

## **XII DISCIPLINE, INSOLVENCY, ETC.**

### **Definitions of terms used in Chapter XII**

57. (1) In this Chapter the following words and phrases have the meaning assigned to them below:

“Appeal Panel” means the panel appointed under Rule 60;

“Appeal Tribunal” means a Tribunal appointed under Rule 74;

“appellant” means a Member or CA Student appealing against a finding or decision of the Discipline Tribunal or the Investigation and Professional Conduct Enforcement Committee appealing against the lenience of an order of the Discipline Tribunal, as the case may be;

The “Board” means the managing board of the Accountancy Investigation and Discipline Board;

“defender” means any Member, Member Firm or CA Student against whom or which a formal complaint is preferred under these Rules;

“Discipline Panel” means the panel appointed under Rule 60;

“Disciplinary Scheme” means, the scheme or schemes referred to in Rule 1(23);

“Discipline Tribunal” means a tribunal appointed under Rule 70;

“Executive Committee” means the Executive Committee of the Disciplinary Scheme;

“hearing” in relation to a formal complaint or appeal means the whole of the proceedings of the relevant Committee including the Committee’s consideration of its findings and decision, and includes, where appropriate, a re-hearing;

“Investigation and Professional Conduct Enforcement Committee” means the committee appointed under Rule 60;

“legally qualified person” means an advocate, solicitor, or solicitor-advocate of at least seven years standing;

“Member Firm” has the same meaning as in the Disciplinary Scheme except in Rule 78 where it is confined to firms composed in whole or in part of Members of the Institute in public practice in the United Kingdom;

“Nominations Committee” means a committee of that title appointed by the Council;

“notice” means written notice sent by pre-paid recorded delivery post, in the case of a defender to his place of business and in the case of the Council to the Institute’s

principal office. Service of such notice shall be deemed to have occurred 48 hours after the date of posting and “notify” and “notification” where used in this Chapter shall be construed accordingly;

A “public interest member” of a committee, sub-committee, tribunal or panel is someone, other than an accountant, appointed as a representative of the public interest;

“regulatory committee” means a committee appointed by the Council to exercise the powers of the Institute in respect of audit, insolvency permit or other licensing of practising rights, or financial matters;

“secretary” has the same meaning as in the Royal Charters.

- (2) Facts and matters are “of the most serious character” which, should they form the subject of an adverse finding of a Discipline Tribunal, would appear likely in the case of a Member to justify an order of expulsion, exclusion or suspension, or in the case of a CA student an order that he be declared unfit to become a Member.

### **Liability of Members and CA Students to disciplinary action**

58. (1) A Member shall be liable to disciplinary action in accordance with this Chapter if:
- (a) he is guilty of professional misconduct (which expression includes any act or default, whether in the course of carrying out professional work or not, likely to bring discredit to himself, the Institute or the profession of accountancy); or
  - (b) he is guilty of professional incompetence (which expression means the performance of professional work, whether as a principal, director, employee or as an individual, incompetently to such an extent or on such a number of occasions as to fall significantly short of the standards expected of a Member).
- (2) A Member shall be liable to disciplinary action under paragraph (1)(a) in respect of acts or defaults which took place prior to his becoming a Member, but only if they were not disclosed fully to the Institute before becoming a Member.
- (3) A person who ceases to be a Member shall remain liable to disciplinary action in respect of professional misconduct or professional incompetence which took place while he was a Member.
- (4) A CA Student shall be liable to disciplinary action if he has at any time been guilty of an act or default such as would render him unfit to become a Member, except acts or defaults which took place before he was admitted as a Student and which had been fully disclosed to the Institute prior to his admission as a CA Student.

A Member or CA Student shall conclusively be presumed to be guilty of professional misconduct if:

- (a) he has been convicted in the United Kingdom of an indictable offence or has been sentenced to imprisonment on summary complaint or he has been

convicted by the criminal courts of any other country of an offence which if committed in Scotland would be an offence and which either, if prosecuted in Scotland, would be an indictable offence, or he has been sentenced to imprisonment; or

- (b) an order of disqualification has been made against him under the Company Directors Disqualification Act 1986.

In deciding whether a Member or a CA Student is liable to disciplinary action, regard may be had to:

- (a) his failure to observe the terms of any code of practice or other guidance, whether ethical or technical, affecting Members;
- (b) his failure to comply with any Rule, bye-law or regulation which imposes a duty on Members or CA Students;
- (c) any adverse finding by a statutory body, another accountancy body or by any committee or person set up by any such body; and
- (a) his conviction in respect of any offence, whether in the United Kingdom or abroad.

Non-compliance with a Rule, bye-law or regulation which is expressly stated to give rise to liability to disciplinary action shall give rise to such liability notwithstanding paragraph (b) of this clause

- (7) In deciding whether a Member or CA Student is liable to disciplinary action regard may be had to any facts or matters concerning him which have previously come to the attention of the Investigation and Professional Conduct Enforcement Committee or its predecessor, whether or not they have been the subject of an adverse finding by a Discipline Tribunal.

### **Liability of regulated Firms and regulated Members to disciplinary action**

- 59. (1) An authorised firm shall be liable to disciplinary action under these Rules:
  - (a) if it has committed a breach of any regulations made by the Institute in its capacity as a designated professional body under the Financial Services and Markets Act 2000.
  - (b) if it has failed to comply with a statement of principle issued by the Financial Services Authority under section 64 of the Financial Services and Markets Act 2000.
- (2) A Member or Member Firm who or which is a registered auditor shall be liable to disciplinary action under these Rules if he or it has committed a breach of any regulations made by the Institute in its capacity as a recognised supervisory body under the Companies Act 1989.

