

The Chartered Institute of Management Accountants

Appeals Procedure Notes 2015

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PART I

Key to abbreviations

IC means the Investigation Committee

DC means the Disciplinary Committee

AC means the Appeal Committee or a panel of members of the AC

PART II

RESPONDENT APPEALS AGAINST DECISION OF OR SANCTION IMPOSED BY THE DC

1. NOTIFICATION OF DECISION OF DC

Sent to the parties as required by the DC Rules

2. JURISDICTION & POWERS OF THE AC

2.1 Jurisdiction

The AC may consider appeals based upon one or more of the following grounds:

- (i) that there was irregularity or unfairness in the procedure leading to the decision reached or sanction imposed

The AC should consider whether:

the complaint has been properly considered within the Byelaws and Regulations

the rules of natural justice and any relevant principles of human rights have been satisfactorily observed

- (ii) that the decision reached was unreasonable or the sanction inappropriate

The AC should consider whether:

the DC has reached a reasonable decision in the circumstances

- (iii) that the respondent produces new evidence which could not reasonably have been produced to the DC

The AC should consider whether:

the evidence could not reasonably have been made available to the DC at the relevant hearing

2.2 Powers

- If the AC concludes that the handling of the complaint has been unsatisfactory in terms of 2.1(i) or 2.1 (ii) above, it may:
 - (i) overturn the finding of the DC, and/or
 - (ii) remove the sanction imposed on the respondent, and/or

(iii) substitute a different sanction from amongst those available to the DC

- The AC shall not hear evidence itself
- If the AC concludes that any new evidence put before it satisfies 2.1(iii) above, it should direct that the DC reconvene to hear the new evidence
- The AC can determine its own procedure. The appellant does not have a right to attend in person, but this facility is offered
- The AC Chairman can decide to admit the public

3. APPEAL AND SUSPENSION OF SANCTION

- Appeal to be in writing, by means of a completed Appeal form signed by the appellant and sent to the “Chairman of the Appeal Committee, care of CIMA” (see www.cimaglobal.com)
- Appeal form must be received within 28 days of the date of receipt of the letter notifying the appellant of the Disciplinary Committee decision (the appeal expiry date). The AC Chairman may extend this deadline for such further period as he considers reasonable. The letter notifying the appellant of the Disciplinary Committee decision shall be deemed to be received two business days after it is sent, or if sent by email/facsimile, within 48 hours after it was sent
- There is no discretion if the deadline is missed and a defective appeal is not sufficient to satisfy the deadline requirement – correct Appeal form must be received within 28 days as above. No requirement for consideration to be given as to whether the “wrong” ground of appeal may have been stated
- Appeal form acknowledged, whether appellant wishes to attend in person clarified as required, and appellant to note that the last date for submission of appeal documents is six weeks after the appeal expiry date
- All cases normally involve suspension of sanctions

4. FIXING AND NOTIFICATION OF DATE OF MEETING OF THE AC

- CIMA staff to arrange the date for the appeal to be considered which must be within 10 weeks of the appeal expiry date
- AC Chairman decides whether appellant to be permitted to attend
- The AC will not hear the original or new witnesses – new witnesses fall under the ‘new evidence’ head of appeal which should be referred to the DC if appropriate
- The AC Chairman to decide whether and to what extent meeting shall be open to public (although there will be a presumption that meetings attended by the appellant in person will be in public unless there are compelling reasons not to admit the public)
- Appellant advised of details of meeting. The complainant and CIMA also informed. Appellant to note that documentation relevant to the appeal must be submitted not later than six weeks after the appeal expiry date
- Where the appellant is attending, CIMA and/or its representative is permitted to attend and make representations at the meeting

