

Date: 1 January 2024



ICAS Investigation Regulations

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The Institute of Chartered Accountants of Scotland

Index

Council, in terms of Rule 11.11.5 and 12.4 of the ICAS Rules, hereby makes the following Regulations.

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1. General

Citation and commencement

- 1.1 These Regulations may be cited as the ICAS Investigation Regulations and shall come into force on 1 January 2024.

Definitions

- 1.2 In these Regulations words and phrases have the same meaning as in the ICAS Rules and, unless the context requires otherwise:

Adjudication Committee – a Sub-Committee established under Regulation 3.35.

Case Officer – a member of staff employed by ICAS to conduct preliminary enquiries into Complaints and/or to act as Investigator in accordance with Regulation 3.27.

Committee – the Investigation Committee established under Regulation 2.1.

Complainer – a person or entity which submits a Complaint to ICAS.

Complaint – a communication (including a referral from any Regulatory Committee of ICAS) and/or matters of concern which come to the attention of ICAS and which raise concerns about or otherwise express dissatisfaction with, the standards of conduct, ethical behaviour or technical competency of a Member, CA Student Member, Affiliate or Firm.

Convener – the chairperson of the Investigation Committee.

Director of Investigations – a member of staff so designated.

Investigating Panel – a Sub-Committee appointed under Regulation 3.27.1.

Investigator – the person or entity appointed to investigate a Complaint in accordance with Regulation 3.27.

Investigator's Report – a report prepared by the Investigator upon conclusion of an investigation in accordance with Regulation 3.31.

Legal Adviser – a legally qualified person nominated to provide advice on law and evidence.

Serious Character – applies where a Complaint raises, or appears to raise, significant concerns about integrity, objectivity, professional competence or professional behaviour, or raises, or appears to raise, serious matters affecting the public interest.

Sub-Committee – means no fewer than three members of the Investigation Committee appointed under these Regulations, including persons co-opted under Regulation 2.8, and comprised of not less than one-third Members and one-third Lay Members.

Time-Barred – a Complaint may be considered to be time-barred and may be dismissed in accordance with Regulations 3.12 and 3.13 if the date on which the complaint was submitted to ICAS is more than three years after either (i) the date on which the concerns raised by the Complainer occurred, or (ii) the date on which the Complainer was, or ought to have been, first aware of the concerns; providing always that this timescale may be extended by either the Director of Investigations or the Convener where there are exceptional circumstances.

Vice Convener – an individual drawn from the Committee to deputise for the Convener when the Convener has declared an interest in a particular matter or is otherwise absent.

Notices

- 1.3 Any notice or other document to be sent under these Regulations shall be delivered electronically, by hand or by post. It must be sent to the address that the Member, CA Student Member, Affiliate, or Firm has given to ICAS for this purpose. Delivery shall be deemed to have occurred:
 - 1.3.2 for emails, facsimile, and other electronic means, when sent;
 - 1.3.2 by hand, when delivered;
 - 1.3.3 by post, 48 hours after posting.

Application

- 1.4 A Complaint shall be investigated and determined in accordance with the version of these Regulations which was in force on the date on which the Complaint was received by ICAS.
- 1.5 For the purposes of Regulation 1.4, previous versions of these Regulations shall remain in force as required for the investigation and determination of Complaints received by ICAS before 31 August 2018.

2. The Investigation Committee

Constitution and composition

- 2.1 The Regulation Board shall establish an Investigation Committee comprised of a Convener and twelve or more other persons. Not less than one half of the Committee shall comprise Lay Members.
- 2.2 Appointments to the Committee shall be for a term of three years, renewable for one further term of three years at the discretion of the Regulation Board.
- 2.3 The length and number of terms referred to in Regulation 2.2 may be extended or varied in exceptional circumstances, at the sole discretion of the Regulation Board.
- 2.4 The Vice Convener shall have all the powers and duties of the Convener set out in these Regulations if the Convener has declared an interest in a particular matter or is otherwise absent.

Conduct of business

- 2.5 The Committee shall meet a minimum of four times a year.
- 2.6 At all meetings of the Committee, three members shall constitute a quorum, of whom one shall be a Member and one shall be a Lay Member.
- 2.7 A meeting of the Committee, or any Sub-Committee established under these Regulations, may be conducted in person, by email, telephone or other electronic or video conferencing means whereby communications between members can be conducted in real time.
- 2.8 The Convener may co-opt persons to assist with an investigation under these Regulations.
- 2.9 The Convener shall, in the case of an equality of votes, have a second or casting vote.

