



Making a Complaint Against Members of the Institute of Certified Public Accountants in Ireland

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1. Introduction

1.1 This document is designed to give interested parties and the public a brief resume of the complaints and discipline procedures operated by The Institute of Certified Public Accountants in Ireland (CPA).

1.2 Not all accountants are members of CPA. This Institute can only deal with complaints about individuals who are members of CPA or firms that are regulated by CPA.

2. How the Institute can help you

2.1 The Institute of Certified Public Accountants in Ireland is the professional body that regulates the conduct of its members. All members are bound by a detailed Code of Ethics whose principal requirements ("the Fundamental Principles" of professional conduct) are that he or she should behave with:

- (a) **Integrity** – meaning that he or she shall be straightforward and honest in all professional and business relationships.
- (b) **Objectivity** – meaning that he or she shall not allow bias, conflict of interest or undue influence of others to override professional or business judgments.
- (c) **Professional Competence and Due Care** – meaning he or she shall maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques. He or she shall act diligently and in accordance with applicable technical and professional standards when providing professional services.
- (d) **Confidentiality** – meaning he or she shall respect the confidentiality of information acquired as a result of professional and business relationships and shall not disclose any such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose. Confidential information acquired as a result of professional and business relationships shall not be used for the personal advantage of the member or third parties.
- (e) **Professional Behaviour** – meaning he or she shall comply with relevant laws and regulations and shall avoid any action that discredits the profession.

3. Relationship with your CPA

3.1 The relationship you have with your accountant is important from both your points of view. That relationship can be a lengthy one, and like any relationship, some minor irritations can occur. Problems can often be amicably remedied if they are addressed promptly and in a constructive spirit.

3.2 Communication is paramount. Let your CPA know what it is that is troubling you, either in writing, by telephone, or at a meeting with him or her. What at first may seem a problem can often be quickly resolved. If the member is employed by a company or by a local or public authority you should first communicate with the employers.

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4. Making a complaint to the Institute

- 4.1** If discussion with your CPA (or his or her employer) does not resolve the problem or if you are dissatisfied with the explanation given, you are entitled to make a complaint to the Institute.
- 4.2** The Institute takes complaints seriously and will deal with them fully. You may find that you need some advice about your particular circumstances, or you may not be sure if you have sufficient grounds on which to complain. You are invited to telephone or write to the Secretary. You will be given advice.
- 4.3** All complaints should be made in writing using an official complaint form – see Appendix A. The complaint should detail the pertinent issues as comprehensively as possible and where possible important copy documentation should be provided as evidence.

5. Complaints with which the Institute cannot deal

- 5.1** The CPA Institute is not generally able to intervene in legal disputes between you and your Accountant, though it often depends on the nature of the complaint and the circumstances surrounding it. This includes fee disputes and complaints relating to overcharging unless a member's actions amounts to professional misconduct.
- 5.2** Complaints of negligence or complaints that challenge the commercial decisions taken by a CPA are not dealt with unless the member's actions, or lack of them, amount to professional misconduct.
- 5.3** The CPA Institute cannot compensate you for the conduct of a member or for any financial loss or damage you may have suffered because of that conduct. It should be noted that the Institute requires its practising members to take out Professional Indemnity Insurance, which in most circumstances, will protect their clients from loss caused by negligence. Negligence is normally a matter for the courts therefore complaints of this nature should be referred to your lawyer.

6. Types of Complaint

- 6.1** You may complain about anything that appears to show that your CPA has been guilty of a breach of professional conduct i.e. a breach of the Fundamental Principles referred to in paragraph 2.1. It is not necessary that the CPA is instructed by you, nor do you need to have a contract with him or her.
- 6.2** For example, you may have a well-founded complaint against a member arising out of your position as a former director of an insolvent company, or as an individual bankrupt, or your complaint may relate to a conflict of interest on the part of the member. The Institute will investigate and deal with the complaint.

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7. Complaints resolved by conciliation

- 7.1** Many complaints can be resolved either by the Complainant talking meaningfully and directly with their CPA Accountant, or by the secretary of the CPA Institute speaking to both.
- 7.2** Frequently, complaints arise from a misunderstanding of relevant legislation, a misunderstanding of the facts, or from a misunderstanding of the scope of the professional work that has been undertaken. Staff in the Professional Standards department at the CPA Institute may be able to explain to the complainant, the issues involved and advise the member of his or her professional responsibility in relation to those issues.

8. Complaints that cannot be resolved by conciliation

- 8.1** The CPA Institute will have made initial enquiries to arrive at a decision on whether or not to refer the complaint to its **Investigation Committee**. This committee is comprised of CPAs and of lay members, the latter being people from other walks of life who ensure that the Committee deals fairly and even-handedly with every complaint.
- 8.2** It is the function of the Investigation Committee to decide what further investigations should be carried out in order that the Committee should be in a position to decide, after those investigations are completed, whether a case is made out; and if a case is made out, what action the Committee should take.

9. Investigation and Discipline

- 9.1** The Investigation Committee will use evidence (such as statements, letters, documentation and accounts) to form a view. Its investigations are detailed and are designed to get to the nub of the matter. Investigations will frequently involve meetings with the parties involved and in-depth reviews of documentation. The volume and the complexity of the evidence have a direct bearing on the length of time required to properly investigate a complaint.
- 9.2** The Committee discusses all the evidence and communicates its opinion, both to the complainant and to the member, as to whether there is prima facie evidence that the member has been guilty of misconduct or of bringing himself or herself, the Institute, or the profession of accountancy into disrepute. If the complaint is not made out, the complaint will be dismissed, the complainant and the member will be so informed.
- 9.3** Where the complaint is made out, the Investigation Committee will decide if the conduct of the member was reprehensible to such an extent that disciplinary action is required against the member. The Committee may decide that disciplinary action is unnecessary if, the case is not serious, or if there is some other compelling reason. In some cases the Investigation Committee may offer the member a Consent Order (see Bye Law). In more serious cases it will take action by prosecuting a formal complaint
- 9.4** A Disciplinary Tribunal will be convened to hear a formal complaint. The Tribunal will be made up of many lay members but will include at least one Accountant. Prior to the Investigation Committee's complaint being upheld, the Disciplinary Tribunal must be satisfied that the member is guilty of the conduct complained of. If it finds the complaint proven, it will impose a sanction against the member which, according to the seriousness of the breach of professional conduct, will range from reprimand to exclusion from membership and may include a fine and publication. A member may appeal the finding or sanction, in which case it cannot be imposed until the appeal is concluded.

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10. The length of the complaints process

- 10.1** The time taken to deal with complaints depends on the nature of the complaint, on how much enquiry is required and on how quickly the answers can be obtained. A general guide is that complaints which do not go before the Investigation Committee will normally be completed or well advanced between four to six months from receipt of the complaint.
- 10.2** If the Investigation Committee makes a formal complaint to the Disciplinary Committee on your behalf the matter will take at least a further three to six months. The more complex cases, and where an appeal against the Committee's findings has been lodged, can take considerably longer.

11. Cost of making a complaint

- 11.1** It costs you nothing to make a complaint to the CPA Institute and you will not have to contribute to the expense involved in dealing with, or in investigating your complaint. During the investigation you may be given an opportunity to be heard before the Investigation Committee. If the investigation results in a formal complaint being made on your behalf to the Disciplinary Committee, you may be called as a witness.

12. Address for making enquiries and for lodging complaints

- 12.1** If you would like assistance regarding a potential complaint you should either telephone or write to the following address. Please remember that all complaints must be made in writing and that you must name the member concerned:

The Secretary,
The Institute of Certified Public Accountants in Ireland,
17 Harcourt Street,
Dublin 2.
Phone 01 425 1000

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BYE LAW 6

DISCIPLINE

6.1.1

In this Bye Law 6, a reference to any statute or statutory provision includes reference to that statute or statutory provision as from time to time amended, extended or re-enacted, with or without amendment.

6.1.2

In this Bye Law 6, unless there is something inconsistent in the subject or context, words denoting the singular number only include the plural and vice-versa; words denoting one gender only include the other genders; words denoting individuals include corporations and vice-versa; and references to "person" include reference to a *Firm*, or corporation, or other body of persons; words such as "hereunder", "hereto", "hereof" and "herein" and other words commencing with "here" shall refer, unless the context clearly indicates to the contrary, to the whole of this Bye Law 6 and not to any particular section or paragraph thereof.

6.1.3

The headings and captions to the paragraphs in this Bye Law 6 are inserted for convenience of reference only and do not affect its construction or interpretation.

6.1.4 The defined terms set out in Article 1 and Article 48 of the *Articles* have the same meaning in this Bye Law 6.

6.2

DUTIES AND LIABILITY TO DISCIPLINARY ACTION

6.2.1

It shall be the duty of every *Member, Affiliated Partner, Responsible Individuals, Student* and *Authorised Firm* to cooperate fully at every phase of the disciplinary process provided for under this Bye-Law 6. It shall be the duty of every *Member, Affiliated Partner, Responsible Individuals, Student* and *Authorised Firm* (including such *Members, Affiliated Partners, Students, Responsible Individuals, and Authorised Firms* who are not involved in or the subject of the said disciplinary process) to provide such information, explanations, documents and computer and other electronic records as the *Secretary, the Investigation Committee, a Special Investigator, the Independent Reviewer, the Disciplinary Committee, a Disciplinary Tribunal* or an *Appeal Tribunal*, as the case may be, may consider necessary to enable it or him to carry out its or his duties¹.

6.2.2

In any case where an *Authorised Firm* is the subject matter of a *Complaint*, it shall be the duty of the *Authorised Firm* to nominate which of its principals are to deal with the *Complaint* and any *Formal Complaint* or *Appeal* that may arise there from. The *Authorised Firm* must nominate which of its principals are to deal with the *Complaint* within a period prescribed by the *Secretary*. Failure of an *Authorised Firm* to nominate a principal in accordance with this bye law does in, and of itself constitute a prima facie case of misconduct.

6.2.3

Where an order is made pursuant to this Bye-Law 6 by a *Disciplinary Tribunal* or an *Appeal Tribunal* for the withdrawal of any authorisation, licence or permit the *Respondent* or, as the case may be, the *Appellant* concerned, shall comply with the requirements imposed by the Registration Committee (or any replacement thereof) as a consequence of such withdrawal.

¹ See Article 48(b)

6.3

LIABILITY TO DISCIPLINARY ACTION

6.3.1

Every *Member, Authorised Firm, Affiliated Partner Responsible Individual, and Student* shall be liable to disciplinary action in the circumstances set out in these *Bye Laws*. For the avoidance of doubt, a *Member, Authorised Firm, Affiliated Partner, Responsible Individual and Student* shall be liable to disciplinary action in accordance with the *Articles* of the *Institute* and the *Bye Laws* in force at the time the matters complained of take place (In respect of AIPA/FIPA members this includes the *Articles, bye laws and Code of Ethics* of the Institute of Incorporated Public Accountants in force at the time the matters complained of take place) ; but for the avoidance of doubt, all disciplinary proceedings shall be conducted in accordance with the *Articles* of the *Institute* and the *Bye Laws* in force at the time of such proceedings. A *Member, Authorised Firm, Affiliated Partner, Responsible Individual, and Student* shall be liable to disciplinary action whether or not he or it was a *Member, Authorised Firm, Affiliated Partner and Student* at the time of the occurrence giving rise to his becoming so liable².

6.3.2

Notwithstanding anything in this *Bye-Law 6*, no *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* may be subject to disciplinary proceedings on grounds that did not constitute misconduct under the *Bye-Laws* effective at the time the alleged misconduct occurred.

6.4

MISCONDUCT

6.4.1

For the purposes of the disciplinary process set out in this *Bye Law 6* misconduct includes but is not confined to any act or default on the part of the *Member, Authorised Firm, Affiliated Partner, Responsible Individual, or Student* likely to bring discredit to himself/the *Authorised Firm, the Institute or the Profession* of accountancy.

6.5

LIABILITY OF A MEMBER, AFFILIATED PARTNER, RESPONSIBLE INDIVIDUAL OR STUDENT TO DISCIPLINARY ACTION

For the purposes of this bye law 6.5, any complaint in respect of an AIPA/FIPA member which relates to matters which occurred before 1 September 2017, references to *Articles, bye laws and Code of Ethics* relate to the *Articles, bye laws and Code of Ethics* of the Institute of Incorporated Public Accountants in force at the time the matter complained of occurred.

6.5.1

A *Member, Affiliated Partner, Responsible Individual, or a Student* shall be liable to the disciplinary process in accordance with this *Bye Law 6* if it is alleged that in the course of carrying out his professional duties or otherwise that he is guilty of misconduct. Without prejudice to the generality the disciplinary process shall be instigated where the allegation is made alleging that:

- (a) He has committed any breach of, or has failed, refused or neglected to comply with *These Presents*;
- or
- (b) He has been duly disciplined by any other professional body or some other disciplinary process; or

² See Article 48(c)

- (c) He has failed, refused or neglected to comply with orders duly made pursuant to this Bye Law 6 other than pending the outcome of an *Appeal* under this Bye Law 6; or

He has engaged in conduct in the context of an insolvency event which gives rise to liability to disciplinary action. Such conduct includes but is not limited to: failure to notify the *Institute* of the insolvency event as required, fraud or theft, reckless trading, failure to co-operate with an insolvency process, dishonest dealings with clients or creditors, fraudulent preference, failing to act honestly and responsibly in business dealings, careless assumption of debt where inability to meet obligations on foot thereof was reasonably foreseeable, breaches of Companies Legislation, failing to engage with the *Institute* on the occurrence of an insolvency event, or breaches of these Bye-Laws ; or

- (d) He provided or purported to provide financial services in connection with any matter in which he has been engaged by a client and it is alleged that those services were inadequate in any material respect and were not of the quality that could reasonably be expected of him; or
- (e) He performed his professional duties inefficiently or incompetently to such an extent, or on such a number of occasions, as to bring discredit to himself, the *Institute* or the *Profession* of accountancy; or
- (f) He has, before a Court of competent jurisdiction in Ireland or elsewhere, pleaded guilty to or has been found guilty of any offence involving fraud, dishonesty, violence or indecency, subversion, drug trafficking, money laundering, tax evasion, breach of companies legislation or complicity in any such offences; or
- (g) He has in any civil or criminal proceedings before a Court of competent jurisdiction in Ireland or elsewhere, been found to have acted fraudulently or dishonestly; or
- (h) He has failed to co-operate fully with any enquiry or investigation being conducted by or on behalf of the *Institute*; in particular he failed to respond to correspondence by or on behalf of the *Institute*; in particular he failed to respond to correspondence or other communications from the *Secretary* or any person acting on behalf of the *Investigation Committee*, a *Special Investigator*, the *Disciplinary Committee*, a *Disciplinary Tribunal*, the *Appeal Panel*, an *Appeal Tribunal*, the Registration Committee or the Registration Appeal Committee of the *Institute* ; or
- (i) He has acted or defaulted in some manner not mentioned above which tends to discredit himself, the *Institute* or the *Profession* of accountancy; or
- (j) He failed to co-operate with the quality assurance process as per *Bye Law 7*.

6.6

LIABILITY OF AUTHORISED FIRMS TO DISCIPLINARY ACTION

For the purposes of this bye law 6.5, any complaint in respect of an Authorised Firm controlled by AIPA/FIPA member(s) which relates to matters which occurred before 1 September 2017, references to Articles, bye laws and Code of Ethics relate to the Articles, bye laws and Code of Ethics of the Institute of Incorporated Public Accountants in force at the time the matter complained of occurred.

6.6.1

An *Authorised Firm* shall be liable to the disciplinary process in accordance with this Bye Law 6 if it is alleged that in the course of carrying out its professional duties or otherwise that it is guilty of misconduct. Without prejudice to the generality the disciplinary process shall be instituted where the allegation is made alleging that:

- (a) It has committed any breach of or has failed refused or neglected to comply with *These Presents*; or
- (b) It has been duly disciplined by any other professional body or some other disciplinary process; or

- (c) It has failed, refused or neglected to comply with orders duly made pursuant to this Bye Law 6 other than pending the outcome of an Appeal made pursuant to this Bye Law; or
- (d) It has engaged in conduct in the context of an insolvency event which gives rise to liability to disciplinary action. Such conduct includes but is not limited to: failure to notify the *Institute* of the insolvency event as required, fraud or theft, reckless trading, failure to co-operate with an insolvency process, dishonest dealings with clients or creditors, fraudulent preference, failing to act honestly and responsibly in business dealings, careless assumption of debt where inability to meet obligations on foot thereof was reasonably foreseeable, breaches of Companies Legislation, failing to engage with the *Institute* on the occurrence of an insolvency event, or breaches of these Bye-Laws ; or
- (e) It provided or purported to provide financial services in connection with any matter in which it has been engaged by a client and it is alleged that those services were inadequate in any material respect and were not of the quality that could reasonably be expected of it; or
- (f) It performed it's professional duties inefficiently or incompetently to such an extent, or on such several occasions, as to bring discredit to itself, the *Institute* or the *Profession* of accountancy ; or
- (g) It has, before a court of competent jurisdiction in Ireland or elsewhere, pleaded guilty to or has been found guilty of any offence involving fraud, dishonesty, violence or indecency, subversion, drug trafficking, money laundering, tax evasion, breach of companies legislation or complicity in any such offences ; or
- (h) It has in any civil or criminal proceedings before a court of competent jurisdiction in Ireland or elsewhere, been found to have acted fraudulently or dishonestly; or
- (i) It has failed to co-operate fully with any enquiry or investigation being conducted by or on behalf of the *Institute*; in particular it failed to respond to correspondence by or on behalf of the *Institute*; in particular it failed to respond to correspondence or other communications from the *Secretary* or any person acting on behalf of the *Investigation Committee*, a *Special Investigator*, the *Disciplinary Committee*, a *Disciplinary Tribunal*, the *Appeal Panel*, an *Appeal Tribunal*, the Registration Committee or the Registration Appeal Committee of the *Institute*; or
- (j) It has acted or defaulted in some manner not mentioned above which tends to discredit itself, the *Institute* or the *Profession* of accountancy; or
- (k) Any principal in the *Authorised Firm* or any employee thereof is (or would, if he or she were a *Member, Affiliated Partner or Responsible Individual* of the *Institute*, be) liable to disciplinary action in accordance with this Bye Law 6: or
- (l) It has failed to co-operate fully with the quality assurance process as per *Bye Law 7*.

