



Guidance for cost orders

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SECTION 1: INTRODUCTION

1. The purpose of the Guidance for Costs Orders ('the Guidance') is to assist all parties to proceedings. It is designed to manage regulatory risk, provide transparency of policies and procedures and ensure consistency in approach.
2. The guidance is for use by:
 - The Committee (including the Chair, where applicable) to provide clarification on the relevant procedure and their powers;
 - Any relevant person (and their advisors) bound by the disciplinary process by virtue of ACCA's bye-laws and regulations ('relevant person') so that they are aware of the relevant procedures and of what the Committee's powers are, prior to pursuing or defending any disciplinary matter;
 - ACCA staff when they are preparing a case on behalf of ACCA.
3. The Guidance is a 'living document' which will be updated and revised when the need arises. References to relevant persons in this document should be taken to include members, member firms, affiliates and students and words importing the masculine gender include the feminine. Reference to Committee should be taken to include Disciplinary Committee, Health Committee, Interim Order Committee and Appeal Committee as applicable.
4. Nothing in this document should be treated as a source of legal advice to any user of the guidance. When appropriate, the independent Legal Adviser will advise the Committee on questions of law, including questions about the use of this guidance. Relevant persons are recommended to obtain independent legal advice.
5. It is important to bear in mind that an award of costs is not a sanction, but a consequence of a finding that allegations are proved (in whole or in part) or an unsuccessful appeal.
6. In professional disciplinary proceedings, it is a recognised principle that the majority of 'members' should not subsidise the minority who find themselves within the disciplinary process.
7. When a relevant person is ordered to pay costs to ACCA, the intention is to compensate ACCA and accordingly and more importantly the membership as a whole for the costs incurred by ACCA in bringing the proceedings. If costs are not recovered, then it is the wider membership who bears those costs.
8. This principle is particularly important when awarding costs against a 'membership body' (sometimes referred to as a 'regulator'), as unlike other civil proceedings or litigation, costs do not automatically follow the event. This means that costs are not ordinarily awarded against a membership body unless it can be demonstrated that in bringing the case there was dishonesty or lack of good faith, or that the case was a 'shambles from start to finish'.
9. The higher courts, including the Supreme Court, have consistently upheld this approach. The public interest would not be served by the application of the ordinary costs rule.
10. While costs are ultimately a matter for the Committee, this principle must be at the forefront of the Committee's minds when approaching the issue of costs generally and costs against a membership body.
11. It is also important that the relevant person and/or their representative understand this principle; that even if matters are not proved either in whole or in part, costs will not follow the event. Further, that there are only very limited circumstances that exist which may lead to a costs award against a membership body. For more details on this see below section: Costs payable by ACCA to the relevant person.

12. All references to the regulations quoted in this Guidance are taken from the 2023 Rulebook.
13. The Rulebook is available on ACCA's website at:

www.accaglobal.com/sg/en/about-us/regulation/rulebook.html

SECTION 2: AWARD OF COSTS

Power to award costs

14. Regulation 9(e) and 15 of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 as amended on 1 January 2020 and Regulation 12 of The Chartered Certified Accountants' Appeal Regulations 2014 as amended on 14 October 2019, The Chartered Certified Accountants' Interim Order Regulations 2014 as amended 1 January 2020, The Chartered Certified Accountants' Health Regulations 2014 as amended on 14 October 2019, gives discretion to the Chairs, the Committee to award costs payable by the relevant person to ACCA.
15. In exceptional circumstances, the Committee can direct that ACCA pay a contribution to the costs of a complainant incurred in relation to the case. Their discretion must be exercised in accordance with the principles of reasonableness, natural justice, and relevant case law.
16. In deciding whether to award costs the overarching and overriding principle, is the public interest, and the public advantage of a professional body such as ACCA carrying out its regulatory function. ACCA is a body funded by its members, and any non-award of costs will ultimately be borne by the membership as a whole. Therefore, it is appropriate to award costs to ACCA.
17. Before making any order in relation to costs, the Committee should invite both parties to make verbal submissions to them as to whether and if so, how much costs should be awarded and to whom. When making an order for costs, the sum ordered will be for a fixed amount.