Declaration of interest

- 2.10 Each member of the Committee must declare any interest in any matter before the Committee. A member of the Committee who has declared such an interest shall ensure that they withdraw from any discussion and decision on the matter concerned.

Remuneration

- 2.11 Members of the Committee are entitled to be reimbursed by ICAS for any expenses reasonably incurred in connection with their membership of the Committee.
- 2.12 Lay Members of the Committee are entitled to reasonable remuneration in connection with their membership of the Committee.
- 2.13 An Investigator who is not employed by ICAS and is not a member of the Committee is entitled to be reimbursed by ICAS for any reasonably incurred expenses, and may be entitled to reasonable remuneration for any work carried out under these Regulations.

Powers and functions

- 2.14 So far as required by these Regulations, the Committee shall exercise the powers of ICAS set out in the following Rules:
- 2.14.1 Rule 13.11;
 - 2.14.2 Rules 13.14.2 and 13.14.3;
 - 2.14.3 Rule 13.15;
 - 2.14.4 Rule 13.16;
 - 2.14.5 Rule 13.19;
 - 2.14.6 Rule 13.21.
- 2.15 With the consent of the Member, CA Student Member, Affiliate or Firm, the Committee shall have the power to impose the following orders:
- 2.15.1 to caution;
 - 2.15.2 to reprimand;
 - 2.15.3 to severely reprimand;
 - 2.15.4 payment of a financial penalty;
 - 2.15.5 payment in respect of the costs incurred by ICAS and/or the Committee;
 - 2.15.6 to exclude a Member or CA Student Member from Membership of ICAS;
 - 2.15.7 to accept the surrender of any permit, licence, certificate or other authorisation granted by ICAS.
- 2.16 The Committee shall have the power to suspend the Membership of a CA Student Member for a period not exceeding 60 days, in accordance with Regulation 9.
- 2.17 The Committee shall exercise the powers of ICAS in relation to the presentation of a formal complaint to a Discipline Tribunal.
- 2.18 The Committee shall have the power to make directions and determine all other matters incidental to or arising from the exercise of its powers under these Regulations.

Delegation of powers

- 2.19 Subject to Regulation 2.20, the Committee and the Convener may sub-delegate all or any of the powers and duties set out in these Regulations to a Sub-Committee on such terms as it may decide.

Restriction of delegated powers

- 2.20 The powers under the following Regulations shall not be delegated:
- 2.20.1 Regulation 2.14.1;
 - 2.20.2 Regulation 4.1;

3. Investigation

Duty to report

- 3.1 It is the duty of each Member, CA Student Member, and Affiliate to report to ICAS any facts or matters which, in their reasonable opinion, indicate that:
- 3.1.1 a Member, CA Student Member, or Affiliate may be guilty of Professional Misconduct or Unsatisfactory Professional Conduct;
 - 3.1.2 a Member, CA Student Member, Affiliate, or Firm may be guilty of Professional Incompetence;
 - 3.1.3 a Firm may have committed any serious act or default, whether in the course of carrying out professional work or otherwise likely to bring discredit to the Firm, ICAS or the profession of accountancy, or any serious departure from the standards to be expected of a Firm; and/or
 - 3.1.4 a Firm may have failed to adhere to the Rules, or to Regulations, or other guidance governing the regulation of Firms.

In deciding whether the duty to report arises in particular circumstances, the Member, CA Student Member or Affiliate may have regard to guidance issued by ICAS from time to time.

Duty to investigate complaints

- 3.2 If a Member or Affiliate receives a complaint from or on behalf of a client concerning any services provided by the Member or Affiliate in the normal course of business, they shall ensure that the complaint is investigated and, if the complaint is considered to be justified, shall ensure that reasonable steps are taken to resolve the complaint.
- 3.3 If a complaint under Regulation 3.2 is not resolved to the satisfaction of the client, the Member or Affiliate shall advise the client in writing of the right to submit a complaint to ICAS.