5. REPRESENTATIONS FROM CIMA

- CIMA to deliver its representations, if any, to the AC and the appellant not less than 14 days before the date on which the appeal is to be considered. These to be forwarded to the appellant
- The appellant shall have not less than 7 days from deemed receipt of such representations to make a written response and, where he has requested to attend in person and such request is to be granted, he is advised that he may be permitted to respond orally to the representations at the relevant meeting of the AC
- If the representations are challenged by the appellant on the grounds of potential prejudice, the AC Chairman should, in his own discretion, consider whether or not the representations should be withdrawn

6. REMOTE CONFERENCING

- In circumstances where an appellant has indicated that he or she wishes to attend the relevant AC meeting, but cannot then attend, the AC Chairman is to determine whether or not the appellant's reasons for not being able to attend are reasonable and if so provision may be made for him or her to join the proceedings by remote conferencing. (Ordinarily, remote conferencing will only be made available for appellants located overseas.)

7. APPEAL DOCUMENTS

- If the appellant supplies any further documentation relevant to the appeal, including any response to CIMA representations, these are supplied to the AC and to CIMA
- Likewise, CIMA representations are passed to the AC and the appellant

8. CONVENING OF COMMITTEE PANEL

- The AC panel to comprise:
 - (i) either the AC Chairman or AC Vice Chairman, (both of whom must be legally qualified), to chair the meeting
 - (ii) at least two other AC members (one of whom may be the AC Vice Chairman if the AC Chairman is sitting as chairman)
- More than half of the panel to be persons who are not Members or Registered Students of the Institute
- An independent Legal Assessor may be appointed

9. MEETING OF THE APPEAL COMMITTEE

Procedure

9.1 If the appellant is present, the procedure in 9.2. to 9.13 will be followed

9.2 The AC Chairman to

- introduce the AC
- explain the function of the note taker to make a record of the proceedings

- if applicable, explain the role of the Legal Assessor
- explain the procedure which will be followed
- invite any questions regarding the procedure

9.3 The decision of the DC and the relevant section of the Appeal form to be read

9.4 Where in attendance, CIMA or its representative to make CIMA's representations, if any

9.5 The appellant (or his representative) to be invited to address the AC

9.6 AC to address any questions to the appellant or his representative, who likewise have the opportunity to address any questions to the AC

9.7 It is open to the AC Chairman at any time to allow the appellant (or his representative) and CIMA (or its representative) to address the AC

9.8 Should the appellant seek to appeal on the grounds of new evidence, discussion by the AC of the new evidence point to be delayed until the AC retires to deliberate

9.9 The AC Chairman to invite the Legal Assessor (if one was appointed) to advise the AC on any legal point raised

9.10 The appellant/ legal representative to be given the opportunity to respond to any comments/advice given by the Legal Assessor

9.11 The appellant/ legal representative to be provided with an express opportunity to make submissions with respect to the appellant's means

9.12 AC Chairman may direct an adjournment to allow advice to be obtained

9.13 AC to retire without the Legal Assessor and without CIMA staff

Adjournments

- If the matter is adjourned for legal advice:
 - (i) any legal advice to be in writing given by Legal Assessor to the AC Chairman, and not to be copied elsewhere
 - (ii) on receipt of the legal advice, appellant (and his representative if applicable) informed by CIMA staff that it has been obtained and either:
 - that the AC will be considering its decision which will be communicated in due course (as if it had been reserved), or
 - that there is to be a continuation of the meeting for which a date is to be fixed
 - (ii) CIMA/ CIMA's representative informed where directed by the AC Chairman
- In any case of adjournment, CIMA staff to notify the appellant or his representative and fix a new date. (CIMA/ CIMA's representative will also be contacted where directed by the AC Chairman.)
- Following an adjournment, the same composition of the AC present at the meeting will participate in the further consideration of the case

Non-attendance by appellant

- Where an appellant has been permitted to attend but neither he nor his representative appears, then the AC Chairman may adjourn or the AC may proceed to consider the matter in the absence of the appellant. The AC Chairman to consider:
 - (i) whether the appellant has a good reason for failing to appear;
 - (ii) the appellant and/or his representative's diligence in dealing with the earlier stages;
 - (iii) whether CIMA (or its legal representative) may nevertheless attend and speak
- Should the appellant and/or his representative arrive during the meeting, the AC Chairman may decide to start again under 9.2 to 9.13

Determination

- AC may
 - adjourn for legal advice or
 - reserve its decision or
 - reject the appeal or
 - reach a finding as indicated at 2.2 above.

