

April 2021



# Reporting Guidance



## Purpose

ICAS is committed to maintaining public confidence in the accountancy profession. Ensuring that our Members, CA Student Members, Firms and Affiliates comply with the high standards expected of them safeguards the reputation of the profession and protects the public interest. While Members will rarely be faced with the need to criticise the conduct or competence of a fellow CA, they are strongly positioned to identify, understand and communicate such concerns to ICAS.

The purpose of this Helpsheet is to provide assistance to Members who believe they may have a regulatory duty to report misconduct or incompetence to ICAS. It does not address statutory reporting obligations to third parties (e.g. reporting money laundering concerns to the National Crime Agency). If you need advice on other such reporting obligations, or if you have questions which are not answered in this Helpsheet, please contact ICAS' ethical helpline on +44 (0)131-347-0271.

## Who is obliged to report?

While this Helpsheet refers to the reporting obligations of Members, Investigation Regulation 3.1 states that the same obligations apply to CA Student Members and Affiliates.

The duty to report is not restricted to Members in practice, and applies equally to Members in business.

## What am I obliged to report?

As set out in the Investigation Regulation 3.1, a Member's duty is to report any facts or matters which, in their reasonable opinion, indicate that a Member, CA Student Member, Affiliate or Firm may be liable to disciplinary action.

An individual is liable to disciplinary action where he or she is guilty of the following:

- **Professional incompetence** – the performance of professional work, whether as a principal, director, employee or as an individual, incompetently to such an extent or on such a number of occasions as to fall significantly short of the standards expected of a Member, CA Student Member, Affiliate, or Firm;
- **Professional misconduct** – includes, but is not limited to, any serious act or default, whether in the course of carrying out professional work or otherwise likely to bring discredit to himself, ICAS or the profession of accountancy, or any serious departure from the standards to be expected of a Member, CA Student Member or Affiliate of ICAS; and/ or
- **Unsatisfactory professional conduct** – includes, but is not limited to, any act or default, whether in the course of carrying out professional work or otherwise which falls below the standards to be expected of a Member, CA Student Member or Affiliate of ICAS but which does not amount to professional misconduct.

The reporting obligation covers the conduct and competence of all Members, not simply those Members engaged in public practice. It could follow a breach of ICAS Rules, Regulations, or other standards which Members are obliged to follow.

Where a concern relates to the regulated work of a Firm, for instance audit or designated professional business ("DPB"), the Firm will be liable to disciplinary action under the Rules if it is guilty of:

- conduct liable to bring ICAS into disrepute;
- professional incompetence (as defined above); and/ or
- a failure to adhere to the Rules, Regulations or other guidance governing the regulation of Firms.

## Am I required to report my own misconduct?

Yes – you are responsible for reporting your own conduct where it would fall within the definition of Regulation 3.1. Where a report leads to a disciplinary finding, the fact that a matter was self-reported may be looked upon favourably.

## Am I required to self-report criminal charges and convictions?

With the exception of fixed penalty notices for minor road traffic offences, all criminal charges and convictions should be reported to the ICAS Secretary without delay, in terms of ICAS General Regulation 2.2. If ICAS becomes aware that you failed to report a charge or conviction, in breach of Regulation 2.2, then that failure is likely to be considered as part of ICAS' wider investigation.

Further information can be found in ICAS' Guidance Note: 'Criminal matters which have been reported to ICAS'.

## Do I need to report misconduct which occurred in a personal capacity?

Yes – the ICAS Code of Ethics places an obligation on Members to avoid any action which may discredit the profession. This includes actions that a reasonable and informed person, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude adversely affects the good reputation of the profession (Code of Ethics, Section 115 'Professional Behaviour'). Misconduct in a personal capacity is therefore a reportable offence under Regulation 3.1.

## How do I make a report?

Reports should be made in writing, addressed to the Director of Investigations, as soon as practically possible and accompanied by supporting documentation as necessary. Concerns can also be emailed to [complaints@icas.com](mailto:complaints@icas.com). Any unreasonable delay could be considered a failure to report, which might constitute grounds for disciplinary action against you.

## What factors should I consider when deciding if I have an obligation to report to ICAS?

You should consider if the facts available to you indicate that the Member has failed to observe any law, regulation or guidance issued by ICAS.

While you may not like or agree with the action of another Member that alone does not mean that he or she has acted inappropriately and may be liable to disciplinary action.