Duty to co-operate

- 3.4 Members, CA Student Members, Affiliates and Firms shall, at all times, co-operate fully and promptly with the investigation of a Complaint.
- 3.5 Further to Rule 13.3, all duties and obligations arising under these Regulations shall equally apply to a person who ceases to be a Member or Affiliate.
- 3.6 Members and Affiliates shall make all reasonable efforts to ensure that any entity of which they are a principal, director or employee co-operates with a request for information under these Regulations.
- 3.7 If a Firm is the subject of a Complaint, the Firm shall ensure that any request for information under these Regulations is dealt with by the managing partner or such Principal or suitable senior employee as they may nominate.
- 3.8 Upon receipt of a request from the Committee, an Investigator or a Case Officer, the Member, CA Student Member, Affiliate or Firm shall:
- 3.8.1 provide such information or explanation in relation to the Complaint; and/or
 - 3.8.2 permit the examination of or deliver up such books, papers and records, including computer records relating to the Complaint, as the Committee, Investigator or Case Officer considers necessary for the purposes of the investigation.
- 3.9 The Case Officer or Investigator may require a Member, CA Student Member or Affiliate to attend an interview on provision of reasonable notice.

- 3.10 A Member, CA Student Member or Affiliate is entitled to be accompanied by a solicitor at any interview held under Regulation 3.9.
- 3.11 A failure by a Member, CA Student Member or Affiliate to comply with Regulations 3.4 to 3.9 without reasonable excuse shall constitute Professional Misconduct.

Initial assessment

- 3.12 Subject to Regulation 3.13, on receipt of a Complaint to ICAS the Director of Investigations shall have the power to dismiss the Complaint without making preliminary enquiries if the Complaint:
- 3.12.1 is vexatious or frivolous;
 - 3.12.2 ought properly to be investigated by another professional body; or
 - 3.12.3 is Time-Barred.
- 3.13 The Director of Investigations shall obtain the agreement of the Convener before dismissing a Complaint in accordance with Regulation 3.12. If the Convener disagrees that the Complaint should be dismissed, the Director of Investigations shall direct that preliminary enquiries are conducted in accordance with Regulation 3.22.
- 3.14 For the purposes of Regulation 3.12, a “vexatious” Complaint means a Complaint which has or may have been made solely with the intention of causing annoyance, worry or trouble for the Member, CA Student Member, Affiliate or Firm complained about. A “frivolous” Complaint is a Complaint that is of a trivial nature, or where to investigate it would be out of all proportion to the seriousness of the issues complained about.
- 3.15 If, in the opinion of the Director of Investigations, a Complaint gives rise to a matter of public concern, they shall ensure that the matter is referred to the Committee to determine whether it should be referred to the Public Disciplinary Scheme in accordance with Rule 13.11.

Preliminary enquiries

- 3.16 If a Complaint is not dealt with in accordance with Regulations 3.12 to 3.15, the Director of Investigations shall appoint a Case Officer to undertake preliminary enquiries into the issues raised in the Complaint.
- 3.17 Subject to Regulation 3.18, when undertaking preliminary enquiries, the Case Officer may, at their discretion, seek to secure a conciliated outcome which is satisfactory to the parties involved.
- 3.18 The Case Officer shall not seek to secure a conciliated outcome of a Complaint which refers to facts or matters which:
- 3.18.1 should be referred to the Committee in accordance with Regulation 3.15;
 - 3.18.2 are of a Serious Character;
 - 3.18.3 otherwise render it unsuitable for conciliation.
- 3.19 If the Case Officer successfully resolves a Complaint by conciliation, the Complaint shall be closed and the involvement of ICAS shall be at an end.
- 3.20 If the Case Officer does not close a Complaint in accordance with Regulation 3.19, they shall determine, upon conclusion of preliminary enquiries, whether the Complaint discloses sufficient grounds for further investigation.

Insufficient grounds for investigation

- 3.21 If the Case Officer decides that a Complaint does not disclose sufficient grounds for further investigation, the Director of Investigations (or such person appointed by the Director of Investigations) shall ensure that the Case Officer’s conclusions and

reasons are documented and made available to a Sub-Committee appointed by the Convener. The Sub-Committee shall include a majority of Lay Members.

- 3.22 The Sub-Committee appointed under Regulation 3.21 shall review the Case Officer's decision and may either:
- 3.22.1 uphold the decision that the Complaint does not disclose sufficient grounds for further investigation;
 - 3.22.2 direct the Case Officer to conduct further preliminary enquiries; or
 - 3.22.3 direct that the Complaint is referred to the Committee for further investigation in accordance with Regulation 3.26.6
- 3.23 If the Sub-Committee upholds the Case Officer's decision that the Complaint does not disclose sufficient grounds for further investigation, the Complaint will be closed and the involvement of ICAS will be at an end, subject to the terms of Regulation 6.
- 3.24 The Sub-Committee may not uphold the decision under Regulation 3.22.1 unless it is able to reach a unanimous decision. In the absence of a unanimous decision, the Complaint shall proceed for investigation in accordance with Regulation 3.22.3. The decision of the Sub-Committee in all instances shall be final, subject to the terms of Regulation 6.