6.7

PRESUMPTION OF MISCONDUCT

6.7.1

Where a *Member, Authorised Firm, Affiliated Partner, Responsible Individual, or Student* has, before a Court of competent jurisdiction in Ireland or elsewhere, pleaded guilty to or has been found guilty of any offence involving dishonesty, fraud, violence or indecency, subversion, drug trafficking, money laundering, tax evasion, breach of companies legislation or complicity in any such offences or has in any civil proceedings being found to have acted fraudulently or dishonestly, it shall be presumed, unless the contrary is established, that such conviction or finding constitutes proof of misconduct³.

³ Article 48(d)

6.8

PRIMA FACIE CASE OF MISCONDUCT

6.8.1

Failure by a *Member, Authorised Firm, Affiliated Partner, Responsible Individual, or Student* to respond to correspondence or other communications from the *Secretary* or any person acting on behalf of the *Investigation Committee, the Special Investigator, a Disciplinary Tribunal, an Appeal Tribunal, the Registration Committee or the Registration Appeal Committee of the Institute*, or failure to co-operate fully with any enquiry or investigation being conducted by or on behalf of the *Institute*, does in itself constitute a prima facie case of misconduct. The case of misconduct caused by a failure set out above shall not ordinarily be investigated or considered as a separate matter by the *Investigation Committee, Special Investigator, Disciplinary Tribunal, Appeal Tribunal, Registration Committee or Registration Appeal Committee*, however it will be taken into consideration as an aggravating factor in the investigation, enquiry or process in which it arose.

6.9

APPOINTMENTS

6.9.1

In each year the *Council* shall appoint an *Investigation Committee, a Disciplinary Committee and an Appeal Panel*⁴.

6.9.2

No person who is an employee of the *Institute* or a *Member of Council* shall be a *Member* of the *Investigation Committee, Disciplinary Committee or Appeal Panel*. No person shall be a *Member* of more than one of the *Investigation Committee, the Disciplinary Committee and the Appeal Panel*. However, if during the course of a hearing of a *Complaint* a *Member* of the *Disciplinary Tribunal* hearing that *Complaint*, or during the hearing of an *Appeal* a *Member* of the *Appeal Tribunal* hearing that *Appeal*, is elected or appointed to the *Council* he shall continue in office as a *Member* of such *Disciplinary Tribunal* or of such *Appeal Tribunal* (as the case may be) until such hearing has finalised⁵.

6.9.3

The *Council* shall have power to pay remuneration to and reasonable expenses of:

- (i) members of the *Investigation Committee, the Disciplinary Committee and the Appeal Panel* provided always that no remuneration shall be paid to any such person who is a *Member* of the *Institute*;
- (ii) a *Special Investigator* appointed by the *Investigation Committee* in accordance with these *Bye-Laws*; and
- (iii) the *Independent Reviewer*, an independent expert and a legal assessor appointed under these *Bye-Laws*⁶

6.9.4

The *Investigation Committee, the Disciplinary Committee and the Appeal Panel* shall each have power to make standing orders (not being inconsistent with the express provisions of the *Bye Laws* or the *Articles*) as may be considered by them necessary for the performance of the respective functions⁷.

⁴ Article 49(a)

⁵ Article 49(b)

⁶ See Article 49(c)

⁷ Article 49(d)

6.9.5

The *Council* shall appoint no less than two persons who are neither *Members* nor employees of the *Institute* to the *Independent Reviewer Panel* annually to carry out the functions of *Independent Reviewers* specified in this Bye Law 6. An *Independent Reviewer* will be appointed from the panel by the *Secretary* of the *Institute* on a case by case basis and the appointment will occur within 2 *Months* of the *Complainant* indicating *In Writing* to the *Institute* that he/she wishes the matter to be independently reviewed in accordance with this Bye Law 6⁸.

6.9.6

The *Council* shall from time to time appoint persons (who may be employees of the *Institute*) to act as registrars and to provide administrative support to the *Secretary*, *Special Investigator*, *Independent Reviewer*, *Investigation Committee*, the *Disciplinary Committee*, any *Disciplinary Tribunal*, the *Appeal Panel* and any *Appeal Tribunal*.

6.10

THE INVESTIGATION COMMITTEE

6.10.1

The *Investigation Committee* shall consist of not less than eight persons, the majority of whom shall be persons who are not *Members* of the *Institute*. The *Council* may appoint from time to time persons to fill any casual vacancy that arises in the membership of the *Investigation Committee*. The *Council* shall from time to time appoint a Chairman and a Vice-Chairman of the *Investigation Committee* from amongst the members of the Committee.⁹

6.10.2

The quorum for meetings of the *Investigation Committee* shall be three persons, so long as a majority of the attendance thereat consists of members who are not *Members* of the *Institute*¹⁰.

6.10.3

The *Investigation Committee* may delegate such of its functions and powers to a sub-committee of its members as it may deem necessary and convenient¹¹. In circumstances where a conflict arises between a member or members of the *Investigation Committee* and a *Member*, *Authorised Firm*, *Affiliated Partner*, *Responsible Individual*, or *Student* who is proposed to be the subject of an investigation by the said committee, the Chairman of the Committee may delegate such of functions and powers of the *Investigation Committee* to a sub-committee as it may deem necessary and convenient. Any sub-committee so formed shall, in the exercise of the functions and powers so delegated, conform to any directions that may be imposed on it by the *Investigation Committee*. The quorum for meetings of any sub-committee of the *Investigation Committee* shall be three persons, so long as a majority of the attendance thereat consists of members who are not *Members* of the *Institute*.

6.10.3 (a)

Where a complaint is in existence relating to an AIPA/FIPA member at 1 September 2017, the Chair of the Investigation Committee shall appoint a sub-Committee in accordance with Bye Law 6.60 to conduct the investigation and delegate its functions and powers to this sub-Committee in accordance with bye law 6.59. Any and all such complaints shall be investigated in accordance with Bye Laws 6.56-6.70

⁸ Article 49(e)

⁹ Article 50 (a)

¹⁰ Article 50(b)

¹¹ See Article 50(c)

6.10.4

It shall be the right of every *Member* and any other person to bring to the attention of the *Secretary* any *Complaint* or any facts or matters indicating that a *Member, Authorised Firm, Affiliated Partner, Responsible Individual, or Student* may have become liable to disciplinary action as aforesaid and it shall be the duty of the *Secretary* to lay such *Complaint* or *facts* or matters before the *Investigation Committee* when deemed necessary following the procedures specified in this Bye Law 6¹².

6.11

COMPLAINTS

6.11.1

A *Complaint* means any complaint, allegation, expression of concern, matter or event touching or apparently touching upon the conduct (whether by act or omission), behaviour, performance or affairs of any *Member, Authorised Firm, Affiliated Partner, Responsible Individual, or Student* in respect of any of the matters mentioned in the *Bye-Laws* whether brought to the attention of the *Secretary* by a *Complainant* or otherwise coming to the attention of the *Secretary*.¹³ A *Complainant* means a person who brings a *Complaint* to the attention of the *Secretary*¹⁴.

6.11.2

A *Complaint* may come to the *Secretary's* attention as follows:

- (a) written *Complaints* from *Members, Affiliated Partners, Responsible Individuals, Students, Authorised Firms* and members of the public;
- (b) *Complaints, In Writing*, from committees or staff within the *Institute*;

and

A matter may also come to the attention of the *Secretary* of the *Institute* as a result of reports in the media or by some other means, including anonymous complaints, which indicates that a *Member, Authorised Firm, Affiliated Partner, Responsible Individual, or Student* may be liable to disciplinary action. For the avoidance of any doubt such a matter that comes to the attention of the *Secretary* will be considered a *Complaint* for the purpose of this Bye Law 6.

6.12

COMPLAINT FORM

6.12.1

A copy of the standard *Complaint* form is available on the *Institute's Website*. Where a matter comes to the attention of the *Secretary* as a result of media report(s), an anonymous complaint, or by some other means other than a *Complaint in Writing*, the *Secretary* shall complete the appropriate form which is available on the *Institute's Website*. The failure of a *Complainant* to set out his *Complaint* on the standard *Complaint* form shall not prevent the *Complaint* being dealt with under the disciplinary process set out in this Bye Law 6.

However, a *Complaint* must be set out *In Writing* for the matter to be dealt with under the disciplinary process set out in this Bye Law 6. For consistency, if a complaint is submitted in writing, but not on the appropriate form, the *Secretary* may send the *Complainant* a copy of the form and ask that their complaint be set out thereon.

¹² See Article 50(e)

¹³ Article 48 of the Article of Association

¹⁴ Article 48 of the *Articles* of Association

6.13.

PROCESS USED BY THE SECRETARY IN RELATION TO A COMPLAINT

6.13.1

When a matter comes to the attention of the *Secretary* through media reports or by some other means other than a *Complaint In Writing* which indicates that a *Member, Authorised Firm, Affiliated Partner, Responsible Individual, or Student* may be liable to disciplinary action under this Bye Law 6 the *Secretary* shall follow the following procedure:

1. The *Secretary* shall reduce the matter(s) into *Writing* in the standard form available on the *Institute's Website*. If the *Secretary* is able to obtain a copy of the relevant media report(s) such report(s) will be attached to the standard form.
2. This form, and any other documentation relating to the complaint is sent to the *Member, Authorised Firm, Affiliated Partner, Responsible Individual, or Student* for his/its response. The time period within which a response is required will be set out clearly in writing on a letter enclosing the said form. Any extension of the said time period will be solely at the *Secretary's* discretion and can be granted either on the request in writing by the *Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student, or on the Secretary's own initiative if he considers it necessary.*
3. The *Secretary* on receipt of the written response may request any further information he deems desirable from the *Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student*. The *Secretary* shall set a time limit, in writing, within which this further information is to be provided. This time limit can also be extended at the discretion of the *Secretary* as set out at 6.13.1.2 above.
4. A failure to provide a response and/or furnish requested information within the set time period will automatically result in the matter being sent to the *Investigation Committee*.

6.13.2

When the *Secretary* receives a written *Complaint* in relation to a *Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student* the *Secretary* shall follow the following procedure:

1. On receipt of a written *Complaint* the *Secretary* shall acknowledge receipt of same to the *Complainant*. The *Secretary* shall also advise the *Complainant* in *Writing* that a copy of the *Complaint* (together with any attached documentation) will be sent to the *Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student* for his/its response and that a copy of the response, or a summary of same, shall be forwarded to the *Complainant* when received.
2. The *Secretary* shall send the written *Complaint* (together with any attached documentation) to the *Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student* with a request for his/its response. The time period within which a response is required will be set out clearly in writing on a letter enclosing the said form. Any extension of the said time period will be solely at the *Secretary's* discretion and can be granted either on the request in writing by the *Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student, or on the Secretary's own initiative if he considers it necessary.*
3. The response, or a summary of same as appropriate, shall be furnished to the *Complainant*. The *Secretary* shall offer the *Complainant* the opportunity to respond *In Writing* to the response. The time period within which a response is required will be set out clearly in writing on a letter enclosing the said response or summary. Any extension of the said time period will be solely at the *Secretary's* discretion and can be granted either on the request in writing by the *Complainant, or on the Secretary's own initiative if he considers it necessary.*
4. If the *Complainant* does not respond within the time limit the *Secretary* shall deem that the *Complainant* has not made a response to the *Member, Authorised Firm,*

- Affiliated Partner, Responsible Individual or Student's* response and the matter shall proceed.
5. The *Secretary* shall acknowledge the *Complainant's* response in writing and shall forward this response, or a summary of same as appropriate, to the *Member* who has an opportunity to provide a response. The time period within which a response is required will be set out clearly in writing on a letter enclosing the said response. Any extension of the said time period will be solely at the *Secretary's* discretion and can be granted either on the request in writing by the *Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student, or on the Secretary's own initiative if he considers it necessary.* The *Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student* is not obliged to respond at this stage if he/it does not wish to.
 6. The *Secretary*, in his discretion may forward a copy of the *member's* response to the *Complainant.*
 7. The *Secretary* on receipt of the written response(s) of the *Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student* and/or *Complainant* may request any further information he deems desirable from the *Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student.* The *Secretary* shall set a time limit in writing within which this further information is to be provided. This time limit similarly can be extended if a request *In Writing* is made to the *Secretary* and/or he deems such an extension appropriate in the circumstances.
 8. A failure to provide a response and/or furnish requested information within the set time period by the *Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student* will automatically result in the matter being sent to the *Investigation Committee.*
 9. The *Secretary* shall have the power to summarise the issues between the parties when the matter is sent to the *Investigation Committee.*
 10. The *Secretary* at any time prior to the matter being sent to *Investigation Committee* may at his absolute discretion offer the parties the opportunity to resolve the subject matter of the *Complaint* by conciliation, however this offer shall be made strictly on the understanding that if the *Secretary acts* as conciliator and the matter is not resolved that this shall not prevent the *Secretary* laying the matter before the *Investigation Committee* and/or acting as "Presenter" if the *Complaint* proceeds to the *Disciplinary Tribunal.* No person other than the *Secretary* can act as a conciliator.
 11. The *Secretary*, in his absolute discretion, with the agreement of the parties concerned may refer the case to mediation in accordance with Bye Law 6.17.
 12. The *Secretary* shall report to the *Investigation Committee* on a quarterly basis in relation to all *Complaints* that have been resolved by virtue of conciliation and all cases referred to mediation.

6.14 **COMPLAINTS THAT ARE SPURIOUS OR FRIVOLOUS OR VEXATIOUS OR CANNOT BE DEALT WITH BY THE INSTITUTE**

6.14.1
After following the procedure set out above the *Secretary* has the authority to decide whether the *Complaint* is spurious or frivolous or vexatious or is not a matter that can be dealt with by the *Institute.*

6.14.2
The *Secretary* makes such a determination based solely on the written *Complaint* and response(s) and further information provided as requested. No oral submissions or evidence shall be heard by the *Secretary.*

6.14.3
The *Secretary* shall make such a decision within 28 days from the date of the final response received. The *Secretary* has the power to extend this time period if he feels an extension is required given the particular circumstances of the case.

6.14.4
The *Secretary* shall inform both the *Complainant* and the *Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student in Writing* of his decision that the *Complaint* was spurious or frivolous or vexatious or a matter that the *Institute* cannot deal with. The *Secretary* shall report to the *Investigation Committee* on a quarterly basis in relation to *Complaints* where he has deemed them to be spurious or frivolous or vexatious or a matter that the *Institute*

cannot deal with.

6.15

RESOLUTION AT SECRETARIAL LEVEL

6.15.1

In the following circumstances the *Secretary* shall deem a *Complaint* closed and shall not lay the matter before the *Investigation Committee* where both parties confirm, *In Writing* to the *Secretary* that the *Complaint* is resolved as a result of conciliation. The *Secretary* shall also deem a *Complaint* closed and shall not lay the matter before the *Investigation Committee* where both parties confirm orally to the *Secretary* that the *Complaint* is resolved as a result of conciliation. In such circumstances the *Secretary* shall write to the *Complainant* notifying him that the case will be closed within 21 days of the date of the letter if the *Complainant* does not indicate that the matter has not been resolved by conciliation.

In the following circumstances the *Secretary* may deem a *Complaint* closed and may decide not to lay the matter before the *Investigation Committee*:

1. Where both parties confirm either orally or *In Writing* to the *Secretary* that the *Complaint* is resolved otherwise than by conciliation

or

2. Where the *Complainant* fails, refuses or neglects within 21 days to respond to a *Secretary's* written request for confirmation as to whether he wishes to proceed with his *Complaint*

In either circumstance the *Secretary* shall write to the *Complainant* notifying him that the case may be closed within 21 days of date of the letter if he does not notify him that he does not want the case closed. The *Secretary* in either circumstance shall lay the *Complaint* before the *Investigation Committee* if he determines that the protection of the public interest requires the *Complaint* to be laid before the *Investigation Committee*.

6.15.2

On a quarterly basis the *Secretary* shall notify the *Investigation Committee* of the cases that he deemed closed and the reasons for same.

6.16

REFERAL OF A COMPLAINT TO THE INVESTIGATION COMMITTEE BY THE SECRETARY

6.16.1

If the *Secretary* has not deemed the *Complaint* closed and determines that the *Complaint* is not spurious or frivolous or vexatious and is a matter that can be dealt with by the *Institute* he shall lay the matter before the *Investigation Committee* and shall do so as soon as reasonably possible.

6.16.2

When the *Secretary* lays a *Complaint* before the *Investigation Committee* he shall provide the *Investigation Committee* with a copy of the *Complaint*, any responses received and any further information received.

6.17

MEDIATION

6.17.1

The *Secretary* and/or *Investigation Committee* may in its absolute discretion decide that it is in the best interests of all the parties to deal with the *Complaint* through mediation. The *Secretary/ Investigation Committee* will only make such a determination where the *Complaint* does not raise matters of consumer protection. The *Investigation Committee* can make this determination at any stage once the *Complaint* has been laid before it.

6.17.2

The *Complaint* shall not be dealt with by way of mediation unless both the *Complainant* and *Respondent* agree to engage in the process. If either party refuse to engage in the process or object to the person appointed as mediator the *Complaint* shall be referred by the *Secretary* to the *Investigation Committee* or, if already referred, proceed as normal before the *Investigation Committee*.

6.17.3

The costs of the mediation process shall be borne by the parties to the *Complaint* and shall not be borne by the *Institute*.

6.17.4

The mediator shall be appointed by the *Secretary* from the Panel of Mediators.

6.17.5

The *Council* shall each year appoint not less 6 persons to the Panel of Mediators. Those persons may be but do not have to be *Members* of the *Institute* or *Lawyers*¹⁵.

6.17.6

The Mediator appointed shall carry out the mediation in accordance with such scheme published by the Institute from time to time, and subject thereto, it shall be for the mediator in his absolute discretion to set out the mediation process to be adopted.

6.17.7

If the Mediator is of the opinion at any stage during the mediation process that either party is unwilling to engage in the mediation process he shall notify the *Secretary* of same and the *Complaint* shall be automatically referred to the *Investigation Committee* by the *Secretary* and the *Secretary* shall inform the parties of this *In Writing*.

