(a) Representation

At the hearing of his case, the relevant person shall be entitled to be heard before the Disciplinary Committee and/or to be represented by such person as he may wish.

(b) Proceeding in the absence of the relevant person

Where the relevant person fails to attend a hearing, the case may be heard in his absence provided the Disciplinary Committee is satisfied that he has been served with the documents referred to in regulation 5(1) in accordance with regulation 7(1).

(c) Case presenter

The case against the relevant person shall be presented to the Disciplinary Committee on behalf of the Association by such person as it may nominate (the “case presenter”).

(d) Advisers to the Disciplinary Committee

The Disciplinary Committee may also instruct a solicitor or barrister to act as its legal adviser at the hearing of any case. At a hearing concerning a relevant person’s state of health as described in regulation 6, the Disciplinary Committee may instruct a medical expert to act as its medical adviser.

(e) Adjournments

(i) The relevant person or the case presenter may make a written request to the Disciplinary Committee that the hearing be adjourned to a future meeting. Such request shall be considered at the outset of the hearing and the Disciplinary Committee may in its absolute discretion agree to the request if it is of the view that it is justified in all the circumstances.

(ii) Any such request made in advance of the hearing shall be considered as follows.

If the request is made after the provision of documents in accordance with regulation 5(1), it shall be considered by the Chairman of the Disciplinary Committee, who may in his absolute discretion agree to the request if he is of the view that it is justified in all the circumstances. If such request is denied by the Chairman, it shall be reconsidered at the outset of the hearing by the other members of the Disciplinary Committee in accordance with regulation 5(4)(e)(i).

If the request is made by the relevant person before the provision of documents in accordance with regulation 5(1), the Association may agree to the request. If the Association opposes the request, it shall be considered by the Chairman of the Disciplinary Committee in accordance with this regulation. If such request is denied by the Chairman, it shall be reconsidered at the outset of the hearing by the other members of the Disciplinary Committee in accordance with regulation 5(4)(e)(i).

Disciplinary regulations

- (iii) In advance of the hearing, at the outset of the hearing, or at any time during the hearing, the Disciplinary Committee may itself direct that the case should be adjourned.
- (iv) The Disciplinary Committee may impose such conditions as it may determine upon the grant of an adjournment.
- (v) The Disciplinary Committee may (but need not) agree to or direct an adjournment where criminal or civil proceedings concerning the allegations are pending to which the relevant person is a party.

(5) Indication whether allegations admitted

- (a) At the hearing of his case, if the relevant person is in attendance he shall be invited to indicate whether or not he admits each of the allegations made against him.
- (b) If the relevant person is not in attendance, the Disciplinary Committee shall refer to any written response to the letter referred to in regulation 5(1)(d) or other correspondence or note of conversation indicating his admission or otherwise of the allegations made against him.

(6) Presentations where all allegations admitted

- (a) If the relevant person admits or (if he is not in attendance) the Disciplinary Committee finds that he has admitted all of the allegations made against him, the case against him will be presented in abbreviated form with the object of assisting the Disciplinary Committee in determining the seriousness of the case. If the relevant person is in attendance he will then be invited to respond to any of the comments made by the case presenter. The Disciplinary Committee will then make a formal finding to the effect that all the allegations made against the relevant person have been proved.
- (b) If the relevant person is in attendance he will then be invited to put forward any statement in mitigation. If he is not in attendance, reference will then be made to any statement in mitigation which he has previously made.
- (c) The Disciplinary Committee may at any time ask any question of the case presenter or the relevant person and, if the Disciplinary Committee considers it appropriate, may invite the complainant (if present) to comment.

(7) *Presentations where one or more allegations not admitted*

- (a) If the relevant person does not or (if he is not in attendance) has not admitted all of the allegations made against him, the case against him will be presented and the case presenter shall be entitled to call witnesses in support, who may include the complainant.
- (b) The relevant person may ask questions of the case presenter in order to clarify the case against him.
- (c) The relevant person shall then be invited to respond by presenting his defence and may also call witnesses in support.
- (d) Witnesses may be cross-examined by the relevant person and the case presenter. The case presenter may cross-examine the relevant person.
- (e) The case presenter and the relevant person may present closing submissions.
- (f) At the conclusion of the presentations, the Disciplinary Committee will retire to consider its verdict and return to announce its findings in respect of each of the allegations.
- (g) In deciding whether any of the allegations have been proved, the standard of proof to be applied by

the Disciplinary Committee shall be the balance of probabilities.

- (h) If the Disciplinary Committee has found that any of the allegations has been proved, the relevant person will be invited (if he is in attendance) to make any statement in mitigation. If he is not in attendance reference will be made to any statement in mitigation previously provided by the relevant person. The Disciplinary Committee may at any time ask questions of the case presenter, the relevant person or any witness and, if the Disciplinary Committee considers it appropriate, may invite the complainant (if present) to comment.

(8) *Evidential material*

The Disciplinary Committee shall be entitled to treat the judgment of any court (whether of a civil or criminal jurisdiction) as conclusive evidence of any findings of facts made in the judgment for the purpose of determining whether the relevant person has participated in any type of activity, whether of a professional nature or not, which is disreputable to the relevant person, the Association or the profession of accountancy as a whole.

(9) *Orders*

Once the Disciplinary Committee has announced its findings in relation to each of the allegations made against the relevant person, it shall be informed of

Disciplinary regulations

any other matter in respect of which he has been disciplined by the Association.

When considering what orders to make, the Disciplinary Committee may also take account of existing decisions concerning similar cases as well as the arguments presented to it by the parties and the circumstances surrounding the misconduct or breach.

The Disciplinary Committee may make any one or more of the following orders against the relevant person or may order that no further action be taken where it determines that none of the following orders is appropriate in the circumstances:

- (a) if the relevant person is a member:
 - (i) that he be excluded from membership;
 - (ii) that he be severely reprimanded, reprimanded or admonished;
 - (iii) that he be fined a sum not exceeding £50,000;
 - (iv) that he pay compensation to the complainant of a sum not exceeding £5,000;
 - (v) that he waive or reduce his fees to the complainant by such sum as shall be specified in the order and which relates directly to the proven allegation;
- (b) if the relevant person is a firm:
 - (i) that it be severely reprimanded, reprimanded or admonished;
 - (ii) that it be fined a sum not exceeding £50,000;
 - (iii) that it pay compensation to the complainant of a sum not exceeding £5,000;
 - (iv) that it waive or reduce its fees to the complainant by such sum as shall be specified in the order and which relates directly to the proven allegation;
 - (v) any of the orders set out in regulation 5(9)(h) where applicable;
- (c) if the relevant person is a registered student:
 - (i) that he be removed from the student register;
 - (ii) that the period as shall be specified in the order shall not be reckoned as part of the student's approved accountancy experience for the purposes of bye-law 2 and any regulations made pursuant thereto;
 - (iii) that he be declared ineligible for such period as shall

