

January 2020



Guidance on the intimation of complaints



Purpose of this guidance

The purpose of this guidance is to assist Case Officers and Investigation Committee members to assess when a Complaint should be intimated to the Member, Firm, CA Student Member or Affiliate who is the subject of the Complaint.

It is understood that Case Officers and Investigation Committee members will exercise discretion when considering whether an individual Complaint should be intimated. Therefore, this guidance is not intended to be prescriptive.

References in this guidance to a “Member” should be construed as also referring to a Firm, CA Student Member or Affiliate who is the subject of a Complaint.

When will a Member be asked to respond to a Complaint

In most cases, the Case Officer will decide to send the Member a copy of the Complaint and ask for their response. This will usually happen because their input is required to allow the Case Officer to assess whether there are grounds to warrant referral of the Complaint to the Investigation Committee.

For example:

- The Case Officer may want to establish whether the facts presented by the Complainer are disputed by the Member.
- The Case Officer may need the Member to provide information or evidence which the Complainer has not submitted.

A Complaint could not be investigated by the Investigation Committee without the Member first being asked to respond to it.

Reasons why a Member may not be asked to respond to a Complaint

There will be some instances where the Case Officer considers that there is no need to ask the Member to respond to a Complaint, and instead the Complaint ought properly to be dismissed.

This could be for a number of reasons, including the following:

- The Complaint raises issues which fall outside ICAS’ complaints jurisdiction (e.g. raising issues which require separate legal determination).
- The Complaint is considered to be vexatious, frivolous, or time-barred (in accordance with the definitions in the Investigation Regulations).
- The Complaint appears to be unfounded, due to a lack of understanding, specification or supporting evidence.

In such circumstances, asking the Member to respond to the Complaint would needlessly prolong the investigation and is therefore unnecessary.

Consideration by the Review Panel

Whenever a Complaint is dismissed by a Case Officer, a Review Panel reviews that decision and has the power to change it.

If a Case Officer has decided to close a Complaint without obtaining the Member’s response, and the Review Panel does not agree with that decision, the Review Panel can overturn the decision to dismiss the complaint and require the Case Officer to send the Member a copy of the Complaint and ask for their response.

Notification of a Complaint after dismissal by a Review Panel

If the Review Panel agrees with the Case Officer’s recommendation to dismiss the Complaint, the general position is that the Member will be notified of the Complaint at that time. The Case Officer will provide the Member with the following information:

- A summary of the Complaint (the communication(s) from the Complainer need not be provided).
- Confirmation that the Complaint has been dismissed in accordance with the Investigation Regulations.
- Confirmation that no response is required or expected from the Member, Firm, CA Student Member or Affiliate.

The main reason for notifying a Member of the Complaint at this stage is to increase transparency in the investigation process. It may also be justified on other grounds – for example, to allow the Member to notify their PII provider of a potential claim. It is hoped that notification at this stage will not lead to extended further correspondence with ICAS on issues which have been considered and dismissed.

The Review Panel is responsible for deciding whether or not a Member should be notified of a Complaint after the fact. There will be some cases where the Review Panel decides that the Member should not be notified (taking account of input which may be provided by the Case Officer). While this will always be at the discretion of the Review Panel, it may be appropriate in the following circumstances:

- Where notification is likely to cause undue distress to an individual.
- Where the Member is suffering from ill-health.
- Where the Review Panel reasonably considers that intimation of the Complaint would likely have negative consequences for the parties involved.

Notification following dismissal of Complaints under Investigation Regulation 3.12

Investigation Regulation 3.12 allows the Director of Investigations to dismiss Complaints on specified grounds (for example, the complaint is frivolous, vexatious or time-barred), with the approval of the Convener of the Investigation Committee.

For such cases, the same approach will be adopted as with Complaints which are dismissed by Review Panels, albeit with the Director of Investigations and Convener exercising discretion over whether to notify the Member of the Complaint.



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