6.17.8

Any discussion that occurs between the parties and/or the Mediator during the mediation process shall be on a confidential basis and cannot be relied upon before the *Investigation Committee*, the Special Investigator, or at any *Disciplinary* hearing or *Appeal* hearing.

6.17.9

If the mediation process resolves the *Complaint* the mediator shall notify the *Secretary In Writing* that the *Complaint* has been resolved. This notification shall include a document signed by the parties, witnessed and dated acknowledging that the *Complaint* has been resolved. No further action will be taken by the *Institute* in relation to this *Complaint*.

6.17.10

The *Secretary* shall notify the *Investigation Committee* as soon as reasonably possible when a *Complaint* is resolved by mediation.

¹⁵ Article 49(o)

6.18

EMERGENCY POWERS¹⁶

6.18.1

Notwithstanding the process in bye laws 6.13 to 6.17 the *Secretary* shall have the right to apply to the *Investigation Committee* for an Emergency Order on receipt of a written *Complaint* or where a matter comes to his attention that suggests that the *Member, Authorised Firm, Affiliated Partner* or *Responsible Individual* may be liable to disciplinary action.

6.18.2

Emergency Orders that can be sought in relation to a *Member* are:

- (a) suspension of the *Member's Membership*
- (b) suspension of the *Member's Practising Certificate*
- (c) suspension of any authorisation, licence or permit held by the *Member*

6.18.3

Emergency Orders that can be sought in relation to *Affiliated Partners/Responsible Individuals* are:

- (a) Suspension of the *Affiliated Partner's/ Responsible Individual* status

6.18.4

Emergency Orders that can be sought in relation to *Authorised Firms* are:

- (a) Suspension of any registration or authorisation
- (b) Suspension of the *Authorised Firm* describing itself as a "Certified Public Accountant"

6.18.5

The application by the *Secretary* for such an Emergency Order shall only be heard by the *Investigation Committee* on an ex-parte basis if it is viewed by the *Investigation Committee* as so urgent to protect the public interest that there is not sufficient time to put the *Member, Affiliated Partner, Responsible Individual* or *Firm* on notice of the application.

6.18.6

If the application is on notice the *Member, Authorised Firm, Affiliated Partner* or *Responsible Individual* has the right to be heard and be represented by a lawyer or a *Member* of the *Institute* at the application and to call witnesses to give evidence if he/it desires.

6.18.7

If the application is heard on an ex-parte basis and granted by the *Investigation Committee* the *Member* concerned shall have the right to apply to the *Investigation Committee* for the Order to be vacated on 24 hours notice. The *Member* has the right to be heard and be represented by a lawyer or a *Member* of the *Institute* at the application and call witnesses to give evidence if he desires. If the *Investigation Committee* refuses to vacate the Order the *Member, Authorised Firm, Affiliated Partner* or *Responsible Individual* shall have the right to appeal to the *Disciplinary Committee* where he/it is entitled to be heard, to be represented by a lawyer or a *Member* of the *Institute* and to call witnesses to give evidence on his/its behalf. The *Appeal* shall be heard within 7 days of his notifying the *Disciplinary Committee* of his intention to appeal.

6.18.8

Where a *Member* is unsuccessful on appeal to the *Disciplinary Committee* the disciplinary process in relation to the *Complaint* shall be dealt with as expeditiously as possible.

6.18.9

No Emergency Order can be granted for a period of more than 21 days. If the *Secretary* wishes the Order to continue he must appear before the *Investigation Committee* prior to the termination of the 21 days

¹⁶ Article 49(j)

seeking same. This also applies to initial Emergency Orders that are affirmed by the *Disciplinary Tribunal*. That application must be on at least 48 hours' notice to the *Member, Authorised Firm, Affiliated Partner or Responsible Individual* concerned. This notice should be *In Writing* and sent to the last known address of the *Member, Authorised Firm, Affiliated Partner or Responsible Individual* concerned. The *Member* has the right to be heard and be represented by a *Lawyer* or a *Member* of the *Institute* at the application and call witnesses to give evidence if he/it desires.

6.18. 10

Before granting an Emergency Order the *Investigation Committee* must be satisfied that a strong and clear case has been established that the protection of the public requires the granting of the Order.

6.19

INVESTIGATION OF COMPLAINTS BY THE INVESTIGATION COMMITTEE

6.19.1

Where any facts or matters have been laid before it, the *Investigation Committee* shall have power to call for such further information (if any) as it may consider necessary to enable it to decide whether or not a prima facie case has been made out against the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* concerned.

The *Investigation Committee* shall set a time limit within which this further information is to be provided. This time limit can be extended if a request *In Writing* is made to the *Investigation Committee* and they deems such an extension appropriate in the circumstances.

Where the *Member, Affiliated Partner, Responsible Individual Student or Authorised Firm* fails to provide this further information in a time period laid down by the *Investigation Committee* the matter shall be automatically referred to the *Disciplinary Committee*.

6.19.2

Before reaching a decision as to whether or not a prima facie case has been made out, the *Investigation Committee* shall:

- (a) Ensure that the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* has been provided with:
 - i. A copy of the written *Complaint* together with any documentation attached thereto
 - ii. A copy of all responses made by the *Complainant*
 - iii. A synopsis of the *Complaint* prepared by the *Secretary*
 - iv. A copy of all documentation that is before the *Investigation Committee* which it proposes to base its decision on as to whether a prima facie case has been made out. If the quantity of documentation is such that it is deemed impractical by the Committee to provide a copy of same to the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* then he/it shall be provided with details of the material and also be provided with the opportunity to inspect the documents with his representative prior to being required to make any written representations to the *Investigation Committee*.
- (b) Ensure that the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* has been given an opportunity to make written representations to it as he or it may consider appropriate to the deliberations of the *Investigation Committee*. If the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* fails to provide the Committee with its representations within the time period laid down by the Committee the Investigation shall proceed without those representations.

6.19.3

The *Investigation Committee* may in its absolute discretion summons a *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* to attend before it. Where the *Investigation Committee* issues such a summons the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm*

has the right to be represented by a lawyer or *Member* of the *Institute*. Failure to attend where a summons has been issued shall result in the *Complaint* being referred to the *Disciplinary Committee*.

6.19.4

The *Investigation Committee* may in its absolute discretion give a *Member*, *Authorised Firm*, *Affiliated Partner*, *Responsible Individual* or *Student* the opportunity to be heard before it and to be represented at that time by a *Lawyer* or a *Member*.

6.19.5

The *Investigation Committee* may in its absolute discretion give a *Complainant* the opportunity to be heard before it. If the *Investigation Committee* affords the *Complainant* with this opportunity it shall also afford the *Member*, *Authorised Firm*, *Affiliated Partner*, *Responsible Individual* or *Student* with the same opportunity together with the right to be represented by a *Lawyer* or a *Member*.

6.19.6

If the *Investigation Committee* is of the opinion that a prima facie case has not been made out in respect of any *Complaint*, it shall notify *In Writing* the *Member*, *Affiliated Partner*, *Responsible Individual*, *Student* or *Authorised Firm* concerned and, if there is one, the *Complainant* of that opinion together with such explanation of its decision as the *Committee* in its absolute discretion thinks appropriate.

6.20

COURSES OF ACTION

6.20.1

If the *Investigation Committee* is of the opinion that a prima facie case as aforesaid has been made out, it may in its absolute discretion:

- (a) decide that no further action be taken on the *Complaint* or any specified part of it; or
- (b) decide that, notwithstanding such prima facie case, further consideration of the whole or any part of the *Complaint* be deferred on such terms and considerations as it considers appropriate, whether for either or all of the following purposes namely:
 - (i) to enable the *Investigation Committee* to obtain such information, explanations, documents and computer and other electronic records as it considers necessary, or
 - (ii) if the substance of the *Complaint* is the failure of the *Member*, *Affiliated Partner*, *Responsible Individual*, *Student* or *Authorised Firm* concerned to satisfy a judgment debt, to enable the *Investigation Committee* to monitor any steps taken by the *Member*, *Affiliated Partner*, *Responsible Individual*, *Student* or *Authorised Firm* concerned to deal with the matter; or
 - (iii) pending a quality assurance review; or
 - (iv) pending such further actions being taken as the *Investigation Committee* sees fit; or
- (c) deal with the whole or part of the *Complaint* under this Bye Law 6 in relation to *Consent Orders* or
- (d) refer the whole or part of the *Complaint* to the *Disciplinary Committee* as a *Formal Complaint*; or
- (e) decide that the case should rest on file

and the *Investigation Committee* shall notify, *In Writing*, the *Member*, *Affiliated Partner*, *Responsible Individual*, *Student* or *Authorised Firm* concerned that a prima facie case has been made out against the *Member*,

Affiliated Partner, Responsible Individual, Student or Authorised Firm concerned, and which course of action of those listed in the *Bye-Laws*, the *Investigation Committee* intends to take. The *Investigation Committee* shall similarly notify the *Complainant In Writing*. The Committee may also set out *In Writing* an explanation of its decision as the Committee in its absolute discretion thinks appropriate.

6.20.2

In deciding whether a matter ought to be referred to the *Disciplinary Committee*, the *Investigation Committee* shall be entitled to take into account any facts or matters which may have been considered by the *Investigation Committee* on a previous occasion in relation to the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* concerned.

6.21

REST ON FILE

6.21.1

If the *Investigation Committee* decides to rest a case on the *Member's, Affiliated Partner's, Responsible Individual's, Student's, or Authorised Firm's* file it shall notify the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* of the following:

- (a) the charges in respect of which it found a prima facie case made out against the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm*;
- (b) the fact that it decided in all the circumstances not to refer the matter to the *Disciplinary Committee*, but rather to rest the matter on the *Member's, Affiliated Partner's, Responsible Individual's, Student's or Authorised Firm's* file for a period no greater than 6 years;
- (c) that the matter is to be treated as rendering the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* liable to disciplinary action and that while no action in respect thereof will on this occasion be taken it may subsequently be referred to the *Disciplinary Committee* in the event of a further matter concerning the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* being considered by the *Investigation Committee*; and
- (d) that the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* may request that the matter be referred to the *Disciplinary Committee* if he/it so wishes, which the *Investigation Committee* will do upon being so requested within 30 days of the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* being so notified. If the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* makes such a request the *Complainant* shall be notified of same.

6.22

CONSENT ORDERS

6.22.1

If the *Investigation Committee* decides to make a *Consent Order* it may with the agreement of the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* make any of all of the following orders:

- (a) that he or it be reprimanded;
- (b) that he or it be fined a sum not exceeding €30,000
- (c) that he or it be required to comply with certain conditions laid down by the *Investigation Committee* or carry out a particular course of action prescribed by

Investigation Committee

6.22.2

The *Investigation Committee* may also, in its absolute discretion, in relation to a *Consent Order*, direct that the *Member, Affiliated Partner, Responsible Individual, Student* or *Authorised Firm* pay a sum by way of costs to the *Institute*. In determining such sum for costs the *Investigation Committee* may take account of any or all fees, costs and expenses of whatsoever nature incurred by or on behalf of the *Secretary, the Institute, the Investigation Committee, the Independent Reviewer* and the *Special Investigator* where applicable in relation to the *Complaint*.

6.22.3

Before making any *Consent Order*, the *Investigation Committee* shall determine which of the orders it is minded to make, what sum by way of costs, if any, it is minded to direct should be included with such order, and what publicity it is minded to give to such order. It shall give written notice to the *Member, Affiliated Partner, Responsible Individual, Student* or *Authorised Firm* of the course it is minded to take, with the *Member's, Affiliated Partner's, Responsible Individual's, Student's, or Authorised Firm's* agreement with respect to such order, costs and publicity. Such notice shall *State* that in default of the *Member, Affiliated Partner, Responsible Individual, Student* or *Authorised Firm* communicating his or its written agreement to the proposed course within a period of not less than 21 days from the date of notice (which said period could be extended on written request at the sole discretion of the *Investigation Committee*), the *Complaint* shall be referred to the *Disciplinary Committee*.

6.22.4

Where the *Member, Affiliated Partner, Responsible Individual, Student* or *Authorised Firm* gives his or its written agreement as described in Bye-Law 6.22.3 the *Investigation Committee* shall make the Order, give direction as to costs and procure the publication of the Order all as specified in the notice given to the *Member, Affiliated Partner, Responsible Individual, Student* or *Authorised Firm*.

6.22.5

Where the *Investigation Committee* makes an Order as provided for in Bye Law 6.22.4, it shall cause to be published, as soon as practicable and in such a manner as it thinks fit, and in accordance with S.I.No.312 of 2016, such a report as it thinks fit of its proceedings under this Bye-Law with respect to the *Complaint*. The Order made by the *Investigation Committee* shall be recorded by the *Secretary*.

6.22.6

When the *Member, Affiliated Partner, Responsible Individual, Student* or *Authorised Firm* concerned gives written agreement to a *Consent Order* in accordance with this Bye Law 6, the *Investigation Committee* will advise the *Complainant* of the fact and detail of the Order.

6.22.7

Where the *Member, Affiliated Partner, Responsible Individual, Student* or *Authorised Firm* fails to give his or its written agreement as described in this Bye Law, the *Investigation Committee* shall refer the case to the *Disciplinary Committee* and inform the *Complainant* (if there is one) of the referral.

6.22.8

Where during the *Investigation Committee's* consideration of a *Complaint* placed before it, additional acts of alleged misconduct become evident (other than that which is the basis of the *Complaint*) the *Investigation Committee* has in its absolute discretion the right to investigate those additional acts of alleged misconduct otherwise it shall initiate the disciplinary process regarding such act(s) by lodging a written *Complaint* or *Complaints* to the *Secretary*. If the *Investigation Committee* decides to investigate the additional acts of alleged misconduct it shall ensure that the *Member, Affiliated Partner, Responsible Individual, Student* or *Authorised Firm* shall be fully informed of nature of the allegations and given a copy of all relevant documentation in relation to same and be provided with an opportunity to respond to those allegations.

6.22.9

Without limitation to the powers of the *Investigation Committee*, the Committee may instruct an employee of the *Institute* to assist in any investigation on its behalf. The *Investigation Committee* has the authority to appoint any independent expert it deems necessary to aid its investigation. *Council* shall have power to pay remuneration to and reasonable expenses of the independent expert provided no remuneration shall be paid to such person who is a *Member* of the *Institute* or an employee of the *Institute*¹⁷.

COMPLAINTS INVESTIGATED BY THE SPECIAL INVESTIGATOR

6.23.1

Where upon consideration of a *Complaint*, the *Investigation Committee* decides that the *Complaint* which has been brought to its attention should be referred for investigation to a *Special Investigator*, the *Investigation Committee* shall notify the *Member, Affiliated Partner, Responsible Individual, Student* or *Authorised Firm* concerned and, if there is one, the *Complainant* and appoint as soon as may be, under the hand of the Chairman or failing him the Vice-Chairman of the *Investigation Committee*, a suitably qualified person as a *Special Investigator* to conduct in such manner as he shall see fit an investigation into such facts and matters as may be specified by the *Investigation Committee* in the instrument appointing him or in any instrument supplemental thereto.

6.23.2

A *Special Investigator* may, at any time during his investigation, apply to the *Investigation Committee* for such extension, amplification or modification of the facts and matters to be investigated into by him as he may deem appropriate having regard to the results of his investigation to date.

6.23.3

The *Investigation Committee* shall have power:

- (a) to confer on the *Special Investigator* powers to request further information from the *Member, Affiliated Partner, Responsible Individual, Student* or *Authorised Firm*. Failure to provide such information within the time limit set down by the *Special Investigator* and failure to comply with such a request shall result in the *Complaint* being automatically referred to the *Disciplinary Committee*.
- (b) to authorise the *Special Investigator* to engage *Members, Authorised Firms* or any other experts to carry out such detailed investigations as the *Special Investigator* may consider necessary and to engage *Lawyers*. The *Council* shall have the power to pay remuneration to and reasonable expenses of any expert (provided remuneration is not paid to a *Member* or employee of the *Institute*) or any *Lawyer* engaged by the *Special Investigator*.
- (c) to authorise the *Special Investigator* to do all such things as he may consider necessary or conducive to carrying out his investigation; and
- (d) to publish or cause to be (if at the *Investigation Committee's* discretion it considers it appropriate to do so) published the fact that a *Special Investigator* has been appointed and his terms of reference.

¹⁷ See Article 49(c)(iv)

6.23.4

The *Special Investigator* shall report to the *Investigation Committee* and in such report he shall certify whether or not, in his opinion, as a result of his investigations there exists a prima facie case of misconduct against any *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* and, if so, he shall specify such prima facie case and stipulate the evidence, facts and matters which he has ascertained in the course of his investigations and which, in his opinion, support such prima facie case. This report shall be delivered within a time limit set out by the *Investigation Committee*. The *Investigation Committee* has the discretion to extend this time limit.

6.23.5

Where the *Special Investigator* certifies to the *Investigation Committee* that, in his opinion, a prima facie case of misconduct exists, the *Investigation Committee* shall immediately refer to the *Disciplinary Committee*, by way of *Formal Complaint*, the prima facie case of misconduct. The *Investigation Committee* shall notify the *Complainant* of same.

6.23.6

In any *Formal Complaint* referred to the *Disciplinary Committee* pursuant to this Bye Law 6, the *Special Investigator* shall, assisted by such lawyers as he may (with the approval of the Chairman or failing him the Vice-Chairman of the *Investigation Committee*) deem necessary, present and prosecute the *Formal Complaint* before the *Disciplinary Tribunal* appointed to hear such *Formal Complaint* and any *Appeal* there from before the *Appeal Tribunal* appointed to hear such *Appeal*.

6.24

INDEPENDENT REVIEWER

6.24.1

If the *Investigation Committee* decides in relation to any *Complaint* that a prima facie case has not been made out against the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* concerned, the *Complainant* who made such *Complaint* may, within two *Months* of being notified *In Writing* of such decision, but not thereafter, require the decision of the *Investigation Committee* to be referred to an *Independent Reviewer* for review and the *Investigation Committee* shall refer the decision accordingly.

6.24.2

An *Independent Reviewer* shall be appointed from the *Independent Reviewer Panel* by the *Secretary* on a case by case basis. The *Independent Reviewer* shall not be an employee or *Member, Affiliated Partner, Responsible Individual or Student* of the *Institute*.