## **Appointment of Investigation and Professional Conduct Enforcement Committee, Discipline Panel and Appeal Panel**

60. (1) The Council shall appoint an Investigation and Professional Conduct Enforcement Committee comprising a convener and vice convener and no fewer than nine Members of the Institute and no fewer than nine public interest members. In the absence of the convener, the vice convener shall have all the powers and duties of the convener under this Chapter. Three members of the Committee, including at least one Member of the Institute and one public interest member, shall comprise a quorum.
- (2) The Council shall appoint a Discipline Panel comprising no fewer than six Members of the Institute, no fewer than six public interest members and no fewer than four legally qualified persons. The Discipline Panel shall elect as its chairman one of its legally qualified members. In the absence of the chairman any of the legally qualified members shall have the powers of the chairman under this Chapter. Three members of the Discipline Panel, including one Member of the Institute and one public interest member and one legally qualified member, shall comprise a quorum.
- (3) The Council shall appoint an Appeal Panel comprising no fewer than six Members of the Institute, no fewer than six public interest members and no fewer than four legally qualified persons. The Appeal Panel shall elect as its chairman one of its legally qualified members. In the absence of the chairman any of the legally qualified members shall have the powers of the chairman under this Chapter. Three members of the Appeal Panel, including one Member of the Institute, one public interest member and one legally qualified member, shall comprise a quorum.
- (4) No person shall be a member of more than one of the following bodies at the same time: the Investigation and Professional Conduct Enforcement Committee, the Discipline Panel and the Appeal Panel. No person shall be appointed to membership of any of those bodies within twelve months of ceasing to be a member of any other of those bodies.
- (5) Appointments to the Investigation and Professional Conduct Enforcement Committee, the Discipline Panel and the Appeal Panel shall be for a period of not less than three years, renewable at the instance of the Council for a further term or terms of not less than three years.
- (6) The Council may pay remuneration to and the reasonable expenses of public interest members of the Investigation and Professional Conduct Enforcement Committee, the Discipline Panel and the Appeal Panel and of the legally qualified members of the Discipline Panel and the Appeal Panel.
- (7) The Investigation and Professional Conduct Enforcement Committee may co-opt persons to assist it with the consideration of particular cases. A co-opted person shall be disregarded for the purposes of deciding whether a meeting is quorate but shall in all other respects be treated as a member of that Committee.

- (8) The Investigation and Professional Conduct Enforcement Committee may delegate all or any of its powers and duties under this Chapter to an individual or sub-committee on such terms, if any, as it thinks fit.
- (9) The chairmen of the Investigation and Professional Conduct Enforcement Committee, the Discipline Panel and the Appeal Panel shall, in the case of an equality of votes, have a casting, as well as a deliberative vote.
- (10) The Appeal Panel may from time to time draw up guidance for the making of orders by Discipline Tribunals and Appeal Tribunals. Any such guidance shall be published to Members, students and others in such manner as the Council thinks fit.
- (11) The Investigation and Professional Conduct Enforcement Committee, Discipline Tribunals and Appeal Tribunals shall have regard in making orders under this Chapter to any guidance drawn up under paragraph (10), but the making of any order in an individual case shall be at the sole discretion of the Committee or Tribunal as the case may be.
- (12) Except as provided in this Chapter, the Discipline and Appeal Panels and Tribunals and their members shall not be subject to the direction or guidance of the Council or of any other person.

#### **Members' duty to report misconduct etc.**

61. (1) It is the duty of a Member to bring to the attention of the Investigation and Professional Conduct Committee any facts or matters indicating that a Member, Member Firm or CA Student may be liable to disciplinary action under this Chapter. In deciding whether a Member, Member Firm or CA Student may be so liable, regard may be had to any guidance issued by the Council.
- (2) For the avoidance of doubt, the failure of a Member or CA Student without reasonable excuse to comply with paragraph (1) shall constitute professional misconduct.

#### **Investigation of complaints by firms**

62. (1) If a Member Firm receives a complaint from a client or former client concerning any services it has provided or failed to provide, it shall cause the complaint to be investigated by a principal and any appropriate action to be taken thereupon.
- (2) If the complainer remains unsatisfied at the conclusion of an investigation and any action under paragraph (1), the Member Firm shall inform the complainer in writing of his right to bring his complaint to the attention of the Institute if he considers any Member or CA Student to be liable to disciplinary action.
- (3) For the avoidance of doubt, it shall be professional misconduct for a Member to fail to take all reasonable efforts to ensure that his firm complies with this Rule.

### **Matters of public concern**

63. (1) If the Investigation and Professional Conduct Enforcement Committee:
- (i) considers that a matter raises or appears to raise important issues affecting the public interest in the United Kingdom; and
  - (ii) considers that one or more Members or Member Firms may have committed an act of misconduct in relation to that matter; and
  - (iii) is satisfied that no disciplinary proceedings have been instituted by an AADB Participant in relation to the conduct in question, it shall refer that matter to the Accountancy Actuarial & Discipline Board to be dealt with in accordance with the AADB Scheme
- (2) If the Board declines such a reference, the Investigation and Professional Conduct Enforcement Committee shall deal with it in accordance with the following provisions of this Chapter as facts or matters coming to its attention.
- (3) If the Investigation and Professional Conduct Enforcement Committee is notified by the Board in accordance with paragraph 6(8) of the AADB Scheme that a matter which it has under its investigation should be dealt with by the Board, the Committee shall forthwith suspend any investigation relating to such a matter.
- (4) In the discharge of its duties under paragraph (1), the Investigation and Professional Conduct Enforcement Committee shall have all the powers of investigation referred to in Rule 66.
- (5) Facts or matters referred to the Joint Disciplinary Scheme prior to the coming into force of the AADB Scheme shall continue to be dealt with in accordance with the Joint Disciplinary Scheme unless the Board accepts transfer from that Scheme of any matter referred to it in accordance with paragraph 18 of the AADB Scheme.

### **Public statements concerning disciplinary matters**

64. (1) If he is of the opinion that it is necessary to maintain public confidence in the disciplinary processes of the Institute, the Chairman of the Investigation and Professional Conduct Enforcement Committee may at any time make such public statement as he thinks fit concerning the performance of his committee's functions, including its consideration of any particular facts or matters.
- (2) In making a statement under paragraph (1) the chairman shall have regard to any guidelines which the Council may from time to time issue.

### **Conciliation**

65. Upon becoming aware of any facts or matters indicating that a Member or Member

Firm may be liable to disciplinary action and not having referred them to the Executive Committee in accordance with Rule 63, the Investigation and Professional Conduct Enforcement Committee shall proceed as follows:

- (a) if the facts or matters arise from a complaint by a client against a practising Member or against a Member employed in private practice and do not appear to be of the most serious character, an attempt shall be made in all appropriate cases to secure a conciliation of the complaint on terms satisfactory to the Member and client concerned;
- (b) if a complaint against a Member or Member Firm has not been dealt with in accordance with paragraph (a) or where an attempt at conciliation under that paragraph was inappropriate or unsuccessful, the facts or matters shall be dealt with in accordance with Rule 66.

