

minutes



Meeting: Regulatory Board

Location: 29 Lincoln's Inn Fields, London, WC2A 3EE

Date: 30 November 2010

PRESENT:

The Chairman (Miss Wingfield), Messrs Akhtar (for items 1 – 11 only), Barrow, Cadman, Ms Fraser, Messrs Joseph (for items 1 – 15 only), Kershaw, Lock and Stenhouse.

IN ATTENDANCE:

Executive Director – Governance (Mr Large), Executive Director – Markets (Ms Gillow), Director – Practice Monitoring (Mr Ali Khan), Director – Professional Conduct (Ms Ziman), Director – Regulation (Mr Takwani) and Planning Officer (Miss Spedding).

1. MINUTES OF THE LAST MEETING

The Board agreed the minutes of the meeting held on 14 September 2010.

2. APOLOGIES

Apologies for absence were received from Mrs Duffner.

3. ACTIONS NOTE

The Board noted a paper providing a summary of the actions taken since the last meeting.

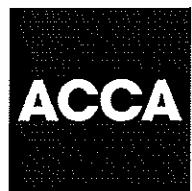
4. PRESENTATION FROM THE EXECUTIVE DIRECTOR – GOVERNANCE

The Board noted a presentation on recent developments from the Executive Director – Governance.

5. ANNUAL REPORT OF THE REGULATORY BOARD TO ACCA'S COUNCIL

The Board agreed that:

- the content range and format of the 2010 annual report of the Regulatory Board to ACCA's Council should follow that of the 2009 report



- the introduction to the report should highlight the work of the Listing Times Working Party and the anticipated timing of the implementation of its recommendations
- the report should note, if details are firmer by the time of the compilation of the report, the Board's Regulatory Event in June 2011
- the 2010 report should include an update to the points in the 2009 report that the Board stated it was intending to pursue in 2010

and

- updates of Board member's profiles should be provided by Board members to ACCA for inclusion in the report.

6. ACCA'S ANNUAL PUBLIC REPORT ON REGULATION

The Board agreed to approve the proposed content and format of the 2011 public report on regulation.

7. GUIDELINE DISCIPLINARY SANCTIONS

The Board agreed to approve updates to the Guideline Disciplinary Sanctions, as set out at Appendix 1 to these minutes. The Board also agreed that the updated Guideline Disciplinary Sanctions document should be re-circulated to the Board, for information, following the meeting.

8. STANDING ORDERS

The Board agreed to endorse its Standing Orders for the coming year, as set out at Appendix 2 to these minutes.

9. SUB-COMMITTEE MEMBERSHIP AND TERMS OF REFERENCE

The Board agreed to confirm:

- the membership of the Appointments and Regulations Review Sub-committees for 2011,



and

- the terms of reference of the Appointments and Regulations Review Sub-committees, as set out at Appendix 3 and 4 respectively to these minutes.

10. GEOGRAPHICAL ANNUAL STATISTICS FOR THE LAST FIVE YEARS

The Board noted the geographical annual statistics for the last five years.

The Board agreed that:

- it would like to receive such information in the future
- and
- ACCA should provide a paper setting out the global regulatory landscape of ACCA's membership for consideration at its meeting on 23 March 2011.

11. PRESENTATION FROM THE EXECUTIVE DIRECTOR - MARKETS

The Board noted a presentation on the international spread and scope of ACCA's activities from the Executive Director – Markets.

12. LEAD REGULATOR UPDATE

The Board noted a paper on ACCA's recent interaction with its lead regulators.

13. REPORT FROM REGULATORY EVENT WORKING PARTY

The Board noted a presentation by the Chairman of the Regulatory Event Working Party, following its meeting on 14 October 2010.

The Board agreed that an external key note speaker be invited to speak at the event and that an early invitation should be sent to the office which makes it clear that the invitation is to speak on professional regulation only.