6.24.3

The *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* shall be notified *In Writing* of the fact that an *Independent Reviewer* has been appointed at the request of the *Complainant*.

6.24.4

If the decision of the *Investigation Committee* is referred to the *Independent Reviewer* for review in accordance with this Bye Law 6 the *Independent Reviewer* shall review such decision.

6.24.5

The *Independent Reviewer* shall carry out the review in a time period prescribed by the *Secretary*. It shall be at the discretion of the *Secretary* to extend this time period.

6.24.6

The *Independent Reviewer* shall carry out the review based solely on all documentation that was in the possession of the *Investigation Committee* when it was carrying out its investigation in relation to the *Complaint*. If the *Independent Reviewer* is provided with new information that was not before the *Investigation Committee* and if he is of the opinion that this information is significant he can require the *Investigation Committee* to reopen the case or can require the new information to be dealt with under these *Bye Laws*. as a new *Complaint*. In order to be considered "New information" and trigger the within power, the said information must have been either: not in existence at the time of the original investigation, or impossible for

the party seeking to submit it to procure at the time of the original investigation. The decision as to whether or not any information provided constitutes new information is at the sole discretion of the *Independent Reviewer*.

6.24.7

If, following a review in accordance with this Bye Law 6, the *Independent Reviewer* is of the opinion that the decision of the *Investigation Committee* was correct the *Secretary* shall on his behalf so inform the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* concerned, the *Investigation Committee* and the *Complainant In Writing*, stating his reasons for forming such an opinion.

6.24.8

If, following a review in accordance with this Bye Law 6, the *Independent Reviewer* is of the opinion that the decision of the *Investigation Committee* was wrong, he shall remit the case to the *Investigation Committee* for reconsideration stating *In Writing* his reasons for forming such an opinion. At the same time the *Secretary* shall on his behalf inform the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* concerned and the *Complainant, In Writing*, that he has decided to remit the matter to the *Investigation Committee* for reconsideration.

6.24.9

In reconsidering its decision following the remission of a case to it by the *Independent Reviewer* under this Bye Law 6 the *Investigation Committee* may have regard to:

- (a) The information and any representations previously made available to it
- (b) The information and representations which have been made to it since it came to its original decision provided that the *Member, Affiliated Partner, Responsible Individual, Student and Authorised Firm* has been provided with a copy of this information and representations and is afforded an opportunity to make written representations in relation to this new information and/or additional representations
- (c) The reasons given by the *Independent Reviewer*, and it shall not make a new decision until the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* concerned has been given a further opportunity to make written representations to it.

6.24.10

If, following the remission of a case the *Investigation -Committee* decides to change its original decision it shall follow the procedure as set out in this Bye Law 6 in relation to Courses of Action that the *Investigation Committee* may take when it finds that a prima facie case has been made. The *Investigation Committee* shall also notify the *Independent Reviewer* of its decision *In Writing*.

6.24.11

If, following the remission of a case the *Investigation Committee* decides not to change its original decision, it shall inform *In Writing* the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* concerned, the *Complainant* and the *Independent Reviewer* giving an explanation for its decision.

In these circumstances the *Complainant* is entitled to seek an independent review from a second *Independent Reviewer*.

6.24.12

A Second *Independent Reviewer* shall be appointed from the *Independent Reviewer Panel* by the *Secretary* on a case by case basis. The second *Independent Reviewer* shall not be an employee or *Member, Affiliated Partner, Responsible Individual or Student* of the *Institute*.

6.24.13

The *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* shall be notified *In Writing* of the fact that a second *Independent Reviewer* has been appointed at the request of the *Complainant*.

6.24.14

If the decision of the *Investigation Committee* is referred to the second *Independent Reviewer* for review in accordance with this Bye Law 6 the second *Independent Reviewer* shall review such decision.

6.24.15

The second *Independent Reviewer* shall carry out the review in a time period prescribed by the *Secretary*. It shall be at the discretion of the *Secretary* to extend this time period.

6.24.16

The second *Independent Reviewer* shall carry out the review based on all documentation that was in the possession of the *Investigation Committee* when it was carrying out its investigation in relation to the *Complaint* including the report of the first *Independent Reviewer*. If the second *Independent Reviewer* is provided with new information that was not before the *Investigation Committee* or the first *Independent Reviewer* and if he is of the opinion that this information is significant he can require the *Investigation Committee* to reopen the case or can require the new information to be dealt with under these *Bye Laws* as a new *Complaint*. In order to be considered “*New information*” and trigger the within power, the said information must have been either: not in existence at the time of the original investigation, or *impossible for the party seeking to submit it to procure at the time of the original investigation*. The decision as to whether or not any information provided constitutes new information is at the sole discretion of the second *Independent Reviewer*.

6.24.17

If, following a review in accordance with this *Bye Law 6*, the second *Independent Reviewer* is of the opinion that the decision of the *Investigation Committee* was correct the *Secretary* shall on his behalf so inform the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* concerned, the *Investigation Committee* and the *Complainant In Writing*, stating his reasons for forming such an opinion. No further action will be taken in relation to this complaint.

6.24.18

If, following a review in accordance with this *Bye Law 6*, the second *Independent Reviewer* is of the opinion that the decision of the *Investigation Committee* was wrong, he shall remit the case to the *Investigation Committee* for reconsideration stating *In Writing* his reasons for forming such an opinion. At the same time the *Secretary* shall on his behalf inform the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* concerned and the *Complainant, In Writing*, that he has decided to remit the matter to the *Investigation Committee* for reconsideration.

6.24.19

In reconsidering its decision following the remission of a case to it by the second *Independent Reviewer* under this *Bye Law 6* the *Investigation Committee* shall have regard to:

- (d) The information and any representations previously made available to it
- (e) The information and representations which have been made to it since it came to its original decision provided that the *Member, Affiliated Partner, Responsible Individual, Student and Authorised Firm* has been provided with a copy of this information and representations and is afforded an opportunity to make written representations in relation to this new information and/or additional representations
- (f) The reasons given by the second *Independent Reviewer*, and it shall not make a new decision until the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* concerned has been given a further opportunity to make written representations to it.

6.24.20

If, following the remission of a case the *Investigation -Committee* decides to change its original decision it shall follow the procedure as set out in this *Bye Law 6* in relation to Courses of Action that the *Investigation Committee* may take when it finds that a prima facie case has been made. The *Investigation Committee* shall also notify the second *Independent Reviewer* of its decision *In Writing*.

6.24.21

If, following the remission of a case from the second *Independent Reviewer* the *Investigation Committee* decides not to change its original decision, it shall inform *In Writing* the *Member, Affiliated Partner, Responsible Individual, Student or Authorised Firm* concerned, the *Complainant* and the *Independent Reviewer* giving an explanation for its decision. No further action will be taken in relation to this complaint.

6.25

REFERRAL TO *DISCIPLINARY COMMITTEE*

6.25.1

If the *Investigation Committee*, or any duly appointed sub-Committee thereof, decides to refer the whole or part of any *Complaint* to the *Disciplinary Committee*, it shall send to the Chairman or, if the Chairman is not available, the Vice-Chairman of the *Disciplinary Committee* and to the *Member, Affiliated Partner, Responsible Individual, Student* or *Authorised Firm* concerned the following material:

- (a) a copy of any written communication received by the *Secretary* or the *Investigation Committee* in respect of the *Complaint* or where the same was not *In Writing* the *Secretary's* synopsis;
- (b) a copy of all material that was considered by the *Investigation Committee* in relation to the *Complaint*;
- (c) a copy of any written representations made by the *Complainant*;
- (d) a copy of any written representations made by the *Member, Affiliated Partner, Responsible Individual, Student* or *Authorised Firm* concerned;
- (e) if the *Investigation Committee* considered facts or matters of the type identified in Bye- Law 6.20.2, a summary of such facts or matters;
- (f) a copy of the notification from the *Investigation Committee* to the *Member, Affiliated Partner, Responsible Individual, Student* or *Authorised Firm* concerned;
- (g) if the *Complaint* was investigated by a *Special Investigator*, the report of the *Special Investigator*, and
- (h) The *Formal Complaint* that is to be considered by the *Disciplinary Tribunal*.
- (i) A copy of any other document that is relevant to the *Complaint* and that is in the possession of the *Investigation Committee*.

6.25.2

The case against the *Member, Affiliated Partner, Responsible Individual, Student* or *Authorised Firm* shall be presented to the *Disciplinary Committee* on behalf of the *Investigation Committee* by such person as the *Investigation Committee* may nominate ('the Presenter'). The Presenter may be the *Institute Secretary*, a staff member of the Institute, a *Member* of the *Investigation Committee*, or a *Lawyer* but shall be the *Special Investigator* when required by this Bye Law 6.

6.26

ATTENDANCE

6.26.1

Where the *Investigation Committee*, the *Disciplinary Tribunal* or an *Appeal Tribunal* is dealing with a *Complaint* or conducting a hearing relevant to the requirements of the Investment Intermediaries Act, 1995 such Committee or Tribunal, if so requested by the Central Bank may grant them observer status to attend and observe the meetings of the *Investigation Committee* or *Tribunal* which deal with such *Complaint* or hearing¹⁸.

¹⁸ Article 49 (m)

6.26.2

The Institute shall grant to staff, directors and other nominated representatives of IAASA::

- (a) unrestricted access to attend and observe at all meetings, hearings and other proceedings of any committees, tribunals, panel and similar bodies (howsoever called) having a role in the regulation, monitoring or discipline of members of the Institute ('Institute regulatory bodies');
- (b) unrestricted access to all books, records or other documents in any format in the possession or control of the Institute of relevance to the Authority's objects and functions, including for the purpose of taking copies of such books, records and other documents; and such information and other assistance as the Authority may reasonably require in connection with such books, records and documentation whatever form (including transcripts and minutes) of all meetings and other proceedings of any Institute regulatory bodies, including for the purposes of taking copies of those records;

Irrespective of whether such meetings, hearings or other proceedings or records are open to the public or otherwise.

6.27

THE DISCIPLINARY COMMITTEE

6.27.1

The *Disciplinary Committee* shall consist of not less than eight persons, the majority of whom shall be persons who are not *Members* of the *Institute*. The *Council* may appoint from time to time persons to fill any casual vacancy that arises in the membership of the *Disciplinary Committee*. The *Council* shall from time to time appoint a Chairman and a Vice-Chairman of the *Disciplinary Committee* from among its *Members* who are not *Members* of the *Institute*¹⁹.

6.27.2

The quorum for meetings of the *Disciplinary Committee* shall be three persons, so long as the majority of the attendance thereat consists of *Members* who are not *Members* of the *Institute*.²⁰

6.27.3

Subject to Bye Laws 6.56-6.70, when a *Formal Complaint* is referred to the *Disciplinary Committee* by the *Investigation Committee*, the Chairman of the *Disciplinary Committee*, or, failing him, the Vice-Chairman of such Committee, shall appoint a *Disciplinary Tribunal* from *Members* of the *Disciplinary Committee* to hear the *Formal Complaint* which Tribunal shall consist of not less than three of its members, a majority of whom shall not be *Members* of the *Institute*.

6.27.4

Subject to Bye Laws 6.56-6.70, the *Disciplinary Tribunal* as appointed shall in relation to the *Formal Complaint* be competent to exercise all the functions and powers conferred on the *Disciplinary Committee* by *These Presents*.

6.27.5

If for any reason any member of the *Disciplinary Tribunal* is during the course of the hearing unable to continue to attend the hearing, the remaining members, provided that they are not less than two in number, may continue with the hearing, but if the *Respondent* is present they shall do so only if he consents. Save as aforesaid the *Complaint* shall be re-heard by a new tribunal.

¹⁹ Article 51(a)

²⁰ Article 51(b)

6.27.6

If at any time the *Disciplinary Committee* is of the opinion that it is for any reason impracticable for the original tribunal to complete the hearing of the *Complaint*, it shall direct that the *Complaint* be heard by a new tribunal.

6.27.7

Whenever a *Complaint* is re-heard pursuant to this Bye Law 6 any of the members of the original Tribunal may not be appointed to the new *Disciplinary Tribunal*.

6.28

INTERVENTION ORDERS

6.28.1

Subject to bye laws 6.56-6.70 if the *Disciplinary Committee* decides that a *Complaint* laid before it or facts and matters that have been brought to its attention establish that there is a strong and clear case that the protection of the public interest requires the making of an *Intervention Order* it has the authority to make such an *Order*.

6.28.2

Intervention Orders that can be made in relation to a *Member* are:

- (a) suspension of the *Member's Membership*
- (b) suspension of the *Member's Practising Certificate*
- (c) suspension of any authorisation, licence or permit held by the *Member*

6.28.3

Intervention Orders that can be made in relation to *Affiliated Partners* and *Responsible Individuals* are: (a) Suspension of the *Affiliated Partner's / Responsible Individual's* status granted in accordance with bye law 13 or bye law 14.

6.28.4

Intervention Orders that can be made in relation to *Authorised Firms* are:

- (a) Suspension of any registration or authorisation granted in accordance with Bye law 13 or bye law 14;
- (b) Suspension of the *Authorised Firm* describing itself as a "Certified Public Accountant"

6.28.5

An *Intervention Order* can only be made initially for a period of 21 calendar days.

6.28.6 An *Intervention Order* shall only in the most urgent of cases be made not on notice to the *Member, Affiliated Partner, Responsible Individual or Authorised Firm*

6.28.7

A *Member, Affiliated Partner, Responsible Individual or Authorised Firm* shall have the right (if the *Intervention Order* was made not on notice to him/it) to apply on 24 hours' notice to the *Disciplinary Committee* seeking to have the *Intervention Order* vacated.

6.28.8

If the *Disciplinary Committee* determines that there may be good reason for the *Intervention Order* to be extended for a period in excess of the initial 21 day period it shall notify the *Member, Affiliated Partner, Responsible Individual or Authorised Firm* of its intention to consider extending same and afford him the opportunity to be heard before it, to be represented by a *Lawyer or Member* of the *Institute* and to call witnesses to give evidence on his behalf before making any such determination

6.28.9

Where a *Disciplinary Committee* refuses to vacate an *Intervention Order* on the application of the *Member* or where the *Disciplinary Committee* determines that it should be extended beyond 21 days the *Member, Affiliated Partner, Responsible Individual* or *Authorised Firm* shall have the right to appeal the *Order* to the *Appeal Panel*. An *Appeal Tribunal* shall hear the *Appeal* and shall be formed from *Members* of the *Appeal Panel* in accordance with this Bye Law 6. An *Appeal* will be heard within 7 calendar days of the *Member, Affiliated Partner, Responsible Individual* or *Authorised Firm* notifying the *Appeal Panel* of his intention to appeal the *intervention Order*.

6.28.10

At all hearings in relation to *Intervention Orders* (save those that are not on notice to the *Member, Affiliated Partner, Responsible Individual* or *Authorised Firm*) the *Member, Affiliated Partner, Responsible Individual* or *Authorised Firm* shall have the right to be heard, to be represented by a *Lawyer* or a *Member* of the *Institute* and to call witnesses to give evidence on his behalf.

6.28.11

Where there is an *Intervention Order* in being, the disciplinary process in relation to the *Complaint* shall be dealt with as expeditiously as is reasonably possible.

6.28.12

The making of an *Intervention Order* does not hinder the *Disciplinary Committee* from carrying out its full disciplinary procedures in relation to the particular case.

6.29

CONSIDERATION OF FORMAL COMPLAINTS BY DISCIPLINARY TRIBUNAL

6.29.1

Subject to bye laws 6.56-6.70, as soon as practicable after its appointment, the *Disciplinary Tribunal*, the *Secretary* or such other person as may be nominated by the Chief Executive Officer of the *Institute* shall notify the *Respondent*, the *Investigation Committee* and, if there is one, the *Complainant* and the IAASA of the time and place fixed for the hearing of the *Formal Complaint*. The *Respondent* shall receive at least 42 days' notice of the hearing

6.29.2

The *Disciplinary Tribunal* shall give the *Respondent* the opportunity of²¹:

- (a) attending and being heard at the hearing of the *Formal Complaint*;
- (b) if he so desires, being represented before the *Disciplinary Tribunal* by *Lawyer(s)* or by a *Member* of the *Institute*;
- (c) in addition to being given in advance of the hearing the material as provided for under Bye-Law 6.29.5, hearing the evidence against him;
- (d) cross-examining witnesses called by the *Presenter*;
- (e) adducing documentary evidence;
- (f) calling witnesses to give evidence on his behalf; and

²¹ Article 51 (f)

- (g) making such submissions as he wishes to the *Disciplinary Tribunal*.

6.29.3

The *Disciplinary Tribunal* shall give the Presenter of the *Formal Complaint* the opportunity of²²:

- a) attending and being heard at the hearing of the *Formal Complaint*;
- b) adducing documentary evidence provided that this documentary evidence was provided to the Respondent in advance.
- c) calling witnesses (including, if desired, any *Complainant*) to give evidence;
- d) cross-examining witnesses called by the *Respondent*; and
- e) making such submissions as he wishes to the *Disciplinary Tribunal*.
- f) being represented by a *Lawyer(s)*

6.29.4

If the *Complaint* giving rise to a *Formal Complaint* was brought to the attention of the *Secretary* by a *Complainant*, the *Complainant* may attend any hearing of the *Disciplinary Tribunal* relating to that *Complaint* even if the Tribunal determines that the hearing shall be heard in private. Any *Complainant* attending a hearing shall do so as an observer only.

6.29.5

At least fourteen days in advance of the hearing, the *Secretary* shall deliver to the *Respondent* copies of or a summary of any documents or other materials, if any, which, in addition to those made available to the *Respondent* under Bye Law 6.25.1, the Presenter intends to rely on and a list of such witnesses as he proposes calling at the hearing. A summary of the documents or materials shall only be provided when it is deemed impractical due to the quantity of documents to provide the *Respondent* with copies of same. In those circumstances the *Respondent* shall be afforded the opportunity to inspect the documents with or without his representative who shall be a *Lawyer* or a *Member* of the *Institute*.

6.29.6

At least seven days in advance of the hearing, the *Respondent* shall deliver to the *Secretary* a summary of the arguments to be presented in his defence, together with copies of such supporting documents as he proposes to rely on, and a list of such witnesses as he proposes calling on his behalf at the hearing. The *Respondent* shall not be precluded from raising any argument or relying on any document which was not included in the material so delivered or calling any witness who was not included in the list of witnesses so delivered.

