

**R (on the application of Coke-Wallis) (Appellant) v
Institute of Chartered Accountants in England and
Wales (Respondent)**

Second Bite of the Cherry?

The case concerns an individual who had already successfully defended a regulatory claim in front of his Disciplinary Committee. The ICAEW's Investigation Committee was not satisfied with the decision and pursued a second action based on the same conduct of the individual.

A differently constituted Disciplinary Committee in the second action ruled that the complaint had been proved and struck off the individual from the ICAEW.

The Appellant argued that the bringing of a second set of disciplinary proceedings arising from the same facts offended against the principle that a person should not be tried twice for the same offence and that the ICAEW (exercising disciplinary powers) was bound by this ancient legal principle. Thus he claimed the second action should have been dismissed, relying on the grounds that:

- he had previously been acquitted (*autrefois acquit*)
- had already been judged in the matter (*res judicata*); and
- the second set of disciplinary proceedings was an abuse of process.

Eventually the matter fell to be considered by the Supreme Court where it was established that fundamentally the first and second disciplinary actions were the same. The Court held that the principles of *autrefois acquit* had been breached, as once the ruling in the first disciplinary action was made the decision became final. So it went against *res judicata* to allow the second complaint to be brought by the ICAEW arising from the same circumstances. Since that decision effectively ended the matter, it was not necessary for the Court to decide the abuse of process argument.

IscaLegal Comment:

- This decision does not mean that a regulator can never bring a second action following a first acquittal. Rather it means that any subsequent action must be grounded on properly different facts and events. It cannot just amount to a re-packaging of the same situation
- The decision shows that regulators such as the ICAEW are not “above the law”, no matter how heavy-handedly they sometimes behave in relation to their members
- The full judgment is available [here](#)