



ACCA

# Consent orders

Frequently asked questions

Think Ahead

## Some frequently asked questions

**1** ACCA's amended Complaints and Disciplinary Regulations ("CDRs") make provision for disposal of complaints by way of consent order. See <https://www.accaglobal.com/pk/en/about-us/regulation/rulebook.html>

### What is a consent order?

**2** A consent order is a formal disciplinary order that records when a relevant person accepts responsibility for a disciplinary allegation and agrees a provisional sanction by way of consent with ACCA to dispose of a complaint without the need for a full investigation and disciplinary process.

**3** For a consent order to be an acceptable disposal of a complaint, the relevant person must admit all the failings and/or breaches against them. They must also provisionally agree to an appropriate sanction and to pay costs (if any). The sanctions available under the consent order process are the same as those available to a Disciplinary Committee, save for the sanction of exclusion from membership or removal from the student or affiliate register (as appropriate). All these matters will be detailed in a draft consent order. The draft consent order must be in writing and signed by the relevant person.

**4** The draft consent order will then be put before a chairman who decides whether to agree or reject the draft consent order. If rejected, the conciliation, investigation or adjudication of the complaint will proceed in accordance with the CDRs.

### When is a consent order appropriate?

**5** An application for resolving a case by consent can be made during the conciliation, investigation or adjudication process at any time up to and including the date of the Disciplinary Committee hearing.

**6** Under the CDRs, ACCA will only consider resolving a case by consent where the investigating officer has conducted the appropriate level of investigation and/or enquiries, such that they are satisfied that there has been a failing and/or breach by the relevant person and that there is a real prospect of a reasonable tribunal finding the allegation(s) proved. Additionally, where the investigating officer is satisfied that any proposed allegation(s), if found proved, would be unlikely to result in removal from the register.

**7** There is no right of appeal/reconsideration of the investigating officer's decision as to whether a case is/may be suitable for disposal by consent order.

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### In what circumstances will the timeframes for a response by the relevant person be extended?

- 8** The timeframes set out within the CDRs governing consent orders will be strictly adhered to. If a relevant person requests an extension of time, either before or after the timeframe in question expires, the circumstances and reasons behind the relevant person's request will be considered at the sole discretion of the investigating officer. There is no right of appeal/reconsideration of the investigating officer's decision to extend time.

### Who will make the final decision about the consent order?

- 9** The final decision as to whether the draft consent order agreed between the parties will be accepted is made by ACCA's chairman. The chairman is independent from ACCA.
- 10** Before making the decision, they will receive a draft of the proposed final consent order which has been agreed and signed by both the relevant person and by ACCA.

### What will the chairman take into account?

- 11** The chairman takes into account the draft consent order and ACCA's Consent Orders Guidance.

- 12** The chairman will bear in mind that there is a public interest in serious allegations (which are likely to result in a finding of misconduct) being considered at a public hearing.
- 13** In reaching a decision, the chairman must have regard to the public interest which includes:
- The protection of members of the public and the public generally from relevant persons who have committed failings, breaches and/or misconduct (if appropriate)
  - The maintenance and promotion of public confidence in the accountancy profession, including declaring and upholding of professional standards
  - The maintenance and promotion of public confidence in ACCA's performance of its regulatory obligations.
- 14** ACCA's duty is to act in the public interest and in particular to protect the public from any relevant person who becomes liable to disciplinary action or brings discredit to ACCA or the profession pursuant to ACCA's *Rulebook 2020*. Disposing of a case by consent order will give the public the most immediate and effective form of protection at ACCA's disposal, as the consent order will amount to a disciplinary finding and will remain on the relevant person's record.

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### What about the interests of the relevant person?

- 15 The chairman will take these into account. In particular, they will consider the relevant person's conduct, all the circumstances of the case, and mitigating features, and the genuine desire to dispose of the case by consent.
- 16 If the chairman forms the view that the relevant person's failing, breach and/or misconduct is likely to result in exclusion from membership or removal from the student or affiliate register (as appropriate), they shall reject the consent order.

### Does anyone else have a say in this?

- 17 ACCA will not seek the views of the complainant about the merits of a disposal by way of consent order. Whilst the complaint will be outlined to the chairman, the complainants' views will not be taken into account when considering a draft consent order. The chairman will only take into account the views of ACCA and the relevant person. The complainant will be notified in writing once an intention to dispose of the matter by way of consent has been reached between ACCA and the relevant person.
- 18 The complainant will also be informed of the outcome of the consent orders process.

### What are the consequences of a draft consent order being approved?

- 19 If the chairman rejects the consent order, the conciliation, investigation or adjudication of the complaint will proceed in accordance with the CDRs as if no consent order had been contemplated.
- 20 If the consent order is approved by the chairman, the proposed sanction and costs proposed in the draft consent order will be imposed on the relevant person's record.
- 21 There is no right to appeal against a consent order as the sanction and costs imposed have been agreed by both parties.

### How are costs calculated for the purpose of the consent order process?

- 22 For the purpose of the consent order process costs are accrued and particularised in a costs schedule in the same way, and on the basis of the same hourly rates, as they are for disciplinary hearings. See <https://www.accaglobal.com/us/en/about-us/regulation/disciplinary-and-regulatory-hearings.html>  
That being said, the consent order process is geared towards early disposal of cases without the need for the full disciplinary process, including full investigation and disciplinary

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hearing. As such, the costs incurred in any consent order process should be significantly less than the costs that would be incurred in the same case being disposed of through the full disciplinary process.

### In what circumstances will consent orders not be appropriate?

- 23** Consent orders will not be appropriate when the behaviour is fundamentally incompatible with being a member, affiliate or student of ACCA, such as when the conduct involves any or all of the following circumstances (this list is not exhaustive):
- Serious departure from relevant professional standards
  - Actual loss or adverse impact on client and/or members of the public
  - Abuse of trust/position
  - Dishonesty
  - Lack of understanding and insight into the seriousness of the acts/omissions and the consequences thereof
  - Conduct continued over a period of time
  - Affected or had the potential to affect a substantial number of clients/members of the public
  - Attempted to cover up the misconduct

- Persistent denial misconduct
- Breach of regulatory order
- Convictions or cautions involving any of the conduct set out above
- Collusion to cover up conduct.

### Why do consent orders have to be published?

- 24** ACCA has a duty, in line with the principle of open justice, to:
- Maintain public protection by ensuring that the public have access to information regarding a relevant person's disciplinary history
  - Maintain and promote public confidence in the accountancy profession, including declaring and upholding professional standards
  - Maintain and promote public confidence in ACCA's performance of its statutory functions.
- 25** As such, it is essential that all consent orders ordered by the chairman are publicised to ensure that the above duties are met.

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