10. COSTS

The AC may direct that the costs of an unsuccessful or partly unsuccessful appeal shall be borne by the appellant. Where it appears to the Committee that the case was brought before the Disciplinary Committee improperly, in bad faith or unreasonably, it may direct that the reasonable costs of a successful appeal shall be borne by the Institute.

Terms of announcement

AC Chairman to announce the AC's decision / reservation of its decision / decision to adjourn for legal advice, and may (if applicable) issue directions on who is permitted to be present

- If an appeal for procedural irregularity or unreasonableness, or inappropriate sanction, is allowed, then in giving its decision, the AC to explain what it has found to be defective or unreasonable or inappropriate
- If the AC directs that the DC reconvene to hear new evidence, AC to state which evidence should be remitted to the DC to be heard
- If an appeal on any ground is rejected then the AC to give reasons for reaching its decision[s]
- The appellant (whether or not present), the complainant, and CIMA, to be advised in writing of the outcome of the appeal

11. NOTIFICATION OF THE DECISION OF AC

Decision letter to appellant to be copied to the complainant, and to CIMA

12. PUBLICATION

- If the appeal is dismissed or only partially upheld, details of the decision shall be published in the journal of the Institute and may be published elsewhere in accordance with policy determined by the Institute.
- If the appeal is wholly upheld, the appellant is entitled to publication in similar manner of appropriate summary information

PART III

COMPLAINANT APPEALS AGAINST CONSENT ORDER

1. NOTIFICATION OF DISPOSAL BY CONSENT ORDER

Letter sent to complainant by CIMA staff following decision of IC to proceed with Consent Order to include information about right of appeal

2. APPEAL

- Appeal to be in writing, signed by the complainant and addressed to the “Chairman of the Appeal Committee, care of CIMA”
- Appeal must be received by the appeal expiry date which is 21 days after the date of receipt of the letter notifying the complainant of the IC decision. The letter notifying the complainant of the IC decision shall be deemed received two business days after it is sent, or if sent by email/facsimile, within 48 hours after it is sent
- There is no discretion if the deadline is missed. If the appeal arrives out of time, it is rejected

3. ACKNOWLEDGEMENT OF APPEAL AND SUSPENSION OF CONSENT ORDER SANCTION

- Appeal acknowledged - complainant to note the possible cost implications, and the requirement to provide any further documentation relevant to the appeal within six weeks

- Respondent (i.e. the Member or Registered Student) advised of the appeal and the suspension of the consent order sanction pending the decision of the AC. Also advised of his right to provide written submissions to the AC

4. FIXING AC DATE

- CIMA staff to arrange the date for the appeal to be considered within 10 weeks of appeal expiry date
- Complainant and respondent advised of AC meeting date
- Any further submissions from the complainant, or any representations from the respondent, to be passed by CIMA staff to the AC

5. CONVENING OF COMMITTEE PANEL

- The AC panel to comprise:
 - (i) either the AC Chairman or AC Vice Chairman (both of whom must be legally qualified) to chair the meeting
 - (ii) at least two other AC members (one of whom may be the AC Vice Chairman if the AC Chairman is sitting as chairman)
- More than half of the panel to be persons who are not Members or Registered Students of the Institute
- An independent Legal Assessor may be appointed

6. MEETING OF THE AC

6.1 Determination

- The AC will consider the appeal on the papers
- The AC may:
 - (i) dismiss the appeal, or
 - (ii) direct that the case be reconsidered by the IC; or
 - (iii) adjourn for legal advice