14. REPORT FROM THE APPOINTMENTS SUB-COMMITTEE

The Board noted:



- a report from the Chairman of the Regulatory Board, following the Appointments Sub-committee meetings on 14 October 2010 and 30 November 2010
and
- the draft minutes of the meeting held on 14 October 2010.

15. AGGREGATED SUMMARY OF DECISIONS OF DISCIPLINARY AND REGULATORY HEARINGS AND REPORTS OF OTHER MEETINGS

The Board noted an aggregated summary of decisions of disciplinary and regulatory hearings covering the period 3 August 2010 to 14 October 2010.

The Board agreed that it would like to look at a breakdown of the number of cases under investigation by age at a future meeting and that this should be included in the Work Plan for the coming year.

The Board also noted:

- the draft minutes of the Meeting of Chairmen and Deputy Chairmen held on 27 September 2010
and
- the draft minutes of the meeting of Regulatory Assessors held on 21 October 2010.

16. NOTES OF THE INFORMAL 'BLUE SKIES THINKING' SESSION HELD ON 14 SEPTEMBER 2010

The Board agreed that it would like to receive a paper at a future meeting setting out the causes of complaints, which should be included in the work plan for the coming year.

The Board also agreed that the next 'blue skies thinking' session should be held before the Regulatory Board meeting on 23 March 2011 at 9.30 am.

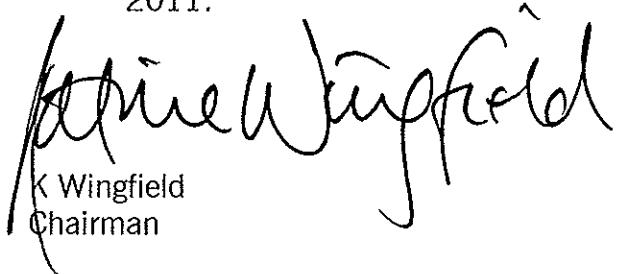
17. REGULATORY BOARD WORK PLAN FOR 2010-2011 COUNCIL YEAR

The Board agreed to approve the work plan set out at Appendix 5 to these minutes.



18. DATES OF FUTURE MEETINGS

The Board noted the dates of Regulatory Board meetings in the Council year 2010 – 2011.



A handwritten signature in black ink, appearing to read 'K Wingfield'.

K Wingfield
Chairman

Appendix 1





GUIDELINE DISCIPLINARY SANCTIONS

To be used in ACCA's disciplinary proceedings
from 13 January 2011

ACCA 29 Lincoln's Inn Fields London WC2A 3EE United Kingdom
tel: +44 (0)20 7059 5000 / fax: +44 (0)20 7059 5050 / www.accaglobal.com

The Association of Chartered Certified Accountants

INDEX

	Page
SECTION 1: INTRODUCTION	3
SECTION 2: THE BYE-LAWS	4
SECTION 3: POWERS AVAILABLE TO THE COMMITTEE	6
SECTION 4: PURPOSE OF SANCTIONS	9
SECTION 5: DESCRIPTION OF THE SANCTIONS AVAILABLE	11
SECTION 6: GUIDELINE SANCTIONS	19
AUDIT	20
INSOLVENCY	21
CLIENT MONIES	22
STUDENT ISSUES	24
CRIMINAL CONVICTIONS	26
PRACTISING CERTIFICATE ISSUES	27
PROFESSIONAL COMPETENCE AND DUE CARE	28
INVESTMENT BUSINESS	30
CONDUCT AS A COMPANY DIRECTOR	31
OTHER LIABILITIES AND BREACHES OF BYE-LAWS OR REGULATIONS	32
DISCIPLINED BY ANOTHER PROFESSIONAL BODY	34
ETHICAL CONDUCT	35

SECTION 1: INTRODUCTION

The Guideline Disciplinary Sanctions were developed by ACCA's Committee of Disciplinary and Regulatory Chairmen, which included members of ACCA's Council, members of ACCA in practice, members of ACCA not in practice and the Chairmen and Deputy Chairmen of the Disciplinary and Appeal Committees. Following the creation of ACCA's Regulatory Board in 2008, the Board adopted the Guideline Disciplinary Sanctions as a policy statement.