You should also bear in mind that minor mistakes or errors of judgement are unlikely to fall within the reporting obligation – e.g. errors which have little or no material impact on third parties.

## What evidence do I need to have in order to make a report?

ICAS can take disciplinary action against a Member where there is sufficient evidence that he or she has failed to meet the standards expected of them. While you are not expected to undertake an investigation into the matter, there must be some indication of wrongdoing on the part of the Member: suspicion alone is unlikely to be a sufficient basis upon which to start a disciplinary investigation.

If you have significant concerns about the conduct or competence of a Member but are unable to gather supporting evidence, you should contact the ICAS Investigations Department to discuss the matter further as it may still be appropriate for ICAS to investigate, or to use the information for regulatory intelligence.

## What are the consequences of making a report?

A report received under Regulation 3.1 will be dealt with in accordance with the ICAS complaints process. The powers of ICAS to undertake a disciplinary investigation against a Member are set out in the Investigation Regulations. Further details about the ICAS complaints process are available on [icas.com](http://icas.com).

## Am I restricted in what I can report because of client confidentiality?

Before making a report to ICAS under Regulation 3.1 you should consider whether you are bound by an obligation to a client, employer or third party. There may also be instances where disclosure is prohibited by a Court order. In such circumstances, Members are encouraged to obtain independent legal advice on your respective obligations. Please note that ICAS cannot provide legal advice to

Members.

General ethical guidance in relation to client confidentiality can be found in Section 114 of the ICAS Code of Ethics, or by calling the ICAS ethics helpline on 0131 347 0271.

## How does the obligation to report apply to Insolvency Practitioners?

In addition to the obligation to report misconduct placed on a Member by Regulation 3.1, Insolvency Practitioners are also required to report the actions of any other Insolvency Practitioner, whether authorised by the same or another Recognised Professional Body. Statement of Insolvency Practice 1 'An Introduction to Statements of Insolvency Practice' requires:

*An insolvency practitioner who becomes aware of any insolvency practitioner who they consider is not complying or who has not complied with the relevant laws and regulations and whose actions discredit the profession, should report that insolvency practitioner to the complaints gateway operated by the Insolvency Service or to the at insolvency practitioner's recognised professional body.*

## Do I still need to report to ICAS if I have reported my concerns to my employer?

As many businesses now have an internal reporting process, it is reasonable to expect that concerns about a Member employed by the business will be directed through that process in the first instance. In these circumstances, the reporting Member may wish to await the conclusion of that process before deciding whether to also report to ICAS.

If the process involves reporting internally to a Member in a more senior position (e.g. a partner of a CA firm), the duty to report will principally rest with that individual, with the more junior reporting Member having discharged his or her duty to report (unless there are strong grounds to suggest that the matters of concern are being concealed).

If you are unhappy with the way in which your concerns have been handled by your employer, you may decide to report to ICAS.

## Can I report to ICAS anonymously?

It can often be difficult for ICAS to investigate anonymous complaints, as we will not be able to clarify the concerns which have been raised, or get feedback on the Member's responses to the allegations. We may, however, attempt to investigate if the complaint discloses sufficient evidence of concerns, or if we think it is otherwise in the public interest.

## What if I don't want to be identified as the source of a report?

For most complaints, it will be preferable for ICAS to disclose the reporting Member's identity to the Member under investigation. This is standard practice in most complaint processes, for various reasons:

- it increases the transparency of the investigation;
- it avoids potential issues with regard to Subject Access Requests made under Data Protection legislation;
- if the complaint proceeds to a Discipline Tribunal hearing, ICAS will likely have to disclose all information and evidence in support of the complaint.

However, we will consider withholding the reporting Member's identity if there are good reasons to do so. An example of where this might be appropriate is with whistleblowing complaints, where a Member wants to disclose concerns involving their employer, but does not want to be exposed to the possible consequences which reporting may bring.

Members who wish to discuss whistleblowing should consider contacting our ethics helpline (see details below). An alternative option is the advice line operated by Protect, which provides a free and confidential service. Further information is available through: <https://protect-advice.org.uk/>

## What are the consequences for failing to report to ICAS?

If we become aware that a Member should have reported certain facts or matters but failed to do so, we will consider whether the Member has breached the requirements of Investigation Regulation 3.1 and is liable to disciplinary action as a consequence.

## Sources of advice

Members who remain in doubt as to their reporting obligations can seek further guidance from the confidential ethics helpline on +44(0)131 347 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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