

Think Ahead

ACCA

Guide to costs orders in disciplinary proceedings

Introduction

This document has been issued by ACCA to assist members, firms, affiliates, students and others in understanding the decision making process undertaken by the Disciplinary and Appeal Committees when awarding costs in disciplinary proceedings.

References to members in this document should be taken to include members, member firms, affiliates and students and words importing the masculine gender include the feminine.

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.

When a member is ordered to pay costs to ACCA, this is intended to compensate ACCA and accordingly the membership as whole for the costs reasonably incurred by ACCA in bringing the proceedings.

All references to the regulations quoted in this guidance are taken from the *2017 Rulebook*. The *Rulebook* is available on ACCA's website at http://www.accaglobal.com/content/dam/ACCA_Global/Members/Doc/rule/ACCA%20Rulebook%202017.pdf

Section 1: Power to award costs

Regulation 14 of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 as amended on 1 January 2017 ('The Disciplinary Regulations') gives discretion to the Disciplinary Committee (the 'Committee') to award costs payable by the member to ACCA and vice versa. 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.

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 ACCA TO THE MEMBER

Where none of the allegations against the member have been found proved, the Committee has discretion to direct ACCA to pay the member, a contribution to the costs incurred by the member in connection with the case in such amount as it thinks fit.

Costs orders will not normally be made against ACCA unless the complaint should never have been brought or the case had been very badly handled throughout.

The fact that an allegation has been found not proved does not in itself constitute grounds for making a costs order against ACCA.

You or your legal representative can make an application for such costs as the hearing or in advance if you are not going attend or be represented. Any such application should be supported by evidence of time spent and hourly charge out rates, together with evidence of any disbursements claimed.

COSTS PAYABLE BY ACCA TO THE COMPLAINANT

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

COSTS PAYABLE BY THE MEMBER TO ACCA

Where one or more of the allegations against the member are found proved, the Committee has discretion to award such costs as it considers appropriate.

The normal position is that a member against whom an allegation has been found proved, should pay the reasonable and proportionate costs of ACCA bringing the case. This is based on the principle that the majority of members should not be required to subsidise the minority who, through their own failings, have found themselves subject to disciplinary proceedings.

Section 1: Power to award costs

ACCA will produce a costs 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. If the actual costs incurred are more or less than the estimate, ACCA has the right to adjust its claim. The member has a right to challenge any or all, of the sum claimed.

The schedule will be included in the bundle of documents which is considered by the Committee and is provided to the member at least six weeks prior to the date of the disciplinary hearing.

If a firm is ordered to pay costs to ACCA, the partners, members (in a limited liability partnership) or directors at the date of the order are jointly and severally liable for payment of the sum ordered.

Relevant factors considered by the Committee

In deciding whether to award costs and if so, how much, the Committee will take into various factors such as those listed below:

- a Whether the costs sought are appropriate and reasonably incurred in the context of the case.
- b The conduct of the party seeking their costs during the investigation and the disciplinary proceedings.
- c The member's financial situation.
The member will be provided with a form *Statement of Financial Position* and is requested to complete the form and provide supporting evidence of his means. This is to enable the Committee to take full account of their financial position before making any order for costs. Alternatively, if the member attends the hearing, he can address the Committee as to his financial situation.
- d Where some or all of the allegations have not been proved:
 - i Whether it was reasonable for ACCA to have pursued the unsuccessful allegation(s).
 - ii Any extra costs incurred by ACCA as a result of pursuing the unsuccessful allegation(s) in terms of the case preparation and the Committee's time in dealing with those allegations.
 - iii Any extra costs incurred by the member in defending the unsuccessful allegation(s).
 - iv The complexity, seriousness and interplay between the allegations found proved compared to those which were found not proved.
- e Any other factor/s which may be relevant in the particular case.

Section 2: ACCA's claim for costs

THE CONSTITUENT ELEMENTS

ACCA's claim for costs will typically include the reasonable costs of:

- a Time spent by staff from the Assessment and Investigations Department and the Committee Unit in investigating the case and bringing the disciplinary proceedings.
- b Disbursements eg the cost of obtaining translations of foreign documents, fees of the independent assessor, expert witness fees.
- c Disciplinary hearing costs which comprise fees and expenses paid to members of the Committee and the legal adviser, venue and catering costs. Where the hearing takes place outside London, the fees claimed will be based on London rates not the actual costs incurred (as these are more expensive).
- d Photocopying and postage costs incurred in sending out the document bundles which are used during the hearing.
- e The expenses of any witnesses called by ACCA and/or the member to give oral evidence at the disciplinary hearing. These costs may include the reasonable costs of their travel, meals and demonstrable loss of earnings.

Section 3: Appealing against a costs order

A member cannot appeal solely on the question of costs unless the order was perverse or unreasonable or paying the sum ordered, would cause him 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 usually seek a standard contribution

of £400 towards the costs of dealing with the appeal in addition to any costs awarded by the Committee.

Where the party appealing (the appellant) withdraws their appeal, and the other party applies for their costs, the Appeal Committee has discretion to make such order for costs as it sees fit.

Section 4: Payment of costs

The date by which payment is required varies according to the type of order made and whether the Committee's decision has been appealed. You will be notified in writing as to when payment is due.

The member can defer the date that payment is due if prior to the due date, he applies to the chairman of The

Disciplinary or Appeal Committee (that made the order), seeking deferral of payment. In such circumstances, The chairman has absolute discretion to defer the due date on such terms as he thinks fit if he considers that the deferral is appropriate in all the circumstances.

Section 5: Enforcement of costs order

ACCA is entitled to recover from the member or his personal representatives, any costs which the member has been ordered to pay even if membership has ceased irrespective of how this has come about.

Where a member has been ordered to pay ACCA's costs, an invoice for payment of the full sum will be sent to the member after the due date for payment has lapsed.

If the outstanding sum remains unpaid, ACCA will 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 or doing so from the member. Where proceedings are issued, ACCA will also claim interest on the outstanding sum and will take appropriate enforcement action to ensure the sum is paid.

ACCA has been successful in recovering unpaid costs where we have found it necessary to issue civil proceedings.

Additionally if a member fails to pay when due, any costs imposed by The Committee or Appeal Committee, he will be removed from the relevant register. Following any such removal, any application by the same member for readmission to ACCA's register at a later date, cannot be processed administratively as would normally be the case. The member must first pay all outstanding sums to ACCA before his re-admission application can be processed and his suitability for readmission to membership will be considered by ACCA's Admissions and Licensing Committee who are required to have specific regard to the circumstances surrounding the member's cessation of membership.

ACCA

The Adelphi
1/11 John Adam Street
London WC2N 6AU

t: +44 (0)20 7059 5000

f: +44 (0)20 7059 5998

www.accaglobal.com

January 2017
© ACCA 2017