- respectively be specified in the order to sit for such examination or examinations of the Association (or such part or parts thereof) as shall be specified in the order;
- (iv) that he be disqualified from such examination or examinations of the Association (or such part or parts thereof) as shall be specified in the order not being an examination (or a part thereof) the result of which shall have been duly notified to him by the Association prior to the date of the order;
 - (v) that he be severely reprimanded, reprimanded or admonished;
 - (vi) any of the orders set out in regulation 5(9)(h) where applicable;
- (d) if the relevant person is an affiliate:
- (i) that he be removed from the affiliate register;
 - (ii) that the period as shall be specified in the order shall not be reckoned as part of the affiliate's approved accountancy experience for the purposes of bye-law 2 and any regulations made pursuant thereto;
 - (iii) that he be declared ineligible to be admitted to membership for such period as shall be specified in the order;
 - (iv) that he be severely reprimanded, reprimanded or admonished;
 - (v) any of the orders set out in regulation 5(9)(h) where applicable;
- (e) if the relevant person is a former member or former firm:
- (i) that he be severely reprimanded, reprimanded or admonished;
 - (ii) that he be fined a sum not exceeding £50,000;
 - (iii) that he pay compensation to the complainant of a sum not exceeding £5,000;
 - (iv) that he waive or reduce his fees to the complainant by such sum as shall be specified in the order and which relates directly to the proven allegation;
 - (v) any of the orders set out in regulation 5(9)(h) where applicable;
- (f) if the relevant person is a former registered student:
- (i) that he be severely reprimanded, reprimanded or admonished;

Disciplinary regulations

- (ii) that he be disqualified from such examination or examinations of the Association (or such part or parts thereof) as shall be specified in the order not being an examination (or a part thereof) the result of which shall have been duly notified to him by the Association prior to the date of the order;
- (iii) any of the orders set out in regulation 5(9)(h) where applicable;
- (g) if the relevant person is a former affiliate:
 - (i) that he be severely reprimanded, reprimanded or admonished;
 - (ii) any of the orders set out in regulation 5(9)(h) where applicable;
- (h) in all cases:
 - (i) that the relevant person produce any necessary documents and supply any other information and explanations relevant to the matter in question, whether by attendance upon reasonable notice before the Disciplinary Committee or otherwise;
 - (ii) that the relevant person allow any officer of the Association to enter the business premises of the relevant person on such notice (if any) as the Disciplinary Committee may think appropriate and interview any employee of the relevant person;
- (iii) that the relevant person procure the attendance of any of his employees at specific premises, upon reasonable notice;
- (iv) that the matter of the relevant person's fitness and propriety to hold a certificate and/or licence issued by the Association, and/or his or its eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be referred to the Admissions and Licensing Committee by a specified date, such date to be no later than twelve months from the date of the order;
- (v) only in conjunction with an order under regulation 5(9)(h)(iv), that the relevant person's practising certificate, insolvency licence, investment business certificate (Ireland) and/or other certificate issued by the Association, and/or his

or its eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be suspended, or made subject to such conditions specified in the order, until an order of the Admissions and Licensing Committee has been made;

(vi) that any future application by the relevant person for any certificate or licence issued by the Association, or to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be referred to the Admissions and Licensing Committee;

(vii) in the case of a relevant person who is an individual, that the relevant person's membership be suspended until further order of the Disciplinary Committee or Appeal Committee;

(i) in all cases, that the hearing be adjourned and referred to a health hearing before a differently constituted Disciplinary Committee.

(10) Conditions and costs

(a) Conditional order

Any order made by the Disciplinary Committee may

be made upon such terms and conditions as the Disciplinary Committee may consider appropriate.

(b) Compensation to be paid by the relevant person to the complainant

The Disciplinary Committee shall specify that any compensation to be paid to the complainant shall be remitted to the Association, for onward transmission to the complainant.

(c) Costs to be paid by the relevant person to the Association

The Disciplinary Committee may direct that the relevant person pay such sum by way of costs to the Association as the Disciplinary Committee considers appropriate. In considering what sum shall be paid by way of costs, if any, the Disciplinary Committee shall take into account any effect the relevant person's actions in relation to the conduct of the case have had upon the costs of dealing with the case, whether beneficial or otherwise.

(d) Costs to be paid by the Association to the relevant person

Where the Disciplinary Committee has not found any allegation proven against a relevant person, it may direct the Association to pay a sum to the relevant person by way of contribution to his costs incurred in connection with

Disciplinary regulations

the case in such amount as the Disciplinary Committee shall in its discretion think fit.

- (e) Costs to be paid by the Association to the complainant

In exceptional circumstances, the Disciplinary Committee may direct the Association to pay a sum to the complainant by way of contribution to his costs incurred with the case in such amount as the Disciplinary Committee shall in its discretion think fit.

(11) Notification

The Disciplinary Committee shall announce its decision at the hearing and, where the relevant person is in attendance, shall inform him of his right to appeal to the Appeal Committee in respect thereof. Formal written notice of the terms of the order shall be notified to the relevant person within 14 days of the hearing and a written statement of the reasons for the decision of the Disciplinary Committee shall be given to the relevant person within 21 days or such longer period as shall be necessary in the circumstances.

(12) Appeal

- (a) A relevant person against whom any order has been made by the Disciplinary Committee may appeal to the Appeal Committee in accordance with the Association's appeal procedures as set out in The Chartered

Certified Accountants' Appeal Regulations 2006 (hereafter referred to as "the Appeal Regulations"), save that no appeal shall lie solely on the question of costs. Any such appeal shall be dealt with in accordance with the Appeal Regulations.

- (b) The Association may appeal against a decision of the Disciplinary Committee, subject to the conditions and procedures set out in the Appeal Regulations.

(13) Correction of errors

- (a) Where the order and/or written statement of the reasons for the decision of the Disciplinary Committee contains an accidental error or omission, a party may apply by way of an application notice for it to be corrected. The application notice shall describe the error or omission and state the correction required.
- (b) The Chairman of the Disciplinary Committee may deal with the application without notice if the error or omission is obvious, or may direct that notice of the application be given to the other party.
- (c) The application may be considered without a hearing with the consent of the parties, such consent not to be unreasonably withheld.

- (d) If the application is opposed, it should be heard by the same Disciplinary Committee which made the order and/or written statement of reasons for the decision which are the subject of the application.
- (e) The Disciplinary Committee may of its own volition vary its own order and/or written statement of reasons for the decision for the purpose of making the meaning and intention clear.

(14) Effective date

An order made by the Disciplinary Committee shall take effect from the date of the expiry of the appeal period referred to in the Appeal Regulations unless:

- (a) the relevant person shall duly give notice of appeal prior to the expiry of such period in which case it shall become effective (if at all) as described in the Appeal Regulations; or
- (b) the order is made under regulation 5(9)(a)(i), 5(9)(a)(iii), 5(9)(b)(ii) or 5(9)(c)(i) and the Disciplinary Committee directs that, in the interests of the public, the order should have immediate effect, in which case it shall have immediate effect, subject to the order being varied or rescinded on appeal as described in the Appeal Regulations.

(15) Publicity

- (a) The Disciplinary Committee shall give advance publicity of its meetings, and of the hearing of any case by it, by way of a press release in such terms and manner as it thinks fit, save that in any such advance publication no relevant person shall be named.
- (b) (i) The findings and order of the Disciplinary Committee shall, as soon as the order has become effective, be made available by way of a press release, provided that where the order is that no further action be taken, the findings and order shall only be made available by way of a press release if the relevant person so requests.
- (ii) Unless in exceptional circumstances the Disciplinary Committee otherwise directs, in such press release the relevant person shall be named and the findings and order made against him stated.
- (iii) The press release shall be sent to such publications as the Disciplinary Committee thinks fit.

