



ACCA

Consent orders guidance

Think Ahead

Introduction

- 1** Disposing of cases by consent is a method of determining the outcome and disposal of complaints under ACCA's rules, effective from January 2016.
- 2** The Regulations governing consent orders within the Complaints and Disciplinary Regulations (CDRs) will be conducted in accordance with any guidance and/or policy that ACCA may prescribe from time to time.

See <https://www.accaglobal.com/pk/en/about-us/regulation/rulebook.html>

- 3** This guidance document seeks to set out some of the underlying principles, together with the policies and procedures that will be applied by ACCA to cases that are deemed suitable for disposal by way of consent.

Rationale behind consent orders

- 4** ACCA believes that disposing of cases by consent has the following benefits:
- i it encourages engagement in the process by the relevant person concerned
 - ii it avoids unnecessary full hearings, which frees up resources for other cases
 - iii it means that witnesses are not required to attend unnecessarily, reducing stress and inconvenience to them
 - iv it enables cases to be concluded more quickly and efficiently, thereby saving on costs.
- 5** However, it is essential that a case is only disposed of by consent where it is in the public interest to do so. This means that the outcome must:
- i ensure an appropriate level of public protection
 - ii maintain public confidence in the accountancy profession and its regulatory body
 - iii declare and uphold proper standards of conduct and behaviour for relevant persons.

Essential requirements

- 6** ACCA will only dispose of a case by way of consent if:
- i the relevant person is willing to admit the allegation(s), facts and any failings and/or breaches, as applicable, in full;
 - ii where the investigating officer has conducted the appropriate level of investigation and/or enquiries so that they are satisfied that there is a case to answer against the relevant person and that there is a real prospect of a reasonable tribunal finding the allegation(s) proved; and
 - iii where the investigating officer is satisfied that any proposed allegation(s), if found proved, would be unlikely to result in exclusion from membership or removal from the student or affiliate register as appropriate.

Details about the essential requirements are set out below.

Full admissions

- 7** Subject to paragraph 8 below, the relevant person must admit the allegation(s) in full. There will be no plea bargaining or negotiations and attempts to do so will not be permitted to delay the consent order process. ACCA will not drop serious charges which are supported by evidence in exchange for admissions from the relevant person.
- 8** The only circumstances where ACCA will not pursue factual allegations as part of a consent order are when:
- i the factual allegations in question add nothing to the overall seriousness of the case; and
 - ii the circumstances existing at the time that the decision is made by the investigating officer mean that there is no longer a realistic prospect that the factual allegation(s) will be proved.
- 9** As well as admitting the factual allegation(s), the relevant person must also admit any failings and/or breaches, as applicable. Whilst the determination in cases where there have been any failings and/or breaches is a matter for the chairman, in every case, an acceptance of the failings and/or breaches by the relevant person is particularly important in cases that are to be disposed of by consent.

Essential requirements

An admission of the failings and/or breaches demonstrates a level of insight essential for a case to be disposed of by consent.

When and how are cases initially identified as suitable for disposal by consent order?

- 10** At any time up to and including the date of any disciplinary hearing, the investigating officer may propose that a complaint is suitable to be disposed of by way of consent order provided the essential requirements referred to in paragraph 6 above are met.

How are appropriate sanctions identified?

- 11** If the investigating officer considers that the case is or may be suitable to dispose of by consent, they will assess all of the circumstances in light of the *Guidance for Disciplinary Sanctions*, located at <https://www.accaglobal.com/us/en/about-us/regulation/disciplinary-and-regulatory-hearings.html>. The investigating officer will reach a provisional view on the appropriate level of sanction based upon the aforementioned guidance and the circumstances of the case in line with the essential requirements set out in paragraph 6 above, and subject to the agreement of a manager will notify the relevant person of that provisional view in writing.

- 12** It should be noted therefore that disposal of suitable matters by way of consent will not result in a more lenient or severe sanction than would have been likely to have been ordered by a Disciplinary Committee following a substantive disciplinary hearing in any event.

Legal advice

- 13** ACCA will not give legal advice. If the relevant person is in any doubt about whether or not to agree to the provisional terms of the consent order, it is their responsibility to seek independent legal advice.

What happens if a case is considered unsuitable for disposal by consent order?

- 14** If a case is considered unsuitable for disposal by consent order, conciliation, investigation or adjudication will proceed in accordance with CDR 4(2), 4(3) or 9 as applicable.
- 15** If the case has been considered as unsuitable for disposal by consent order, but the relevant person has indicated that they want to discuss the possibility of a consent order, the investigating officer will contact them to explain why the allegation(s) cannot be disposed of in that way.

Essential requirements

What happens if a case is considered to be suitable for disposal by consent order?

- 16** If the investigating officer decides a consent order is appropriate (i.e. the essential requirements referred to in paragraph 6 are met), the investigating officer shall notify the relevant person accordingly ('the notice'), and will invite the relevant person to provide a written response to the proposed method of disposal by a specified date. This may be extended at ACCA's absolute discretion.
- 17** The investigating officer will review the responses given by the relevant person and determine whether the case will be suitable for disposal by consent.

What happens if a case is subsequently considered unsuitable for disposal by consent order?

