

Full schedule of amendments to the Disciplinary Bye-laws - 2019



DBL	Proposed amendment	Rationale / comments
1.2	Minor amendment to the definition of 'complainant'.	The amendment is required to correct 2 minor typographical errors.
1.2	Minor amendment to the definition of 'director'.	The amendment is required to correct a typographical error.
1.2	Minor amendment to the definition of 'firm'.	The amendment is proposed for completeness and consistency with paragraphs (a) and (b).
1.2	Minor amendment to the definition of 'interim review hearing'	The amendment is required to correct a typographical error.
1.2	New definition of 'Professional Standards Department committee' has been inserted.	The new definition of 'Professional Standards Department committee' is used in DBLs 30 (interim orders) and 37.1 (referral of matters to the Fitness Committee). It includes all Professional Standards committees with the exception of the Fitness Committee.
1.2	New definitions of 'proposed settlement agreement', 'Settlement Agreement Chair' and 'settlement order' have been inserted.	The new definitions are a consequence of the insertion of draft DBL 18B (settlement orders process).

1.2	Definition of 'provisional member' has been amended.	The definition has been amended for clarity.
1.2	New definition of 'registered email address' has been inserted.	The new definition of 'registered email address' is used in DBLs 1.6 and 1.6A (service of notices / documents on respondents / respondent firms).
1.2	New definition of 'regulated activities' has been inserted.	The new definition of 'regulated activities' is used in DBLs 4.1 and 5.1 (liability of individuals and firms to disciplinary action under the DBLs).
1.2	Minor amendments to the definition of 'review hearing'	Minor drafting amendments for consistency with other bye-laws.
1.2	Amendments to the definition of 'tribunal'	The definition has been amended as a consequence of the changes to DBL 30 (interim orders).
1.2	Minor amendment to the definition of 'written referral'	Minor drafting amendment for consistency with other bye-laws.
1.5	Minor amendments to the DBL dealing with interpretation of the bye-laws.	The amendment is required as a consequence of the proposed changes to DBL 30 (interim orders). Paragraph (d) has been inserted for completeness to include orders of Fitness Panels at initial, interim review and review hearings.
1.5A	Cross-reference to DBL 6A has been removed from paragraph (b)	Minor amendment to correct a typographical error.
1.6	Service on notices / documents under the DBLs on respondents / respondent firms	Minor amendments are proposed to remove the requirement for consent of the individual or firm to service of notices / documents under the DBLs by email).

1.6A and 1.8	Service of notices and other documents	<p>New bye-law is proposed to be inserted to enable respondents / respondent firms to request that an alternative postal or email address be used for the purposes of service of notices / documents under the DBLs. This is sometimes requested by respondents who do not wish for their principal (work) address to be used for the purposes of service.</p> <p>A cross-reference to DBL 1.6A has been inserted into DBL 1.8 – consequential change only.</p>
4.1(d)	Liability of individuals to disciplinary action.	Minor drafting amendment for completeness only. Identical amendments have been made to DBLs 5.1(d), 6.1 and 6.2.
4.1(e)	New paragraphs have been included in DBLs 4.1 and 5.1 to make liable to disciplinary action respondents / respondent firms who or which have been convicted of an indictable offence (or have, outside England and Wales, been convicted of an equivalent offence).	In relation to individuals, this is a drafting amendment only. DBL 4.2(g) already provides that an individual shall be liable to disciplinary action if they have been convicted of an indictable offence. However, as DBL 4.2 deals mainly with insolvency issues, it seems logical from a drafting perspective to move this section into DBL 4.1.
4.1(f)	A new paragraph (f) has been included in DBL 4.1 to make liable to disciplinary action respondents who have had a disqualification order made against them, or who have given a disqualification undertaking, under the Company Directors Disqualification Act 1986 (or who have had orders made against them or given undertakings	The fact that a respondent has had a disqualification order made against them, or has given a disqualification undertaking under the CDDA 1986 already constitutes proof of certain matters for the purposes of the DBLs (see DBLs 7.2 and 7.3). However, in such circumstances, the Professional Conduct Department (PCD) is still required to establish discredit on the part of the respondent in bringing a complaint under DBL 4.1(a). Extending the circumstances under DBL 4.1 which give rise to an immediate liability to disciplinary action will prevent the Investigation Committee (IC) or the Disciplinary Committee (DC) having to re-hear in full the case for disqualification which has already been determined and ordered by a Court or agreed by the respondent.