Costs payable by the relevant person to ACCA

18. Where one or more of the allegations against the relevant person are found proved, the Committee has discretion to award costs to ACCA. The normal position is that the relevant person, or firm against whom an allegation has been found proved, should pay the costs of ACCA bringing the case and that it is appropriate to do so, particularly having regard to principles set out in case law cited below.
19. This is based on the principle that the majority of a membership body should not be required to subsidise the minority who, through their own failings, have found themselves subject to disciplinary proceedings. Moreover, it safeguards the public interest in allowing the professional body to carry out its regulatory functions.
20. ACCA will produce a cost schedule which gives a detailed breakdown showing how the costs claimed have been calculated. This will include costs incurred up to the date that the costs schedule was produced and an estimate of the costs to be incurred from the date the schedule was produced up to and including the hearing.
21. The schedule will be included in the bundle of documents which is considered by the Committee and is provided to the relevant person at least 28 days prior to the date of the disciplinary and/

or relevant hearing. The relevant person will be provided with a blank Statement of Financial Position Form and is requested to complete the form and provide supporting evidence of their means. This is to enable the Committee to take full account of their financial position before making any order for costs.

22. Alternatively, if the relevant person attends the hearing, they can address the Committee as to their financial situation. However, see note below at: Financial circumstances of the relevant person.
23. If a firm is ordered to pay costs to ACCA, the partners, relevant persons (in a limited liability partnership) or directors at the date of the order are jointly and severally liable for payment of the sum ordered.
24. If the actual costs incurred are more or less than the estimate, ACCA has the right to adjust its claim. The relevant person has a right to challenge any or all of the sum claimed.

ACCA's claim for costs

25. ACCA's claim for costs will typically include:
 - 25.1 time spent by ACCA in investigating the case and bringing the disciplinary proceedings;
 - 25.2 disbursements, for example, expert witness fees, expenses incurred by ACCA witnesses in attending the hearing;
 - 25.3 disciplinary hearing costs which include fees paid to Committee members and the legal adviser are fixed costs;
 - 25.4 where applicable photocopying and postage costs incurred in sending out the document bundles which are used during the hearing.
 - 25.5 preparation and scheduling of hearing. These costs apply even where the hearing goes short as fees and preparation time have already been incurred and are fixed costs.

Financial circumstances of the relevant person

26. The Committee may determine that a reduction in the sum of costs claimed is appropriate by taking into account the relevant person's financial, personal and all other relevant circumstances.
27. Before making any reduction as to costs, the Committee must have evidence of the relevant person's financial circumstances. Importantly, the relevant person must provide some documentary proof, ideally through a completed Statement of Financial Position and supporting documentation.
28. If a relevant person does not provide proof of financial means, the Committee is entitled to infer that the relevant person is able to meet the costs that it orders.
29. In the absence of evidence or proof, Committees should not speculate as to the relevant person's means.
30. Where evidence is provided, the Committee will take into account any accompanying documentary proof that a relevant person has provided including, but not limited to:

- 30.1 current income and likelihood of income in the future;
- 30.2 existence and nature of assets;
- 30.3 involvement with, or ownership of other businesses;
- 30.4 amount of debt and any other liabilities, or likely future liabilities;
- 30.5 amount and reasonableness of stated outgoings;
- 30.6 any savings and assets;
- 30.7 insolvency (actual or pending);
- 30.8 any other matters of a financial nature that are relevant to the relevant person's ability to pay ACCA's costs.

Personal circumstances of the relevant person

- 31. As well as financial factors, the Committee may also consider the relevant person's personal circumstances. The Committee will look at their current health, family situation, ability to earn, whether they have any dependents and what, if any, impact ACCA's decision to recover money due will have on them.
- 32. If the Committee decides to reduce costs in whole or in part, it should give full reasons as to the amount awarded, moreover it should provide reasons why it has departed from the principles set out above and below.

Costs payable by ACCA to the relevant person

- 33. The fact that an allegation has been found not proved in part or in whole does not mean that costs follow the event.
- 34. The relevant person or their legal representative can make an application for such costs at the hearing or in advance if they are not going to attend or be represented. However, such an application has a high hurdle to surmount, and only very limited circumstances exist that may lead to a costs award against a 'membership body' (also referred to as a 'regulator'). Importantly the following should be noted:
- 35. In *Baxendale Walker v Law Society [2007] EWCA Civ 233*

Sir Igor held: *...that save for the situation where a case had been a "shambles from start to finish" an order for costs should not be made against a regulator in the event of a successful challenge to the allegations as this would have a "chilling effect on the exercise of its regulatory obligations, to the public's disadvantage."*
- 36. In 2022, this principle was affirmed by the Supreme Court in, *Competition and Markets Authority (Respondent) v Flynn Pharma & Pfizer (Appellants) [2022] UKSC 14*, addressing the concern that if the body/regulator in question was exposed to adverse costs orders, this would necessarily result in relevant persons of the profession being subject to higher fees:

Lady Rose addressed this concern as follows:

.. [the body in question in the case was the SRA] is funded predominantly by practising certificate

fees and other fees paid by the solicitors' profession. Although, following Baxendale-Walker, it is not usually subject to an adverse costs order where the solicitor is successful, it does usually recover its costs from the unsuccessful solicitor when the Disciplinary Tribunal upholds the complaint. These costs can be considerable and if they were not recovered by the SRA from the unsuccessful solicitor, the costs would have to be borne by the profession. I recognise the importance of the Baxendale-Walker authority for the continued proper functioning of the SRA and I do not regard this judgment as casting any doubt on the correctness of that decision."

37. If an application against ACCA is made, the above factors must be addressed in any such application and should still be supported by evidence of time spent and hourly charge out rates, together with evidence of any disbursements claimed.
38. The Legal Advisor should draw the Committee's attention to the precedents cited above and the application thereof.
39. Where the Committee is agreed as to the sum of costs, the Committee shall award costs. If the Committee makes any reduction as to costs full reasons should be provided having regard to the principles and case law set out in this guidance.

Costs payable by ACCA to the complainant

40. In exceptional circumstances, the Committee can direct ACCA to pay the complainant a contribution to the costs incurred in connection with the case as the Committee think fit.

Reserving Costs

41. This may occur where a matter is not concluded, or an Interim Order hearing has taken place, it may be appropriate to hold over costs until the conclusion of the case.

SECTION 3: POST-HEARING

Appealing against a costs order

42. Regulation 3(3) of the Chartered Certified Accountants' Appeal Regulations 2014, as amended on 14 October 2019 provides that a relevant person cannot appeal solely on the question of costs unless the order was perverse or unreasonable or paying the sum ordered, would cause them severe financial hardship. If an appeal is made against the findings and/or orders made by the Committee, this can include an appeal against the costs awarded. Where an oral hearing takes place before an Appeal Committee, ACCA will as a matter of course seek the costs of dealing with the appeal in addition to any costs awarded by the Committee. The principles set out above apply equally to an appeal hearing, particularly with regard to costs against the body/ regulator.
43. Where the party appealing withdraws their appeal, and the other party applies for their costs, the Appeal Committee has the discretion to make any such order for costs as it sees fit.

Payment of costs

44. Any order that a sum be paid to ACCA, or the complainant must be complied with within 21 days from the date the order becomes effective (unless the Council otherwise agrees). Where a firm is the subject of the order, the persons who are specified persons in relation to the firm on the date of the order shall be jointly and severally liable for the costs.
45. ACCA will notify the relevant person when the costs owed to ACCA must be paid.
46. Where an order for costs is made against ACCA, payment will usually be instigated within 21 days from the date the order becomes effective.

Deferral of payment date or variation of payment

47. The relevant person can seek to defer the due date for payment or vary any payment providing any representations are submitted in advance of the due date for payment. Where the relevant person seeks to defer the due date for payment or vary any payment, written representations should be submitted to: adminadjudication@accaglobal.com.
48. Upon receipt of any written representations, ACCA will determine whether the due date for payment or the payment itself can be varied. ACCA's decision is final.

Enforcement of a costs order

49. ACCA is entitled to recover from the relevant person or their personal representatives any costs which the relevant person has been ordered to pay even if the relevant person's membership has ceased irrespective of how this has come about.
50. If the outstanding sum remains unpaid, ACCA will ordinarily take action to enforce the costs order. Where appropriate, ACCA will commence legal proceedings in the civil courts to recover the debt and will seek the costs of doing so from the relevant person. Where proceedings are issued, ACCA may also claim interest on the outstanding sum and may take appropriate enforcement action to ensure the sum is paid. ACCA has been successful in recovering unpaid costs where it has found it necessary to issue civil proceedings.
51. Additionally, Regulation 11(1) of The Chartered Certified Accountants' Member Regulations 2014, as amended on 1 January 2023 provides a relevant person shall be removed from the applicable register where any sum owed to ACCA remains unpaid for three months from the date on which it was due to ACCA.
52. Accordingly, where the relevant person fails to pay when due, any costs imposed by the Committee will be removed from the relevant register. Following any such removal, any application by the relevant person for readmission to ACCA's register cannot be processed administratively as would normally be the case. The relevant person must first pay all outstanding sums to ACCA before their readmission application can be considered and processed.



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Think Ahead