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Criminal matters which have been reported to ICAS



Purpose

The purpose of this note is to provide guidance on the approach taken by ICAS where a Member has been charged with, or convicted of, a criminal offence.

Whilst the note simply refers to 'Members', it applies equally to CA Student Members, Affiliates and, where appropriate, Firms. For the avoidance of doubt, the note is not restricted to Members in practice, and applies also to Members in business and Members who are retired.

Why does ICAS become involved with Members who are subject to criminal process?

ICAS is committed to maintaining public confidence in the accountancy profession by promoting the highest professional and ethical standards amongst its Members. If a Member has been charged with, or convicted of, a criminal offence, there will inevitably be questions over their character or ethics (and possibly competence). It is important that ICAS carefully considers these questions.

One of the fundamental ethical principles in the ICAS Code of Ethics is 'professional behaviour', which is set out in Section 115 of the Code as follows:

"A professional accountant shall comply with the principle of professional behaviour, which requires an accountant to comply with relevant laws and regulations and avoid any conduct that the accountant knows or should know might discredit the profession. A professional accountant shall not knowingly engage in any business, occupation or activity that impairs or might impair the integrity, objectivity or good reputation of the profession, and as a result would be incompatible with the fundamental principles".

When assessing whether the conduct might discredit the profession, consideration will be given to whether a reasonable and informed third party would be likely to conclude that the criminal conviction adversely affects the good reputation of the profession.

What must be reported?

Regulation 2.2 of the ICAS General Regulations states that:

"A Member, CA Student Member, Affiliate or Firm shall without delay provide written notification to the Secretary, by recorded delivery, if they have been charged with, or convicted of, a criminal offence, such as may render them liable to disciplinary action under Rule 13".

It is important to note that the reporting obligation is triggered at the point of a Member being charged with a criminal offence, rather than at the point of conviction. The Member must report the matter to ICAS even if they intend to plead not guilty to the charge.

Is there anything that doesn't need to be reported?

While General Regulation 2.2 does not set out any exceptions, Members will not be expected to report fixed penalty notices for minor road traffic offences (e.g. speeding), or other fixed penalty notices issued by local authorities (e.g. dog-fouling).

All other charges or convictions must be reported to ICAS. It is important to understand that the reporting obligation applies equally to criminal matters which occur in a personal or professional capacity.

What happens if a Member fails to report a criminal matter to ICAS?

If a Member has been charged with, or convicted of, a criminal offence and fails to report that to ICAS – or unreasonably delays doing so – that will constitute a breach of General Regulation 2.2.

A breach of Regulation 2.2 may provide additional grounds for disciplinary action against the Member. On that basis, if there is any doubt over where something needs to be reported, it is safer to err on the side of caution and contact ICAS.

Who will assess if the Member is liable to disciplinary action?

In most instances, the ICAS Investigation Committee (“the Committee”) will assess whether the criminal matter renders the Member liable to disciplinary action under the ICAS Rules and Regulations. In some cases, the matter may subsequently need to be considered by a Discipline or Appeal Tribunal.

How will it be assessed?

ICAS must determine if the criminal matter constitutes professional misconduct, unsatisfactory professional conduct or professional incompetence (as those terms are defined under the ICAS Rules).

Some criminal convictions will give rise to a *presumption* that the Member is guilty of professional misconduct. This will depend on two factors: (i) the seriousness of the offence, as demonstrated by the way in which the offence was prosecuted in court, and (ii) the sentence applied by the court.

Across the UK, there are different names for the process followed by the prosecution. In general terms, for more serious offences, the charge against the accused is set out in a document called an indictment. Accused people are said to be charged ‘on indictment’ in these cases. Less serious charges are by way of “summary complaint”.

Taking account of the seriousness of the process, ICAS Rule 13.6 states that a Member convicted of an indictable offence or sentenced to imprisonment on summary complaint shall be presumed guilty of professional misconduct.

It is important to understand that even if the Member has received a lesser conviction (i.e. not an indictable offence or a prison sentence) that may still constitute professional misconduct, professional incompetence, or unsatisfactory professional conduct. The only difference is that for lesser convictions there is no presumption of professional misconduct.

What about convictions outside the UK?

ICAS will apply Rule 13.6 in the same way if a Member is convicted by the criminal courts of another country of an offence which, if committed in the UK, would be an indictable offence or an offence which could result in a sentence of imprisonment.

What information must be provided to ICAS in respect of the criminal matter?

A Member must provide documentation to confirm the details of the offence, for example a copy of the indictment or summons where the Member has been charged, or a copy of the extract conviction where the Member has been convicted.

ICAS will generally rely on the extract of conviction as proof of a Member’s guilt and the underlying facts. ICAS will not look behind the conviction except in exceptional circumstances. For the avoidance of doubt, it is not generally the role of ICAS to re-examine the evidence or how the finding of the court was made.