6.29.7

If the *Respondent* does not attend the hearing fixed as foresaid, then the *Disciplinary Tribunal* may, in its absolute discretion, either:

- (a) provided the *Disciplinary Tribunal* is satisfied that notice of the hearing was given to the *Respondent*, proceed to hear the *Formal Complaint* in the absence of the *Respondent*; or

²² Article 51(g)

- (b) adjourn the hearing to such other date, venue and time as the Tribunal may, in its absolute discretion, determine, and the *Disciplinary Tribunal* shall give to the *Respondent* notice of its decision.

6.29.8

If, during the course of hearing a *Formal Complaint*, it becomes apparent to a *Disciplinary Tribunal* that the *Respondent* may be liable to disciplinary proceedings in relation to matters not the subject matter of the *Formal Complaint*, it may bring those matters to the attention of the *Secretary*.

6.29.9

A *Disciplinary Tribunal* shall have a general discretion to grant extensions of time, adjournments, postponements or change of venue for the hearing where it considers it fair and proper to do so.

6.30

HEARINGS OF DISCIPLINARY TRIBUNALS TO BE IN PUBLIC

Subject to Bye Law 6.56-6.70:

6.30.1

All hearings by a *Disciplinary Tribunal* will be held in public unless the *Disciplinary Tribunal*, in its sole discretion, determines that the holding in public of its hearings or any part thereof would be inappropriate²³. If the *Disciplinary Tribunal* determines its hearings or any part of them should not be held in public, then its hearings or the relevant part of them shall be held in private.

6.30.2

Before making any determination to hold a hearing or part thereof other than in public the *Disciplinary Tribunal* will inform the *Complainant*, the *Respondent* and the *Investigation Committee* of the fact that the *Disciplinary Tribunal* propose considering whether or not the hearing or any part thereof should be in public and invite the said persons (and any other person it considers may be affected) to make such written submissions, if any, as they wish on the issue of whether or not the hearing, or the part of the hearing in issue, should be heard otherwise than in public.

6.30.3

In addition the *Disciplinary Tribunal* may, in its absolute discretion, give each of the *Respondent*, the *Complainant* and the *Investigation Committee* (and any other person it considers may be affected) an opportunity of being heard before it in relation to whether or not the hearing or any part thereof should be heard otherwise than in public. If the Tribunal gives any of such persons such an opportunity it shall offer alike opportunity to each other of them. Any such hearing shall be in public unless, in light of the written submissions received by the Tribunal, the Tribunal is of the opinion that it would be inappropriate to hold such hearing in public.

6.30.4

A *Disciplinary Tribunal* may only determine that it would be inappropriate to hold a hearing (whether in whole or in part) in public on the grounds that morals, public order, national security, the interests of juveniles, the protection of the private life of any person (including the *Respondent* or the *Complainant*), the protection of the financial or business affairs of any person whether they are a party to the *Complaint* or not or the protection of client confidentiality so requires, or there are, in the opinion of the Tribunal, special circumstances where publicity would prejudice the interests of justice.

²³ See Article 52(a)

6.30.5

A *Disciplinary Tribunal* may require any person attending a hearing to give their name and address.

6.30.6

A *Disciplinary Tribunal* may expel from a hearing any person who is or becomes disruptive to the proceedings of such Tribunal or who fails to comply with Bye Law 6.30.5. If the *Respondent* is the person so expelled the proceedings shall be adjourned until a later date.

6.30.7

A *Disciplinary Tribunal* may in its absolute discretion appoint a legal assessor to sit with the Tribunal during a hearing. A legal assessor shall be a practicing solicitor or barrister. The *Council* shall have the power to pay the remuneration and reasonable expenses of the solicitor and/or barrister.

6.31

PROCEDURE AT DISCIPLINARY TRIBUNAL HEARINGS

Subject to Bye Law 6.56-6.70:

6.31.1

The procedure at a *Disciplinary Tribunal* hearing where the *Respondent* accepts the charges made against him shall be:

- (a) The Presenter shall read the charges made against the *Respondent*.
- (b) If in attendance, the *Respondent* shall be invited to indicate whether or not he accepts each of the charges made against him.
- (c) If he is not in attendance, reference will be made to any written response made by the *Respondent* or other correspondence or note of conversation indicating his acceptance or otherwise of the charges made against him.
- (d) If he accepts or (if he is not in attendance) has accepted all of the charges made against him, the case will be presented in abbreviated form with the object of assisting the *Disciplinary Tribunal* in determining the seriousness of the case.
- (e) The *Disciplinary Tribunal* will then make a formal finding to the effect that all the charges made against him have been proved.
- (f) If the *Respondent* is in attendance he must be invited to respond to any of the comments made by the Presenter and put forward any statement in mitigation. If the *Respondent* is not in attendance, reference will be made to any *Statement* in mitigation which he has previously made.
- (g) The *Disciplinary Tribunal* may at any time ask any question of the Presenter or the *Respondent*.
- (h) The *Disciplinary Tribunal* shall then proceed in accordance with Bye Laws 6.31.3, 6.32.1, 6.33.1, 6.34.1.

6.31.2

The procedure at a *Disciplinary Tribunal* hearing where the *Respondent* does not accept the charges made against him shall be:

- (a) The Presenter shall read the charges made against the *Respondent*.
- (b) If in attendance, the *Respondent* shall be invited to indicate whether or not he accepts each of the charges made against him.
- (c) If the *Respondent* does not or (if he is not in attendance) has not accepted all the charges made against him, the case will be presented against him.
- (d) The Presenter shall be entitled to call witnesses in support.
- (e) The *Respondent* shall then be invited to respond by presenting his defence and may also call witnesses in support.
- (f) Witnesses may be cross-examined by the *Respondent* and the Presenter.
- (g) At the end of the *Respondent's* presentation, the *Disciplinary Tribunal* will retire to consider its verdict and return to announce its findings in respect of each of the charges. Before the *Disciplinary Tribunal* retires to consider its verdict the *Respondent* shall have the opportunity to make submissions.
- (h) If a *Disciplinary Tribunal* appointed to hear a *Formal Complaint* finds that the *Formal Complaint* has been proved in whole or in part in accordance with the standard of proof applicable in accordance with this Bye Law 6 it shall make a finding to that effect; but if it finds that the *Formal Complaint* has not been proved in accordance with such applicable standard of proof it shall dismiss the *Formal Complaint*. If the *Disciplinary Tribunal* find that the *Formal Complainant* has not been proved it shall so notify the *Respondent* and *Complainant In Writing*.
- (i) Subject to any presumption of misconduct under this Bye Law 6, the *Member, Affiliated Partner, Responsible Individual, Student* or *Authorised Firm* concerned shall be presumed not guilty of a *Formal Complaint* or any part of it unless and until the *Formal Complaint* or any part of it has been proved to the satisfaction of the *Disciplinary Tribunal* appointed to hear it in accordance with the standard of proof applicable under this Bye-Law. The standard of proof that a *Disciplinary Tribunal* appointed to hear a *Formal Complaint* shall apply will be "on the balance of probabilities".
- (j) If it is found that any of the charges has been proved, the *Respondent* 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 *Respondent*.
- (k) The *Disciplinary Tribunal* may at any time ask questions of the Presenter, the *Respondent* or any witness.

6.31.3

Once the *Disciplinary Tribunal* has announced its findings in relation to each of the charges made against the *Respondent*, it shall be informed of any other matters in respect of which he has been disciplined by the *Institute* and cases which have been allowed to rest on the *Respondent's* file, by the *Investigation Committee*.

6.32

ORDERS

Subject to Bye Law 6.56-6.70:

6.32.1

If a *Disciplinary Tribunal* makes a finding that a *Formal Complaint* has been proved in whole or in part, it may make any one or more of the following *Orders* against the *Respondent* as it considers appropriate having regard to the status of the *Respondent*, the Tribunal's views as to the nature and seriousness of the *Formal Complaint*, any previous *Complaint* in respect of which a finding or a finding and an *Order* have been made against the *Respondent* and any circumstances that the Tribunal considers relevant:

- (a) if the *Respondent* is a *Member*:
 - (i) that he be excluded from *Membership*;
 - (ii) that he be suspended from *Membership* for such a period as the Tribunal thinks fit;
 - (iii) that any practising certificate held by him be withdrawn;
 - (iv) that he be ineligible for a practising certificate;
 - (v) any insolvency licence held by him be withdrawn;
 - (vi) that he be ineligible for an insolvency licence;
 - (vii) that any authorisation or licence or permit held by him be withdrawn;
 - (viii) that he be severely reprimanded;
 - (ix) that he be reprimanded; and
 - (x) that he be fined a sum not exceeding €30,000;
- (b) if the *Respondent* is an *Affiliated Partner* or *Responsible Individual*:
 - (i) that his *Affiliated Partner* or *Responsible Individual* status be withdrawn from him;
 - (ii) that his *Affiliated Partner* or *Responsible Individual* status be suspended for such a period as the Tribunal thinks fit;
 - (iii) that he be severely reprimanded;
 - (iv) that he be reprimanded; and
 - (v) that he be fined a sum not exceeding €30,000;
- (c) if the *Respondent* is a *Student*:
 - (i) that he be declared unfit to become a *Member*;
 - (ii) that he be declared ineligible for such a period (not exceeding two years to sit for such examination or examinations of the *Institute* (or such part or parts thereof) as the Tribunal thinks fit;
 - (iii) that he be disqualified from such examination or examinations of the *Institute*; (or such part or parts thereof) as shall be specified in the *Order*, not being an examination (or part thereof) the result of which shall have been duly notified to him by the *Institute* prior to the date of the *Order*;
 - (iv) that he be severely reprimanded; and
 - (v) that he be reprimanded;
- (d) if the *Respondent* is an *Authorised Firm*:
 - (i) that any registration or authorisations granted to the *Authorised Firm* by the *Institute* be withdrawn;
 - (ii) that it be prohibited from describing itself as a "Certified Public Accountant" for a specified period;
 - (iii) that it be severely reprimanded;
 - (iv) that it be reprimanded; and
 - (v) that it be fined a sum not exceeding €30,000 per partner in the *Authorised Firm* who is a *Member*, *Affiliated Partner* or *Responsible Individual* of the *Institute*;
- (f) an *Order* that no further action be taken on the *Formal Complaint*;

- (g) An *Order* requiring the *Member, Affiliated Partner, Responsible Individual, Student* or *Authorised Firm* to carry out a certain course of action in a certain time period;
- (h) An *Order* in lieu of any of the other *Orders* that could be made in relation to the *Member, Affiliated Partner, Responsible Individual, Student* or *Authorised Firm* requiring the *Member, Affiliated Partner, Responsible Individual, Student* or *Authorised Firm* to carry out a certain course of action in a certain time period and failure to comply with this *Order* shall result in a default *Order* being activated; and
- (i) *Order* for costs under Bye Law 6.42 (a)

6.33 CONDITIONS

Subject to Bye Law 6.56-6.70:

6.33.1

Any *Order* made by the *Disciplinary Tribunal* may be made upon such terms and conditions (if any) as the *Disciplinary Tribunal* in its absolute discretion may consider appropriate.

6.34 NOTIFICATION

Subject to Bye Law 6.56-6.70:

6.34.1

The *Disciplinary Tribunal* shall announce its decision at the hearing and, where the *Respondent* is in attendance, shall inform him of his right to appeal to the *Appeal Committee* in respect thereof. Formal notice of the terms of the *Order* made against him shall be given to him together with a notification of his right to *Appeal* against the *Order*. Notification of the finding against the *Respondent* and the *Order* made shall be made *In Writing* to the *Complainant*.

6.35

RIGHT OF APPEAL

Subject to Bye Law 6.56-6.70:

6.35.1

A *Respondent* against whom any *Order* has been made by the *Disciplinary Tribunal* may give notice of *Appeal* in accordance with this Bye Law 6.37, provided that no appeal shall lie solely on the question of costs.

6.36

EFFECTIVE DATE

Subject to Bye Law 6.56-6.70:

6.36.1

An *Order* made by the *Disciplinary Tribunal* shall take effect from the date of expiry of the *Appeal* period referred to in this Bye Law 6.37.2 unless the *Disciplinary Tribunal* 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*.

6.37

APPEALS AND THE APPOINTMENT OF APPEAL TRIBUNAL

Subject to Bye Law 6.56-6.70:

6.37.1

No *Appeal* shall lie solely on the question of costs. A *Respondent* may appeal against a finding or *Order* of a *Disciplinary Tribunal* on the grounds that:

- (i) the finding is wrong; and/or
- (ii) the *Order* is excessive; and/or
- (iii) the finding and/or the *Order* is flawed because of a serious procedural or other irregularity in the proceedings before the *Disciplinary Tribunal*.

6.37.2

If a *Respondent* wishes to appeal a finding or *Order* of a *Disciplinary Tribunal*, he must within 21 days (or such longer period as the *Disciplinary Committee* may allow) of the date of the service upon him of such *Order*, give notice of *Appeal* to the Chairman of the *Appeal Panel*. Any such notice shall:

- (i) state the grounds of *Appeal* and the grounds so stated shall not thereafter be amended except with the leave of the *Appeal Tribunal* appointed to hear such *Appeal*; and
- (ii) if the *Order* appealed against is exclusion or suspension from *Membership*, be accompanied by a bank draft payable to the *Institute* for any costs directed to be paid unless the Chairman or, failing him, the Vice-Chairman of the *Appeal Panel*, in his absolute discretion, considers that to require such a bank draft would unfairly prejudice the *Respondent's* ability to appeal.

6.37.3

The *Appeal Panel* shall consist of not more than eleven persons. A majority of the members of the *Appeal Panel* shall be persons who are not *Members* of the *Institute* at least two of whom shall be *Lawyers*. Not less than three members of the *Appeal Panel* shall be *Members*. The *Council* may appoint from time to time persons to fill any vacancy that arises in the membership of the *Appeal Panel*. The *Council* shall appoint from time to time a Chairman and Vice-Chairman of the *Appeal Panel* who shall be *Lawyers* who are not *Members*.

The quorum for meetings of the *Appeal Panel* shall be three persons, so long as the majority of the attendance thereat consists of members who are not *Members* of the *Institute*

6.37.4

The Chairman or, failing him, the Vice-Chairman of the *Appeal Panel* shall as soon as practicable after the receipt of such notice of *Appeal*, appoint an *Appeal Tribunal* from the members of the *Appeal Panel*. The *Appeal Tribunal* shall consist of a *Lawyer*, who is not a *Member*, as Chairman, one person who is a *Member* and one person who is not a *Member*, but no member or former member of the Investigation or *Disciplinary Committee* who has been concerned with the *Complaint* or *Formal Complaint* which is the subject of the *Appeal* shall be eligible for appointment to such *Appeal Tribunal*.

6.37.5

If, for any reason, prior to the time fixed for the hearing of the *Appeal*, any member of the *Appeal Tribunal* other than the Chairman thereof becomes unable to act, the Chairman or, failing him, the Vice-Chairman of the *Appeal Panel* shall co-opt another eligible person from the *Appeal Panel* to act in his place.

6.37.6

If for any reason any member of the *Appeal Tribunal* other than the Chairman is, during the course of the hearing, unable to continue to attend the hearing, the remaining members, provided that they are not less than two in number, may continue with the hearing, but if the *Appellant* is present they shall do so only if he consents. Save as aforesaid the *Appeal* shall be reheard by a new *Appeal Tribunal* appointed by the Chairman or, failing him, the Vice-Chairman of the *Appeal Panel*. If, at any time during the course of the hearing of an *Appeal*, the *Appeal Tribunal* is of the opinion that it is for any reason inappropriate for it to complete the hearing, the Chairman or, failing him, the Vice-Chairman of the *Appeal Panel* shall appoint a new *Appeal Tribunal* to re-hear the *Appeal*.

6.37.7

Where an *Appeal* is re-heard pursuant to this Bye Law 6.37.6 none of the members of the original *Appeal Tribunal* may be appointed to the new *Appeal Tribunal*.

6.37.8

If notice of *Appeal* is served on the Chairman of the *Appeal Panel* in accordance with this Bye Law 6.37.2 the *Order* of the *Disciplinary Tribunal* or the part thereof which is the subject matter of the *Appeal* shall not have effect until the *Appeal* has been withdrawn or determined and, where determined, it shall only have effect in accordance with the *Order* of the *Appeal Tribunal*.

6.38

HEARING OF APPEALS BY APPEAL TRIBUNAL

Subject to Bye Law 6.56-6.70:

6.38.1

As soon as practicable after its appointment, the *Appeal Tribunal* shall notify the *Appellant*, the *Investigation Committee* the *Complainant* and the IAASA of the time and place fixed for the hearing of the *Appeal*. The *Appeal Tribunal* shall give the *Appellant* the opportunity of:

- (a) Attending and being heard at the hearing of the *Appeal*
- (b) If he or she so desires, being represented before the *Appeal Tribunal* by a *Lawyer(s)* or by a *Member* of the *Institute*
- (c) In addition to being given in advance all material as prescribed for by these *Bye Laws*, hearing evidence against him
- (d) Cross – examining witnesses called by the *Presenter*
- (e) Adducing documentary evidence
- (f) Calling witnesses to give evidence on his behalf; and
- (g) Making such submissions as he wishes to the *Appeal Tribunal*

6.38.2

The *Presenter* at the *Disciplinary Tribunal* Hearing shall be present at the *Appeal* Hearing except where the *Investigation Committee*, in its absolute discretion, appoints another person to appear at the *Appeal* hearing as the *Presenter*. The *Appeal Tribunal* shall give the *Presenter* of the *Formal Complaint* under this Bye Law 6 the opportunity of:

- (a) Attending and being heard at the *Appeal*;
- (b) Adducing documentary evidence provided that the *Appellant* has been afforded the opportunity to see the documents in advance of the hearing
- (c) Calling witnesses (including, if desired the *Complainant*) to give evidence;
- (d) Cross-examining witnesses called by the *Appellant*; and
- (e) Making such submissions as he or she wishes to the *Appeal Tribunal*.
- (f) Being represented by a *Lawyer*

6.38.3

The *Appeal Tribunal* may instruct a solicitor to act, or to brief counsel to act, as legal assessor at the hearing of any *Appeal*. The *Council* shall have the power to pay the remuneration and reasonable expenses of the solicitor and/or counsel.