Sufficient grounds for investigation

- 3.25 If the Case Officer decides that a Complaint discloses sufficient grounds for further investigation, the Director of Investigations (or such person appointed by the Director of Investigations) shall ensure that the Complaint is referred to the Committee in accordance with Regulation 3.26.

Investigation by the Committee

- 3.26 If a Complaint discloses sufficient grounds for investigation and is unsuitable for conciliation, or has been remitted for investigation under Regulation 3.22.3, the Complaint shall be referred to the Committee for investigation in accordance with these Regulations.
- 3.27 Once a Complaint is referred to the Committee, the Convener shall appoint an Investigator who may be:
- 3.27.1 a Sub-Committee;
 - 3.27.2 an individual (including a Case Officer);
 - 3.27.3 a Member or Firm; or
 - 3.27.4 a legally-qualified person or law firm.
- 3.28 The role of an Investigator is to make such enquiries and obtain such information relating to the Complaint as is necessary in order for the Investigator to assess whether the Complaint discloses grounds which render the Member, CA Student Member, Affiliate or Firm liable to disciplinary action.
- 3.29 In performing the role under Regulation 3.28, an Investigator may obtain technical and legal advice from such sources as the Investigator deems appropriate.
- 3.30 An Investigator shall be entitled to extend the Complaint beyond the issues which were referred to the Committee under Regulation 3.26.

Recommendation of the Investigator

- 3.31 Once an Investigator has reached a recommendation as to whether the Member, CA Student Member, Affiliate or Firm is liable to disciplinary action, the Investigator shall prepare a report detailing the conclusions, supporting reasons and recommendation for disposal.

- 3.32 The Investigator's Report shall be considered and reviewed by an Adjudication Committee in accordance with Regulation 3.35 if:
- 3.32.1 the Investigator is other than a Sub-Committee under Regulation 3.27; or
 - 3.32.2 the Investigator is a Sub-Committee under Regulation 3.27 and considers that the Member, CA Student Member, Affiliate or Firm may be liable to disciplinary action.
- 3.33 The Investigator's Report shall not require to be considered by an Adjudication Committee in accordance with Regulation 3.35 if:
- 3.33.1 the Investigator is a Sub-Committee under Regulation 3.27; and
 - 3.33.2 the Investigator has concluded that the Member, CA Student Member, Affiliate or Firm is not liable to disciplinary action.
- 3.34 If Regulation 3.33 applies the Investigator's Report shall be referred to the Convener who shall dismiss the Complaint.

Adjudication Committee

- 3.35 Where Regulation 3.32 applies, the Convener shall appoint an Adjudication Committee the function of which shall be to review the Investigator's Report and determine whether the Member, CA Student Member, Affiliate or Firm is liable to disciplinary action.
- 3.36 An Adjudication Committee may obtain technical and legal advice from such sources as it deems appropriate in order to determine the Complaint in terms of Regulation 3.38.
- 3.37 An Adjudication Committee shall exercise the powers of the Committee as set out in Regulations 2.14 to 2.16.
- 3.38 Upon consideration of the Investigator's Report and the recommendation for disposal of the Complaint, an Adjudication Committee shall determine the Complaint and may:
- 3.38.1 refer the Complaint back to the Investigator for further investigation;
 - 3.38.2 with the consent of the Member, CA Student Member, Affiliate or Firm impose any of the orders set out in Regulation 2.15;
 - 3.38.3 order that a formal complaint be referred to the Discipline Panel;
 - 3.38.4 dismiss the Complaint; or
 - 3.38.5 refer the Complaint to the full Committee for determination.
- 3.39 An Adjudication Committee may decide to take no action under Regulation 3.38 if it determines that there are compassionate or other exceptional circumstances.
- 3.40 Any failure by a Member, CA Student Member, Affiliate or Firm to make full payment of any sums imposed by an Adjudication Committee under Regulations 3.38.2 and 3.38.3 shall be dealt in accordance with Rule 6.4.
- 3.41 Where a Member, CA Student Member, Affiliate or Firm accepts a liability to disciplinary action, but does not accept the order which has been proposed by an Adjudication Committee under Regulation 3.38.2, the Adjudication Committee may proceed via the Joint Order Application procedure, as set out in the Discipline and Appeal Tribunals Regulations.