- If the appeal is dismissed:
 - (i) AC should consider the costs
 - (ii) CIMA staff to inform IC Chairman, the complainant, respondent and CIMA of the outcome
 - (iii) respondent informed that consent order to proceed and finding recorded
 - (iv) the issue of the consent order will be published

6.2 Adjournments

- If the matter is adjourned for legal advice:
 - (i) any legal advice to be in writing given by Legal Assessor to the AC Chairman, and not to be copied elsewhere
 - (ii) on receipt of the legal advice, complainant and respondent informed by CIMA staff that it has been obtained and either:
 - that the AC will be considering its decision which will be communicated in due course (as if it had been reserved), or
 - that there is to be a continuation of the meeting for which a date is to be fixed
- Following an adjournment only those AC members present at the initial meeting should participate in the further consideration of the case

PART IV

COMPLAINANT APPEALS AGAINST DECISION OF THE DC

1. NOTIFICATION OF DECISION OF DC

To be sent to the parties as required by the current DC Rules

2. APPEAL

- Appeal to be in writing, signed by the complainant and addressed to the “Chairman of the Appeal Committee care of CIMA”

- Appeal must be received by the appeal expiry date which is 21 days after the date of receipt of the letter notifying the complainant of the DC decision. The letter notifying the complainant of the DC decision shall be deemed received two business days after it is sent, or if sent by email/facsimile, within 48 hours after it is sent
- There is no discretion if the deadline is missed. If the appeal letter arrives out of time, it is rejected

3. ACKNOWLEDGEMENT OF APPEAL AND SUSPENSION OF SANCTIONS

- Appeal acknowledged. Complainant to note that the last date for submission of any other written submissions is six weeks after the appeal expiry date, failing which the appeal will lapse. Complainant to note the possible cost implications
- Respondent notified and can make written submissions
- CIMA supplied with copy of Appeal
- All cases normally involve suspension of sanctions

4. FIXING DATE

- CIMA staff to arrange the date for the appeal to be considered within 10 weeks of the appeal expiry date
- Complainant, respondent and CIMA advised of the AC meeting date
- Any further submissions from the complainant, or any representations from the respondent, to be passed by CIMA staff to the AC

5. REPRESENTATIONS FROM CIMA

- CIMA to deliver its representations, if any, no less than 14 days before the date on which appeal is to be considered. These will be forwarded to the respondent
- Right of respondent to make a written response to representations

- If the representations are challenged by the respondent on the grounds of potential prejudice, the AC Chairman should, in his discretion, consider whether or not the representations should be withdrawn

6. CONVENING OF COMMITTEE PANEL

- The AC panel to comprise:
 - (i) either the AC Chairman or AC Vice Chairman (both of whom must be legally qualified), to chair the meeting
 - (ii) at least two other AC members (one of whom may be the AC Vice Chairman if the AC Chairman is sitting as chairman)
- More than half of the panel to be persons who are not Members or Registered Students of the Institute
- An independent Legal Assessor may be appointed

7. MEETING OF THE AC

- AC to consider the appeal on the papers
- The AC may:
 - (i) dismiss the appeal, or
 - (ii) direct that the case be reconsidered by the DC, or
 - (iii) adjourn for legal advice
- If the appeal is dismissed:
 - (i) the AC should consider the costs
 - (ii) where the appeal has sought more severe sanctions, the respondent is informed that any sanctions imposed by the DC will now take effect and DC decision will be published

The respondent, complainant, and CIMA, to be advised in writing of the outcome of the appeal

- If the matter is adjourned for legal advice:
 - (i) any legal advice to be in writing given by Legal Assessor to the AC Chairman, and not to be copied elsewhere;

- (ii) on receipt of the legal advice, the complainant and respondent informed by CIMA staff that it has been obtained and either:
- that the AC will be considering its decision which will be communicated in due course (as if it had been reserved), or
 - that there is to be a continuation of the meeting for which a date is to be fixed