The Guideline Disciplinary Sanctions are for use by the Disciplinary and Appeal Committees (described in this publication as "the Committee") when they are considering which sanction to impose upon an individual or firm. It is a 'living document' which will be updated and revised when the need arises.

It is important that a member, student or firm knows, prior to any decision being made, which sanctions are available to the Committee and which matters the Committee members may take into account when coming to a decision.

Each case will be judged on its own facts. Members of the Committee will exercise their own judgement in making decisions but having regard at all times to the regulatory framework set out by ACCA contained in the Rulebook and any other relevant guidance.

The Committee finds it very helpful to hear from the member, student or firm personally at a hearing, particularly if questions arise on the day. If attendance at the hearing is not possible, the Committee finds it very helpful to receive a full written explanation from the member, student or firm of the circumstances of the conduct which is the subject of the allegations, together with any mitigation relating to his personal circumstances. Documentary evidence should be submitted to support any assertions made, where possible.

SECTION 2: THE BYE-LAWS

Liability to disciplinary action arises under bye-law 8:

8. (a) A member, relevant firm or registered student shall, subject to bye-law 11, be liable to disciplinary action if:

- (i) he or it, whether in the course of carrying out his or its professional duties or otherwise, has been guilty of misconduct;
- (ii) in connection with his or its professional duties, he or it has performed his or its work, or conducted himself or itself, or conducted his or its practice, erroneously, inadequately, inefficiently or incompetently;
- (iii) he or it has committed any breach of these bye-laws or of any regulations made under them in respect of which he or it is bound;
- (iv) in the case of a relevant firm, any person has in the course of the business of that firm committed any breach of these bye-laws or of any regulations made under them in respect of which that person is bound;
- (v) he is a specified person in relation to a relevant firm against which a disciplinary order has been made and which has become effective or which has been disciplined by another professional body or pursuant to some other disciplinary process;
- (vi) he or it has been disciplined by another professional body or pursuant to some other disciplinary process;
- (vii) he or it has made an assignment for the benefit of creditors, or has made an arrangement for the payment of a composition to creditors, or has had an interim order made by the court in respect of him, or is a specified person in relation to a relevant firm which has made such an assignment or composition or been wound up as an unregistered company, or entered into a voluntary arrangement, administration or liquidation, in each case where applicable under the Insolvency Act 1986, or other similar or analogous event has occurred in relation to him or it under applicable legislation; or
- (viii) he or it has failed to satisfy a judgment debt without reasonable excuse for a period of two months (and the fact that he or it did not have sufficient funds to discharge the debt shall not be a reasonable excuse for this purpose) whether or not the debt remains outstanding at the time of the bringing of the disciplinary proceedings hereunder.

(b) Each of the paragraphs in bye-law 8(a) shall be without prejudice to the generality of any of the other paragraphs therein.

(c) For the purposes of bye-law 8(a), misconduct includes (but is not confined to) any act or omission which brings, or is likely to bring, discredit to the individual or relevant firm or to the Association or to the accountancy profession.

(d) For the purposes of bye-law 8(a), in considering the conduct alleged (which may consist of one or more acts or omissions), regard may be had to the following:

- (i) whether an act or omission, which of itself may not amount to misconduct, has taken place on more than one occasion, such that together the acts or omissions may amount to misconduct;
- (ii) whether the acts or omissions have amounted to or involved dishonesty on the part of the individual or relevant firm in question;
- (iii) the nature, extent or degree of a breach of any code of practice, ethical or technical, adopted by the Council, and to any regulation affecting members, relevant firms or registered students laid down or approved by Council.