- 18** A case could still be considered unsuitable in the following circumstances:
- i In the event the relevant person fails to respond to the notice that their case is, or may be, suitable for disposal by way of consent order by the specified date; or
 - ii The relevant person subsequently indicates they are not agreeable to disposing of the complaint by way of consent order; or

- iii ACCA is subsequently provided with evidence that indicates that the case would not be suitable for disposal by way of consent order; or
- iv All terms as set out in paragraph 20 below are not agreed.

In any of the above circumstances the conciliation, investigation or adjudication of the complaint shall proceed in accordance with regulation 4(2), 4(3) or 9, as applicable.

What happens if the relevant person agrees to disposal by consent order?

- 19** If paragraph 18 is not relevant, the case will proceed to be disposed of by consent order.
- 20** If the relevant person or their representative provides written confirmation by the specified date of their agreement to disposing of the complaint by way of consent order, a draft written consent order setting out the proposed terms shall be served on the relevant person, which must at least contain the following:
- i the relevant facts
 - ii the relevant failings and/or breaches
 - iii the proposed sanction
 - iv the proposed level of financial penalties and costs (if any)
 - v any other relevant matters.

Essential requirements

What is the difference between financial penalties and costs?

- 21** A financial penalty is linked to the conduct in question in any case. Conversely, costs arise from, and are calculated by reference to, the amount of time and resources expended upon disposing of complaints.

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 based on the same hourly rates, as they are for disciplinary hearings. Our guidance for cost orders is located at <https://www.accaglobal.com/us/en/about-us/regulation/disciplinary-and-regulatory-hearings.html>

That being said, and as set out at paragraph 4 above, the consent order process is geared towards early disposal of cases without the need for the full disciplinary process, including full investigation and disciplinary 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.

What happens after the draft consent order is served on the relevant person?

- 23** If the relevant person admits all of the failings and/or breaches, and agrees to the proposed sanction and costs (if any) as proposed within the draft consent order, they shall provide ACCA with a signed copy of the draft consent order within 21 days of being served with the same.
- 24** Upon receipt of a signed copy of the draft consent order, within 21 days of being served with the same, the investigating officer will, as soon as is practicable, refer the matter to a chairman who shall determine in the absence of the parties without a hearing whether, on the basis of the evidence before it, it is appropriate to deal with the complaint by way of consent order and to approve or reject the draft consent order.
- 25** If the relevant person provides a signed copy of the draft consent order after the expiry of the 21 day deadline, and up until the disciplinary case arising from the complaint is opened before the Disciplinary Committee, the investigating officer may in their absolute discretion reconsider whether the matter should proceed under the consent, having regard to all of the circumstances.

Essential requirements

26 In the event that the relevant person fails to provide ACCA with a signed copy of the draft consent order within 21 days of being served with the draft consent order, the conciliation, investigation or adjudication of the complaint shall proceed in accordance with CDR 4(2), 4(3) or 9, as applicable.

What happens if either party change their mind about continuing with the consent order process?

27 At any stage prior to the chairman making their determination, either party may withdraw their agreement to the signed draft consent order by confirming such withdrawal in writing.

28 If any or both parties withdraw their consent to the signed draft consent order, or if it is rejected by the chairman the conciliation, investigation or adjudication of the complaint will proceed in accordance with the CDR 4(2), 4(3) or 9 as applicable. In such circumstances, any admission made by the relevant person during the course of discussions relating to consent orders will be regarded for the purpose of any subsequent disciplinary proceedings arising from the complaint as without prejudice.

29 This means that neither the assessor nor any subsequent Disciplinary Committee considering the case will be made aware of the consent order

proceedings unless the member chooses to bring it to the attention of the assessor and/or Disciplinary Committee themselves. It is important to note that it is only if either party withdraws from the consent order proceedings that an admission would be treated as without prejudice. Consequently, in such circumstances ACCA could still rely on any evidential material secured during the consent order proceedings in any proceeding conciliation or investigation.

The chairman

30 A chairman has the power to approve any signed draft consent order setting out terms as to sanction, and costs (as applicable), against the relevant person which a Disciplinary Committee would have the power to make, except for a sanction of exclusion from membership or removal from the student register or affiliate register as appropriate.

31 A chairman shall only reject the signed draft consent order if it is of the view that the admitted breaches would more likely than not result in exclusion from membership or removal from the student register or affiliate register as appropriate.

32 If a chairman is satisfied that it is appropriate to deal with the complaint by way of consent order, but wishes the terms of the draft consent order

Essential requirements

to be amended, the chairman has the power to recommend amendments to the signed draft consent order to ACCA and the relevant person, and to subsequently approve any amended order agreed by those parties.

- 33** If the signed draft consent order is approved by a chairman, it constitutes a formal finding and order.
- 34** In the event of a subsequent complaint against the relevant person being made to ACCA, the approved consent order may be taken into account by an investigating officer in determining how to deal with the subsequent complaint. The approved consent order can also be taken into consideration at the relevant stage of any future Disciplinary Committee.
- 35** All findings and orders set out in the consent order shall be published, naming the relevant person, as soon as practicable and in such manner as ACCA thinks fit.
- 36** There is no right of appeal against a consent order.

When should the complainant be informed of the consent order?

- 37** 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.
- 38** The complainant will also be informed of the outcome of the consent orders process.

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