4. Advanced Costs

- 4.1 Where the Convener certifies in writing that facts or matters are of a Serious Character and that it is necessary for the effective conduct of the investigation, the Investigator may require a Member, CA Student Member, Affiliate or Firm to obtain, at their own expense, a report of such nature as may be directed by the Investigator.

- 4.2 If a Member, CA Student Member, Affiliate or Firm fails to obtain a report required under Regulation 4.1, it may be obtained by the Committee and the Member, CA Student Member or Affiliate or Firm shall be liable to pay the costs of such report. Non-payment of such costs shall be treated in accordance with Rule 6.4.
- 4.3 If, on conclusion of the investigation, the Investigator determines that the Member, CA Student Member, Affiliate or Firm is not liable to disciplinary action, the Committee may, at its discretion and on written application by the Member, CA Student Member, Affiliate or Firm concerned, determine that the Member, CA Student Member, Affiliate or Firm shall be reimbursed for all or part of any costs which have been incurred in relation to the report prepared in accordance with Regulation 4.1.

5. Regulatory Responsibilities

- 5.1 During the course of an investigation of a Complaint, the Case Officer, Investigator, or Adjudication Committee may have cause to bring relevant facts to the attention of a Regulatory Committee, and shall do so without delay notwithstanding that the Committee has not fully discharged its duties under the Rules and Regulations.

6. New Evidence

- 6.1 Where new evidence is presented to ICAS following the dismissal of a complaint, which was not made available to the Case Officer, Investigator or Adjudication Committee at the time of their consideration of the Complaint, the Convener may invite the Case Officer, Investigator or Adjudication Committee (where applicable) to consider:
- 6.1.1 the relevance of such new evidence;
 - 6.1.2 the reason why the new evidence was not previously made available; and
 - 6.1.3 any relevant points of law.
- 6.2 The Case Officer, Investigator or Adjudication Committee shall thereafter decide whether the new evidence merits a reconsideration of the decision to dismiss the Complaint. The decision of the Case Officer, Investigator or Adjudication Committee shall be final.

7. Judicial Factor

- 7.1 Where it considers that it is either necessary or advisable in the public interest, the Committee may apply to a competent court for the appointment of a judicial factor or such other individual who fulfils a comparable function.

8. Publicity

- 8.1 The Convener may, if they are of the opinion that it is necessary to maintain public confidence in the disciplinary process of ICAS, at any time make such public statement as they think fit concerning the performance of the Committee's functions, including its consideration of any particular facts or matters.
- 8.2 If, with the consent of the Member, CA Student Member, Affiliate or Firm, the Committee imposes an order under Regulation 2.15, it shall publicise the outcome in such manner as it sees fit. The default position is that such publicity shall include the name of the Member, CA Student Member, Affiliate or Firm concerned and a short statement of the facts. In exceptional circumstances, the Committee may publicise the outcome on an anonymous basis.
- 8.3 Where the Committee has dismissed a Complaint, the Member, CA Student Member, Affiliate or Firm which was the subject of the Complaint may require the Committee to

publicise the fact that the Complaint was dismissed. The Committee shall have full discretion over the placement, form and content of such publicity.

9. Suspending Membership of a CA Student Member

- 9.1 The Committee may immediately suspend the Membership of a CA Student Member for a period not exceeding 60 days if it considers that the continuation of Membership would present an undue risk to clients, third parties, the public interest, or the reputation of ICAS.
- 9.2 Where Membership is suspended in accordance with Regulation 9.1, the decision shall be confirmed in writing to the CA Student Member at the earliest opportunity, with such written notice confirming the practical impact of the suspension for the CA Student Member.
- 9.3 A CA Student Member whose Membership has been suspended under Regulation 9.1 may appeal against the decision to the Appeal Panel, with the appeal to be submitted within 14 days of the notice of suspension, and considered thereafter in accordance with the provisions of the Discipline and Appeal Tribunals Regulations.
- 9.4 On expiry of the suspension, the Committee may:
 - 9.4.1 take no further action;
 - 9.4.2 investigate matters in accordance with these Regulations; or
 - 9.4.3 apply for an Interim Order in accordance with Rule 13.18.



CA House, 21 Haymarket Yards, Edinburgh, UK, EH12 5BH


+44 (0) 131 347 0100


connect@icas.com

icas.com

 @ICASaccounting

 ICAS – The Professional Body of CAS

 icas_accounting

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