### **Investigations**

66. (1) Except where they have been referred to the Executive Committee to be dealt with in

accordance with the Disciplinary Scheme under Rule 63, or made the subject of successful conciliation under Rule 65, any facts and matters coming to the attention of the Investigation and Professional Conduct Enforcement Committee indicating that a Member, Member Firm or CA Student may be liable to disciplinary action shall be referred to an investigator who may be:

- (a) a sub-committee of the Investigation and Professional Conduct Enforcement Committee appointed specially or generally for this purpose; or
- (b) an official of the Institute; or
- (c) a Member or Member Firm; or
- (d) a legally qualified person or law firm.

In this Chapter, the words 'he', 'his', and 'him' shall include an investigator who is not an individual.

- (2) The Council may pay the remuneration and reasonable expenses of an investigator who is not a Member, Member Firm or official of the Institute.
- (3) A reference by the Investigation and Professional Conduct Enforcement Committee to an investigator under paragraph (1) may, at any time before the investigation is completed, be withdrawn by that Committee or made subject to such terms and conditions as the Committee thinks fit.
- (4) Upon receipt of a reference under paragraph (1) the investigator shall make such inquiries (called herein 'an investigation') and obtain such information as he sees fit into the facts or matters referred to him or any matters connected in any way therewith with a view to discovering whether any Member, Member Firm or CA Student is liable to disciplinary action.
- (5) Members, Member Firms and CA Students shall at all times cooperate fully with an investigation under this Rule, and Members shall make all reasonable efforts to

ensure that any firm or company of which they are principal, director or employee shall likewise cooperate.

- (6) If at any time an investigator is of the opinion that a Member, Member Firm or CA Student has failed without reasonable excuse to comply with paragraph (5) or has failed without reasonable excuse to comply with a requirement to obtain a report under paragraph (8)(b), he shall report to the Investigation and Professional Conduct Enforcement Committee accordingly. For the avoidance of doubt, the failure of a Member or CA Student without reasonable excuse to comply with paragraph (5) or to obtain a report in accordance with a requirement under paragraph (8)(b) shall constitute professional misconduct.

In pursuance of his duties under this Rule an investigator may by written notice require any Member, Member Firm or CA Student to:

- (a) provide such information in such form;
- (b) provide such books, papers and records, including computer records or copies thereof; and
- (c) permit the examination and taking of copies of such books, papers and records, including computer records,

as he considers necessary for the purposes of his investigation.

- (8) If at any time the chairman of the Investigation and Professional Conduct Enforcement Committee certifies in writing that it appears to him that facts or matters which have come to the attention of his Committee are of the most serious character and that the exercise of powers under this paragraph are necessary for the effective conduct of an investigation, the investigator may:

- (a) require, as often as he deems necessary, any Member or CA Student to attend at the Institute or any other specified place upon reasonable notice to be examined orally about the facts or matters which are the subject of the investigation;
- (b) require any Member or CA Student concerned to obtain from a specified source at his expense such report or reports of a financial or legal nature concerning his conduct or professional work as the investigator considers necessary for the purposes of the investigation.

- (9) If a Member or CA Student fails to obtain a report required under paragraph (8) it may be obtained by the Investigation and Professional Conduct Enforcement Committee and the Member or CA Student shall be liable to pay the Institute the costs thereof. Non-payment of such costs shall be treated as if it was non-compliance with a direction for the payment of costs and shall be enforceable as if the date on which the Member or CA Student was notified of his liability to pay were the date on which a direction for the payment of costs were made.

- (10) A record shall be kept of any examination held in accordance with paragraph (8)(a) and a copy of such record shall be provided, on application, to the Member or CA Student concerned at his own cost.

- (11) If a formal complaint against a Member or CA Student the subject of a requirement under paragraph 8(b) is dismissed by a Discipline Tribunal, that Tribunal may at its complete discretion order the reimbursement by the Institute to the Member or CA Student concerned of all or part of any monies which he has paid under that requirement. If no disciplinary proceedings are brought, the Investigation and Professional Conduct Enforcement Committee may, on written application by the Member or CA Student, at its complete discretion make a like order. In the event that neither the Discipline Tribunal nor the Investigation and Professional Conduct Enforcement Committee makes such an order, a Member, CA Student or Member firm (if paragraph (14) below applies) may appeal to the Appeal Tribunal to recover such monies.
- (12) Except where the facts or matters are referred to a sub-committee to which the Investigation and Professional Conduct Enforcement Committee has delegated its full powers and duties under this Chapter the investigator shall, on completing the investigation, report to the Investigation and Professional Conduct Enforcement Committee with recommendations as to how it should proceed.
- (12) Upon receiving a report from an investigator, the Investigation and Professional Conduct Enforcement Committee may cause such further enquiries to be made as it sees fit. All the provisions of this Rule shall apply to such further enquiries as if they were an investigation.
- (13) The cost of complying with any requirement under this paragraph shall be borne by the Member or CA Student concerned or, if in the case of a Member he should default in payment, by any Member Firm of which he is a principal.
- (14) Where facts or matters regarding a CA Student have come to the attention of the Investigation and Professional Conduct Enforcement Committee, the results of any Institute Examinations (or any part or parts thereof) taken by the CA Student which have not yet been notified to him shall not be so notified until either the Investigation and Professional Conduct Enforcement Committee has decided not to prefer a formal complaint to the Discipline Panel or, if such complaint is preferred, it has been disposed of in accordance with these Rules.