Disciplinary regulations

(16) Open hearings

- (a) Meetings of the Disciplinary Committee shall be open to the public unless the Committee determines that the public shall be excluded from attending all or part of any meeting at any time, including during the hearing of any case by it, on any of any one or more of the following grounds:
- (i) in the interests of morals, public order or national security in a democratic society;
 - (ii) where the interests of juveniles or the protection of the private lives of the parties so require; or
 - (iii) to the extent strictly necessary in the opinion of the Disciplinary Committee in special circumstances, where publicity would prejudice the interests of justice.
- (b) The Disciplinary Committee may establish such procedures as it deems necessary or desirable in connection with the attendance by the public at its meetings and the procedure to be adopted in respect of any meeting shall, subject to the foregoing paragraphs of this regulation, be such as the Disciplinary Committee in its absolute discretion shall determine.

(17) Advice

In addition to any of the other things or acts the Disciplinary Committee may do, it may communicate with any relevant person with a view to assisting him with or alerting him to problems identified by the Disciplinary Committee and may advise him to obtain advice from a source specified by the Disciplinary Committee. Any failure by a relevant person to act in accordance with such a communication or advice may be noted on the relevant person's file.

6. Ill health

Where it is asserted on behalf of a relevant person, either during the course of an investigation or after a case has been referred to the Disciplinary Committee, that he is too ill to participate in the process ("the disciplinary process"), the relevant person may apply for an adjournment and the following regulations apply.

(1) Submission of evidence

- (a) Within seven days of the assertion that he is too ill to participate in the disciplinary process, the relevant person shall submit:
- (i) medical evidence to support the assertion, including a prognosis and indication as to when, if at all, the relevant person would be well enough to participate in the disciplinary process; and

- (ii) details of the arrangements he has made for the continuity of his practice during the period of his ill health.

(2) Deferral or withdrawal of the disciplinary process

- (a) The investigating officer shall have a discretion to defer the investigation, in accordance with regulation 3(5).
- (b) The case presenter shall have a discretion not to proceed with the allegations against the relevant person, in accordance with regulation 4(6)(c). For the purpose of this regulation, the decision may be to withdraw the allegations completely or defer proceeding with the allegations for a period of time.

(3) Right to require relevant person to be examined

At any time, the Association shall have the right to require the relevant person to be examined by a doctor or other medical professional of the Association's choice.

(4) Referral to health hearing

At any time, at the request of the Association or by order of the Disciplinary Committee, the question of the relevant person's fitness to participate in the disciplinary process shall be considered by the Disciplinary Committee at a health hearing (see regulation 6(5) below). This should be done in any event where

the disciplinary process has, in the Association's view, been deferred for an unreasonable period of time with no agreement between the relevant person and the Association as to how to proceed. What will be an unreasonable period of time will depend on the circumstances of each case.

(5) Health hearing

- (a) It shall be for the relevant person to satisfy the Disciplinary Committee that he is unfit to participate in the disciplinary process.
- (b) If the relevant person is too ill to be present at the hearing, he may attend by way of telephone or video link.
- (c) The Association and the relevant person may submit documentary evidence (medical or otherwise) not less than seven days prior to the health hearing. Documents submitted less than seven days prior to the hearing will only be considered by the Disciplinary Committee in exceptional circumstances.
- (d) During the health hearing, the Disciplinary Committee shall be entitled to make a determination on the evidence before it of the allegations against the relevant person, for the purpose of deciding whether the seriousness of the allegations is such that it would be in the public interest to

Disciplinary regulations

make an order under regulation 6(5)(e) and/or that the disciplinary process should be resumed notwithstanding the relevant person's assertion of ill health. Such determination shall be disregarded for the purposes of any subsequent disciplinary or appeal hearing before a differently constituted Committee.

- (e) The Disciplinary Committee may order that any certificate and/or licence issued to the relevant person by the Association and/or the relevant person's eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations be suspended or made subject to conditions for a specified period or until further order of the Disciplinary Committee or Appeal Committee. Such conditions may include, in the case of a sole practitioner, that the relevant person's continuity provider step in to run the practice and, in the case of a partner or co-director, that the relevant person take no part in the client work of the practice or business.
- (f) The Disciplinary Committee shall make an order as to whether the disciplinary process shall be resumed, withdrawn, or deferred for such period as it sees fit (but for no longer than six months) and brought before a further health

hearing at that time if there has been no agreement between the Association and the relevant person as to how to proceed.

- (g) In addition to its powers under this regulation 6, the Disciplinary Committee shall have the power to make any one or more of the orders set out in regulation 5(9)(h) at a health hearing. It shall not have the power to make any of the orders set out in regulation 5(9)(a)–(g) at a health hearing.
- (h) The Disciplinary Committee shall specify whether any elements of its orders in sub-paragraphs (e) or (g) above are to have immediate effect regardless of any appeal that may be made by the relevant person. The Disciplinary Committee may not so specify in relation to an order under sub-paragraph (f).

(6) Publicity

Health hearings shall be heard in private, but the Disciplinary Committee's decision shall be subject to publicity in accordance with regulation 5(15).

(7) Right of appeal

There shall be a right of appeal from a decision of the Disciplinary Committee at a health hearing, in accordance with regulation 5(12).

(8) Applicability of Disciplinary Regulations

The other Disciplinary Regulations will apply to health hearings unless they conflict with any paragraph within regulation 6, in which case the relevant provision of regulation 6 shall take precedence.

7. General

(1) Notices

- (a) Any notice or other document required to be provided to a relevant person may be provided to him personally or sent by post or courier to his registered place of address. If the relevant person has no registered address any notice or document should be sent by post or courier to the relevant person's address last known to the Association. Any such notice or document so sent shall be deemed to have been provided within 72 hours (excluding Saturdays, Sundays and Public and Bank Holidays) of despatch.
- (b) Any notice or document to be provided to the Association may be provided by sending it to the investigating officer at the principal office of the Association.

(2) Payment

Any order that a sum be paid to the Association or the complainant must be complied with within 21 days from the date the order becomes effective (unless Council otherwise agrees) and, where the

relevant person the subject of the order is a firm, shall be jointly and severally due from, and shall be paid by, the persons who are specified persons in relation to the firm on the date of the order.

(3) Attendance

A relevant person may attend a hearing of the Disciplinary Committee where he is the relevant person concerned notwithstanding that he may have previously indicated that he did not intend to attend.

(4) Hearings

Where a case is of particular interest to a specific government or government agency, or primarily affects persons resident in a specific country, either the Disciplinary Committee or the Secretary may direct that the hearing before the Disciplinary Committee take place in that country. In the absence of any such direction, hearings before the Disciplinary Committee shall take place in London.