	under legislation of equivalent effect outside England and Wales).	
4.1(g)	New paragraphs have been included in DBLs 4 and 5 to make liable to disciplinary action respondents / respondent firms who or which carry out activity regulated under statute when not duly authorised.	Such cases are currently brought under DBLs 4.1(a) and 5.1(a) which requires the PCD to establish both the fact that the individual or firm has engaged in regulated activity when not authorised, and that the conduct has brought the individual / firm, ICAEW or the profession into discredit. Inserting an additional paragraph in DBLs 4.1 and 5.1 will make it more straightforward to bring complaints in these types of cases which already constitute an offence in law.
4.2(a)	The ambit of paragraph 2(a) has been amended to encompass respondents who are principals of firms which are the subject to a judgment debt.	Currently, DBL 4.2(a) provides that a respondent shall be liable to disciplinary action if they have failed personally to satisfy a judgment debt. For consistency, this paragraph has been extended to include cases where the individual is a principal of a firm in public practice which has a judgment debt against it.
4.2(b)	Paragraph 2(b) has been amended to refer to the assignment of some or all assets for the benefit of creditors by a principal of a firm (either in a personal capacity or as a principal).	This is a drafting change only to make the language used consistent with other paragraphs.
4.2(e)	Paragraph (e) has been amended to make liable to disciplinary action respondents who are principals of firms in public practice during the 6 months prior to the firms entering insolvency.	Currently, DBLs 4.2(e) and (f) only make liable to disciplinary action respondents who, at the time a practising firm becomes insolvent, are principals in the practice. DBL 4.2(e) has been amended to extend liability to disciplinary action to individuals who have been principals in the firms at any point during the 6 months prior to the firms entering insolvency. PCD report that they are more frequently coming across cases where principals have either resigned from the practice before it becomes insolvent, or where the firm has ceased practice and then becomes insolvent a short time after. In both scenarios, PCD are unable to take disciplinary action against the principals under the current DBLs.

		<p>References in these paragraphs to ‘an administration order’ have also been replaced with more general references to the appointment of an administrator as firms can enter into administration without an order of the Court.</p> <p>Sub-paragraph (ii) has also been inserted to address cases where corporate practices are subject to an effective resolution by their shareholders or members for them to be wound up on grounds of insolvency. This removes the need for DBL 4.2(f) – i.e. a drafting amendment only.</p>
5.1(e) and (f)	Minor amendments to paragraph (e) and the deletion of paragraph (f)	Drafting amendments only which follow the drafting amendments to DBL 4.2(e) and (f).
(Renumbered) 5.1(f)	New paragraph to make liable to disciplinary action a respondent firm that has been convicted of an indictable offence (or has, outside England and Wales, been convicted of an equivalent offence).	This amendment is proposed for consistency with draft DBL 4.1(e) – liability of individuals to disciplinary action following a conviction for an indictable offence. Currently, such convictions in relation to respondent firms constitute conclusive evidence of an act or default for the purposes of DBL 5.1(a) only – see DBL 7.1.
5.1(g)	New paragraph inserted to make liable to disciplinary action respondent firms which carry on activity regulated under statute when not duly authorised.	An equivalent amendment in relation to individuals is set out at DBL 4.1(g).
5.3	Minor drafting amendment only – reference to ‘partners’ has been replaced by ‘principals’	This is a minor amendment to ensure that the provision applies also to body corporates, not just partnerships.
(Former) 7.1	DBL 7.1 has been deleted.	This DBL is proposed to be deleted following the insertion of new DBLs 4.1(e) and 5.1(f).

(Former) 7.2 and 7.3	Paragraphs (b) – (d) of DBL 7.2 have been deleted; DBL 7.3 has been deleted.	<p>Paragraphs (b) and (c) which enable PCD to treat disqualification orders etc as proof of certain matters for the purposes of the DBLs are proposed to be deleted following the insertion of new DBL 4.1(f).</p> <p>Paragraph (d) which enables PCD to treat dishonest tax advisor conduct notices as conclusive evidence purposes of DBL 4.1(a) is proposed to be moved to (renumbered) DBL 7.2 and be recast as prima facie evidence of unfit behaviour only. This change is proposed for consistency with the approach taken to other types of evidence that can be relied upon for the purposes of proceedings under that bye-law.</p> <p>DBL 7.3 has been deleted as a consequence of the deletion of (former) DBL 7.2(b) and (c).</p>
(Former) 7.4 and 7.5	DBL 7.4(c) has been amended to refer to ‘any proceedings before, or a report by, any professional or regulatory body’, and a new paragraph (e) is proposed to be inserted; DBL 7.5 has been deleted	<p>DBL 7.4(c) currently enables PCD, in bringing a complaint, to rely on a finding of fact in any proceedings before, or report by, a body listed in DBL 7.5 as prima facie evidence of facts found for the purposes of the DBLs.</p> <p>DBL 7.4(c) has been framed in more general terms to enable PCD to rely on a finding of fact in any proceedings before / report by any professional or regulatory body (whether in the UK or elsewhere). This avoids the need for a prescriptive list of bodies in DBL 7.5 and for the DBLs to be amended any time this list of bodies needs to be varied.</p> <p>Paragraph (e) has been inserted concerning dishonest tax adviser conduct notices (see commentary on former DBL 7.2 above).</p>
(Former) 7.6 – 7.8	Minor amendments are proposed to DBLs 7.6 – 7.8	These are consequential drafting amendments that follow the changes to DBL 7 outlined above. In (former) DBL 7.7 reference to the ICAEW Council making regulations has been replaced with the ICAEW Regulatory Board.