6.39

APPEAL PRESENTATIONS

Subject to Bye Law 6.56-6.70:

6.39.1

On the hearing of an *Appeal* it shall be for the *Appellant* to satisfy the *Appeal Tribunal* on the grounds of the *Appeal*.

6.40

APPEAL AGAINST THE FINDINGS

Subject to Bye Law 6.56-6.70:

6.40.1

When the *Appellant* appeals against the findings made by the *Disciplinary Tribunal* the hearing shall be a fresh hearing. The following is the process for this hearing:

- (a) The Presenter shall read the charges made against the *Appellant*.
- (b) the *Appellant* shall be invited to indicate whether or not he accepts each of the charges made against him.
- (c) If the *Appellant* does not accept all the charges made against him, the case will be presented against him.
- (d) The Presenter shall be entitled to call witnesses in support.
- (e) The *Appellant* shall then be invited to respond by presenting his defence and may also call witnesses in support.
- (f) Witnesses may be cross-examined by the *Appellant* and the Presenter.
- (g) At the end of the *Appellant's* presentation, the *Appeal Tribunal* will retire to consider its verdict and return to announce its findings in respect of each of the charges. Before the *Appeal Tribunal* retires to consider its verdict the *Appellant* shall have the opportunity to make submissions.
- (h) If an *Appeal Tribunal* appointed finds that the charges have been proved in whole or in part in accordance with the standard of proof applicable in accordance with this Bye Law 6 it shall make a finding to that effect; but if it finds that the charges have not been proved in accordance with such applicable standard of proof it shall dismiss the charges. If the *Appeal Tribunal* find that the charges have not been proved it shall so notify the *Appellant* and *Complainant In Writing*. The standard of proof that shall apply will be "on the balance of probabilities".

- (i) If it is found that any of the charges has been proved, the *Appellant* 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 *Appellant*. Formal notice of the terms of the *Order* made against him shall be given to the *Appellant*. Notification of the Finding against the *Appellant* and the *Order* made shall be made *In Writing* to the *Complainant*.
- (j) The *Appeal Tribunal* may at any time ask questions of the Presenter, the *Appellant* or any witness.

6.41

APPEAL AGAINST THE ORDER

Subject to Bye Law 6.56-6.70:

6.41.1

When the *Appellant* appeals against the *Order* made by the *Disciplinary Tribunal*, the Presenter shall outline the facts supporting the charges. The *Appellant* may then present pleas in mitigation and call witnesses (if any) as appropriate.

6.41.2

If the *Complaint* giving rise to the *Appeal* was brought to the attention of the *Secretary* by a *Complainant*, the *Complainant* may attend at the hearing of the *Appeal* even if the *Appeal Tribunal* determines that the hearing shall be held in private. Any *Complainant* attending a hearing shall do so as an observer and shall have no right of audience save as provided in this Bye Law 6 or to the extent that he or she is called as a witness.

6.41.3

If the *Appellant* does not attend the hearing fixed as aforesaid, then the *Appeal Tribunal* may, in its absolute discretion, either:

- (a) provided that the *Appeal Tribunal* is satisfied that notice of that hearing was given to the *Appellant* or *Appellants*, dismiss the *Appeal*; or
- (b) adjourn the *Appeal* hearing to such other date, venue and time as it may in its absolute discretion determine and give to the *Appellant* or *Appellants* notice of the dismissal and/or adjourned hearing.

If an *Appellant's Lawyer* or representative who is a *Member* of the *Institute* attends the hearing the *Appeal Tribunal* shall not dismiss the *Appeal*.

6.41.4

If the *Appeal Tribunal* dismisses an *Appeal* for non attendance by an *Appellant* and the *Appellant* applies to have the *Appeal* re listed for hearing within 21 days of the Notice of Dismissal being sent by registered post to the *Appellant's* correspondence address as notified to the *Appeal Tribunal* under this Bye Law 6 the *Appeal Tribunal* will consider re-listing the *Appeal*, if, in its absolute discretion, the *Appeal Tribunal* is satisfied that the non-attendance at the *Appeal* was for some reason which merits the reversal of the dismissal.

DETERMINATION OF COSTS

- (a) In addition to such other *Orders* as may be made by a *Disciplinary Tribunal* or an *Appeal Tribunal* (including an *Order* that no further action be taken) a *Disciplinary Tribunal* or an *Appeal Tribunal* may, in its absolute discretion, direct that the *Respondent* or *Appellant*, as the case may be, pay the *Institute* such sum for costs as the *Disciplinary Tribunal* or *Appeal Tribunal* may, in its absolute discretion, determine.
- (b) In determining such sum for costs:
 - (i) the *Disciplinary Tribunal* may take account of any and all fees, costs and expenses of whatsoever nature incurred by or on behalf of the *Secretary*, the *Institute*, the *Investigation Committee*, the *Independent Reviewer*, the *Special Investigator*, the *Disciplinary Committee* and the *Disciplinary Tribunal*, where applicable, in relation to the *Complaint* and *Formal Complaint*; and
 - (ii) the *Appeal Tribunal* may take account of such fees, costs and expenses as the *Disciplinary Tribunal* may take account of, as well as any and all fees, costs and expenses of whatsoever nature incurred by or on behalf of the *Appeal Tribunal* and by or on behalf of the *Secretary*, the *Institute*, the *Investigation Committee*, the *Independent Reviewer*, the *Special Investigator*, the *Disciplinary Committee* and the *Disciplinary Tribunal*, where applicable, in relation to the *Appeal*.
- (c) Neither a *Respondent* nor an *Appellant*, as the case may be, shall be entitled to any award of costs as against the *Secretary*, the *Institute*, the *Investigation Committee*, the *Independent Reviewer*, the *Special Investigator*, the *Disciplinary Committee*, the *Disciplinary Tribunal* or the *Appeal Tribunal* or any other party whatsoever in relation to any fees, costs and expenses of whatsoever nature incurred by or on behalf of the *Respondent* or the *Appellant*, as the case may be, in relation to the *Complaint*, *Formal Complaint* or the *Appeal*.
- (d) The *Appeal Tribunal* may, in its *Order*, reduce or increase any costs ordered by the *Disciplinary Tribunal* in addition to any *Order* it may make in relation to the costs of the *Appeal*.
- (e) Any such costs ordered by a *Disciplinary Tribunal* or an *Appeal Tribunal* shall be paid within twenty-one days of the date of the service upon the *Respondent* or *Appellant*, as the case may be, of the *Order* in respect of costs save that, subject to Bye-Law 6.37.2(ii) if notice of *Appeal* in accordance with this Bye Law 6.37 is given, such costs shall not be payable until the determination of the *Appeal*, and then subject to any *Order* made by the *Appeal Tribunal* in relation thereto.

Where any *Appeal* is taken the *Appellant* shall notify the *Appeal Tribunal* *In Writing* of his correspondence address. Any communication sent to the correspondence address of an *Appellant* by registered post shall be deemed served upon the *Appellant* on the day after posting.

An *Appeal Tribunal* shall have a general discretion to grant extensions of time, adjournments and postponements where it considers it fair and proper to do so.

6.45

APPEALS TO BE HEARD IN PUBLIC

Subject to Bye Law 6.56-6.70:

6.45.1

All *Appeals* heard before an *Appeal Tribunal* will be held in public unless the *Appeal Tribunal*, in its sole discretion, determines that the holding in public of the hearing or any part thereof would be inappropriate. If the *Appeal Tribunal* determines that the hearing or any part of it should not be held in public then the hearing or the relevant part of it shall be held in private.

6.45.2

Before making any determination to hold a hearing or part thereof other than in public the *Appeal Tribunal* will inform the *Complainant*, the *Appellant* and the *Secretary* of the fact that the Tribunal propose considering whether or not the hearing or any part thereof should be in public and invite the said persons to make such submissions, if any, as they wish on the issue of whether or not the hearing, or the part of the hearing in issue, should be heard otherwise than in public.

6.45.3

In addition the *Appeal Tribunal* may, in its absolute discretion, give each of the *Appellant*, the *Complainant* (if there is one) and the *Investigation Committee* an opportunity of being heard before it. Any such hearing shall be in public unless, in light of the written submissions received by the Tribunal, the Tribunal is of the opinion that it would be inappropriate to hold such hearing in public.

6.45.4

An *Appeal Tribunal* may only determine that it would be inappropriate to hold a hearing (whether in whole or in part) in public on the grounds that morals, public order, national security, the interests of juveniles, the protection of the private life of any person (including the *Respondent* or the *Complainant*), the protection of the business or financial affairs of a person (whether that person is a party to the *Appeal* or not) or the protection of client confidentiality so requires, or there are, in the opinion of the Committee, special circumstances where publicity would prejudice the interests of justice.

6.46

ORDERS OF APPEAL TRIBUNAL

Subject to Bye Law 6.56-6.70:

6.46.1

On any *Appeal*, the *Appeal Tribunal* may affirm, vary or rescind any finding or *Order* of the *Disciplinary Tribunal*, and may substitute any other finding or *Order* (on such terms and conditions (if any) as it thinks appropriate) which the *Disciplinary Tribunal* might have made on the original *Formal Complaint*, or may, if the *Appeal Tribunal* considers it appropriate, order that the *Formal Complaint* be heard de novo by a different *Disciplinary Tribunal*.

6.46.2

An *Order* of the *Appeal Tribunal* shall take effect as from the date thereof unless the *Appeal Tribunal*, in its absolute discretion, directs that it shall take effect as from some other date (not being earlier than the date of the *Order* appealed against) as shall be specified in the *Order*.

6.46.3

Notice of any finding or *Order* of the *Appeal Tribunal* shall as soon as practicable be given to the *Appellant* and (if there is one) to the *Complainant* and the *Investigation Committee*.

6.47

PUBLICATIONS OF FINDINGS AND ORDERS

Subject to Bye Law 6.56-6.70:

6.47.1

Whenever any *Disciplinary Tribunal* makes an *Order* under this Bye-Law 6 it shall, subject to Bye-Laws 6.47.3 and 6.47.4 cause its findings and *Order* to be published as soon as practicable in such manner as it thinks fit, and in accordance with S.I.No.312 of 2016, provided that if the *Disciplinary Tribunal* has ordered that no further action to be taken on the *Formal Complaint*, the findings and *Order* shall not be published unless the *Respondent* so requests.

6.47.2

The *Appeal Tribunal* shall, likewise, cause any findings and *Order* made by it to be published as soon as practicable in such manner as it thinks fit, and in accordance with S.I.No.312 of 2016 provided that if the *Appeal Tribunal* has ordered that no further action be taken on the *Formal Complaint* the findings and *Order* shall not be published unless the *Respondent* or *Appellant* so requests.

6.47.3

In relation to every publication of a finding and *Order* of a *Disciplinary Tribunal* or an *Appeal Tribunal* it shall be entirely at the discretion of the Tribunal to determine whether the name of the *Respondent* or *Appellant* shall be published. In any event, where the *Complaint* giving rise to the *Formal Complaint* or *Appeal*, as the case may be, was investigated by a *Special Investigator* the name of the *Respondent* or the *Appellant* shall be published.

6.47.4

No publication under Bye-Law 6.47.1 shall be made until after the expiry of the Appeal period referred to in Bye-Law 6.37.2 and in the event that notice of *Appeal* under that Bye-Law is received by the Chairman of the *Appeal Panel* then, unless the Appeal is abandoned, no publication under Bye-Law 6.47.1 shall take place, but publication shall be under Bye-Law 6.47.2

6.47.5

Nothing in this Bye-Law 6.47 shall prevent:

- (a) any *Disciplinary Tribunal* or *Appeal Tribunal* from communicating with any *Respondent*, *Appellant* or *Complainant* or the *Secretary* in relation to any matter concerning a *Formal Complaint* or an *Appeal* or from announcing details of any *Order* or finding at any hearing (whether held in public or private);
- (b) the *Investigation Committee*, the *Disciplinary Committee* or any *Disciplinary Tribunal* or *Appeal Tribunal* making any report on its activities to the Council; or
- (c) the *Secretary* maintaining a register of findings and orders in accordance with this Bye- Law 6.

6.47.6

Any measure taken or penalty imposed by way of *Consent Order* or otherwise in relation to a *Statutory Auditor* or a Registered *Audit Firm* arising out of any disciplinary process laid down in *These Presents* shall be subject to such publication as may be required by law. In relation to any such publication, should a conflict arises between *These Presents* and European or Irish Law, European/Irish law shall take precedence.

6.48

RESIGNATION FROM MEMBERSHIP DURING DISCIPLINARY PROCESS

Subject to Bye Law 6.56-6.70:

In the event of a *Member, Authorised Firm, Affiliated Partner, Responsible Individual* or *Student* resigning (which term includes the retirement or any non-renewal of membership howsoever occurring) during the course of any disciplinary process or prior to the commencement of any disciplinary process but where a Complaint has been made:

- (i) The Institute may publish a statement that such a resignation has taken place together with a statement as to the existence of the complaint and/or a statement of fact that the disciplinary process was ongoing prior to the resignation. In any such statement the *Member, Authorised Firm, Affiliated Partner, Responsible Individual* or *Student* shall be named. In the event of such a resignation, details will also be recorded in the register of findings naming the *Member, Authorised Firm, Affiliated Partner, Responsible Individual* or *Student*.
- (ii) Such *Member, Authorised Firm, Affiliated Partner, Responsible Individual* or *Student* will continue to be liable notwithstanding such resignation, for any:
 - a. Fine or costs order imposed upon such *Member, Authorised Firm, Affiliated Partner, Responsible Individual* or *Student* arising from such disciplinary proceedings in accordance with these Presents irrespective of whether or not a decision has been made or fine imposed by the Institute in those disciplinary proceedings prior to the resignation provided that all steps other than the decision in the disciplinary proceedings have been completed.
 - b. Costs incurred by the Institute in any disciplinary proceedings which have been commenced prior to resignation but which have been discontinued by reason of the said resignation.
- (iii) All such fines and costs referred to in (ii) above shall be recoverable and enforceable by the Institute in accordance with Article 60 hereof.

6.49

REGISTER OF FINDINGS AND ORDER

Subject to Bye Law 6.56-6.70:

6.49.1

The *Secretary* shall maintain a register of all findings and *Orders* including *Consent Orders* made by *Disciplinary Tribunals* and *Appeal Tribunals* and *Investigation Committees*.

6.49.2

Such register shall be open to inspection by *Members* and members of the public during normal opening hours at the head office of the *Institute*.

6.49.3

Each entry in such register shall include:

- (a) details of the *Complaint* or *Formal Complaint* giving rise to the finding and/or *Order*;
- (b) details of the finding and/or *Order*;
- (c) the name, address and *Membership* number of each person or *Firm* against whom the finding and/or *Order* is made; if the *Disciplinary Tribunal, Appeal Tribunal* or *Investigation Committee* ordered that the *Member, Affiliated Partner, Responsible Individual, Student* or *Authorised Firm's* name be published

6.49.4

No entry shall be made in such register of any finding or *Order* of a *Disciplinary Tribunal* until the expiry of the *Appeal* period referred to in Bye-Law 6.37.2

6.49.5

The entry of an *Order* (and any finding giving rise to such *Order*) shall be deleted from such register after:

- (A) if it is an *Order* made under Bye-Law 6.32.1 (other than under those paragraphs thereof referred to in paragraph (B) below and in Bye-Law 6.48.6), 5 years from the date the *Order* becomes effective; and
- (B) if it is an *Order* under Bye-Law 6.32.1(a) (ii), (b) (ii), or (d) (ii), 5 years from the date the *Order* becomes effective or the lifting of the suspension whichever is later.

6.49.6

The entry of an *Order* under Bye-Law 6.32.1 (a) (i), (b) (i), (c) (i) or (d) (i) shall remain permanently in such register.

6.49.7

If any person believes that an error has been made in any entry in such register, he or she may apply to the *Secretary* to have the error rectified. If the *Secretary* determines that an error has been made the *Secretary* shall duly rectify the register.

6.50

PRECEDENT BOOK

6.50.1

The *Institute* shall establish and maintain a Precedent Book. The *Institute* shall appoint a person who is an employee of the *Institute* to establish and maintain the Precedent Book.

6.50.2

The Precedent Book shall record all *Investigation Committee*, *Disciplinary Tribunal* and *Appeal Tribunal* decisions and sanctions imposed.

6.50.3

The Precedent Book may be used by members of all *Investigation Committees*, *Disciplinary Tribunals* and *Appeal Tribunals* as a reference when dealing with *Complaints*, *Formal Complaints* or *Appeals*.

6.51

GENERAL

6.51.1

Where an *Order* is made pursuant to this Bye-Law 6 by a *Disciplinary Tribunal* or an *Appeal Tribunal* the *Respondent* shall thereupon forthwith deliver up to the *Secretary* all relevant certificates, licences and authorisations affected by the *Order*.

6.51.2

The *Institute* shall report to the Director of Corporate Enforcement in accordance with the requirements of the Company Law Enforcement Act, 2001.

6.52

CONTINUING PROFESSIONAL DEVELOPMENT

6.52.1

Alleged breaches of Bye Law 8 concerning Continuing *Professional Development* may be dealt with under the procedure set out in Bye Law 8.

6.53

CONFIDENTIALITY

6.53.1

The *Secretary, Special Investigator, Independent Reviewer, Investigation Committee, Disciplinary Committee, Disciplinary Tribunal and Appeal Panel and Appeal Tribunal* have the absolute authority not to provide certain information and/or documentation (including written responses from a *Respondent*) to a *Complainant* if he or it deems it appropriate.

6.54

INDEMNITY

6.54.1

The *Institute* shall indemnify and keep indemnified the *Secretary, the Special Investigator, the Independent Reviewer, members of the Investigation Committee, members of the Disciplinary Committee and members of the Appeal Panel* in relation to any litigation or claim arising out of the disciplinary process set out in this Bye Law 6 or otherwise arising by the exercise by them of their function pursuant to these bye laws.

6.54.2

If a *Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student* resigns from *Membership* before the disciplinary process as set out in this Bye Law 6 is completed the disciplinary process shall be adjourned indefinitely. If the *Member, Authorised Firm, Affiliated Partner, Responsible Individual or Student* applies to be readmitted to the *Institute* the process shall recommence. It shall be decided by *Council* as to whether the process must be completed prior to re-admittance or post re-admittance to *Membership*.

