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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 his or her 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"*.

## 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 he or she intends 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 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.

Taking account of the seriousness of the process, ICAS Rule 13.6 states that a Member convicted of an indictable offence shall be presumed guilty of professional misconduct.

The same presumption in Rule 13.6 applies to Members who receive a prison sentence – including a suspended sentence – regardless of whether the case was prosecuted on indictment.

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 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 before it is decided if disciplinary action is necessary and, if so, what the outcome should be.

However, the following are likely to be considered aggravating factors:

- Criminal offences which involve dishonesty, an abuse of a position of trust and/or financial matters (e.g. fraud or embezzlement).
- A prison sentence.
- Criminal offences committed in connection with the Member's employment.
- Harm or prejudice to third parties (including clients of the Member).
- Any damage to the reputation of ICAS (and/or the accountancy profession).

There are also mitigating factors which may be considered, including:

- Offences committed in a personal capacity, with no impact on the Member's professional life.
- The sentence applied by the court.
- Relevant health issues.
- Character references.

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.

## 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.

In most instances, a certificate of a conviction from a court will be conclusive proof of the facts upon which the conviction is based. ICAS will not review the evidence that was considered in court.

## 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](mailto: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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