### **Action following an investigation**

67. (1) If, after considering the report of an investigator under Rule 66, the Investigation and Professional Conduct Enforcement Committee is of the opinion that any Member, Member Firm or CA Student is not liable to disciplinary action, it shall take no further action. If the facts or matters giving rise to the investigation arose from an external complaint, the complainant shall be informed in writing of the decision and of his right to apply to the Independent Examiner under Rule 82.
- (2) If, as a result of investigations under Rule 66, the Investigation and Professional Conduct Enforcement Committee is of the opinion that a Member, Member Firm or CA Student is liable to disciplinary action, it shall proceed as follows:
  - (a) unless the Investigation and Professional Conduct Enforcement Committee is of the opinion that the facts or matters concerned are of a most serious

character it may, instead of taking any other action, issue to the Member, Member Firm or CA Student a formal written warning in such terms and subject to such conditions as the Investigation and Professional Conduct Enforcement Committee thinks fit. A formal written warning shall not give rise to publicity, except that if the investigation arose as a result of a complaint the complainer shall nevertheless, be informed of the outcome;

- (b) if liability to disciplinary action is admitted by the Member, Member Firm or CA Student in terms acceptable to the Investigation and Professional Conduct Enforcement Committee, the Committee may with his consent admonish, reprimand or severely reprimand him and/or require him to pay to the Institute as a penalty such sum as the Committee may determine or, in a case involving facts or matters of the most serious character, may accept the voluntary surrender by him of his membership or practising rights and require him to pay the Institute such a penalty. An order under this paragraph (a consent order) involving acceptance of admonishment or reprimand shall not be publicised. Where a consent order does not give rise to publicity, and where the investigation arose as a result of a complaint the complainer shall nevertheless be informed of the outcome. An order involving acceptance of a voluntary surrender of membership or practising rights or severe reprimand shall be publicised in such manner as the Investigation and Professional Conduct Enforcement Committee thinks fit. Such publicity shall include the name of the Member, Member Firm or CA Student concerned and a short statement of the facts;
  - (c) if the Investigation and Professional Conduct Enforcement Committee does not take action in accordance with either of paragraphs (a) or (b) above, or if, within fourteen days of it being notified to him, a Member, Member Firm or CA Student informs the Committee in writing that he or it declines to consent to a formal written warning under paragraph (a) above of this paragraph or to a consent order being made under paragraph (b) above the Investigation and Professional Conduct Enforcement Committee shall make a formal complaint to the chairman of the Discipline Panel unless it considers, on the basis of further information or representations, that the Member, Member Firm or CA Student concerned is not liable to disciplinary action;
  - (d) if it is of the opinion that there are compassionate or other exceptional circumstances which would make it unjust to take action under any of the preceding provisions, the Investigation and Professional Conduct Enforcement Committee may instead take no action. If the facts or matters giving rise to the investigation arose from an external complaint, the complainer shall be informed in writing of the decision.
- (3) Before taking any action under this Rule the Investigation and Professional Conduct Enforcement Committee may, if it sees fit, give notice in writing to the Member, Member Firm or CA Student concerned of what facts it believes may be provable before a Discipline Tribunal on a formal complaint based on the information presently available to it and of what orders and directions it would seek if such a complaint were to be proved and what orders and directions it would make if the Member, Member Firm or CA Student were to accept a formal warning or consent order under this Rule.

- (4) A consent order shall have effect as if it were an order of a Discipline Tribunal and shall be subject to the same rules regarding penalty enforcement as apply to the orders of such Tribunals. For the avoidance of doubt, there shall be no appeal against a formal written warning or against a consent order under this Rule.
- (5) A formal complaint to the chairman of the Discipline Panel under this Rule shall include a summary of the grounds for disciplinary action, together with an outline of the evidence then available which, if contested, the Investigation and Professional Conduct Enforcement Committee intends to call against the Member, Member Firm or CA Student concerned.
- (6) The Investigation and Professional Conduct Enforcement Committee may make regulations, not inconsistent with these Rules, governing the exercise of its duties under this Chapter and the conduct of investigations.
- (7) If, at any time during the course of its investigations, the Investigation and Professional Conduct Enforcement Committee or an investigator becomes aware of matters which ought to be brought to the attention of a regulatory committee, it or he shall notify that committee forthwith notwithstanding that the Committee has not fully discharged its duties under this Chapter.

### **Interim Orders**

68. (1) Where any one of, the Investigation and Professional Conduct Enforcement Committee, Practitioner Certification, Committee, Audit Registration Committee or Insolvency Permit Committee consider that sufficient evidence is available to justify the Discipline Tribunal, were it so minded, to make an interim order with respect to a Member, then the relevant Committee may prepare a summary of the evidence available concerning the Member and present an application for an interim order before the Discipline Tribunal.
- (2) The Discipline Tribunal is justified in making an interim order under the Rule if satisfied that the order is justified in all the circumstances having regard to the public interest.
- (3) The Discipline Tribunal upon such a summary being laid before it, and if satisfied that the Member is present or represented or reasonable steps have been taken to serve a copy of the summary upon the Member and that notice of the hearing and of his right to appear or be represented before the Tribunal and to make representations at that hearing was properly served on the Member in good time, and that no adequate reason was given for his non-attendance, may, having heard any submissions which the Committee and the Member (if the member or his representative be present) may wish to make, make an order:
  - i. that the Member be suspended from membership of the Institute,
  - ii. that the Member's practising certificate be suspended or that specified conditions be attached to such certificate,
  - iii. that any other authorisation or licence held by the Member be suspended or that specified conditions be attached to such licence or authorisation,

or any of these for such period or until the occurrence of such event as the Tribunal may determine. An interim order shall take effect from the date it is made by the Tribunal or from such other date as the Tribunal shall direct.

- (4) A Member may appeal against an interim order made under this Rule in the same manner as against any finding or decision of the Tribunal and, save as provided at paragraph (5) below.
- (5) Unless the Discipline Tribunal otherwise orders, an interim order shall take effect immediately and notwithstanding any appeal under paragraph (4) above.
- (6) The Discipline Tribunal shall review any interim order which has not expired within twelve months from the date of the said order and shall take all reasonable steps to give the Member (or person who but for such an order would have been a Member) notice on each occasion that the said order is to be reviewed and a reasonable opportunity of appearing or being represented before it and of making representations.
- (7) A Member (or person who but for such an order would have been a Member) may apply for an order made under this Rule to be reviewed on the grounds of a change in circumstances since the order was made. Such an application shall be in writing to the Discipline Tribunal. The Tribunal shall consider the said application at its next convenient meeting and in any event within three months of receiving the application and shall take all reasonable steps to give the Member (or person who but for such an order would have been a Member) notice of that meeting and an opportunity of appearing or being represented before it and of making representations.

### **Appointment of Judicial Factor etc.**

69. If at any time it appears to the Investigation and Professional Conduct Enforcement Committee from facts or matters which have come to its attention from any source that it is necessary or advisable in the public interest to apply to the Court of Session for the appointment of a Judicial Factor to the practice and estate of any Member or for any other competent order it shall instruct the Secretary to act accordingly.

