

APRIL 2024



Adverse Decisions of the Authorisation Committee



Purpose

This helpsheet provides information to members and firms who are subject to adverse decisions proposed by ICAS.

What is the Authorisation Committee?

The Authorisation Committee is appointed by the Regulation Board to be responsible for granting, supervising, suspending and removing the regulatory licences issued by ICAS. This includes audit registration, insolvency licences, practising certificates, and AML supervision.

The Committee monitors the quality and controls within firms through robust monitoring arrangements, pursuing regulatory action wherever appropriate, including adverse decisions. It meets six times a year and comprises a mixture of CAs and lay members.

What is an adverse decision?

An adverse decision is a decision which may be proposed to a licensed member or firm in response to a regulatory concern which has been identified. It is a decision which, if made, would have an adverse impact on the licence-holder.

The power to make an adverse decision is based in the ICAS Rules, and set out in detail in the Regulations which apply to ICAS' various licensing schemes (e.g. Audit Regulations, Public Practice Regulations). The Regulations can be accessed [here](#).

Which decisions are considered to be adverse decisions?

While each of the regulatory schemes is set out separately in Regulations, the adverse decisions which are available to the Authorisation Committee are the same for each.

- A refusal to grant a licence.
- A decision to apply conditions and/or restrictions to a licence.
- A decision to withdraw a licence.

In certain circumstances, a decision to suspend a firm's audit registration can also constitute an adverse decision.

A condition requires a licence-holder to remedy a risk or deficiency by taking a required course of action, within a set timescale. Examples include completing a training course, or having an external file review undertaken.

A restriction prevents a licence-holder from doing something for a specified period of time. This might include not providing certain services, or not taking on new clients.

When might an adverse decision be proposed?

Adverse decisions are proposed when the Authorisation Committee has identified concerns in something it has been asked to consider and determine. While this sometimes arises in the context of a licence application, the most common circumstance is in response to a regulatory monitoring report which has identified:

- Breaches of ICAS' Rules and Regulations.
- Non-compliance with legislation, standards, codes of practice, guidance etc.
- Other concerns over the competency of a licence-holder.

The applicable Regulations set out the criteria which must exist for an adverse decision to be proposed in each case.

The Authorisation Committee will adopt a proportionate approach to adverse decisions, ensuring that no lesser form of regulatory action would be sufficient to address the concerns which have been identified, and that the adverse decision is therefore appropriate.

The most significant adverse decision – withdrawal of a licence – will generally only be pursued in the most serious of cases, where there are identifiable risks to the public interest, ICAS, and/or the reputation of the profession (although the grounds for withdrawal are clearly stated in the respective Regulations).

What is the process for proposing an adverse decision?

A report will be made to the Authorisation Committee, usually following a licence application, or a regulatory monitoring visit. The report will list matters of concerns which have been identified. The Authorisation Committee will then consider whether action is required under the relevant Regulations, and if so, what form of action is most appropriate, having regard to the seriousness of the issues which have been identified.

Once the Committee has decided what form of regulatory action is appropriate, it will be notified to the licence-holder as a proposed adverse decision, with a covering letter providing full information on the reasons and the process.

The member or firm will be asked to confirm within 10 working days whether the proposed adverse decision is accepted. If no response is received within the deadline, the adverse decision will come into force once the deadline has passed.

What if the member or firm does not accept the proposed decision?

A member or firm that disagrees with the proposed adverse decision may submit written representations (by letter or email) explaining why they do not think that the proposed decision is required or appropriate. Relevant supporting evidence should be provided at this time.

Alternatively, the member or firm can request a hearing to make representations to the Committee in person. The member or firm is entitled to attend and to be legally represented. Again, relevant supporting evidence should be submitted at or before the hearing. The Committee may order the member or firm to contribute to the costs of the hearing.

The Authorisation Committee will reconsider the proposed adverse decision in light of the further submissions and evidence provided, before deciding how to proceed.

There are then three potential outcomes: (i) the Committee decides that proposed adverse decision initially proposed remains appropriate, (ii) the Committee decides to vary the terms of the decision (e.g. deciding that a lesser regulatory action can be used instead), or (iii) the Committee decides that the proposed adverse decision is no longer required. The decision will be communicated to the member or firm with supporting reasons.

If the Committee is still proposing an adverse decision which the member or firm refuses to accept, the licence-holder can submit an appeal.

What is the process for appealing an adverse decision?

If the Authorisation Committee has resolved that the proposed adverse decision remains appropriate, the only right of challenge left to the licence-holder is to submit an appeal to ICAS' Discipline & Appeal Panel, which sits separately from the Committee, and is independent.

An Appeal Tribunal would then be appointed to consider and determine matters, with the process set out in ICAS' Discipline & Appeal Tribunals Regulations ([here](#)).

The Regulations list four grounds upon which a decision of the Committee may be appealed (with an appeal possible on one or more of the grounds):

- The Committee erred in law or fact, or in its interpretation of the Rules or Regulations.
- The regulatory process followed in respect of the decision was not conducted fairly.
- Significant fresh evidence is available that was not available to the licence-holder until now, and which they could not at that time have been expected with reasonable diligence to have obtained.

- The decision was manifestly excessive in all the circumstances.

It is likely that the Appeal Tribunal will fix a hearing in person to allow the licence-holder and the Committee to argue why the adverse decision should or should not be made. The Appeal Tribunal will then make its decision. The decision of the Appeal Tribunal is final.

When does an adverse decision come into effect?

The timing of an adverse decision will depend on the response of the licence-holder:

- If the licence-holder accepts the proposed decision then it will come into effect immediately upon acceptance.
- If the licence-holder does not respond within 10 working days then the proposed decision will come into effect at the expiry of that period.
- If the licence-holder challenges the proposed decision – through the review and appeal processes – then the decision will not come into effect until all of these processes have been completed.

If the concerns are of a serious nature then the Authorisation Committee might pursue an interim suspension order for a licence if its proposed adverse decision is being delayed through the review or appeal process. This would be considered by the Committee on a case-by-case basis, having regard to any risks to the public interest.

Will an adverse decision be publicised?

The Regulations do not prescribe which regulatory decisions are publicised, giving the Authorisation Committee discretion to use its power to publicise.

However, recognising the impact that a publicity notice can have on a member or firm, the Authorisation Committee takes a proportionate approach to publicity, with its default position being that only the following adverse decisions will be publicised:

- A decision to restrict a licence, preventing a licence-holder from doing something for a specified period of time, e.g. undertaking a certain type of work, or taking on new clients.
- A decision to suspend or withdraw a licence.

Full information on publicity of decisions is available in a helpsheet available [here](#).

Further information

Further information in respect of Regulatory Penalties can be requested from the individual at ICAS who communicated the decision. Information may also be requested by email: regulatoryauthorisations@icas.com



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