(5) Public interest cases

- (a) The Association shall refer a case to AADB where:
 - (i) it considers that the case raises or appears to raise serious issues affecting the public interest in the United Kingdom; and
 - (ii) it considers that a relevant person may have committed an act of misconduct in relation to the case; and

Disciplinary regulations

- (iii) it is satisfied that no disciplinary proceedings going beyond an investigation have been instituted by the Association or any other AADB participant in relation to the conduct in question.
- (b) Where the Association receives notice that AADB has decided to deal with a case relating to a relevant person, either in response to a referral under regulation 7(5)(a) or of its own volition, the Association shall suspend any investigation relating to the case and, upon AADB's request, provide to AADB any such documentary information in its possession or control which it can lawfully provide.
- (c) IAASA may undertake its own investigation into a case relating to a relevant person, if IAASA forms the opinion that it is appropriate or in the public interest to do so. In such circumstances, the Association shall suspend any investigation relating to the case and, upon IAASA's request, provide to IAASA any such documentary information in its possession or control which it can lawfully provide.
- (d) It is the duty of all relevant persons to co-operate with the AADB and IAASA during the course of any investigations they may undertake. Failure to co-operate with the AADB or IAASA shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.

Appeal Regulations

THE CHARTERED CERTIFIED ACCOUNTANTS' APPEAL REGULATIONS 2006 Amended 1 January 2008

The Council of the Association of Chartered Certified Accountants, in exercise of the powers conferred on it by bye-laws 2 to 6, 9, 27 and 28 of the Association's bye-laws and all other powers enabling it, hereby makes the following regulations:

1. Citation, commencement and application

(1) These regulations may be cited as The Chartered Certified Accountants' Appeal Regulations 2006.

(2) These regulations as set out herein shall come into force on 1 January 2008.

(3) These regulations shall apply to:

- (a) all members, affiliates and registered students and, to the extent that they are relevant, to former members, affiliates and registered students;
- (b) all persons subject to bye-laws 8 to 11; and
- (c) all persons who otherwise agree to be bound by them.

2. Interpretation

(1) In these regulations, unless the context otherwise requires:

AADB means the Accountancy and Actuarial Discipline Board;

Admissions and Licensing Committee, Disciplinary Committee and Appeal Committee mean the committees appointed by Council pursuant to regulations made under bye-law 28;

affiliate means a registered student who has passed or obtained exemptions from all papers of the Association's examinations but has not progressed to membership;

appellant means a party appealing to the Appeal Committee against a decision made by the Disciplinary Committee or Admissions and Licensing Committee;

assessor means an independent person so appointed by the Appointments Committee in accordance with The Chartered Certified Accountants' Committee Regulations 2001 and referred to in these regulations;

the Association means the Association of Chartered Certified Accountants incorporated by Royal Charter issued to it in 1974 as amended from time to time;

Authorisation Regulations means The Chartered Certified Accountants' Authorisation Regulations 1998;

Appeal regulations

bye-laws means the bye-laws from time to time of the Association;

case presenter has the meaning ascribed to it in regulation 9(3);

committee officer means any officer of the Association with responsibility for the administration of the Disciplinary Committee or Admissions and Licensing Committee;

complainant means any person or persons who bring to the attention of the Association any matters, acts or circumstances which appear to render a relevant person liable to disciplinary action;

Council means the Council of the Association from time to time and includes any duly authorised committee of Council;

decision means any decision of the Admissions and Licensing Committee made under the Authorisation Regulations or Membership Regulations, and shall include where the context requires more than one such decision;

disciplinary bye-laws means bye-laws 8 to 11 as amended from time to time;

Disciplinary Regulations means The Chartered Certified Accountants' Disciplinary Regulations 2001;

IAASA means the Irish Auditing and Accounting Supervisory Authority;

investigating officer means the Secretary or any other officer of the Association charged with the responsibility of investigating matters and performing the other functions described in the Disciplinary Regulations;

liable to disciplinary action means liable to disciplinary action under bye-law 8(a);

Membership Regulations means The Chartered Certified Accountants' Membership Regulations 1996;

officer of the Association means any official, servant or agent of the Association, whether employed by the Association or otherwise;

order means any order of the Disciplinary Committee made under regulation 5 of the Disciplinary Regulations and any order of the Appeal Committee made under these regulations and includes any direction as to the payment of a sum in respect of costs to or by the Association and as to the publicity to be given to such an order and shall include any finding, term or condition in consequence of or upon which the order is made and shall include where the context requires more than one such order;

relevant person means a member and any other person (whether an individual or a firm and, without limitation, including a registered student) who has undertaken with the

Association to abide by and be bound by, inter alia, the bye-laws and these regulations;

respondent means the person who is the opposite party in the appeal brought by the appellant;

Secretary means the Secretary of the Association (by whatever name known) or any other person acting in such capacity by the direction of the Council.

(2) Words importing the masculine gender include the feminine and words in the singular include the plural and vice versa. References to “his” shall include “its” where the context requires.

(3) Headings and sub-headings are for convenience only and shall not affect the interpretation of these regulations.

3. Appeal

(1) Any person who is the subject of a decision made by the Disciplinary Committee or the Admissions and Licensing Committee may apply for permission to appeal within 30 days after service of the written statement of the reasons for the decision of such Committee (or such longer period as the Chairman of the Appeal Committee may allow where there is good reason for the appellant having failed to meet the time limit). No appeal shall lie solely on the question of costs.

(2) In exceptional circumstances, where there is a clear public interest in the decision being reviewed, the Association may apply for permission to appeal against a decision made by the Disciplinary Committee or Admissions and Licensing Committee within 14 days after service of the written statement of the reasons for the decision of such Committee.

4. Applying for permission to appeal

(1) An application for permission to appeal shall be made by filing with the committee officer an application notice in the form specified in regulation 5(1).

(2) Where an application notice is filed by the Association, the committee officer shall notify the respondent and supply a copy to him within 14 days. The respondent may submit grounds of opposition within 30 days thereafter.

5. Form of application notice and grounds of appeal

(1) The application notice:

- (a) shall be in writing addressed to the committee officer;
- (b) shall state the appellant's name and address;
- (c) shall state whether the appellant has authorised a representative to act for him in the appeal and, if so, state the representative's name and address;

Appeal regulations

- (d) shall state whether the appellant intends to appear at the hearing of the appeal if permission is granted;
 - (e) in the case of an appeal from a decision made by the Disciplinary Committee, shall state whether the appellant appeals against one or more of its findings and orders or one or more of its orders only. An appeal against an order may be made conditionally upon an appeal against a finding of the Disciplinary Committee failing;
 - (f) in the case of an appeal from a decision made by the Admissions and Licensing Committee, shall state which of the orders is appealed and shall state the orders which the appellant wishes the Appeal Committee to make;
 - (g) shall state which of the grounds of appeal set out in this regulation 5 the appellant is putting forward in support of his application (and the grounds so stated shall not thereafter be amended except with the leave of the Appeal Committee);
 - (h) shall state the reasons in support of each ground of appeal; and
 - (i) may include any documents which the appellant wishes the Appeal Committee to take into account.
- (2) An appeal by a person who is the subject of a decision made by the Disciplinary Committee or the Admissions and Licensing Committee may be successful only upon one or more of the following grounds:
- (a) the Committee made an error of fact or law, which would have altered one or more of the findings or orders made in the case;
 - (b) the Committee misinterpreted any of the Association's bye-laws or regulations or any relevant guidance or technical standards, which would have altered one or more of the findings or orders made in the case;
 - (c) the Committee failed to take into account certain relevant evidence, which would have altered one or more of the findings or orders made in the case;
 - (d) there is new evidence not previously available, which would have altered one or more of the findings or orders made in the case;
 - (e) the Committee's order is disproportionate and/or unreasonable in light of its findings;
 - (f) the Committee's findings and/or order are unjust because of a serious procedural irregularity in the proceedings.