### **Appointment of a Discipline Tribunal**

70. (1) Upon receiving a formal complaint from the Investigation and Professional Conduct Enforcement Committee in accordance with Rule 67(2)(c), the chairman of the Discipline Panel shall appoint from among the Panel a Discipline Tribunal to hear the complaint. The Discipline Tribunal shall comprise at least three members of the Panel appointed in terms of Rule 60(2), including a legally qualified member as chairman, not fewer than one Member of the Institute and not fewer than one public interest member of the Panel.
- (2) A formal complaint may be heard in the absence of any one member of a Discipline Tribunal except the chairman, provided that if the defender is present, the hearing may proceed in the absence of such member only if the defender consents. A member of the Discipline Tribunal who has not been present at a hearing of a

formal complaint may not thereafter sit in judgement on that complaint save with the agreement of the defender.

### **Hearing a Formal Complaint**

71. (1) A formal complaint shall be conducted in accordance with regulations made by the Discipline Panel not inconsistent with these Rules. The standard of proof shall be the civil standard.
- (2) Hearings before a Discipline Tribunal, under this Rule, shall be held in public. The Discipline Tribunal may decide upon the application of either party to the hearing or at its own instance, that the hearing or any part of it shall be held in private;
- (a) if the Discipline Tribunal is satisfied that it is necessary to do so having regard to any unfairness to any party or prejudice to the interests of any other person that might result from a hearing in public and
- (b) in circumstances permitted in terms of Article 6 of the European Convention on Human Rights
- (3) A defender shall be entitled to be represented before a Discipline Tribunal by a solicitor, advocate or barrister entitled to practise in any part of the United Kingdom or any member of a corresponding profession in any Member State of the European Union and a defender so represented shall be deemed to be present.
- (4) If the defender does not attend before the Discipline Tribunal on the day and at the time fixed for the hearing then, provided that the Discipline Tribunal is satisfied that notice of that hearing was properly served on the defender in good time and that no adequate reason has been given for his non-attendance, the Discipline Tribunal may proceed to hear the complaint in his absence.
- (5) The Investigation and Professional Conduct Enforcement Committee shall be represented before a Discipline Tribunal by any official of the Institute or may instruct a solicitor, advocate or barrister entitled to practise in any part of the United Kingdom or any member of a corresponding profession in any Member State of the European Union. If a complaint is proved, such representative shall be entitled to invite the Discipline Tribunal to consider making any particular order or direction under this Chapter.

### **Powers of a Discipline Tribunal**

72. (1) Upon finding a formal complaint proved in whole or in part, a Discipline Tribunal may make any one or more of the following orders concerning the defender as it considers appropriate in all the circumstances.
- (A) If the defender is a Member:-
- i. that he be expelled from the Institute;
- ii. that he be excluded from membership of the Institute;

- iii. that he be suspended from membership of the Institute for such period, not exceeding one year, as the Tribunal thinks fit;
- iv. that any practising certificate held by him be withdrawn or that specified conditions be attached to such certificate;
- v. that he be ineligible for a practising certificate;
- vi. that any insolvency permit or entitlement held under the Audit Regulations held by him be withdrawn;
  - vii. that he be severely reprimanded;
  - viii. that he be reprimanded;
  - ix. that he be admonished;
- x. that he be required to pay to the Institute as a penalty such sum as the Tribunal may determine.

(B) If the defender is a CA Student:-

- i. that he be declared unfit to become a Member of the Institute and that the registration of his training contract be cancelled;
- ii. that he be ineligible, for such period as the Tribunal thinks fit, to apply for admission to membership of the Institute;
- iii. that he be ineligible, for such period as the Tribunal thinks fit, to exercise all or any of the following rights:
  - (a) entry for all or part of the Institute's Examinations;
  - (b) continuance of his service under a training contract;
- iv. that he be ineligible to use the Institute's premises and libraries;
- v. that he be reprimanded.

(C) If the Defender is an authorised firm:

- i. that its authorisation to conduct investment business granted by the Institute pursuant to the Financial Services and Markets Act 2000 be withdrawn;
- ii. that it shall cease to be authorised by the Institute to carry on exempt regulated services under the Financial Services and Markets Act 2000;
- iii. that it be severely reprimanded;
- iv. that it be reprimanded;
- v. that it be required to pay the Institute as a penalty such sum as the Tribunal may determine.

(D) If the defender is a registered auditor:

- i. that any registration granted by the Institute under the Companies Act 1989 be withdrawn;
- ii. that the defender be severely reprimanded;
- iii. that the defender be reprimanded;
- iv. that the defender be required to pay the Institute as a penalty such sum as the Tribunal may determine.

(2) Any such order may be made upon such terms and conditions, if any, as the Discipline Tribunal thinks fit.

- (3) Any such order may include a direction that a defender obtains advice from such a source as the Tribunal may from time to time prescribe and the Member shall follow any such advice. For the avoidance of doubt, a failure without reasonable excuse to comply with a direction under this paragraph shall be professional misconduct.
- (4) An order of a Discipline Tribunal shall take effect from such date as the Discipline Tribunal shall determine or, failing such a determination, upon the expiry of the time permitted for an appeal to be lodged or the date of disposal of any appeal, whichever is the later. For the avoidance of doubt, the Discipline Tribunal shall, whether the time permitted for an appeal to be lodged has expired or any appeal has been disposed of, cause the findings and order to be publicised under Rule 79.
- (5) If, notwithstanding its finding that a formal complaint has been proved, a Discipline Tribunal is of the opinion that in all the circumstances of the case no order under this Rule is appropriate, it may, instead of making an order under paragraph (1), take no further action on the complaint.

### **Rights of appeal**

73. (1) A defender may appeal against a finding or order of a Discipline Tribunal on the following grounds only:
- (i) the Tribunal erred in law or in the interpretation of the Institute's Rules, bye-laws or regulations; or
  - (ii) the hearing was not conducted fairly; or
  - (iii) significant fresh evidence is available that was not available to the defender at the time of the hearing and which he could not at that time have been expected with reasonable diligence to have obtained; or
  - (iv) an order of exclusion, expulsion or suspension or, in the case of a CA Student, a declaration of unfitness for membership, was manifestly excessive in all the circumstances; or
  - (v) in terms of Rule 66(11).
- (2) the Investigation and Professional Conduct Enforcement Committee may appeal against an order of a Disciplinary Tribunal on the ground that it is too lenient in all the circumstances of the case.
- (3) An appeal under this Rule shall be valid only if lodged with the Secretary within 21 days from the date of the finding or order appealed against or such longer period as a chairman of the Appeal Panel may permit.