DISCIPLINE AIPA / FIPA Members

Subject to the provisions of Article 61 (d) and (e) of the Constitution, liability to Disciplinary Action for AIPA / FIPA Members for complaints in being or made before the {date of transfer} shall be governed by the following Bye-laws 6.56 to 6.70.

Definition:

From Bye-law 6.56 – 6.70 “**Member**” refers to and includes only A.I.P.A. / F.I.P.A. Members as defined in Article 2 (c) of the Constitution and Member Firms and Affiliate Members relates only to Member Firms and Affiliate Members associated with the aforesaid A.I.P.A /F.I.P.A. members.

“**Membership**” shall be construed accordingly.

“Institute” for the purposes of bye laws 6.56 to 6.70 means The Institute of Incorporated Public Accountants which said Institute is a recognised body of Accountants as provided for by S.I. 312 of 2016 and the Companies Act 2014 at the date of transfer | September 2017.

“Student” refers to an individual registered as a student of the Institute of Incorporated Public Accountants as above.

6.56 A Member, Member Firm, Affiliate Member or Student shall continue to be liable to disciplinary action under the following subsections 6.56-6.70 after his or its ceasing to be a Member, Member Firm, Affiliate Member or Student in respect of any matters which occurred whilst he was actually a Member, Member Firm, Affiliate Member or Student and in respect of which a complaint is referred to the committee responsible for hearing the complaint, or disciplinary action is otherwise commenced.

6.57 Subject to Bye-law 6.56, a Member, Member Firm, Affiliate Member or Student of the Institute shall be liable to disciplinary action in any of the following cases:

(a) Where, in the course of carrying out his professional duties or otherwise, he has been guilty of misconduct. Misconduct, for this purpose, shall include any act or default likely to bring discredit to himself or the accountancy profession.

(b) Where he has been convicted by a court of competent jurisdiction in Ireland or elsewhere of any offence involving dishonesty, violence, incompetence or indecency or has in any civil proceedings been found to have acted fraudulently, incompetently or dishonestly, it shall be presumed to be proof, unless the contrary is proven, that he has been guilty of misconduct for the purposes of this Bye-Law.

(c) Where he has committed any breaches of the Bye-Laws or the Articles of Association of the Institute of Incorporated Accountants in effect at the time of the allegation, Regulations of the Institute of Incorporated Accountants in effect at the time of the allegation, or the Code of Ethics of the Institute of Incorporated Public Accountants in effect at the time of the allegation.

(d) Where he has performed his professional work or the duties of this employment or conducted his practice inefficiently or incompetently to such an extent or frequency as to bring discredit to himself, or the accountancy profession.

(e) Where he has failed to satisfy a judgement debt or, individually or as a partner, has made an assignment for the benefit of creditors or under any resolution of creditors or order of the court or any deed or document, has had his estate placed in liquidation for the benefit of the creditors or has made any arrangement for the payment of a composition to creditors.

(f) Where he has failed to respond to any communication from any duly appointed representative of the Institute or the Institute of Certified Public Accountants in Ireland.

(g) Where he has failed to fully disclose any matter or occurrence during his application for Membership that may have affected the Institutes consideration of whether he was of good repute at the time of his application.

No disciplinary action shall rest solely on the matter of disputed professional fees.

Adjournment of a Meeting

6.58 The chairperson at any meeting of the Investigation Sub-Committee (appointed in accordance with bye law 6.59-6.60), the Disciplinary Tribunal or the Appeals Tribunal may

adjourn any meeting where such an adjournment is necessary so that the business of the meeting may be properly conducted. When a meeting is adjourned, the time and place for the adjourned meeting shall be fixed by the Committee. No business shall be transacted at any adjourned meeting except business which might properly have been transacted at the meeting had the adjournment not taken place. When a meeting is adjourned for two months or more, notice of the adjourned meeting shall be given as in the case of an original meeting. The parties required to attend a meeting of the Investigation Sub-Committee, the Disciplinary Tribunal or the Appeals Tribunal shall also be obliged to attend at any adjournment of that meeting, unless for good reason, which shall be notified to the chairperson of the meeting, they are not in a position to attend.

Investigation Sub- Committee

- 6.59 Subject to Bye-Law 6.10.3 the Investigation Committee shall delegate its' functions and powers to a sub-committee of its members for the purpose of investigating complaints under these Sections 6.56 – 6.70.
- 6.60 The Investigation Sub-committee shall consist of five persons of whom two shall be Members and the other three shall be non-Members (of either the Institute of Certified Public Accountants in Ireland or Institute of Incorporated Public Accountants) nominated by the Council. The quorum for meetings of the Sub-Committee shall be three. A simple majority of non-Members must be present in order to constitute a valid quorum. The chairperson of the Investigation Sub-Committee shall be a non-Member nominated by the Investigation Committee.
- 6.61(a) A "Complaint" is any complaint, allegation, expression of concern, matter or event in respect of the conduct, behaviour, performance or affairs of a Member, Member Firm, Affiliate Member or Student brought to the attention of the Institute in writing on the designated complaint form. The Institute may, at his own discretion, complete, or cause to be completed a complaint form where he becomes aware of any circumstances which he believes merits such an action.
- (b) Where the Institute determines that a complaint made is vexatious the Complainant may appeal this decision by to the Investigation Committee. Any appeal must be made within 30 days of the date that the notice of the decision is issued to the Complainant.
- (c) Where a Member Firm is the subject of a Complaint, the Responsible Principal shall be required to deal with the Complaint.
- (d) The Institute may endeavour to resolve and/or conciliate the issues arising. Where the endeavours to resolve do not succeed the Institute shall have a duty to lay such facts and matters before the Investigation Committee. Any and all complaints resolved or conciliated by the Institute must be reported to the Investigation Committee. The Institute may seek any clarifications, documents, or anything he feels is necessary in undertaking his duties in relation to this Bye-Law.
- (e) Where any such facts or matters have been laid before the Investigation Sub- Committee, it shall have power to call for such further information as it may consider necessary and useful to help it to decide whether or not a prima facie case has been made against the Member, Member Firm, Affiliate Member or Student concerned. Before reaching a decision, the Investigation Sub- Committee shall be satisfied that it has taken all reasonable steps to give the Member, Member Firm, Affiliate Member or Student an opportunity to make written representations to it. The Committee may, at its absolute

discretion, give the Member, Member Firm, Affiliate Member or Student an opportunity to be heard before it. Minutes of the meeting of the Investigation Sub-Committee shall be taken and the minutes taken shall constitute the written record of the meeting held.

(f) If it is the opinion of the Investigation Sub-Committee, from the facts and matters laid before it, that a Member, Member Firm, Affiliate Member or Student may be or may have been conducting his professional affairs inefficiently or incompetently, the Committee may, at its absolute discretion, require that Member, Member Firm, Affiliate Member or Student to obtain and act upon specific professional advice. Failure to take this advice will be recorded by the Investigation Sub-Committee and will, unless the Committee believes that exceptional or exigent circumstances exist, be refer the complaint to the Disciplinary Committee. Notwithstanding the above, the original complaint will continue to be processed in the normal way.

(g) Where the matters complained of are the subject of civil or criminal proceedings, the matter may, at the discretion of the relevant Committee, be deferred until such time as the civil or criminal proceedings are at an end. Notice of such a deferral will issue to the Complainant and Member, Member Firm, Affiliate Member or Student.

(h) Any notice of hearing of the Investigation Sub- Committee which is issued to the Respondent and the Complainant shall also be sent to the Irish Auditing andAccounting Supervisory Authority at the same time, who may attend the hearing at their discretion.

(i) If the Investigation Sub-Committee, following its meeting in respect of the matter complained of, is of the opinion that no prima facie case exists, it shall cause the Secretary within twenty-one (21) days of the meeting, to issue a notice of such findings to the Member, Member Firm, Affiliate Member or Student and the Complainant providing the reasons for this decision.

(j) If the Complainant is not satisfied with the finding of the Investigation Sub-Committee that no prima facie case exists against the Member, Member Firm, Affiliate Member or Student, the Complainant may make an appeal in writing to the Disciplinary Committee within thirty (30) days of the issue of the notice from the Investigation Committee. The Disciplinary Committee shall appoint a Disciplinary Tribunal in accordance with bye law 6.61.

(k) On receipt of an appeal from the Complainant under Bye-law 6.60 (j) the staff of the Institute will facilitate the transfer of all documentation in relation to the Complaint from the Investigation Sub-Committee to the Disciplinary Tribunal.

(l) Following the receipt of an appeal in writing from the Complainant under Bye-law 6.60 (j), the Disciplinary Tribunal will convene within 60 days to consider the appeal. The Disciplinary Tribunal will consider only whether it is of the opinion, based on the documentation provided to the Committee that a prima facie case does or does not exist against the Member, the Member Firm, Affiliate Member or Student.

(m) If, following its consideration of the appeal received under Bye-law 6.60(j), the Disciplinary Tribunal is of the opinion that a prima facie case exists against the Member, Member Firm, Affiliate Member or Student, it shall arrange for the communication of this to the Investigation Committee and the Complainant, along with the reasons for its opinion, within twenty-one (21) days. The Investigation Committee will then be required to treat the Complaint as if it had come to the opinion that a prima facie case exists against the Member,

Member Firm, Affiliate Member or Student and proceed with the Complaint in line with Bye-law 6.60(o).

(n) If following its consideration of the appeal received under Bye-law 6.60 (j), the Disciplinary Tribunal is of the opinion that a prima facie case does not exist against the Member, Member Firm, Affiliate Member or Student the Committee shall arrange for the communications of these findings to the Member, Member Firm, Affiliate Member or Student, and the Complainant providing the reasons for its opinion within twenty-one (21) days.

(o) If the Investigation Sub-Committee is of the opinion that a prima facie case exists against the Member, Member Firm, Affiliate Member or Student, it may decide:

- (A) That no further action is required in respect of part or all of the complaint;
- (B) That it will defer consideration of the complaint until such time as:
 - i. the Committee has obtained such information, documentation, records or other evidence that it requires;
 - ii. require particular performance by the Member, Member Firm, Affiliate Member or Student to deal with the matter;
- (C) To make an order (to be known as a Consent Order) with the agreement of the Member, Member Firm, Affiliate Member or Student. The order may include any or all of the following:
 - i. That he be reprimanded;
 - ii. That he be fined a sum not exceeding €30,000;
 - iii. Require specific performance or desist from a particular course of action;
 - iv. An order for Costs in accordance with bye law 6.22.2.
- (D) That the complaint will rest on file;
- (E) That it will refer part or all of the Complaint to the Disciplinary Committee;

Where the Investigation Sub-Committee decides that the case will rest on file the Committee will notify the Member, Member Firm, Affiliate Member or Student, and the Complainant that it has found that a Prima Facie case exists; that the Committee has decided not to refer the complaint to the Disciplinary Committee. in this case; that while no action is being taken at this point in time, in the event that further concerns coming to the attention of the Investigation Committee the current matter may be included in a future referral to the Disciplinary Committee. The Member, Member Firm, Affiliate Member, Student or Complainant may appeal the decision to allow the case to rest on file to Disciplinary Committee, and such a request must be made within thirty (30) days of the Investigation Sub-Committee issuing their decision.

(p) Following the receipt of an appeal in writing from the Complainant under Bye-law 6.60(j), the Disciplinary Tribunal will convene within sixty (60) days to consider the appeal. The Disciplinary Tribunal will consider only whether it is of the opinion, based on the documentation provided to the Tribunal, whether the case should or should not rest on file.

(q) If, following its consideration of the appeal received under Bye-law 6.60(j), the Disciplinary Tribunal is of the opinion that the case should rest on file, it will arrange for this decision to be communicated to the Investigation Committee, the Complainant, and the Member, Member Firm, Affiliate Member or Student along with the reasons for that opinion, within twenty-one (21) days.

(r) If, following its consideration of the appeal received under Bye-law 6.60(j) the Disciplinary Tribunal is of the opinion that the case should not rest on file, it will arrange for this decision to be communicated to the Investigation Committee, the Complainant, and the Member, Member Firm, Affiliate Member or Student along with the reasons for this decision, within twenty-one (21) days. The Investigation Committee will then treat the Complaint as if it had come to the opinion that that a prima facie case exists against the Member, Member Firm, Affiliate Member or Student and proceed with the Complaint in line with Bye-law 6.60(o), but may not decide under 6.60(o)(D) to allow the Complaint to rest on file.

(s) Where the Investigation Sub-Committee makes a decision or order under these Bye-Laws the Committee may also make an order of costs to be paid to the Institute, as well how the decision will be publicised. The Investigation Sub-Committee will notify the Member, Member Firm, Affiliate Member or Student and the Complainant in writing of its decision and require written notice from the Member, Member Firm, Affiliate Member or Student agreeing to be bound by the order within twenty-eight (28) days of the Committee issuing its decision. Where the Member, Member Firm, Affiliate Member or Student fails to give written agreement to be bound by the decision within the allotted time the matter will be referred to the Disciplinary Committee.

(n) Nothing in this Bye-Law may prevent the Investigation Sub-Committee changing its decision to act in a particular manner where further evidence on the case comes to light, so long as such a change is not contrary to natural justice, due process and fair procedure.

Disciplinary Tribunal

- 6.61 When a formal Complaint is referred to the Disciplinary Committee by the Investigation Committee, or where a complainant seeks an appeal, the Chairman of the Disciplinary Committee, or failing him, the Vice-Chairman of such Committee, shall appoint a Disciplinary Tribunal from Members of the Disciplinary Committee to hear the formal complaint.
- 6.62 (a) The Disciplinary Tribunal shall consist of five members of whom two shall be Members and other members shall be non-Members nominated by the Council. The quorum for meetings of the Tribunal shall be three. A simple majority of those present must be non-Members. The Disciplinary Tribunal shall not include any member or former member of the Investigation Committee that has been concerned with the complaint that is now the subject matter before the Disciplinary Tribunal.
- (b) A suitably qualified individual shall serve as recording secretary to the Disciplinary Tribunal. At the conclusion of the hearing of a disciplinary case, the recording secretary shall produce an official record of the proceedings.
- 6.63 (a) In the event that the majority of the Investigation Sub-Committee is of the opinion that a prima facie case exists against the Member, Member, Affiliate Member, Firm or Student, and the Investigation Committee decides to refer a complaint to the Disciplinary Committee it shall notify the Member, Member Firm, Affiliate Member or Student and the Complainant of this. When a formal complaint is referred to the Disciplinary Tribunal by the Investigation Committee, the Disciplinary Tribunal shall notify the Respondent and the Complainant of the nature of the complaint and of the time and place fixed for the hearing, and shall be held in public unless the Disciplinary Tribunal believes that there are exceptional circumstances which would make the holding of a Disciplinary Tribunal meeting in public inappropriate.

(b) The Disciplinary Tribunal shall give the Respondent the opportunity to attend the hearing, to be heard before it and to adduce documentary evidence. The Respondent may call witnesses to give evidence on his behalf and, if he so desires, he shall be permitted to be represented at the hearing by counsel or by a solicitor or by a Member of the Institute. The Respondent may cross-examine witnesses. If the Disciplinary Tribunal is satisfied that notice of the hearing was duly given to the Respondent and the Respondent does not attend the hearing, then the Disciplinary Tribunal may proceed with the hearing in the absence of the Respondent.

(c) Any notice of a disciplinary hearing which is issued to the Respondent and the Complainant shall, at the same time, be sent to the Irish Auditing and Accounting Supervisory Authority, who may attend the hearing at their discretion whether it is held in private or in public.

(d) The Investigation Sub-Committee may appoint any representative or any Member of the Institute to explain the formal complaint before the Disciplinary Tribunal or may instruct a solicitor to support, or brief counsel to support, such complaint. Witnesses may be called to give evidence on behalf of the Investigation Sub-Committee and documentary evidence may be adduced.

(e) The Disciplinary Tribunal may, at its discretion, require that certain evidence should be taken under oath.

(f) The Disciplinary Tribunal may instruct a solicitor to act, or brief counsel to act, as legal advisor on the hearing of any formal complaint.

(g) Following receipt of the aforesaid notice from the Disciplinary Tribunal by the Respondent, he may give notice in writing to the Secretary of the Institute that he wishes to admit, without appearing before the Disciplinary Tribunal, that the complaint brought against him is valid. In such circumstances the Disciplinary Tribunal will proceed to hear the complaint in the absence of the Respondent.

(h) Where the matters complained of are the subject of civil or criminal proceedings the matter may be deferred until such time as all civil or criminal proceedings have been concluded.

6.64 (a) If the Disciplinary Tribunal is of the opinion that the complaint has been proved in whole or in part, it shall make a finding to that effect. In such circumstances, having regard to the status (Member, Member Firm, Affiliate Member or Student) of the Respondent and the Disciplinary Tribunal's views as to the nature and seriousness of the complaint and any other circumstances the Disciplinary Tribunal considers relevant, the Tribunal may make any one or more of the following orders against the Respondent.

A) If the Respondent is a Member:

- (i) That he be excluded from membership;
- (ii) That he be suspended from membership for a period decided by the Disciplinary Tribunal, but which shall not exceed two years. In the case of suspension for failure to satisfy a judgement debt, the period of suspension shall continue until the Member shall establish to the satisfaction of the Disciplinary Tribunal that the debt has been satisfied;
- (iii) That any licence, authorisation or permit issued to him may be withdrawn;

- (iv) That he be ineligible for a Practising Certificate and/or auditing certificate.;
- (v) That he be reprimanded;
- (vii) That he be fined a sum to be determined by the Disciplinary Tribunal, but not exceeding €30,000;
- (viii) That an order for costs be made in accordance with bye law 6.42.
- (ix) That no further action be taken;
- (x) Any other order that the Disciplinary Tribunal feels is appropriate to the circumstances of the case.