(3) An appeal by the Association against a decision of the Disciplinary Committee or Admissions and Licensing Committee may be successful only upon the ground that the decision was one that no Committee acting reasonably would have made.

6. Permission to appeal

(1) *Initial consideration of the application notice*

- (a) An application notice served by the Association shall be considered by the Appeal Committee in accordance with regulation 6(2).
- (b) An application notice served by any other party shall initially be considered by the Chairman of the Appeal Committee, who shall direct that either:
 - (i) the appeal shall proceed in accordance with regulation 7 because he is satisfied that the appeal would have a real prospect of success on one or more of the grounds under regulation 5(2) that are set out in the appellant's application notice; or
 - (ii) the application notice shall be considered by the Appeal Committee in accordance with regulation 6(2).
- (c) Before making any direction under regulation 6(1)(b), or in conjunction with such a direction,

the Chairman of the Appeal Committee may make such other directions as he deems to be necessary or desirable.

- (d) The Chairman of the Appeal Committee may limit his direction under regulation 6(1)(b)(i) to one or some of the grounds of appeal specified in the application notice. In such situation, the remaining grounds specified in the application notice shall be considered by the Appeal Committee in accordance with regulation 6(2) unless the appellant elects to withdraw those grounds.
- (e) The Chairman of the Appeal Committee shall not be permitted to sit on any Appeal Committee that he has directed to consider an application notice pursuant to regulation 6(1)(b)(ii). Nor shall he be permitted to sit on any Appeal Committee in relation to the case thereafter.

(2) *Consideration of the application notice by the Appeal Committee*

- (a) The application notice shall be considered by the Appeal Committee on the papers in private without a hearing; or, if the appellant or respondent requests to be heard, at a hearing. If the application notice is being considered on the papers, the Appeal Committee may at any time direct that the matter should

Appeal regulations

- be adjourned for consideration at a hearing in order to give the parties an opportunity to make oral submissions.
- (b) The Appeal Committee shall be supplied with:
- (i) all the documents which had been placed before the Committee whose decision is the subject of the application notice;
 - (ii) the notice of the Committee's decision;
 - (iii) the statement of the Committee's reasons for its decision;
 - (iv) the application notice and any documents submitted with it;
 - (v) any written submissions that may have been made by the respondent at this time;
 - (vi) any other documents or information which the Appeal Committee may request.
- (c) If the appellant so requests, the Appeal Committee may grant permission to amend any ground of appeal submitted by the appellant for one or more of the grounds of appeal set out in regulation 5. The Appeal Committee may of its own volition amend the application notice to
- add one or more of the grounds of appeal set out in regulation 5.
- (d) The Appeal Committee may grant or refuse permission to appeal.
 - (e) The Appeal Committee may limit its permission to one or more of the grounds of appeal specified in the application notice.
 - (f) If the Appeal Committee grants permission to appeal, that same Committee may proceed to hear the appeal immediately thereafter, or at such convenient time as the Committee may direct, provided that all parties to the appeal give their explicit consent.
 - (g) Before making a decision under this regulation 6(2), or in conjunction with such a decision, the Appeal Committee may make such directions as it deems to be necessary or desirable.
- (3) *Decision where the appellant is a person who is the subject of a decision made by the Disciplinary Committee or the Admissions and Licensing Committee*
- Where the application notice has been filed by a person who is the subject of a decision made by the Disciplinary Committee or the Admissions and Licensing Committee, the Appeal Committee may grant permission to appeal only if it is satisfied that either:

- (a) the appeal would have a real prospect of success on one or more of the grounds under regulation 5(2) that are set out in the appellant's application notice; or
- (b) there is some other compelling reason why the appeal should be heard on one or more of the grounds under regulation 5(2).

(4) Decision where the appellant is the Association

Where the application notice has been filed by the Association, the Appeal Committee may grant permission to appeal only if it is satisfied that:

- (a) there is a clear public interest in the decision being reviewed; and
- (b) the appeal would have a real prospect of success on the ground set out in regulation 5(3).

(5) Notice of the decision

- (a) Within 14 days after the Appeal Committee's decision to grant or refuse permission, formal written notice of the decision shall be given to the parties. Where permission to appeal has been granted, the notice shall state upon which of the grounds within regulation 5 permission has been granted.
- (b) Within 14 days after the Appeal Committee's decision, the parties shall be given copies of the

documents supplied to the Appeal Committee under regulation 6(2)(b) if they have not already been supplied.

- (c) A statement of the reasons for the Appeal Committee's decision, which may be in summary form, shall be given to the parties within 21 days after the decision, or such longer period as shall be necessary in the circumstances.

7. The appeal

The grounds of appeal upon which permission to appeal has been granted, or the grounds of appeal set out in an application notice in respect of which the Chairman of the Appeal Committee has directed the appeal may proceed, shall be considered by the Appeal Committee at a hearing except where the appeal is withdrawn by the appellant.

8. Preparation for the appeal hearing

(1) Further enquiries

Where the appeal is from a decision of the Disciplinary Committee, an investigating officer may make such further enquiries as he shall consider appropriate in order to assist in the preparation of the case to the Appeal Committee. It shall be the duty of the person who is the subject of the decision under appeal to co-operate with such enquiries and failure by him to do so shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.

(2) Submissions and documents

The appellant and respondent may submit such written submissions and additional documentary evidence as they may wish to be drawn to the Appeal Committee's attention, provided that any such written submissions and documentary evidence must be submitted not less than 7 days prior to the hearing of the appeal. Written submissions and documents submitted less than 7 days prior to the hearing will only be considered by the Appeal Committee in exceptional circumstances.

9. Notice, representation and adjournments

(1) Notice

The Association shall provide the parties with no less than 21 days prior written notice of the time and place of the hearing of the appeal. In the event that the Association has not complied with this requirement the Appeal Committee may, in its absolute discretion, provided that it is satisfied that the appellant has received written notice of the time and place of the hearing of the appeal and that the appellant has not been prejudiced in the conduct of his appeal, order that the hearing shall proceed.

In exceptional circumstances, the parties may be provided with less than 21 days prior written notice of the hearing ("an urgent hearing"). At an urgent hearing, the Appeal Committee shall consider at the outset the appropriateness of short notice and may, in its absolute discretion, if it is of the view that it is justified in all the circumstances, order that the hearing

proceed or be adjourned for such period and under such directions as it sees fit.

(2) Proceeding in the absence of a party

The appeal may be heard in the absence of a party provided that the Appeal Committee is satisfied that he has been served with no less than 21 days prior written notice of the date set for the hearing or, in the case of an urgent hearing, that proceeding with the hearing is justified in all the circumstances.

