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# **Guidance on the use of ICAS Investigation Regulation 3.42**



## Purpose

This guidance is published by ICAS' Investigation Committee, with the approval of the Regulation Board, to provide further information on the process which shall be followed by Adjudicating Panels when proposing and imposing orders under Regulation 3.42 of the ICAS Investigation Regulations ("the Regulations").

## Context

Full information on the powers and procedures of the Investigation Committee is available in the Regulations, which are available on the ICAS website [here](#). This guidance only focuses on the powers exercised under Regulation 3.42 and does not provide wider information on the investigation and determination of complaints.

## Definitions

The Rules and Regulations allow for orders to be applied to Members, CA Student Members, Affiliates and Firms. For simplicity, this guidance will use the term "Member(s)" to cover all of these categories.

References to an "order" in this guidance mean the orders available to the Investigation Committee under Regulation 2.05, with "order" including one or more of these.

## Adjudicating Panels

At the conclusion of the investigation of a complaint, an Adjudicating Panel may need to be appointed under the Regulations to determine whether a Member liable to disciplinary action, and if so, which order would be appropriate in response.

An Adjudicating Panel is a sub-committee of the Investigation Committee, appointed from its members as and when required to determine a complaint. It will contain at least three members, including a CA and a lay member.

Decisions are made by Adjudicating Panels in meetings following careful consideration of the relevant facts and evidence in respect of a complaint, as set out in the Investigator's Report.

## Powers

The Regulations provide Adjudicating Panels with various powers in respect of complaints, including powers to dismiss with no further action, and to request further investigation or information.

This guidance focuses on the Adjudicating Panel's power to propose and impose one or more of the disciplinary orders which are listed in Regulation 2.15 (including orders of reprimand, exclusion from membership, and financial penalties). This power is set out in Regulation 3.42.

## Regulation 3.42

This Regulation is worded as follows:

- 3.42 *The following process shall be followed by an Adjudicating Panel where it has upheld a Complaint and proposes to impose an order or orders:*
- 3.42.1 *notice of the decision and proposed order or orders shall be served on the Member, CA Student Member, Affiliate or Firm;*
  - 3.42.2 *the notice shall advise the Member, CA Student Member, Affiliate or Firm that the proposed order or orders shall be made on expiry of a period of 21 days (or such longer period of time as the Adjudicating Panel considers is reasonable in the circumstances), unless the Member, CA Student Member, Affiliate or Firm confirms in writing within that timescale that they wish to oppose the order or orders;*
  - 3.42.3 *if a Member, CA Student Member, Affiliate or Firm has confirmed that they wish to oppose the order or orders, the Adjudicating Panel shall proceed in accordance with Regulation 3.40.2 or 3.44 as appropriate;*

3.42.4 notwithstanding a lack of response from a Member, CA Student Member, Affiliate or Firm, the Adjudicating Panel may decide that it is appropriate to proceed in accordance with Regulation 3.40.3.

The Regulation concludes with this wording: “In following this process, Adjudicating Panels shall act in accordance with such guidance as shall be published by ICAS from time to time”. This document is the guidance referred to in the Regulation.

## Deciding when to use Regulation 3.42

As set out above, Regulation 3.42.4 allows an Adjudicating Panel to proceed as follows:

- An order is proposed to the Member.
- The Member fails to respond within the stated timescale.
- Rather than apply the order, the Adjudicating Panel takes steps for a formal complaint against the Member to be intimated to the Discipline Panel, for hearing and determination by a Discipline Tribunal in due course.

Adjudicating Panels are only likely to take such decisions in the following circumstances:

- (i) It is clear from the investigation papers that the Member does not accept the charges made against them, with a disagreement over the facts or evidence.
- (ii) There is a public interest in the case being heard and determined by a Discipline Tribunal (having regard to the seriousness of the allegations against the Member).

## Member response to proposed Regulation 3.42.1 order

The communication of the Adjudicating Panel’s decision will set out the Member’s options for responding to the proposed orders. These may be summarised as follows:

Response	Next steps
If a Member agrees with, accepts, or does not wish to challenge the Adjudicating Panel’s decision, they may either reply to the communication to confirm their position, or let the timescale expire with no response.	The order will be applied and publicised in accordance with the process set out below. Any financial penalty or costs order must be paid with the stated timescale.
If a Member does not accept the decision, this should be communicated in writing before the end of the listed timescale. There is no requirement for reasons to be provided.	The Investigation Committee will submit a formal complaint to the Discipline Panel, which will be heard and determined by a Discipline Tribunal following a formal hearing.
A Member may accept that the complaint should be upheld (i.e. that they are liable to disciplinary action), but disagree with the order proposed (e.g. the financial penalty is too high). This should be communicated in writing before the end of the listed timescale.	An order will be applied by a Discipline Tribunal through the ‘Joint Order Application’ process, following representations from the Member and the Investigation Committee.

**It is important to emphasise that a failure to respond to the decision letter within the stated timescale will lead to the order being applied by the Investigation Committee. If a Member disagrees with the proposed order, the onus is on them to confirm this to ICAS.**

## Communications and timescales

Further to the provisions of Regulation 3.42, the following steps in the process shall be followed by ICAS:

- (i) One week before the expiry of the timescale applied under Regulation 3.42.2, ICAS shall contact the Member to remind them of the deadline for response.
- (ii) If the timescale expires with no notice of opposition from the Member, ICAS shall send them a copy of the order which has been imposed.
- (iii) Not less than two months after (ii) has been completed, notice of the order shall be uploaded to the ICAS website, and publicised in CA Magazine, in accordance with ICAS' publicity policy. At the same time, a copy of the notice will be sent to the Member.

Each of the communications listed here will be sent to the following:

- The Member's personal and work email addresses (where held by ICAS), using the 'read receipt' function.
- The Member's work and home addresses (where held by ICAS), with the communication under (ii) sent additionally by recorded delivery.

## Challenges with responses

A Member who receives the communications from ICAS, but is unable to respond within the stated timescale, should contact the ICAS Case Officer at the earliest opportunity, following the processes set out in the following helpsheets:

- [Co-operating with an investigation](#)
- [Health issues in connection with the investigation of a complaint](#)

The Case Officer will take instructions from the Adjudicating Panel on next steps, with the expectation being that ICAS will apply a reasonable level of flexibility on response timescales.

## Objection from a Member after an order is made

There could be circumstances where an order is made and publicised in the absence of a response from the Member, and the Member then contacts ICAS afterwards to confirm their objection to the order. While the process set out above means this is unlikely to happen, ICAS would expect to respond as follows in such circumstances:

- (i) If not already provided, request from the Member a detailed explanation of why they failed to respond within the timescale, accompanied by supporting evidence where relevant (e.g. certified evidence of ill-health).
- (ii) No action will be taken by ICAS if the information requested under (i) is not forthcoming, or if information is provided which the Adjudicating Panel does not consider to support any further action.
- (iii) If information is provided within a period of three months which the Adjudicating Panel deems to satisfactorily explain the lack of response, the Panel shall require the following steps to be taken:
  - (a) recalling of the order(s),
  - (b) removing the publicity notice from the ICAS website, and
  - (c) proceed in accordance with Regulation 3.42.3, as appropriate.

If a period in excess of three months has passed since the order was made, the Adjudicating Panel shall exercise its discretion as regards any actions which should be taken. The longer the time which has passed, the less likely it is that an Adjudicating Panel would decide to take any action in response to a request from a Member.

## Further information

Further information in respect of the issues set out in this guidance can be requested by contacting the Investigations Team at ICAS: [complaints@icas.com](mailto:complaints@icas.com)



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