(e) The following shall be conclusive proof of misconduct:

- (i) the fact that a member, relevant firm or registered student has pleaded guilty to, or been found guilty of, any offence discreditable to him or, as the case may be, it, or derogatory to the Association or the accountancy profession, before a court of competent jurisdiction in the United Kingdom or before a court of competent jurisdiction in any other country where such court's judgments are in the opinion of Council (or relevant committee of Council) relevant;
- (ii) the fact that a member, relevant firm or registered student has been found to have acted fraudulently or dishonestly in any civil proceedings before any court of competent jurisdiction in the United Kingdom or before a court of competent jurisdiction in any other country where such court's judgments are enforceable in the United Kingdom.

Unless there is a specific bye-law that relates to the alleged conduct (for example, having been disciplined by another professional body) then bye-laws 8(a)(i),(ii) or (iii)/(iv) may be engaged. Each allegation will normally be expressed by reference to the conduct specified in one of the bye-laws. The Committee must consider on the basis of the case presented to them whether they find that the acts or omissions are of sufficient gravity to amount to the allegation. For example, whether a breach of a regulation amounts to misconduct (bye-law 8(a)(i)), or not (bye-law 8(a)(iii)).

SECTION 3: POWERS AVAILABLE TO THE COMMITTEE

Complaints and Disciplinary Regulation 5(9) sets out the sanctions and other orders available to the Disciplinary Committee:

The Disciplinary Committee may make any one or more of the following orders against the relevant person or may order that no further action be taken where it determines that none of the following orders is appropriate in the circumstances:

- (a) if the relevant person is a member:
 - (i) that he be excluded from membership, which may be combined with an order that no application for readmission may be considered until the expiry of a specified period after the effective date of the order, which period may not be longer than five years;
 - (ii) that he be severely reprimanded, reprimanded or admonished;
 - (iii) that he be fined a sum not exceeding £50,000;
 - (iv) that he pay compensation to the complainant of a sum not exceeding £5,000;
 - (v) that he waive or reduce his fees to the complainant by such sum as shall be specified in the order and which relates directly to the proven allegation;
 - (vi) any of the orders set out in regulation 5(9)(h) where applicable;
- (b) if the relevant person is a firm:
 - (i) that it be severely reprimanded, reprimanded or admonished;
 - (ii) that it be fined a sum not exceeding £50,000;
 - (iii) that it pay compensation to the complainant of a sum not exceeding £5,000;
 - (iv) that it waive or reduce its fees to the complainant by such sum as shall be specified in the order and which relates directly to the proven allegation;
 - (v) any of the orders set out in regulation 5(9)(h) where applicable;
- (c) if the relevant person is a registered student:
 - (i) that he be removed from the student register, which may be combined with an order that no application for readmission may be considered until the expiry of a specified period after the effective date of the order, which period may not be longer than five years;
 - (ii) that the period as shall be specified in the order shall not be reckoned as part of the student's approved accountancy experience for the purposes of bye-law 2 and any regulations made pursuant thereto;
 - (iii) that he be declared ineligible for such period as shall respectively be specified in the order to sit for such examination or examinations of the Association (or such part or parts thereof) as shall be specified in the order;
 - (iv) that he be disqualified from such examination or examinations of the Association (or such part or parts thereof) as shall be specified in the order not being an examination (or a part thereof) the result of which shall have been duly notified to him by the Association prior to the date of the order;
 - (v) that he be severely reprimanded, reprimanded or admonished;
 - (vi) any of the orders set out in regulation 5(9)(h) where applicable;
- (d) if the relevant person is an affiliate:
 - (i) that he be removed from the affiliate register, which may be combined with an order that no application for readmission may be considered until the expiry of a specified period after the effective date of the order, which period may not be longer than five years;
 - (ii) that the period as shall be specified in the order shall not be reckoned as part of the affiliate's approved accountancy experience for the purposes of bye-law 2 and any regulations made pursuant thereto;
 - (iii) that he be declared ineligible to be admitted to membership for such period as shall be specified in the order;
 - (iv) that he be severely reprimanded, reprimanded or admonished;
 - (v) any of the orders set out in regulation 5(9)(h) where applicable;
- (e) if the relevant person is a former member or former firm or non-member who has undertaken to be bound by these regulations:
 - (i) that he be severely reprimanded, reprimanded or admonished;
 - (ii) that he be fined a sum not exceeding £50,000;

