

March 2024



Tribunal Clerk Guidance



Purpose

This guidance has been approved by ICAS' Discipline Board. It provides information about the role of the ICAS Tribunal Clerk ("the Clerk") for the benefit of the role-holder, as well as individuals with whom they will come into contact.

Definition of the role

The role of the Clerk is based in ICAS' Discipline & Appeal Tribunals Regulations ("the Regulations"), and is defined as follows: "*an official appointed by ICAS, who is responsible for the administrative arrangements for Discipline and Appeal Tribunals under these Regulations*".

Who appoints the Clerk?

ICAS is responsible for the recruitment process, as well as deciding who to appoint to the role. However, in doing so, ICAS will have regard to any views and recommendations of the Discipline Board and the Disciplinary Appointments Committee, and may choose to formally involve individual(s) from either or both in the process (although there is no obligation to do so).

Who does the Clerk report to?

In discharging their responsibilities, the Clerk will primarily be reporting to the Chair of the relevant Discipline or Appeal Panel, and will act upon their instructions in respect of the process.

Given that they are appointed by ICAS, the Clerk will also report to ICAS in respect of operational and performance standards in the role.

It is important to emphasise the importance of the independence of the Tribunals, and therefore the Clerk. In discharging their duties, they are not acting for or against any of the parties involved in a Tribunal process, with an overarching duty to ensure due process and fairness.

When is the Clerk required?

The Clerk is required as and when there is a matter to be determined by a Tribunal under the Regulations. As it is not possible to anticipate the volume or frequency of such matters, it is important that the Clerk understands the variable time commitment and is flexible in terms of their availability.

What support is available to the Clerk?

While there will be aspects of the role where support will be available from ICAS employees, the Clerk will primarily be working autonomously, having been given sufficient training and equipment to appropriately and efficiently discharge their functions.

What are the requirements for the role?

Detailed requirements for the role are listed in **Appendix A** (confirming where ICAS will offer support). However, in general terms, the Clerk works in accordance with the requirements of the Regulations, as well as the aims and principles set out in ICAS' [Commitment to Fair Tribunal Processes](#). They will assist individual Discipline and Appeal Tribunals, usually on instruction of the Tribunal Chair.

What is the contractual basis of the role?

The Clerk is appointed by ICAS on the basis of a contract for services which is agreed and signed by the parties. The agreement emphasises that it is not a contract of employment. The Clerk is appointed by ICAS for a three-year term, with the possibility of further terms being agreed by the parties.

The role is remunerated in accordance with rates agreed by ICAS and the Clerk.

Further information

Further information in respect of respect of the Clerk's role can be requested by email by contacting either the Clerk (tribunalsclerk@icas.com) or ICAS (rmudge@icas.com).

Appendix A – Role requirements

Point of contact for new Tribunal matters

The Clerk is provided with an email account by ICAS (tribunalsclerk@icas.com) which is the account used by parties for new Tribunal matters – e.g. formal complaints submitted by ICAS under Regulation 3.1 and appeals submitted by appellants under Regulation 5.6.

Given the importance of timely action in respect of new Tribunal matters, the Clerk must regularly check this account, providing an appropriate 'out of office' message so that new matters can be dealt with in their absence (with ICAS given appropriate advance notice of such absences).

Advising the Chair of the Discipline & Appeal Panel of new Tribunal matters

When a new Tribunal matter is intimated to the Clerk, they must immediately draw this to the attention of the Chair of the Discipline & Appeal Panel, who shall be responsible for appointing a Discipline or Appeal Tribunal to consider the matter (including the Chair of the Tribunal).

The Clerk will maintain appropriate records of which Panel members have recently served on Tribunals, advising the Chair accordingly. This will ensure that there is a reasonable spread of work amongst the Panel members.

Appointing Panel members to a Tribunal

Once advised by the Chair of the proposed Tribunal, the Clerk will email the Panel members to confirm their ability to sit on the Tribunal (noting the parties involved in the matter to allow any conflicts to be identified).

The Clerk will also advise the Chair if there are members of the Panel who regularly decline invitations to join Tribunals, so that appropriate steps can be taken to assess their ongoing position on the Panel.

Notifications of Tribunal matters

The Clerk is responsible for serving a formal complaint on the defender in terms of Regulations 4.1 – 4.3, and must ensure that they are provided with appropriate information and/or guidance in relation to the matter (e.g. any relevant helpsheets in connection with the process).

The Clerk is also responsible for sending other notifications to the parties (including ICAS, the defender and the Tribunal members) during the Tribunal process, and this is usually done by email.

Scheduling Tribunal hearings

The Clerk will liaise with the Tribunal Chair to ensure that hearings are scheduled in accordance with the Regulations, having regard to appropriate timescales which may be listed.

Once a date or dates have been identified by the Chair, the Clerk will liaise with the other Tribunal members to confirm their availability, and then with ICAS to check whether suitable rooms are available at CA House (assuming that the hearing is to take place in person). ICAS is responsible for identifying and booking rooms for hearings, although the Clerk will be expected to take the lead where hearings are being held at a location other than an ICAS office.

The Clerk will then notify the relevant parties of the date of the hearing. If one or more of the parties advises that they are not available on the date, the Clerk will liaise with the Tribunal Chair to assess whether a reasonable explanation has been provided, and follow-up accordingly (i.e. insisting on the date identified, or restarting the process to identify a new date).

Papers for Tribunal hearings

The Clerk is responsible for producing bundles of papers for Tribunal hearings and ensuring that these are shared with Tribunal members and the parties to the matter.

All parties should be encouraged to file documents electronically, avoiding the need for the Clerk to print papers (which presents greater threats to data security and promotes ICAS' commitment to sustainable processes).

