

September 2020



Putting an investigation on hold



Purpose

This helpsheet is for Members, CA Student Members, Affiliates and Firms who have received a complaint against them. The purpose of the helpsheet is to provide information about the circumstances in which ICAS may put our investigation of the complaint on hold.

What happens when an investigation is put on hold?

It is in the interests of all parties to a complaint that the complaint is determined at the earliest opportunity. In this regard, ICAS will be particularly conscious of the public interest.

However, circumstances will arise from time to time which will lead to an investigation being placed on hold (sometimes this is referred to as 'sisting' the investigation). In these instances, ICAS will delay the completion of the investigation until the circumstances in question no longer apply.

Where this helpsheet refers to an investigation being put on hold, this means a material delay of months, rather than days or weeks. It is not intended to cover shorter delays, e.g. where a request is made for additional time to respond.

Who decides whether an investigation will be put on hold?

Depending on the stage of the investigation, the decision will be taken by a combination of members of the Investigation Committee (including its Convener) and the Case Officer who is dealing with the complaint.

It is important to understand that discretion will always be exercised when considering placing an investigation on hold, and it should never be assumed that this will happen.

How do I ask for an investigation to be put on hold?

You should make the request in writing to the Case Officer who is dealing with your complaint. If the complaint is at the first stage of the process (preliminary enquiries), the decision will be taken by the Case Officer, with the approval of the Director of Investigations and/or the Convener of the Investigation Committee.

If the complaint is at the second stage of the process, and has been referred to the Investigation Committee, the decision will be taken either by a quorum of the Investigation Committee, or by the Convener of the Committee.

You should include a detailed summary of the reasons why you believe the investigation should be put on hold and provide evidence to support your reasons. It is important to understand that the onus is likely to be on you to justify any delay in the investigation.

The decision will be confirmed to you in writing and will state the period for which the investigation will be placed on hold, and any conditions you may be required to meet during this time.

When will an investigation normally be put on hold?

We will consider all requests for an investigation to be put on hold. We often receive requests in the following circumstances:

- **Ill-health**

If you are suffering from ill-health, and you believe that this is preventing or hindering your participation in the investigation, you can ask for the investigation to be put on hold until such time as you are well enough to participate.

More information about this is contained in our Health Issues helpsheet.

- **Other personal circumstances**

Sometimes a Member encounters difficult personal circumstances that prevents them from participating in the investigation for a sustained period. If you are in this position and you would like the investigation to be put on hold, please let the Case Officer know as soon as possible.

Please remember that you have a duty, under Regulation 3.4 of the ICAS Investigation Regulations, to “cooperate fully and promptly with the investigation of a complaint”. We therefore expect you to treat the investigation as a priority and to meet any deadlines set out by the Case Officer.

While we will consider requests for more time to respond, ICAS is unlikely to place an investigation on hold due to holidays, or a high volume of work.

- **Court proceedings**

Sometimes we receive complaints about Members regarding matters which are also the subject of civil or criminal court proceedings.

It should not be assumed that ICAS will always put its investigation on hold until the court proceedings have concluded. We have a responsibility to the public to progress an investigation without unreasonable delay. We will need to assess whether there is a risk that continuing our investigation would be likely to cause prejudice which may lead to an injustice in either the court proceedings or ICAS’ investigation.

In making this assessment, we will consider factors such as:

- How similar are the issues being considered by ICAS and the court?
- How long will the court proceedings take to conclude?
- Will the court proceedings produce findings which ICAS can rely on in our investigation?
- Does the court have greater powers than ICAS, or is it a more suitable authority for determining the matter?

You will normally also be asked to provide ICAS with a copy of the court papers.

If there are elements of the complaint which are not part of the court proceedings, we may decide to investigate these, regardless of the court proceedings.

- **Criminal investigations**

Sometimes we receive complaints involving criminal allegations which are still being (or are yet to be) investigated by the police.

It is unlikely that ICAS will put its investigation on hold in these circumstances, particularly where the allegations are serious, or where the criminal process (if there is one) is at a very early stage. It is in the public interest that our Members are also subject to regulatory oversight.

- **Investigation by another regulator**

Sometimes, where a Member is regulated by more than one professional body, ICAS will receive a complaint about matters which are also being investigated by the other professional body. In these circumstances, ICAS will consider whether our investigation should be placed on hold to allow the other body to complete its inquiry. This will usually involve discussions with the other body, sometimes with reference to formal memorandums of understanding.

In deciding whether to wait for the other body to complete its investigation, ICAS will normally consider the facts of the complaint (which may relate more closely to the work of the other body), as well as the stage of the respective investigations.

If the ICAS investigation is placed on hold, we will review the outcome of the other body’s investigation and decide how best to proceed in response. It should not be assumed that ICAS will follow whatever decision is taken by the other body.

For how long will ICAS put its investigation on hold?

While this will depend on the reasons why the investigation was put on hold in the first place, it will always be influenced by our need to avoid unnecessary delays in the investigation of a complaint.

If the investigation was put on hold pending a separate outcome (e.g. a court case, or a different investigation), ICAS would expect to resume our investigation as soon as the outcome is known. If the delay was due to the Member's ill-health, the investigation will restart as soon as the Member is well enough to participate.

It is unlikely that ICAS will place an investigation on hold if the length of time involved is likely to be significant (e.g. a year or more).

Even if ICAS decides to put an investigation on hold, that decision may be varied or withdrawn at any time, at our discretion.

What are my responsibilities if an investigation is put on hold?

In most instances, you will be asked to provide regular updates while the investigation is on hold and must respond to these fully and promptly. If you stop corresponding with us, the investigation is likely to be re-started, with your lack of cooperation possibly being considered as a separate head of complaint.

There may be some cases where ICAS will look to apply other conditions during the period in which the investigation is on hold. This could mean asking you to do something, or refrain from doing something.

What other steps might ICAS take if an investigation is put on hold?

If we do put our investigation on hold, we may take steps to suspend or restrict Membership or licences until we are able to resume or complete our inquiry. We would do this by making an Interim Order Application to the Discipline Tribunal. The application would only be granted if the Tribunal decides that it is necessary for the protection of the public and/or justified in all the circumstances. Full information is contained in our Interim Order Guidance.

Further help

If you have questions which are not addressed here, please contact the Case Officer who is dealing with the complaint. Alternatively, please telephone +44 (0)131 347 0271 and ask to speak to a member of the Investigations Department.



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