- (iii) that he pay compensation to the complainant of a sum not exceeding £5,000;
- (iv) that he waive or reduce his fees to the complainant by such sum as shall be specified in the order and which relates directly to the proven allegation;
- (v) any of the orders set out in regulation 5(9)(h) where applicable;
- (f) if the relevant person is a former registered student:
 - (i) that he be severely reprimanded, reprimanded or admonished;
 - (ii) that he be disqualified from such examination or examinations of the Association (or such part or parts thereof) as shall be specified in the order not being an examination (or a part thereof) the result of which shall have been duly notified to him by the Association prior to the date of the order;
 - (iii) any of the orders set out in regulation 5(9)(h) where applicable;
- (g) if the relevant person is a former affiliate:
 - (i) that he be severely reprimanded, reprimanded or admonished;
 - (ii) any of the orders set out in regulation 5(9)(h) where applicable;
- (h) in all cases:
 - (i) that the matter of the relevant person's fitness and propriety to hold a certificate and/or licence issued by the Association, and/or his or its eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be referred to the Admissions and Licensing Committee by a specified date, such date to be no later than twelve months from the date of the order;
 - (ii) only in conjunction with an order under regulation 5(9)(h)(i), that the relevant person's practising certificate, insolvency licence, investment business certificate (Ireland) and/or other certificate issued by the Association, and/or his or its eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be suspended, or made subject to such conditions specified in the order, until an order of the Admissions and Licensing Committee has been made;
 - (iii) that any future application by the relevant person for any certificate or licence issued by the Association, or to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be referred to the Admissions and Licensing Committee;
 - (iv) in the case of a relevant person who is an affiliate or a registered student, that any future application for membership be referred to the Admissions and Licensing Committee;
 - (i) in all cases, that the hearing be adjourned and referred to a health hearing before a differently constituted Disciplinary Committee.

Complaints and Disciplinary Regulation 5(4)(f) sets out the interim orders available to the Disciplinary Committee when granting an adjournment of a hearing:

(f) **Interim orders**

Where the hearing of the case has been adjourned, the Disciplinary Committee may make any one or more of the following interim orders against the relevant person:

- (i) that the relevant person produce any necessary documents and supply any other information and explanations relevant to the matter in question, whether by attendance upon reasonable notice before the Disciplinary Committee or otherwise;
- (ii) that the relevant person allow any officer of the Association to enter the business premises of the relevant person on such notice (if any) as the Disciplinary Committee may think appropriate and interview any employee of the relevant person;
- (iii) that the relevant person procure the attendance of any of his employees at specific premises, upon reasonable notice;
- (iv) in the case of a relevant person who is an individual, that the relevant person's membership, registered student or affiliate status be suspended until further order of the Disciplinary Committee;
- (v) that the matter of the relevant person's fitness and propriety to hold a certificate and/or licence issued by the Association, and/or his or its eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be referred to the Admissions and Licensing Committee by a specified date, such date to be no

later than twelve months from the date of the order;

(vi) that the relevant person's practising certificate, insolvency licence, investment business certificate (Ireland) and/or other certificate issued by the Association, and/or his or its eligibility to conduct exempt regulated activities in accordance with the Designated Professional Body Regulations, be suspended, or made subject to such conditions as are specified in the order, until further order of the Disciplinary Committee or, only in conjunction with an order under regulation 5(4)(f)(v), until an order of the Admissions and Licensing Committee has been made.