A Member may provide representations in respect of the matter, including any mitigating factors they consider are relevant to ICAS’ consideration. However, it will be for ICAS to assess the relevance of the representations, including any weight to be given to them. ICAS recognises that the member’s representations alone may not represent a balanced view of the matter and there may be other versions of events, for example from witnesses, that may not be available as part of this process.

A Member may wish to consider whether a character reference (for example from the Member’s employer) would be helpful.

Where the Member is aware that there has been media coverage of the criminal matter, it is expected that they will bring this to ICAS’ attention.

What factors will ICAS consider in assessing criminal convictions?

ICAS does not have a prescribed list of criminal offences which will always lead to disciplinary action, nor does it prescribe what sanctions should be applied for certain criminal offences. All the facts and circumstances of the matter will be considered on a case-by-case basis before it is decided if disciplinary action is to be taken and, if so, what the outcome should be.

When determining whether an offence is sufficiently serious to meet the threshold for disciplinary action the Committee will take into account a number of relevant factors. These factors will be particularly relevant for cases that do not give rise to a presumption of professional misconduct under ICAS Rule 13.6. If it is decided that disciplinary action is necessary, these factors are likely to also have a bearing on the level of disciplinary sanction which is applied.

The relevant factors include, but are not limited to, the following:

- Nature and the severity of the offence
- Level of sanction applied by the court/ level of conviction or length of prison sentence
- Conduct in a professional or personal capacity
- Personal gain, fraud or financial impropriety
- Abuse of a position of trust
- Prejudice to third parties
- Admission of guilt prior to conviction

Due to the nature of work performed by Members in the accountancy profession, a very serious view will be taken of offences which involve dishonesty, an abuse of a position of trust or financial impropriety (e.g. fraud or embezzlement). For similar reasons, an offence directly relevant to the Member's professional work it is more likely to lead to disciplinary action. Although it is important to understand that even if the offending took place in a Member's private life, it will still be necessary for ICAS to consider if the conduct brings the profession into disrepute.

The level of sanction imposed by the court will be relevant to the Committee's consideration. However, the purpose of the sentence issued by the court is intended to achieve a different objective to a sanction of a regulatory body, with the latter seeking to maintain confidence in the regulated profession, rather than to punish the individual. Where necessary, the Committee may seek guidance from a suitably qualified person to assist with interpretation of a particular disposal or sanction by the court.

In addition to any relevant factors, when determining the appropriate sanction, the Committee will also consider whether there is any aggravating or mitigating factors that may impact on its consideration. For example, a failure to report a criminal charge or conviction to ICAS, a failure to co-operate with Police or criminal justice system, or a lack of remorse, insight or remediation are likely to be considered aggravating factors.

Conversely, the Committee may also take into account mitigating factors such as the Member has shown remorse, the offence was isolated, unplanned and out of character, or there is little or no impact on the reputation of ICAS or the accountancy profession.

Further information on the factors that may be taken into account by the Committee when determining a disciplinary sanction, including the sanctions available to it, can be found in the ICAS Sanctions Guidance.

What will ICAS do about criminal charges which have not yet been determined by the court?

Where criminal proceedings have been raised against a Member but not yet determined by the court, it may be appropriate for ICAS to put its consideration of the matter on hold – for example, where the issues which ICAS needs to assess are the same (or substantively the same) as the issues to be determined by the court.

In those circumstances, it may not be appropriate for ICAS to reach its own determination on the matter if doing so could prejudice the criminal proceedings. However, ICAS will exercise its discretion in this regard, and it should not be assumed that ICAS investigations will always be put on hold.

If ICAS does put its investigation on hold, it may still seek to suspend or restrict the Member's licence or Membership until the criminal proceedings are over. ICAS will do this by making an Interim Order Application to the Discipline Tribunal. The application will only be granted if the Tribunal decides that it is necessary for the protection of the public and/or justified in all the circumstances.

What if the Member disagrees with the criminal conviction?

In considering whether a criminal matter renders the Member liable to disciplinary action, ICAS will not seek to take on the role of a criminal court. Where a Member has been convicted of a criminal offence, ICAS will rely on that conviction and will not question the decision of the court, even if the Member maintains his or her innocence.

The duty to report other Members

If a Member becomes aware that another Member has been charged with, or convicted of, a criminal offence, he or she should consider whether a report should be made to ICAS. There is separate guidance on exercising this reporting obligation – 'Reporting potential disciplinary offences to ICAS' – available on the ICAS website.

In considering whether to make such a report, the Member should consider whether ICAS is likely to already be aware of the circumstances (e.g. taking account of media coverage).

Sources of advice

Members who wish to discuss the contents of this note can seek further guidance from the confidential ethics helpline on 0131 347 0271 or by email at ethicalenquiries@icas.com.

Members should be aware that seeking guidance from the ethics helpline does not discharge them from their reporting obligations.



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