9.1, 9.11 and 10.9	DBL 9.1 has been amended and new DBLs inserted at 9.11 and 10.9 referring to the requirement on complainants to comply with the Code of Conduct.	The amendments are intended to address concern about the behaviour of a minority of complainants who are abusive towards PCD staff, or whose behaviour limits the ability of staff to progress other, meritorious complaints.
9.2	Reference to 'Council' has been replaced with 'ICAEW Regulatory Board' in this bye-law.	The amendment has been made to reflect ICAEW's current internal governance arrangements.
9.3	Amendment to the bye-law that defines what shall constitute a 'complaint' for the purposes of the DBLs.	This amendment is intended to address a query that was raised by the Privy Council Office on the terminology used in the DBLs. It clarifies that where a complaint is brought under different provisions of the DBLs, it will comprise 'parts'.
12.3, 12A.2, 12A.3, 12B	Minor drafting amendments only	References to 'facts or matters' have been replaced with 'complaint(s)' to be consistent with other bye-laws.
14A	Minor amendments have been made to DBL 14A concerning the fixed penalty process.	<p>Paragraph 1 has been amended to enable fixed penalties to be proposed by the head of staff in relation to certain <i>categories of complaint</i>, as well as complaints. This is to reflect the fact that fixed penalties may be proposed in relation to less serious criminal conviction and police caution complaints as agreed by the Regulatory Board at its meeting in December 2018.</p> <p>A new paragraph 7 has also been inserted to provide expressly for payment of any financial penalties by instalment.</p>
14B	A new DBL has been inserted at 14B to enable certain types of serious criminal complaints to be referred directly to the Disciplinary Tribunal by the head of staff (i.e.	<p>This DBL implements the expedited process for certain types of serious criminal complaints which the Regulatory Board approved in principle at its meeting in October 2018.</p> <p>Cross-references to DBL 14B have been inserted in DBL 12.3, 12A.2 and 12A.3.</p>

	avoiding the need for prior review by the IC.	
15.2(c)(ii)	Cross-reference has been updated	This is a consequential amendment resulting from the proposed deletion of DBL 4.2(f)
15.5 and 15.6	Minor drafting amendments only	Minor drafting amendments have been made to DBLs 15.5 and 15.6 for clarity.
16.4 and 16A.3	Paragraphs have been deleted to remove the references to notices being in the form prescribed by the IC regulations.	In 2018, the IC deleted from its regulations the Schedules setting out the form and content of notices concerning consent orders and cautions. This was on the basis that the Schedules were out of date and did not reflect the current drafting of the notices. Text under DBL 16A.3 in relation to costs has been moved up into DBL 16A.2.
(Re-numbered) 16.7, 16.10 – 16.12	New DBLs have been inserted at (re-numbered) DBLs 16.7 and 16.11, and paragraphs 10 and 12 have been amended	DBL 16 has been amended to provide the IC with the power to defer publication of a consent order, where it considers that a delay is necessary in the public interest. In determining the timing of publication, the IC may have regard to the representations of any co-respondents whose complaints have yet to be heard by a Disciplinary Tribunal. The amendments mirror the approach taken to the publication of settlement orders in draft DBL 18B.9 where complaints are brought against multiple respondents arising from the same facts. DBL 18B was developed on advice of Leading Counsel.
17.5	Minor drafting amendment only	Reference to 'facts and matters' has been replaced with 'complaint(s)' for consistency with other DBLs.
18A	A new DBL has been inserted at 18A to enable the IC to recall and reconsider complaints which it has	The draft DBL enables the IC to recall and reconsider complaints that it has previously referred to the DC where it is of the view that:

	previously referred formally to the DC.	<ul style="list-style-type: none"> a) It is appropriate and fair to re-consider whether a prima facie case should have been found in relation to any of the formal complaints; b) The wording of one or more of the formal complaints does not reflect accurately the available evidence and/or the Committee's concerns about the respondent's conduct; or c) An additional complaint or complaints should be considered in relation the respondent's conduct and/or one or more formal complaints should be brought under a different or additional paragraph or bye-laws 4, 5 or 6 based on the available evidence.
18B	A new DBL has been inserted at 18B in relation to settlement orders.	The DBL provides a process for the agreement of settlement orders between the head of staff and the respondent / respondent firm. Any proposed settlement agreement would be on a 'without prejudice' basis and would require the approval of a Settlement Agreement Chair.
19.1	Amendment to the bye-law governing the appointment of a Disciplinary Tribunal.	This amendment is consequential on the insertion of draft DBL 18B. For independence reasons, no member of the DC may be appointed as a tribunal member if they were previously appointed as a Settlement Agreement Chair and considered a proposed settlement order in relation to the formal complaint(s).
22.7	Amendment to DBL 22.7 (power of the tribunal to make orders where the respondent is a provisional member (i.e. student))	DBL 22.7 has been expanded to enable a tribunal to make an order, on finding one or more formal complaints proved, that a provisional member is unfit to become a member and/or a Foundation Qualification Holder. Currently orders are limited to a declaration that the individual is unfit to become a member.
22.8, 22.10	Minor amendments to the provisions setting out the powers of tribunals.	Minor drafting amendments only.
22.12	New DBL empowering the tribunal to extend an interim order previously made under DBL 30	The draft DBL enables the tribunal to include in its order a direction that an order previously made against the respondent under DBL 30 shall continue in force until the time period for appeal has passed or, if the respondent brings an appeal against the tribunal's order, until the appeal has been finally determined.

23.3 and 24A.3	Reference to 'Council' has been replaced by the 'ICAEW Regulatory Board' in these by-laws.	The amendment has been made to reflect ICAEW's current internal governance arrangements.
26A.1	Paragraph (c) has been deleted	This ground for appeal by the Investigation Committee has been deleted on grounds of fairness to the respondent / respondent firm.
30, 30A, 30B and 31	Amendments are proposed to DBLs 30 and 31 and new DBLs inserted at 30A and 30B (interim orders – previously intervention orders)	<p>The existing DBL concerning intervention orders has been replaced with a process to enable a Disciplinary Tribunal to order the suspension of a respondent's membership, practising certificate or licence on an interim basis pending the substantive hearing of the complaints. The process will only be available in limited circumstances (i.e. where the respondent has appeared before a court charged with an indictable offence, where they have been excluded from membership of another professional body, or where they have abandoned their practice).</p> <p>Provision has been made for a review and appeal process, and for costs orders, in draft DBLs 30A and 30B and in DBL 31.</p>
36.1(c)	References to intervention orders of the Investigation Committee have been replaced with 'interim orders' by a 'tribunal'.	This amendment is required as a consequence of the changes the DBL 30 process (above).
36.2 and 36.5	Reference to 'Council' has been replaced by the 'ICAEW Regulatory Board' in these by-laws.	The amendment has been made to reflect ICAEW's current internal governance arrangements.

37.1	Amendments have been made to DBL 37.1 to expand the circumstances in which the fitness process may be utilised (i.e. not just where there is a background complaint).	<p>Currently, DBL 38 restricts use of the fitness process to cases where there is a background complaint. At any time after it has been decided that a matter is a 'complaint' for the purposes of DBL 9.3, an individual may be referred into the process by the head of staff or by the IC Chair or the Chairs of any Disciplinary Tribunal or Appeal Panel. The individual can also refer themselves into the process.</p> <p>For reasons of public protection, and in order to support members suffering from physical and mental ill health, this DBL has been amended to enable the fitness process to be used in a wider range of circumstances where the respondent's professional competence may be compromised – e.g. upon referral into the process by the Chair of one of PSD's regulatory committees or by the Chair of the Practice Assurance Committee.</p>
Paragraph 1.4 and 6.4 of the Schedule of the DBLs.	Amendments have been made to paragraphs 1.4 and 6.4 of the Schedule to specify that a majority of the IC, DC or Appeal Committee is required to approve amendments to the regulations of those committees.	The amendment is proposed for completeness and to confirm ICAEW's governance arrangements.
Generally	Language of the DBLs has been made gender neutral; References to complaints being 'preferred' by the IC to the DC have been replaced with 'referral'.	Amendments are proposed to modernise the language of the DBLs and make it more inclusive.