Appeal Regulation 11 sets out the orders available to the Appeal Committee:

- (1) On the conclusion of the hearing of the appeal, the Appeal Committee shall consider the appeal.
- (2) In the case of an appeal against one or more of the findings and orders of the Disciplinary Committee, the Appeal Committee may do any one or more of the following:
 - (a) affirm or vary any findings of the Disciplinary Committee;
 - (b) affirm, vary or rescind any order of the Disciplinary Committee;
 - (c) substitute any other order which the Disciplinary Committee could have made;
 - (d) order that the case be heard afresh by the Disciplinary Committee.
- (3) In the case of an appeal against one or more of the orders, but not the findings, of the Disciplinary Committee, the Appeal Committee may do either or both of the following:
 - (a) affirm, vary or rescind any order of the Disciplinary Committee;
 - (b) substitute any other order which the Disciplinary Committee could have made.

SECTION 4: PURPOSE OF SANCTIONS

It is a settled principle of law that the purpose of sanctions issued by a professional regulatory body is to:

- a) protect the public interest
- b) maintain public confidence in the profession
- c) maintain proper standards of conduct

The purpose of the Committee is therefore not simply to discipline the individual or firm for any wrongdoing of which he or it may be culpable, but to protect the public and maintain the reputation of the profession by sending a signal as to how serious the Committee considers the conduct to be. In carrying out these roles the Committee is maintaining public confidence in the profession.

It was noted in Bolton v The Law Society [1994] 2 ALL ER 486 that the reputation of a profession as a whole is more important than the fortunes of an individual member of that profession.

Proportionality

In deciding what sanction is appropriate, the Committee needs to weigh the interests of the member/student against the need for public protection. The Committee in considering an appropriate sanction will have regard to the public interest. This includes the protection of members of the public, maintaining public confidence in the profession and maintaining proper standards of conduct.

In order to ensure that any sanction imposed is both proportionate to the level of seriousness of the conduct found proved and the minimum necessary to achieve the purpose, taking into account all the circumstances of the case, the Committee will need to consider:

- a) any aggravating or mitigating factors relevant to the conduct in question;
- b) the personal circumstances of the individual or firm (eg. financial position) and any other personal mitigation advanced by him, i.e. the circumstances which pertain at the date of the Committee's decision;

- c) any character and/or other references adduced in support of the individual or firm.

SECTION 5: DESCRIPTION OF THE SANCTIONS AVAILABLE

In this section, reference to a member includes reference to students, affiliates and firms where indicated. Please note that the sanctions available to the Committee for students, affiliates and firms differ in some respects from those for members (for example, students and affiliates may not be fined), but the principles behind them are the same.

The Committee may make any one or more of the following orders, except that an admonishment, a reprimand and a severe reprimand cannot be combined with each other (see Complaints and Disciplinary Regulation 5(9)(a)(ii) in Section 2 of this publication).

No further action

In all cases, the Committee may decide that the appropriate 'sanction' is to take no further action. For example, where the breach took place many years ago, the public is not at risk and there would be no purpose served by ordering sanctions.

Members, affiliates, students and firms

Admonishment

This is the lowest sanction that can be applied by the Committee. An admonishment may be appropriate where the conduct is at the lower end of the spectrum, but the Committee nevertheless wishes to indicate that the behaviour was unacceptable.

Relevant factors to take into consideration (this list is not exhaustive):

- a) evidence of no loss to the client
- b) evidence of member's understanding and appreciation of failings
- c) conduct was an isolated incident, not deliberate
- d) genuine expression of regret
- e) previous good history

Reprimand

A reprimand is appropriate where the conduct is of a minor nature and there is no continuing risk to the public. There is evidence of the member's understanding and appreciation of the conduct found proved.

Severe Reprimand

A severe reprimand is appropriate where the conduct is of a serious nature but there are particular circumstances of the case or mitigation advanced which satisfy the Committee that there is no continuing risk to the public, and there is evidence of the member's understanding and appreciation of the conduct found proved.