(3) Representation

- (a) At the hearing of the appeal, the person who is the subject of the decision under appeal shall be entitled to be heard before the Appeal Committee and/or to be represented by such person as he may wish.
- (b) The Association shall be represented by such person as it may nominate (the "case presenter").

(4) Advisers to the Appeal Committee

The Appeal Committee may also instruct a solicitor or barrister to act as its legal adviser on the hearing of any appeal. At a hearing concerning a party's state of health as described in regulation 19, the Appeal Committee may instruct a medical expert to act as its medical adviser.

(5) Adjournments

- (a) A party may make a written request to the Appeal Committee that the hearing be adjourned to

a future meeting. Such request will be considered at the outset of the hearing and the Appeal Committee may, in its absolute discretion, agree to the request.

- (b) Any such request made in advance of the hearing shall be considered as follows.

If the request is made after the provision of notice in accordance with regulation 9(1), it shall be considered by the Chairman of the Appeal Committee, who may in his absolute discretion agree to the request. If such request is denied by the Chairman, it shall be considered at the outset of the hearing by the other members of the Appeal Committee in accordance with regulation 9(5)(a).

If the request is made by the person who is the subject of the decision under appeal before the provision of notice in accordance with regulation 9(1), the Association may agree to the request. If the Association opposes the request, it shall be considered by the Chairman of the Appeal Committee in accordance with this regulation. If such request is denied by the Chairman, it shall be considered at the outset of the hearing by the other members of the Appeal Committee in accordance with regulation 9(5)(a).

- (c) In advance of the hearing, at the outset of the hearing, or at any time during the hearing, the Appeal Committee may itself direct that the case should be adjourned.
- (d) The Appeal Committee may impose such conditions as it may determine upon the grant of an adjournment.
- (e) The Appeal Committee may (but need not) agree to or direct an adjournment where criminal or civil proceedings concerning a relevant matter are pending to which the person who is the subject of the decision under appeal is a party.

10. The hearing

(1) Constitution of Appeal Committee

The Chairman of the Appeal Committee who considered the application notice in accordance with regulation 6(1)(b) may hear the appeal if he directed that the appeal should proceed pursuant to regulation 6(1)(b)(i). He shall not be permitted to hear the appeal if he directed that the application notice be considered by the Appeal Committee pursuant to regulation 6(1)(b)(ii).

(2) Burden and standard of proof

On the hearing of any appeal it shall be for the appellant to satisfy the Appeal Committee that the grounds of the appeal are made out. The standard of proof to be applied by the Appeal Committee shall be the balance of probabilities.

Appeal regulations

(3) Amendment of grounds of appeal

If the appellant so requests, the Appeal Committee may grant permission to amend any ground of appeal submitted by the appellant for one or more of the grounds of appeal set out in regulation 5. The Appeal Committee may of its own volition amend the application notice to add one or more of the grounds of appeal set out in regulation 5.

(4) Evidential material

- (a) The Appeal Committee shall be entitled to consider as evidence the Committee's reasons for the decision under appeal.
- (b) If permission to appeal has been granted following consideration of the application notice by the Appeal Committee, the Appeal Committee hearing the appeal shall be entitled to consider as evidence the reasons for the decision to grant permission.
- (c) The Appeal Committee shall be entitled to admit additional evidence which was not before the Committee whose decision is under appeal. The Appeal Committee may give directions as to the matter and time in which such evidence is to be submitted.

(5) Presentations

The appellant shall present his case first, followed by the respondent. The appellant then has a right of response.

(6) Witnesses

Either party may call witnesses in support of his case. Any witnesses called shall be liable to cross-examination by the other party. The Appeal Committee may ask questions of either party and their witnesses (if any), at any time.

11. Orders of Appeal Committee

(1) On the conclusion of the hearing of the appeal, the Appeal Committee shall consider the appeal.

(2) In the case of an appeal against one or more of the findings and orders of the Disciplinary Committee, the Appeal Committee may do any one or more of the following:

- (a) affirm or vary any findings of the Disciplinary Committee;
- (b) affirm, vary or rescind any order of the Disciplinary Committee;
- (c) substitute any other order which the Disciplinary Committee could have made;
- (d) order that the case be heard afresh by the Disciplinary Committee.

(3) In the case of an appeal against one or more of the orders, but not the findings, of the Disciplinary Committee, the Appeal Committee may do either or both of the following:

- (a) affirm, vary or rescind any order of the Disciplinary Committee;
- (b) substitute any other order which the Disciplinary Committee could have made.

(4) In the case of an appeal against the decision of the Admissions and Licensing Committee, the Appeal Committee may make such order as it sees fit in respect of the appeal.

12. Costs

In this regulation 12, reference to “the appeal” includes a permission hearing in accordance with regulation 6(2).

(1) Costs to be paid by the appellant to the Association

Where the appellant is a person who is the subject of a decision made by the Disciplinary Committee or the Admissions and Licensing Committee, the Appeal Committee may direct the appellant to pay to the Association by way of costs of the appeal such sum as the Appeal Committee shall consider appropriate. In considering what sum shall be paid by way of costs, if any, the Appeal Committee shall take into account (and without limiting its discretion in any way) any effect the appellant’s actions in relation to the conduct of the appeal have had upon the costs of dealing with the appeal, whether beneficial or otherwise.

(2) Costs to be paid by the Association to the appellant

Where the appellant is a person who is the subject of a decision made by the Disciplinary Committee, and the Appeal Committee has wholly rescinded a finding of the Disciplinary Committee in respect of an allegation and has itself found the allegation not proved, the Appeal Committee may direct the Association to pay a sum to the appellant by way of contribution to his costs incurred in connection with the case and the appeal in such amount as the Appeal Committee shall in its discretion decide.

(3) Costs to be paid by the Association to the complainant

Where the appeal is against a decision of the Disciplinary Committee, the Appeal Committee may in exceptional circumstances direct the Association to pay a sum to a complainant by way of contribution to his costs incurred with the case in such amount as the Appeal Committee shall in its discretion think fit.

(4) Costs to be paid by the Association to the respondent

Where the Association is the appellant and has not been successful on all the grounds of its appeal, the Appeal Committee may direct that the Association pay to the respondent by way of costs of the appeal such sum as the Appeal Committee shall consider appropriate.

13. Effect on costs of withdrawal of appeal

(1) Costs of the complainant

Where the appeal is against a decision of the Disciplinary Committee, the Appeal Committee may in exceptional circumstances direct the Association to pay a sum to the complainant by way of contribution to his costs incurred in the case in such amount as the Appeal Committee shall in its discretion think fit.

(2) Costs of the respondent to be covered by the appellant

If at any time prior to the conclusion of the hearing of the appeal the appellant makes a request to withdraw the appeal, the Appeal Committee shall make such order as it sees fit in respect of costs. In particular, the Appeal Committee may order the appellant to pay to the respondent by way of costs of the appeal such sum as the Appeal Committee shall consider appropriate. In considering what sum shall be paid by way of costs, if any, the Appeal Committee shall take into account (but without limiting its discretion in any way) any effect that the appellant's actions in relation to the conduct of the appeal and its withdrawal have had upon the costs of dealing with the appeal up to the time of the withdrawal, whether beneficial or otherwise.