### **Appointment of an Appeal Tribunal**

74. (1) Upon receiving a notice of appeal the Chairman of the Appeal Panel shall, if satisfied

that the notice of appeal discloses arguable grounds for appeal under Rule 73, appoint from among the Panel an Appeal Tribunal to hear the appeal.

- (2) The Appeal Tribunal shall comprise a legally qualified person as chairman, a Member of the Institute and a public interest member.
- (3) An appeal may be heard in the absence of any one member of an Appeal Tribunal other than the chairman, provided that if the appellant is present the appeal may be heard in the absence of such member only if the appellant consents. A member of an Appeal Tribunal who has not been present at the hearing of that appeal may not thereafter sit on judgement on that appeal save with the agreement of the appellant.

### **The hearing of an appeal**

75. (1) An appeal shall be conducted in accordance with regulations made by the Appeal Panel

not inconsistent with these Rules. The Investigation and Professional Conduct Enforcement Committee shall act as respondent to an appeal by the defender. The defender shall act as the respondent to an appeal by the Investigation and Professional Conduct Enforcement Committee.

- (2) An appellant shall be entitled to be represented before an Appeal Tribunal by a solicitor, advocate or barrister entitled to practise in any part of the United Kingdom or any member of a corresponding profession in any Member State of the European Union, and an appellant so represented shall be deemed to be present.
- (3) Hearings before an Appeal Tribunal shall be held in public. The Appeal Tribunal may decide upon the application of either party to the hearing or at its own instance, that the hearing or any part of it shall be held in private;
  - (a) if the Appeal Tribunal is satisfied that it is necessary to do so having regard to any unfairness to any party or prejudice to the interests of any other person that might result from a hearing in public and
  - (b) in circumstances permitted in terms of Article 6 of the European Convention on Human Rights.
- (4) If an appellant does not attend before an Appeal Tribunal on the day and at the time fixed for the hearing then, provided that the Tribunal is satisfied that notice of that hearing was properly given to the appellant in good time and no adequate reason has been given for his non-attendance, the Tribunal may dismiss the appeal or proceed to hear it in his absence.
- (5) The Investigation and Professional Conduct Enforcement Committee may appoint any official of the Institute to appear at the hearing of the appeal or may instruct a solicitor, advocate or barrister entitled to practise in any part of the United Kingdom or any member of a corresponding profession in any Member State of the European Union to appear at such appeal on its behalf.

### **The powers of an Appeal Tribunal**

76. (1) On an appeal, an Appeal Tribunal may affirm, vary or rescind any decision of a Discipline Tribunal and may substitute for any order of the Discipline Tribunal any other order or orders (on such terms and conditions, if any, as it thinks appropriate) which the Discipline Tribunal might have made on the formal complaint or may, if the Appeal Tribunal considers it appropriate, order that the complaint be heard afresh by a differently constituted Discipline Tribunal.
- (2) A decision of an Appeal Tribunal shall take effect as from the date thereof unless the Tribunal directs that it shall take effect as from some other date (not being earlier than the date of the finding or order appealed against) as shall be specified in the decision.

### **Costs**

77. (1) Any order made by a Discipline Tribunal or an Appeal Tribunal, including a decision that no further action be taken, may include a direction that the Member or CA Student shall pay the Institute such sum by way of costs as shall be specified in the direction. For the avoidance of doubt, allowable costs for the purposes of such a direction shall include (a) the expenses of an investigation under Rule 66; (b) the costs of preferring a formal complaint to and of conducting the case before the Discipline Tribunal and of preparing an appeal to the Appeal Tribunal and of conducting the case before such Tribunal; and (c) the costs of the Discipline Tribunal and the Appeal Tribunal.
- (2) Any costs directed to be paid under this Rule shall be paid to the Institute within twenty-one days from the date of the order of the Discipline or Appeal Tribunal or by such later date as the Appeal Tribunal may direct.

### **Non-payment of penalty or costs**

78. (1) A Member or CA Student who fails to comply with an order, including a consent order, for the payment of a penalty or a direction for the payment of costs (or any instalment thereof) made by a Discipline Tribunal, an Appeal Tribunal or by any Committee appointed under the Joint Disciplinary Scheme by the date upon which the same fall due (or before the expiry of two months from the making of the order, if no date is stipulated) shall thereupon, by virtue of that fact, cease to be a member or CA Student as the case may be.
- (2) If a person ceases to be a Member or CA Student under the provisions of the preceding paragraph any Member Firm of which he was at the relevant time a member shall be liable to pay such penalty or costs upon written demand from the Institute. If a Member Firm fails to comply forthwith with such a demand all its partners who are Members of the Institute shall be jointly and severally liable for payment of the sums due under the demand. In this paragraph 'the relevant time' means the date of any act or default resulting in the Member or CA Student becoming liable to disciplinary action under these Rules or under the Joint Disciplinary Scheme.

- (3) Cessation of membership of the Institute or of CA Student status under paragraph (1) of this Rule shall not extinguish the right of the Institute to sue for the recovery of such costs or to cause the name and particulars of the former Member concerned, and the circumstances giving rise to the order, to be publicised in the manner provided for in Rule 79.
- (4) Failure by a Member Firm to comply with an order, including a consent order, for the payment of a penalty or a direction for the payment of costs (or any instalment thereof) made by a Discipline Tribunal, an Appeal Tribunal or by any Committee appointed under the Joint Disciplinary Scheme by the date upon which the same fall due (or before the expiry of two months from the making of the order, if no date is stipulated) shall render all Members of that Firm who are members of the Institute jointly and severally liable to pay such sum and, in addition, liable to disciplinary action.

