



Council 2 May 2007

OPENING DISCIPLINARY TRIBUNALS TO THE PRESS AND PUBLIC

Status – Open

Executive Summary – The Institute’s disciplinary hearings have always been conducted in private. The majority of professional bodies normally hold disciplinary hearings in public. The Public Oversight Board has previously recommended that the Institute change its arrangements. The Institute could decide that all hearings should normally be in public, or that only a limited class of case be held in public, or that e.g. only complainants be admitted to hearings, or it could take no action at present.

Recommendation

That Council agree -

(1) to fix a date for a move to open hearings for all cases before Disciplinary and Appeal tribunals (subject to the tribunal’s discretion – see paragraph 2); and

(2) that, subject to paragraphs 13 - 15 below, 1 January 2008 be fixed as the date for a change to open hearings.

Background

1. The issue whether to admit the public to hearings of the Institute’s Disciplinary and Appeal Tribunals has been under review for many years. As long ago as 1995 Bye-law powers were taken to permit the Council to authorise the hearing of formal complaints or appeals in public.
2. Disciplinary Bye-law 36(5) provides that any authority given by the Council in relation to public hearings may –
 - a) relate to a particular case, to cases of one or more classes or to cases generally; and
 - b) may be given subject to any restrictions which the Council thinks appropriate.

If authority is given for a hearing to be in public the Chairman of the Tribunal would nevertheless have power to exclude the press and public from all or part of the proceedings if it appeared to him to be desirable to do so in the interests of justice or for any other special reason (DBL 36(7)).

3. It should be emphasised that nothing in the Bye-laws would currently prevent a hearing from being conducted in public where the defendant or his representative so requested. This right arises under the European Convention of Human Rights but is subject to a Tribunal's power to exclude the press and public from all or part of a hearing in certain limited circumstances (Article 6 of the ECHR and DBL 28(5)).
 4. When the Council last considered the matter it agreed in principle that disciplinary hearings should be held in public but declined to fix a date for implementation of the change whilst public interest cases, dealt with by the Joint Disciplinary scheme (JDS), continued to be held in private and until the Accountancy Investigation and Discipline Board (AIDB) had a successful track record of holding public hearings.
 5. The JDS is in the process of "running off" the remaining cases referred to it and it is expected that these will be concluded in the course of the next twelve months or so.
 6. The AIDB has completed its first case (Mayflower). The hearing was in public and no significant issues occurred which bear on the decision to hold a public hearing. There is no reason to believe that future AIDB hearings will not be in public. Indeed paragraph 10(9) of the AIDB Scheme expressly requires that Tribunals should sit in public although there is "... an absolute discretion to exclude them [the public] from all or part of the hearing to the extent it considers necessary where, in the opinion of the Tribunal, the circumstances are such that publicity would prejudice the interests of justice...".
 7. The Institute has been recommended by the Public Oversight Board (POB) that it should normally conduct disciplinary hearings in public. In its response to this recommendation in February 2005 the Institute indicated that "Assuming a number of AIDB cases are satisfactorily held in public during 2005 and 2006, Council would be able to decide by 2007 whether to hold domestic disciplinary hearings in public".
 8. The Disciplinary Committee has long been a strong advocate of a move to open hearings and the Appeal Committee concurs.
 9. Each of the major accountancy bodies (with the exception of ICAS), in common with a majority of other professional bodies, normally conduct disciplinary hearings in public. No particular problems appear to have been encountered.
 10. Issues that might impact on a decision to introduce open hearings including:
 - Implications for client confidentiality;
 - Possible need for legally qualified Chairmen;
 - Additional facilities required for the press and public;
 - Risk of action for defamation
- have been considered in some detail in previous reports to Council but it has been concluded that none should inhibit the Council from making a change if it is so minded.
11. If it is decided that open hearings should be introduced consideration will need to be given to whether this will be the norm for all cases or whether it

should apply only to a particular class(es) of case. If open hearings are to be the norm there will nevertheless be a discretion for tribunals to order that a hearing should be in private where the interests of justice might otherwise be affected. If hearings are to be limited to a particular class(es) of case careful consideration will need to be given to the definition of the class. Since the AIDB handles cases which "... raise or appear to raise important issues affecting the public interest in the United Kingdom..." there is no other obvious class which should be held in public. Conversely nor is there any obvious class of case (as defined by subject matter) which should inevitably be held in private. This being so, and if public hearings are introduced, it will be necessary to afford members/firms who wish to have their cases heard in private an opportunity to apply to the tribunal chairman setting out their reasons.

12. As indicated in para 2(b) above it would be open to Council to impose restrictions, (i.e. limitations) on a move to open hearings e.g. it would be possible to limit access to a "Complainant" as defined in the Disciplinary Bye-laws, or to a complainant and his nominee and other specified persons.
13. If a change to open hearings is to be made consideration needs to be given to the timing. In considering this issue the principal concerns are firstly that members and firms are treated with absolute fairness, and secondly that any practical arrangements may be made.
14. To ensure absolute fairness to members/firms any decision to move to open hearings should not impact on cases where a finding of a prima facie case, by the Investigation Committee, pre-dates notice being given of the change to arrangements. The reason for this approach is that some members/firms might have wished to take account of the possibility of a public hearing when refusing an offer of a Consent Order.
15. As far as practical matters for hearings are concerned it will be necessary to have sufficient notice to make appropriate arrangements. In particular it will be necessary to identify venues for such hearings and to ensure that suitable facilities are available.
16. Taking the above factors into account it is suggested that if the Council wishes to effect a change it determines that, subject to the matters raised in paragraphs 13-15 above, the effective date be 1 January 2008.

Consultation

17. The views of the Professional Standards Board, Disciplinary Committee and the Board (see para 18 below) have been obtained. It is not thought that further consultation would realistically result in the identification of additional relevant considerations that ought to be taken account of. There will, of course, be sensitivity amongst those members who apprehend that they might appear before a Tribunal.
18. The Board considered the proposals in this paper at its meeting on 20 March. It concluded that the Institute should now move to open hearings as this would be consistent with the practice of the majority of other professional bodies and demonstrate its willingness to act transparently. It recommended that the change take effect from 1 January 2008.

Financial and resourcing implications

19. Some additional financial provision will need to be made in the budget for 2008 to meet the additional costs of room hire etc. These cannot be quantified with certainty but are unlikely to exceed £30k.

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