14. Notification

The Appeal Committee shall announce its decision at the hearing. Formal written notice of the order made shall be notified to the parties within 14 days after the

hearing, and a written statement of the reasons for the decision of the Appeal Committee shall be given to the parties within 21 days after the hearing, or such longer period as shall be necessary in the circumstances.

15. Correction of errors

(1) Where the order and/or written statement of the reasons for the decision of the Appeal Committee contains an accidental error or omission, a party may apply by way of an application notice for it to be corrected. The application notice shall describe the error or omission and state the correction required.

(2) The Chairman of the Appeal Committee may deal with the application without notice if the error or omission is obvious, or may direct that notice of the application be given to the other party.

(3) The application may be considered without a hearing with the consent of the parties, such consent not to be unreasonably withheld.

(4) If the application is opposed, it should be heard by the same Appeal Committee which made the order and/or written statement of reasons for the decision which are the subject of the application.

(5) The Appeal Committee may of its own volition vary its own order and/or written statement of reasons for the decision for the purpose of making the meaning and intention clear.

16. Effective date

Any order made by the Appeal Committee shall take effect from the date it is made (that is, for the avoidance of doubt, the date its decision is announced and not the date it is formally notified to the appellant) unless the Appeal Committee, in its absolute discretion, directs that it shall take effect as from some other date (not being earlier than the date of the decision under appeal) as shall be specified in the order of the Appeal Committee.

17. Publicity

(1) In the case of an appeal against a decision of the Disciplinary Committee:

- (a) the Appeal Committee shall give advance publicity of its meetings, and of the hearing of any case by it, by way of a press release in such terms and manner as it thinks fit, save that in any such advance publication no appellant shall be named; and
- (b) (i) any finding and/or order of the Appeal Committee shall, as soon as it has become effective, be made available by way of a press release, provided that where the order is that no further action be taken any finding and/or order shall only be made available by way of a press release if the appellant so requests;

- (ii) unless in exceptional circumstances the Appeal Committee otherwise directs, in such press release the appellant shall be named and any finding and/or order made against him stated;
- (iii) the press release shall be sent to such publications as the Appeal Committee thinks fit.

(2) In the case of an appeal against the decision of the Admissions and Licensing Committee, where the Appeal Committee has ordered the withdrawal of a certificate or certificates pursuant to the Authorisation Regulations, the order may, as soon as it has become effective, be made available by way of a press release and sent to such publications as the Appeal Committee thinks fit. Unless in exceptional circumstances the Appeal Committee otherwise directs, in such press release the appellant shall be named and the order made against him stated.

18. Open hearings

Save where otherwise specified in these regulations, meetings of the Appeal Committee shall be open to the public, unless the Appeal Committee determines that the public shall be excluded from attending all or part of any meeting at any time, including during the hearing of any case by it, on any one or more of the following grounds:

Appeal regulations

- (a) (i) in the interests of morals, public order or national security in a democratic society;
 - (ii) where the interests of juveniles or the protection of the private lives of the parties so requires; or
 - (iii) to the extent strictly necessary in the opinion of the Appeal Committee in special circumstances where publicity would prejudice the interests of justice.
- (b) The Appeal Committee may establish such procedures as it deems necessary or desirable in connection with attendance by the public at its meetings and the procedure to be adopted in respect of any meeting shall, subject to the foregoing paragraphs of this regulation, be such as the Appeal Committee, in its absolute discretion, so determines.

19. III health

Where it is asserted on behalf of an appellant, after a case has been referred to the Appeal Committee, that he is too ill to participate in the process ("the appeal process") but does not wish to withdraw his appeal, the appellant may apply for an adjournment and the following regulations apply.

(1) Submission of evidence

- (a) Within seven days of the assertion that he is too ill to participate in the appeal process, the appellant shall submit:
 - (i) medical evidence to support the assertion, including a prognosis and indication as to when, if at all, the appellant would be well enough to participate in the appeal process; and
 - (ii) details of the arrangements he has made for the continuity of his practice during the period of his ill health.

(2) Right to require appellant to be examined

At any time, the Association shall have the right to require the appellant to be examined by a doctor or other medical professional of the Association's choice.

(3) Referral to health hearing

- (a) At any time, at the request of the Association or by order of the Appeal Committee, the question of the appellant's fitness to participate in the appeal process shall be considered by the Appeal Committee at a health hearing (see regulation 19(4) below). This should be done in any event where the appeal process has, in the Association's view, been deferred for an unreasonable

period of time with no sufficient improvement in the appellant's health nor any agreement between the appellant and the Association as to how to proceed. What will be an unreasonable period of time will depend on the circumstances of each case.

- (b) Reviews of a decision of the Disciplinary Committee or Appeal Committee made at a first health hearing shall be referred to a differently constituted Appeal Committee.

(4) Health hearing

- (a) At a hearing under regulation 19(3)(a), it shall be for the appellant to satisfy the Appeal Committee that he is unfit to participate in the appeal process. At a review hearing under regulation 19(3)(b), it shall be for the appellant to satisfy the Appeal Committee on the grounds of the review.
- (b) If the appellant is too ill to be present at the hearing, he may attend by way of telephone or video link.
- (c) The respondent and the appellant may submit documentary evidence (medical or otherwise) not less than seven days prior to the health hearing. Documents submitted less than seven days prior to the hearing will only be considered by the Appeal

Committee in exceptional circumstances.

- (d) During the health hearing, the Appeal Committee shall be entitled to make a determination on the evidence before it of the allegations against the appellant, for the purpose of deciding whether the seriousness of the allegations is such that it would be in the public interest to make an order under Disciplinary Regulation 6(5)(e) and/or an order that the disciplinary or appeal process should be resumed notwithstanding the appellant's assertion of ill health. Such determination shall be disregarded for the purposes of any subsequent disciplinary or appeal hearing before a differently constituted Committee.
- (e) The Appeal Committee has the power to make any order which the Disciplinary Committee could have made at a health hearing, save that it may not order that the appeal process be withdrawn. Where the Appeal Committee is reviewing a decision of the Disciplinary Committee made at a health hearing, it may do any one or more of the following:
 - (i) affirm, vary or rescind the order of the Disciplinary Committee;

- (ii) substitute any other order which the Disciplinary Committee could have made.
- (f) Where the Appeal Committee is hearing a case other than a review of a decision of the Disciplinary Committee, it shall specify whether any elements of its orders are to have immediate effect regardless of any request for review that may be made by the appellant. The Appeal Committee may not so specify in relation to an order directing that the appeal process be resumed or deferred.

(5) Publicity

Health hearings shall be heard in private, but the Appeal Committee's decision shall be subject to publicity in accordance with regulation 17(1).

(6) Right of appeal

There shall be a right of review of a decision of the Appeal Committee made following a referral under regulation 19(3)(a). There shall be no right of review of a decision of the Appeal Committee made following a review under regulation 19(3)(b).

(7) Applicability of Appeal Regulations

The other Appeal Regulations will apply to health hearings unless they conflict with any paragraph within regulation 19, in which case the relevant provision of regulation 19 shall take precedence.