### **Publication of findings and orders**

79. (1) If a Discipline Tribunal makes an interim order against a Member under Rule 68 or finds a formal complaint proved in whole or in part against a Member, Member Firm or CA Student, in terms of Rule 72(1), it shall cause such a finding, and any order made thereon to be publicised in such manner as it thinks fit.
- (2) If an Appeal Tribunal varies or rescinds an order of a Discipline Tribunal it shall cause its decision on the appeal to be publicised in like manner and subject to the same proviso as if it were a finding of the Discipline Tribunal
  - (3) Notwithstanding anything in the preceding provisions, the chairman of a Discipline Tribunal and an Appeal Tribunal may cause a report of its decision to be published at any time if in his opinion publication is desirable in view of any statement or comment made in the public domain.

### **Certificates and permits**

80. (1) An order suspending a Member from membership shall have the effect, among others, of cancelling any practising certificate, insolvency permit or entitlement to audit.
- (2) An order suspending a Member from membership or an order withdrawing or attaching conditions to a practising certificate or withdrawing an insolvency permit or an entitlement to audit shall not disqualify a Member from applying to the appropriate committee of the Institute for the renewal of such certificate, permit or entitlement or for any conditions attached thereto to be varied or removed on cause shown.
  - (3) When an order is made under this Chapter by a Discipline Tribunal or an Appeal Tribunal affecting a certificate or permit, the defender shall forthwith deliver up to the Secretary the relevant certificate and permits affected by the order.

## Re-admission to membership

81. (1) A person who has been removed from membership of the Institute for any reason may apply for re-admission to membership to the Investigation and Professional Conduct Enforcement Committee, who shall deal with such applications in accordance with the Chapter.
- (2) The Secretariat of the Investigation and Professional Conduct Enforcement Committee shall in the first instance assess such applications and determine whether such persons should be re-admitted to membership without further investigations.
- (3) Applications for re-admission will only be considered by the Investigation and Professional Conduct Enforcement Committee in the following instances:
- (i) A person who was excluded from membership by an order under this Chapter;
  - (ii) A person who was excluded from membership due to insolvency under Rule 83;
  - (iii) A person whose membership ceased and was the subject of an unresolved complaint;
  - (iv) A person who was removed from membership for failure to pay costs or fines from disciplinary proceedings;
  - (v) A person who has been out of membership for more than three years; and
  - (vi) Any application for re-admission that the Secretariat considers should be dealt with by the Investigation and Professional Conduct Enforcement Committee.
- (4) In considering an application under paragraph (3) the Investigation and Professional Conduct Enforcement Committee shall make such enquiries as it thinks fit regarding the applicant's conduct both before and after their removal from membership. Before deciding whether or not to grant the application, the Committee shall afford the applicant a reasonable opportunity of making representations, which may at the Committee's discretion be written and/or oral.
- (5) Upon an application under this Rule, the Investigation and Professional Conduct Enforcement Committee shall have power at its complete discretion to grant or refuse re-admission to membership of the Institute and shall not be liable to give reasons for its decision.
- (6) Re-admission to membership of the Institute shall be on condition that the applicant:
- (i) pays such sum (if any) as the Investigation and Professional Conduct Enforcement Committee may determine towards the amount of any subscription which would have been due by him if he had remained a Member from the date of the exclusion order;
  - (ii) pays a re-admission fee of such sum (if any) not exceeding the current normal admission fee as the Investigation and Professional Conduct Enforcement Committee may determine;

- (iii) adheres to any other requirements or conditions as the Investigation and Professional Conduct Enforcement Committee may determine.
- (7) If an application under this Rule is refused, the Investigation and Professional Conduct Enforcement Committee may inform the applicant that it will not consider a further application from him within a specified period of time.
- (8) The Investigation and Professional Conduct Enforcement Committee shall inform the applicant of its decision and shall report its decisions under this Rule to the Council.
- (9) If an application under this Rule is granted, the applicant shall not by virtue of that fact be entitled to a practising certificate or other permit.

### **Independent Examiner's Panel**

82. (1) The Council shall appoint an Independent Examiner's Panel comprising of no fewer

than three individuals, who shall be neither accountants nor officials of the Institute. The appointment to the Panel shall be for a period of not less than three years and shall be renewable. The Independent Examiners shall be remunerated and paid their reasonable expenses, and indemnified by the Institute against civil liability. The Independent Examiner's Panel, annually, shall elect one of its members to act as chairman. Upon receiving an application in terms of paragraph (2) below the chairman of the Independent Examiner's Panel shall appoint one of the members of the Panel to consider the application.

- (2) Any person (hereinafter referred to as the "applicant") informed under Rule 67 that the Investigation and Professional Conduct Enforcement Committee has decided to take no action or no further action with respect to a Member, Member Firm or CA Student (other than a decision on compassionate grounds), may apply in writing for the decision to be reviewed by the Independent Examiner on any one or more of the following grounds:
  - (a) there is reason to suspect lack of independence on the part of any member of the Investigation and Professional Conduct Enforcement Committee who took part in the decision complained of;
  - (b) the decision of the Investigation and Professional Conduct Enforcement Committee was not one which could reasonable have been arrived at upon due consideration of the facts and matters before it.

Such a request shall not be considered unless made within six months of the date on which the applicant received notice of the Investigation and Professional Conduct Enforcement Committee's decision.

- (3) If, after considering an application under paragraph (2), the Independent Examiner is of the opinion that one or more grounds referred to therein applies, he may remit with reasons the application to the Investigation and Professional Conduct Enforcement Committee with a recommendation that the decision be reviewed. If he is not of that opinion he shall provide the applicant with his reasons in writing.

In any event, if, after considering an application under paragraph (2), he is of the opinion that the disciplinary Rules or procedures of the Institute could be improved, he shall report to the Council accordingly.