If there is a valid reason for one or more of the parties requiring physical papers, the Clerk should contact ICAS. ICAS will arrange for papers to be printed and securely sent to the party.

Sharing papers for Tribunal hearings

Papers for Tribunal hearings must be uploaded to Admincontrol, which is the secure online document sharing system used by ICAS. Following appointment, the Clerk will be provided with access to Admincontrol, and an accompanying user-guide. Training on how to use the system can also be provided if required.

When a new Tribunal matter is raised, and a Tribunal is appointed, the Clerk will create a folder for the matter on Admincontrol and ensure that the members of the Tribunal have access to it. When papers in relation to the matter are lodged by ICAS or the defender, the Clerk will upload these to Admincontrol and advise the Tribunal members accordingly. This means that the Clerk does not need to share papers with Tribunal members by email.

When sharing Tribunal papers with ICAS and the other parties to the matter, the Clerk will follow such instructions as are issued by ICAS to ensure appropriate data security. The Clerk must not share papers by email, as this is not sufficiently secure.

ICAS expects the Clerk to be able to share papers with Tribunals appropriately with little or no assistance.

Data security and confidentiality

The Clerk's ICAS email account will be subject to the same retention policies as are applied to ICAS employees (meaning that emails will automatically be deleted after a period of time). This means that the Clerk should save relevant emails on Admincontrol.

The Clerk must not use their personal email account for any activity relating to their role as Clerk, nor should they store Tribunal papers on their personal computer.

The contract for services signed by the Clerk on appointment contains data security and confidentiality provisions which must be followed at all times during the appointment. In following these provisions, the Clerk must ensure that:

- Their log-in details for Admincontrol are not shared with anyone.
- Admincontrol is not set to automatically log-in (to avoid other users of the Clerk's computer having access to Tribunal papers).
- Care is taken when reading Tribunal papers out of the home or office.
- Appropriate steps are taken to safeguard information given to the Clerk in confidence or which otherwise comes into their possession in circumstances where confidentiality arises.

Pre-hearing duties

The Clerk has a number of duties to attend to in advance of a hearing, including:

- Ensuring an appropriate venue and room if the hearing is being held in person.
- Setting up a video conference meeting if the hearing is being held remotely (in accordance with general instructions from ICAS in respect of v/c).
- Ensuring that all parties receive appropriate notification of the hearing.
- Publishing the details of the hearing on the ICAS website (in accordance with a process to be advised by ICAS).
- Responding to any queries by the parties in relation to the purpose of the hearing and associated matters.
- Arranging for lunch to be provided for the Tribunal members (in accordance with a process to be advised by ICAS).

Hearing duties

The Clerk has a number of duties on the day of the hearing, including:

- Ensuring that all parties attend the hearing, contacting anyone who has not appeared.
- Advising parties where to go on arriving at the hearing venue, and calling them into the hearing on the instructions of the Tribunal Chair.
- Ensuring that the hearing is recorded (in accordance with a process to be advised by ICAS).
- Taking notes of key Tribunal directions to assist with the drafting of interlocutors.
- Advising the Tribunal on the application of the Regulations and other matters, on request from the Tribunal, and on an ad hoc basis as appropriate.
- Ensuring that the Tribunal and the parties have access to the relevant Rules, Regulations, and associated documents (including ICAS' Sanctions Guidance).
- Where the Tribunal is considering making a costs order, ensuring that the Tribunal is referred to the relevant guidance and has appropriate information in respect of its own costs.

Post-hearing duties

The Clerk has a number of duties to attend to following a hearing, including:

- Ensuring that ICAS appropriately uploads the recording of the hearing to ICAS' system.
- Assisting the Chair with the drafting of interlocutors, as required.
- Ensuring that the parties to the matter receive copies of the interlocutors, decision notice, etc, and are clearly advised on next steps in the process.
- Arranging further hearings, if required.
- Dealing with any claims for payment and expenses which arise from the hearing (in accordance with a process to be advised by ICAS).
- If required, and using wording agreed with the Tribunal Chair, publishing the Tribunal's decision on the ICAS website (in accordance with a process to be advised by ICAS and any applicable guidance).

Hearing duties / role of the Chair

In duties listed above, there are instances where the Clerk is referring the Tribunal to the Regulations, guidance, and procedures. The Chair of the Tribunal will be a senior lawyer with extensive experience in courts, tribunals, and disputes procedures, and will therefore be responsible for advising the Tribunal on the application of such documents. The Clerk's role is to provide reminders, and ensure that the Tribunal members can access the appropriate materials, rather than to give them advice.

Checking compliance with Tribunal directions

When one or more of the parties have been given directions by the Tribunal following a hearing, the Clerk should proactively monitor their compliance, contacting the party in the event of default, and advising the Tribunal Chair accordingly.

Assisting with enquiries

While the Clerk fulfils an independent role in the process, it is expected that they will provide reasonable assistance to the parties in relation to queries about the Tribunal process (e.g. confirming next steps, highlighting relevant provisions in the Regulations).

In addition to dealing with queries from the parties to a Tribunal matter, the Clerk will be the first point of contact for general enquiries in relation to ICAS' Tribunal processes, and will be expected to respond to these with little or no need for input from ICAS.

Maintaining Tribunal content on the ICAS website

The Clerk is responsible for ensuring that adequate information about the Tribunal processes is available on the ICAS website and that it is kept up-to-date. This includes:

- Notices of upcoming hearings.
- Disciplinary findings (which must be removed in accordance with applicable timescales).
- Guidance notes on parts of the process.

The Clerk is expected to take a proactive approach to website content, with an emphasis on accessibility and transparency.



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