B) If the Respondent is a Member Firm:

- (i) That it be prohibited from describing itself as a firm of Incorporated Public Accountants and that its Auditing Certificate be withdrawn;
- (ii) that it be temporarily be prohibited from describing itself as a firm regulated by the Institute of Certified Public Accountants in Ireland and that its Auditing Certificate be suspended for a period decided by the Disciplinary Tribunal, but which shall not exceed two years. In the case of suspension for failure to satisfy a judgement debt, the period of suspension shall continue until the Member Firm shall establish to the satisfaction of the Disciplinary Tribunal that the debt has been satisfied;
- (iii) That it be ineligible for an Auditing Certificate;
- (iv) That it be reprimanded;
- (v) That it be fined a sum to be determined by the Disciplinary Tribunal, but not exceeding €30,000;
- (vi) That an order for costs be made in accordance with bye law 6.42
- (vii) That no further action be taken;
- (viii) Any other order that the Disciplinary Tribunal feels is appropriate to the circumstances of the case.

C) If the Respondent is a Student:

- (i) That he be declared unfit to become a Member of the Institute of Certified Public Accountants in Ireland;
- (ii) That he be declared ineligible for a certain period to sit for such examination or examinations (or parts thereof) as shall be specified in the order. The period of ineligibility in the order shall not exceed two years;
- (iii) That he be disqualified from such examination or examinations (or parts thereof) as shall be specified in the order, not being an examination or part thereof the result of which shall already have been notified to him prior to the date of the order of the Disciplinary Tribunal;
- (iv) That he be fined a sum to be determined by the Disciplinary Tribunal, but not exceeding €30,000;
- (v) That an order for costs be made in accordance with bye law 6.42;
- (vi) That he be reprimanded;
- (vii) That no further action be taken;
- (viii) Any other order that the Disciplinary Tribunal feels is appropriate to the circumstances of the case.

D) If the Respondent is an Affiliate Member:

- (i) That he be declared unfit to become a Member of the Institute of Certified Public Accountants in

Ireland;

- (ii) That he be declared ineligible for a certain period to sit for such examination or examinations (or parts thereof) as shall be specified in the order. The period of ineligibility in the order shall not exceed two years;
 - (iii) That he be excluded from Affiliate Membership;
 - (iv) That he be fined a sum to be determined by the Disciplinary Tribunal, but not exceeding €30,000;
 - (v) That an order for costs be made in accordance with bye law 6.42
 - (vi) That he be reprimanded;
 - (vii) That no further action be taken;
 - (viii) Any other order that the Disciplinary Tribunal feels is appropriate to the circumstances of the case.
- (b) If, notwithstanding its finding that a complaint has been proved, the Disciplinary Tribunal is of the opinion that, in all the circumstances of the case, no such order as aforesaid in these Bye-Laws is appropriate, it may make an order that no further action be taken on the complaint.
- (c) Any such order may also include a requirement that the Member, Member Firm, Affiliate Member or Student obtain particular advice and implement the advice so obtained.
- (d) Provided that an appeal has not been received by the Appeals Panel, any order of the Disciplinary Tribunal shall take effect thirty (30) days from the date of the making of the order and notice of the order shall be given to the Respondent within fourteen (14) days of the making of the order and a copy of the order shall be given to the Council. The Complainant will be notified of the order as soon as is practicable after the order comes into effect.
- 6.65 (a) Where the Disciplinary Tribunal makes an Order against the Respondent he may, within twenty one (21) days of the date of the service of the Order on him, give notice of appeal in writing, to the Secretary. Those grounds of appeal shall not be amended thereafter, except with the leave of the Appeals Tribunal appointed to hear such appeal. No appeal shall rest solely on the matter of costs.
- (b) Upon receipt of an appeal, the Secretary shall forward same to the Chairman of the Appeals Panel who shall appoint an Appeals Tribunal in accordance with bye law 6.37 to hear the appeal..
- (c) On receipt by the Secretary of a notice of appeal, any order of the Disciplinary Tribunal shall be suspended, pending the decision of the Appeals Tribunal or the withdrawal of the Appeal.

Appeal Tribunal

- 6.59 (a) The Appeal Tribunal shall send a notice to the Appellant and the Complainant specifying the time and place fixed for the appeal hearing. The appeal hearing will be held in public unless the Appeal Tribunal believes that there are exceptional circumstances that would make the holding of an Appeal Tribunal meeting in public inappropriate.
- (b) Any notice of an appeal hearing, which is issued to the Appellant and the Complainant shall be sent at the same time to the Irish Auditing and Accounting Supervisory Authority who may attend the hearing at their discretion whether it is in private or in public.
- (c) The Appeal Tribunal shall give the Appellant the opportunity to attend the hearing, to be heard before it, to call witnesses to give evidence on his behalf, to adduce documentary evidence and, if he so desires, he shall be permitted to be represented at the appeal hearing by counsel or by a solicitor or by a Member of the Institute. The Appellant has also the right to cross-examine witnesses.
- (d) If the Appellant does not attend the hearing and, provided that the Appeal Tribunal is satisfied that notice of that hearing was duly given to the Appellant, the Appeal Tribunal may proceed to hear the appeal in the absence of the Appellant.
- (e) The Appeals Tribunal may instruct a Solicitor to act, or to brief counsel to act, as legal advisor on the hearing of any appeal.

- (f) On any appeal, the Appeal Tribunal may affirm, vary or rescind any order of the Disciplinary Tribunal. Also on such appeal, the Appeal Tribunal may substitute any other order or orders, (on such terms and conditions as it thinks appropriate), which the Disciplinary Tribunal might have made on the original formal complaint. The Appeal Tribunal may, if it considers it appropriate, order that the complaint be heard again by the Disciplinary Tribunal.
- (g) An Order of the Appeal Tribunal shall take effect as from the date that the Order is made unless the Appeal Tribunal, in its absolute discretion, specifies otherwise in the order.
- (h) Notice of any order of the Appeal Tribunal, which shall specify the reasons for such findings of the Appeal Tribunal, shall be sent to the Appellant, the Complainant and to the Council within fourteen (14) days of the making of such an order.
- 6.66 (a) Any order made under Bye-Law 6.57 may direct that the payment to the Institute a sum of money by way of costs and that such sum shall be determined by the Appeal Tribunal in accordance with bye law 6.42.
- (b) All costs, howsoever ordered, shall be paid within twenty eight (28) days of the date of the order having been served on the Appellant.
- (c) The Appeal Tribunal may reduce any costs ordered by the Disciplinary Tribunal and the Appeal Tribunal may direct that the Appellant pay a sum of money by way of costs of the appeal. Any such costs shall be paid within twenty-eight days of the date of the order having been served on the Appellant.
- 6.67 (a) Whenever the Disciplinary Tribunal finds that a formal complaint has been proved in whole or in part and makes an Order under Bye-Law 6.60, it shall, (subject as provided in this Bye- Law), cause the Order to be published as soon as is practicable in such publications (including electronic publications) and in such manner as it thinks fit. The findings of the Order shall be recorded in the register of findings which shall be maintained at the Institute's registered Office and made available to the public during Office hours. However, if the Respondent has been acquitted or if the Disciplinary Tribunal has ordered that no further action be taken on the complaint, the order shall not be published unless so requested by the Respondent.
- (b) No publication shall be made prior to the expiry of the period permitted for the giving of notice of appeal or, if notice of appeal is received by the Secretary, no publication shall be prior to the making of an order by the Appeal Tribunal.
- (c) The Appeal Tribunal shall cause any order made by it to be published, as soon as practicable, in such publications and in such manner as it thinks fit. The findings of the Order shall be recorded in the register of findings which shall be maintained at the registered Office and made available to the public during Office hours. However, if the Appellant has been acquitted or if the Appeal Tribunal; has ordered that no further action be taken the complaint, the order shall not be published, unless so requested by the Appellant.
- (d) Any such publication under this Bye-Law shall state the name of the Respondent and the order or orders made against him, unless the Disciplinary Tribunal or Appeal Tribunal direct otherwise, provided always that, when the order is for the exclusion or suspension of a Member, Member Firm, Affiliate Member or Student, then the name of the Respondent shall be stated in such publication.
- (e) Where the matters complained of are the subject of civil or criminal proceedings, the matter may be deferred until such time as the civil or criminal proceedings have been concluded.

Requirement to Surrender Certificates

- 6.68 If, as a result of an order under these Bye-Laws, a Member, Member Firm, Affiliate Member or Student is excluded or suspended from Membership, Firm Membership, Affiliate Membership or Student membership, he shall immediately deliver up to the Secretary of the Institute all relevant certificates, licenses and authorisations which are affected by the order.

Audit Practitioners Rules of Confidentiality

- 6.69 Notwithstanding any other provision of the Articles of Association of the Institute or Bye- laws, a Member or former Member of the Institute who has at any time been a Member in Audit Practice must continue to observe any and all rules of confidentiality relating to the undertaking of a Statutory Audit. Any failure to keep to these rules by the Member or former Member shall render that Member or Former Member liable to disciplinary action, irrespective of their Membership status at the time of commencement of the disciplinary action. Nothing in this Bye-law shall operate to prevent the Institute from complying with its obligations under S.I. No. 312/2016- European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No 537/2014) Regulations 2016 or the Companies Acts.

Requirement to Preserve Documents

- 6.70 As soon as a Member, Member Firm, Affiliate Member or Student becomes aware that they are the subject of a complaint they are required to retain any and all documentation, irrespective of the form it is held, until the Member, Member Firm, Affiliate Member or Student is informed in writing that all matters relating to the complaint have been complete.

Appendix A Complaint Form

The Disciplinary Process of the Institute is set out in Bye Law 6 of the Institute's Bye Laws.

This form should be completed by any person wishing to make a complaint against a CPA member, firm, affiliated partner or registered student.

A COPY OF THIS FORM TOGETHER WITH ANY ATTACHED DOCUMENTATION SHALL BE FORWARDED TO THE MEMBER, FIRM, AFFILIATED PARTNER OR STUDENT WHO IS THE SUBJECT OF THIS COMPLAINT

Your Name:

Your Address:

Your Phone no:

Your email address:

Name and Address of CPA Member, Firm, Affiliated Partner or Student complaint is in relation to:

Please set out in as much detail as possible the circumstances giving rise to the complaint and the reasons for the complaint. [PLEASE USE ADDITIONAL PAGES IF REQUIRED]

Please attach copies of any relevant documentation to this form which you believe is relevant to the complaint.

Please indicate how you feel this complaint could be resolved to your satisfaction.

USING YOUR PERSONAL INFORMATION

We will treat your personal information in accordance with data protection legislation. We will use your information to carry out our responsibilities as a regulator and as a professional body. We may, either as required by law or to carry out those responsibilities, share your personal information to comply with the requirements of government departments, agencies, and regulators. For more information about our data protection policy, please go to <https://www.cpaireland.ie/Privacy-Policy>

The CPA Ireland member or firm who is the subject of the complaint will need to be shown all material relevant to the complaint against them. All correspondence between the CPA Ireland member or firm, the complainant and CPA Ireland is private and confidential, although it may be disclosed to persons representing CPA Ireland or the CPA Ireland member or firm, or to CPA Ireland support member. If CPA Ireland is asked by a government department, agency, or regulator to disclose information about the CPA Ireland member or firm, we may share information about the complaint.

Please tick this box if you DO NOT want us to share any evidence or correspondence with the CPA Ireland member or firm.

Please be aware that CPA Ireland may not be able to act on your complaint if we cannot disclose the supporting evidence to the accountant.

If there are any specific documents you do not wish us to share with the CPA Ireland member or firm, please mark them clearly as such. If you have any questions about making a complaint, please call our helpline on +353 (0)1 4251041.

Please attach copies of any relevant documentation to this form which you believe is relevant to the complaint.

Signed
COMPLAINANT

Date

Please send your completed form and supporting documents to dconway@cpaireland.ie or

Ms. Cáit Carmody.
The Secretary,
Institute of Certified Public Accountants in Ireland,
17 Harcourt Street,
Dublin 2.
D02 W963.

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Scheme of Mediation

Appendix B

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The Institutes' bye laws on discipline recognise that there are certain areas of dispute that arise and result in a complaint being made to the Institute, as at least one party to the dispute is a CPA member. In certain cases, such disputes may be resolved more satisfactorily for all parties by mediation, rather than through the complaints process. Therefore, the bye laws provide for, in the absolute discretion of either the Secretary or the Investigation Committee, the referral of certain complaints to mediation. See bye law 6.17 attached – Appendix 1.

“Mediation is a process whereby an independent, neutral Mediator(s) assists the parties to come to agreement through collaborative engagement. The Mediator’s role is non-judgmental and non-directive. The Mediator is neither judge nor arbitrator and does not adjudicate or give decisions on the rights or wrongs of the actions of the parties. The Mediator supports the parties in identifying their issues and needs, in exploring how those needs can be addressed and facilitates them to reach agreement” (Definition of Mediators Institute of Ireland)

Mediation provides a confidential and safe environment for the parties to air their issues and concerns with the other party at first hand and to hear the complaints, issues and concerns that are being made against them.

The content of mediation is confidential to the parties and the Mediator and can only be shared with a third party with the expressed permission of all parties.

The parties and the Mediator agree the terms of the mediation at the outset of the mediation.

Mediation is a voluntary process. Mediation cannot proceed if either of the parties objects to a mediation referral. Likewise each side may withdraw consent at any stage of the process and the mediation will be terminated immediately.

Why Chose Mediation?

Advantages for a Member:

- Less adversarial than the complaints process
- You get control of the process
- Speedy resolution – the formal complaints process takes an average of six months and often takes a lot longer
- No disciplinary record if mediation is successful
- No publication if agreement is reached
- Low risk
- Potentially lower cost

Advantages for a Complainant:

- Less adversarial than the complaints process
- Ability to come up with creative solutions to the problem
- Speedy resolution – the formal complaints process takes an average of six months and often takes a lot longer
- Preservation of options
- Swift settlement –the standard complaints process, while it may successfully discipline a member, does not guarantee any resolution of the dispute with the complainant
- You get a say in the process

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Stages in Mediation Process

Stage 1 – Agree Process and Appoint a Mediator

1. The Secretary or Investigation Committee, if they deem a complaint suitable for mediation, will make contact with both parties and suggest that they engage in mediation as an option to resolve their conflict
2. If both parties agree to Mediation, the Institute will appoint a Mediator from a panel of Mediators
3. The Mediator will contact both parties and agree with both how to deal with the costs of the mediation
4. The Mediator will hold introductory meetings with the parties to identify the problems and develop a framework for the process

Stage 2 – Meetings

1. The Mediator will give each party an opportunity to present an outline of their perspective of the events leading to the dispute – normally in joint session
2. The Mediator will facilitate the examining of information, perceptions and understandings and in exploring what the main issues, obstacles and possibilities are.
3. The Mediator may decide to continue in joint session or may move into private meetings. Throughout the substantive discussion, the Mediator facilitates the Parties in exploring their needs and underlying interests.

Stage 3 – Negotiation of a Settlement

Efforts to reach a settlement continue until:

1. The Parties reach agreement to settle the dispute and such agreement is recorded in writing and signed by both Parties (the Mediated Agreement)
2. One of the Parties decides to withdraw from the mediation – in this case, the Mediator will inform the Secretary or the Investigation Committee of this fact and the complaint process resumes in accordance with bye law 6.
3. The Mediator decides to discontinue the mediation - in this case, the Mediator will inform the Secretary or the Investigation Committee of this fact and the complaint process resumes in accordance with bye law 6.

Stage 4 – The Written Settlement

1. If the parties agree to settle this dispute, the Parties, with the help of the Mediator will draft an agreement detailing the terms of the settlement.
2. When all Parties agree to its terms the Parties sign and execute the written agreement – which becomes legally binding. The Mediator will inform the Secretary/ Investigation Committee that agreement has been reached and the complaint file will be closed.
3. In the event that no written agreement is signed by the Parties to the dispute, the Mediator will inform the Secretary or the Investigation Committee of this fact and the complaint process resumes in accordance with bye law 6.

Confidentiality of Mediation Process

Any discussion that occurs between the Parties and/or the Mediator during the mediation process shall be on a confidential and without prejudice basis and cannot be relied upon before the Investigation Committee, the Special Investigator or at any Disciplinary hearing or Appeal hearing.

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Appendix 1

Extracts from Bye Law 6 – Discipline

6.17. MEDIATION

6.17.1

The *Secretary* and/or *Investigation Committee* may in its absolute discretion decide that it is in the best interests of all the parties to deal with the *Complaint* through mediation. The *Secretary/ Investigation Committee* will only make such a determination where the *Complaint* does not raise matters of consumer protection. The *Investigation Committee* can make this determination at any stage once the *Complaint* has been laid before it.

6.17.2

The *Complaint* shall not be dealt with by way of mediation unless both the *Complainant* and *Respondent* agree to engage in the process. If either party refuse to engage in the process or object to the person appointed as mediator the *Complaint* shall be referred by the *Secretary* to the *Investigation Committee* or, if already referred, proceed as normal before the *Investigation Committee*.

6.17.3

The costs of the mediation process shall be borne by the parties to the *Complaint* and shall not be borne by the *Institute*.

6.17.4

The mediator shall be appointed by the *Secretary* from the Panel of Mediators.

6.17.5

The *Council* shall each year appoint not less 6 persons to the Panel of Mediators. Those persons may be but do not have to be *Members* of the *Institute* or *Lawyers*²⁴.

6.17.6

The Mediator appointed shall carry out the mediation in accordance with such scheme published by the *Institute* from time to time, and subject thereto, it shall be for the mediator in his absolute discretion to set out the mediation process to be adopted.

6.17.7

If the Mediator is of the opinion at any stage during the mediation process that either party is unwilling to engage in the mediation process he shall notify the *Secretary* of same and the *Complaint* shall be automatically referred to the *Investigation Committee* by the *Secretary* and the *Secretary* shall inform the parties of this *In Writing*.

6.17.8

Any discussion that occurs between the parties and/or the Mediator during the mediation process shall be on a confidential basis and cannot be relied upon before the *Investigation Committee*, the Special Investigator, or at any *Disciplinary* hearing or *Appeal* hearing.

6.17.9

If the mediation process resolves the *Complaint* the mediator shall notify the *Secretary In Writing* that the *Complaint* has been resolved. This notification shall include a document signed by the parties, witnessed and dated acknowledging that the *Complaint* has been resolved. No further action will be taken by the *Institute* in relation to this *Complaint*.

6.17.10

The *Secretary* shall notify the *Investigation Committee* as soon as reasonably possible when a *Complaint* is resolved by mediation.

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²⁴ Article 49(o)