- (4) The Independent Examiner shall be entitled to request the Secretary of the Institute to provide him with such technical assistance as he believes to be necessary to discharge his responsibilities, which request shall not be refused unreasonably.
- (5) Before making any decision on an application under paragraph (2) the Independent Examiner may require the Investigation and Professional Conduct Enforcement Committee to make or cause to be made such further investigation concerning the application as he considers necessary for the purposes of his review.
- (6) In the conduct of a review following a remission under paragraph (3), the Investigation and Professional Conduct Enforcement Committee may have regard both to the information and any representations previously available to it as well as to the information and any representations which have been made to it since the Investigation and Professional Conduct Enforcement Committee came to its decision that no formal complaint should be made or that no action should be taken.
- (7) If, following a remission to the Investigation and Professional Conduct Enforcement Committee of an application under paragraph (3), the Investigation and Professional Conduct Enforcement Committee is of the opinion that a formal complaint should now be made to the Discipline Panel it shall make such complaint, but not before first having given the Member, Member Firm or CA Student concerned a further opportunity to make written representations to it.
- (8) If, following a remission to the Investigation and Professional Conduct Enforcement Committee of an application under paragraph (3), the Investigation and Professional Conduct Enforcement Committee is still minded to make no formal complaint to the Discipline Panel, it shall inform the applicant and the Independent Examiner in writing of its reason therefor. On receipt of such reasons the Independent Examiner may make any comments he thinks fit to the Investigation and Professional Conduct Enforcement Committee. The Investigation and Professional Conduct Enforcement Committee shall consider its proposed finding in the light of such comments, if any, and make its final determination, which shall be given in writing to the applicant and to the Independent Examiner.
- (9) The Chairman of the Independent Examiner's Panel shall be entitled to request a representative sample of such investigation files, which are not subject to challenge by a complainer, from the Convener of the Investigation and Professional Conduct Enforcement Committee as he deems appropriate to permit him to review the investigation process and decisions reached by the Committee.
- (10) The Chairman of the Independent Examiner's Panel, in consultation with the Panel members, shall make a report to the Council annually; in relation to the individual complaints, the issues as he thinks fit and the review of the files examined under paragraph (9) above.

**Bankruptcy, etc**

83. (1) Insolvency and/or insolvent in relation to this section of the Rules refers to where an

individual enters into any bankruptcy process or similar processes in the United Kingdom or any other jurisdiction, or where an individual grants a trust deed in favour of his creditors, or where an individual enters into an Individual Voluntary Arrangement.

- (2) If at any time any Member is made insolvent, such Members shall:
- (a) immediately inform the Investigation and Professional Conduct Enforcement Committee in writing; and
  - (b) upon being made insolvent in terms of this paragraph, cease to be entitled to engage in insolvency practice in the United Kingdom and any permit issued to him shall be withdrawn; and
  - (c) cease to be a Member on the expiry of fourteen days from the date of his being made insolvent or on the expiry of such extended period or periods from such last-mentioned date as the Investigation and Professional Conduct Enforcement Committee in its discretion may fix, unless he has submitted an application to be retained in membership to the Committee.
- (3) In considering an application under paragraph (2)(c) the Investigation and Professional Conduct Enforcement Committee shall make such enquiries as it thinks fit regarding the applicant's conduct both before and after being made insolvent. Before deciding whether or not to grant the application, the Committee shall afford the applicant a reasonable opportunity of making representations, which may at the Committee's discretion, be written or oral.
- (4) In receipt of an application under this Rule, the Investigation and Professional Conduct Enforcement Committee shall have power at its complete discretion to grant or refuse retention in membership. Such applications shall be granted in exceptional circumstances only. The Committee shall not be liable to give reasons for its decision.
- (5) Where the Investigation and Professional Conduct Enforcement Committee decides in accordance with paragraph (4) of this Rule that a Member shall be retained in membership, the applicant shall not by virtue of this fact be automatically entitled to a practising certificate or other permit. The relevant Regulatory Committee shall be notified of the circumstances and shall be bound to review the situation and have the power in its discretion to withdraw or restrict any practising certificate or other permit held by him.
- (6) Where an individual ceases to be a Member in accordance with either paragraph (2)(a) or paragraph (4) of this Rule or where in accordance with paragraph (5), the individual continues to be a Member but his practising certificate or other permit is withdrawn or restricted, the Investigation and Professional Conduct Enforcement Committee may cause a statement to that effect to be published in such manner as it thinks fit.
- (7) The Investigation and Professional Conduct Enforcement Committee shall inform the applicant of its decision and shall report its decisions under this Rule to the Council.

- (8) Nothing in this section shall prevent the Investigation and Professional Conduct Enforcement Committee from retaining in membership a Member who is subject to disciplinary proceedings in terms of Chapter XII.

### **Professional Standards**

84. (1) The Council shall have power to establish alone or to enter into with others any scheme

designed to provide an independent mechanism to ensure and to demonstrate that the setting of technical and ethical standards and the regulatory and disciplinary procedures of the Institute are such as to maintain and enhance the reputation of the accountancy profession and to ensure that the public interest is being served in terms of the Royal Charters and its other responsibilities.

- (2) The Council shall have power to establish alone or to enter into with others any scheme or schemes designed to provide an assessment of the quality of work carried on by members in practice and to ensure, and where appropriate enforce, a high standard of such work. The Council may appoint a committee to administer such scheme or schemes, which committee shall be composed of not fewer than five persons, of whom not fewer than two shall be non-accountants. The Council shall have power to pay remuneration to, and the reasonable expenses of, non-accountant members of such committee.
- (3) In accordance with Article 3C of the Supplementary Royal Charter of 1992, as amended, the Institute shall be a Participant in the Scheme adopted by the Accountancy Actuarial and Discipline Board on 13 September 2007.
- (4) Members and Member Firms and Former Members and Former Member Firms shall be subject to all the provisions of the AADB Scheme.

85. (1) The Investigation and Professional Conduct Enforcement Committee or the Discipline

Tribunal or Appeal Tribunal (as the case may be), in relation to any complaint under its consideration in accordance with Chapter XII where it considers that the fee charged, or proposed to be charged, by a member or member firm may be excessive given the adequacy and timeliness of the professional service rendered and the whole other circumstances, and where the complainer agrees to the matter so being remitted and to his being bound by the decision of the Auditor of Fees and to meet all or such proportion of the costs of the adjudication as the Auditor shall determine, may instruct the member or member firm to submit his or its fees to the Auditor of Fees for a determination.

- (2) In a case so remitted, the Auditor of Fees shall, after such investigation as he considers appropriate, and after having given the parties an opportunity to make representations to him, determine an appropriate fee, taking into account the whole circumstances of the case known to him. The costs of the adjudication shall be borne by the complainer and member in such proportions as the Auditor shall direct.

- (3) It shall be the professional obligation of a member or member firm to accept the adjudication of the Auditor, including his direction as to costs, and act accordingly. A failure so to act shall constitute professional misconduct.