20. General

(1) General procedure

The procedures to be adopted in relation to any meeting of the Appeal Committee shall, subject to the foregoing regulations, be such as the Appeal Committee shall, in its absolute discretion, determine. In particular, the Appeal Committee may establish such procedures as it deems necessary or desirable in connection with the attendance by the public at its meetings.

(2) Notices

- (a) Any notice or other document required to be provided to a party may be provided to him personally or sent by post or courier to his or its registered place of address. If the party has no registered address any notice or document should be sent by post or courier to his address last known to the Association. Any such notice or document so sent shall be deemed to have been provided within 72 hours (excluding Saturdays and Sundays and Public and Bank Holidays) of despatch.
- (b) Any notice or document required to be provided to the Association may be provided by sending it to the principal office of the Association addressed as follows:
 - (i) in the case of a notice or document relating to an appeal against the findings or order of the Disciplinary

- Committee, to the investigating officer; and
- (ii) in the case of a notice or document relating to an appeal against a decision of the Admissions and Licensing Committee, to the committee officer.

(3) Payment

Any order that a sum be paid to the Association or the complainant must be complied with within 21 days from the date the order becomes effective (unless Council otherwise agrees) and, where the appellant who is the subject of the order is a firm, shall be jointly and severally due from, and shall be paid by, the persons who are specified persons in relation to the firm on the date of the order.

(4) Attendance

A party may attend a hearing of the Appeal Committee where he is a party concerned notwithstanding that he may have previously indicated that he did not intend to attend.

(5) Hearings

Where a case is of particular interest to a specific government or government agency, or primarily affects persons resident in a specific country, either the Appeal Committee or the Secretary may direct that the hearing before the Appeal Committee take place in that country. In the absence of any such direction, hearings before the Appeal Committee shall take place in London.

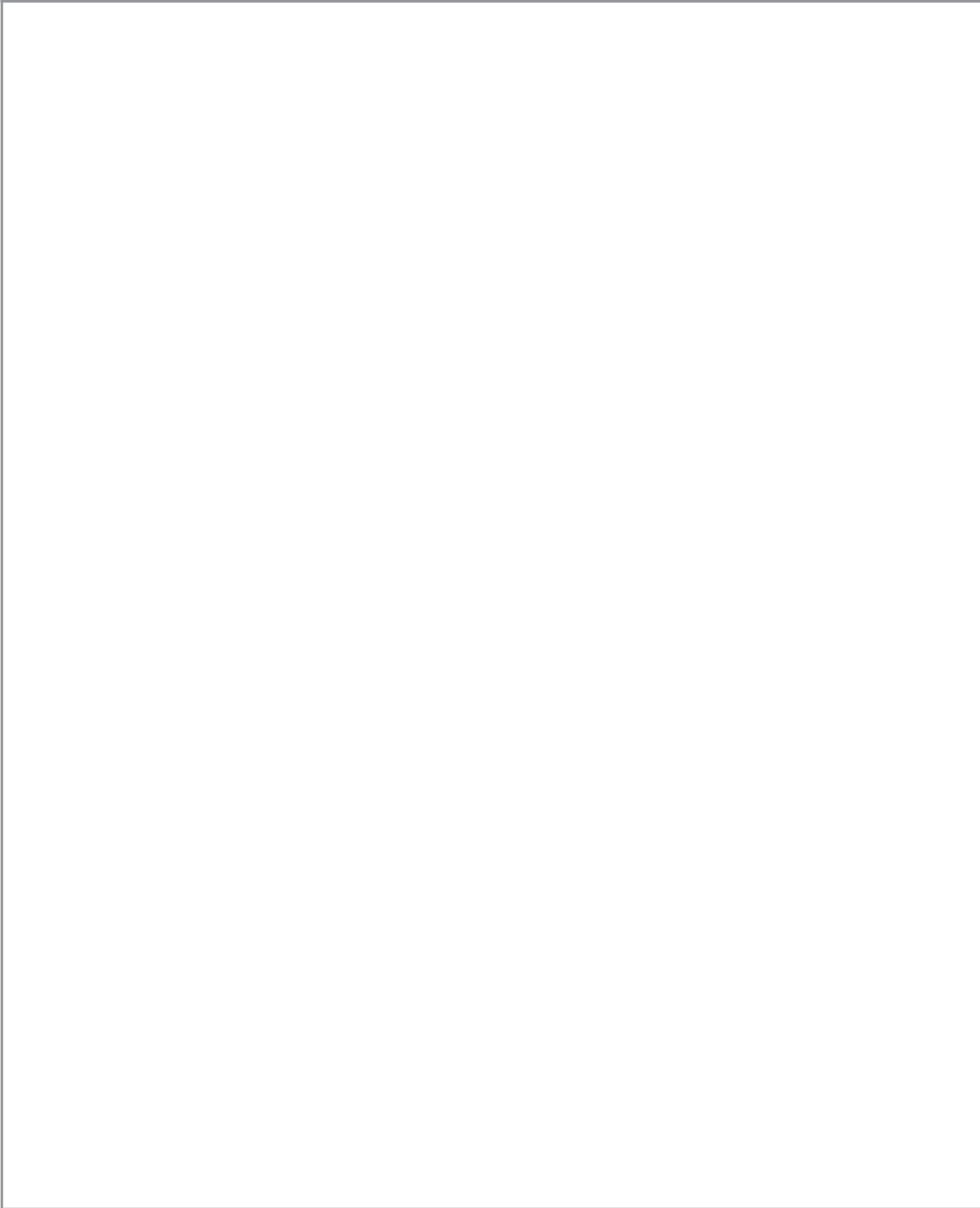
(6) Public interest cases

- (a) The Association shall refer a case to the AADB where:
- (i) it considers that the case raises or appears to raise serious issues affecting the public interest in the United Kingdom; and
- (ii) it considers that a relevant person may have committed an act of misconduct in relation to the case; and
- (iii) it is satisfied that no disciplinary proceedings going beyond an investigation have been instituted by the Association or any other AADB participant in relation to the conduct in question. This regulation 20(6)(a)(iii) is unlikely to be satisfied in the case of an appeal unless evidence of the conduct in question was not available prior to the hearing of the Disciplinary Committee.
- (b) Where the Association receives notice that AADB has decided to deal with a case relating to a relevant person, either in response to a referral under regulation 20(6)(a) or of its own volition, the Association shall suspend any investigation relating to the case and, upon AADB's request, provide to AADB any such

Appeal regulations

documentary information in its possession or control which it can lawfully provide.

- (c) IAASA may undertake its own investigation into a case relating to a relevant person if IAASA forms the opinion that it is appropriate or in the public interest to do so. In such circumstances, the Association shall suspend any investigation relating to the case and, upon IAASA's request, provide to IAASA any such documentary information in its possession or control which it can lawfully provide.
- (d) It is the duty of all relevant persons to co-operate with the AADB and IAASA during the course of any investigations they may undertake. Failure to co-operate with the AADB or IAASA shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.



December 2007 © ACCA 2007

ACCA 29 Lincoln's Inn Fields London WC2A 3EE United Kingdom
tel: +44 (0)20 7059 5000 fax: +44 (0)20 7059 5050