Exclusion/Removal from register (not available in relation to firms)

Exclusion/Removal from register is appropriate where this is the only means of protecting the public and/or the conduct is so serious as to undermine confidence in the accountancy profession if the member/student were to remain on the register. Relevant factors to take into consideration (this list is not exhaustive):

- a) serious departure from relevant professional standards
- b) abuse of position/trust
- c) dishonesty
- d) persistent lack of understanding and appreciation of seriousness of actions or consequences

Exclusion/Removal for a minimum period

ACCA's Membership Regulations currently require that where a member/student has been excluded/removed, he may not apply for readmission until a minimum of 12 months after the effective date of the exclusion/removal.

The Committee has the power to extend that period by combining an exclusion/removal order with an order that no application for readmission may be considered until a minimum period (of no more than five years) has expired. (Note that this does not mean that the member/student is automatically readmitted after the expiry of the period, as it is not a suspension. The decision as to whether a disciplined member/student is

suitable to be readmitted is within the sole discretion of the Admissions and Licensing Committee.)

Circumstances in which the Committee may wish to consider making such an order include where the Committee feels that the member/student has not accepted responsibility for the misconduct and/or does not have insight into why it was considered to be serious. The period of exclusion should reflect the Committee's view of the length of time the member/student needs to reflect upon his conduct before being permitted to apply for readmission.

Note that the Committee does not have the power to impose any additional conditions upon readmission.

Members and firms

Fine

The Committee may impose a fine as the only sanction, or combine a fine with an additional sanction. For example, the Committee may feel that a particular sanction is appropriate, but that it should be combined with a fine to reflect properly the seriousness with which it views the conduct. Or a fine may be appropriate where a higher sanction was almost imposed; for example, a near exclusion might end up as a severe reprimand plus a large fine. In other cases, the fine may reflect the amount by which the member has profited from the breach. For example, if a member has been carrying on public practice without a practising certificate for a period, the fine might reflect the cost of the practising certificates he ought to have held throughout the period, or the amount of fees he has received for audits conducted when ineligible to do so.

Once the Committee has decided the appropriate amount of a fine, it may be reduced after taking into account the member's financial situation. It may not be increased if the member appears to be able to afford more.

Compensation

The Committee may order the member to pay compensation to the complainant to reflect any inconvenience suffered as a result of the member's or firm's failure to observe proper standards. This could be reimbursement of costs suffered (eg. if another accountant had to be employed to rectify the member's errors) or compensation for time spent or inconvenience suffered.

Waiver of fees

The Committee may order the member or firm to waive or reduce their fees to the complainant where appropriate.

Referral to Admissions and Licensing Committee of member's fitness and propriety to hold a certificate or other licence or eligibility to carry on exempt regulated activities

An order for exclusion entails automatic withdrawal of any certificate or licence held. Where the Committee has not ordered exclusion but has concerns as to the member's fitness and propriety to hold a current certificate or licence, or his eligibility to conduct exempt regulated activities, it may order that the issue is referred to the Admissions and Licensing Committee by a date within the next 12 months.

If the Committee's concerns are such that it believes the public needs to be protected in the meantime, it may combine a referral to the Admissions and Licensing Committee with the placing of conditions upon, or suspension of, the member's certificate or licence or his eligibility to conduct exempt regulated activities. This may be particularly appropriate in relation to firms, where a sanction of exclusion is not available.

The imposition of conditions allows the practitioner to continue to hold the certificate with certain restrictions, enabling him to remedy any deficiencies in his practice whilst at the same time protecting clients. For example, a member may be prohibited from holding client monies as a condition of holding a practising certificate. Any conditions should be:

- appropriate;
- proportionate;
- workable;
- measurable.

The principle of proportionality requires that any conditions imposed should be the minimum necessary to protect the public.

Relevant factors to take into consideration (this list is not exhaustive):

- a) identifiable area of practice in need of review/retraining

- b) evidence of potential and willingness to respond positively to future training
- c) clients not at risk as a result of continued registration with conditions
- d) conditions will protect clients during the period they are in force.

Where the member no longer holds the certificate or conducts exempt regulated activities, the Committee can order that any future application be referred to the Admissions and Licensing Committee.

(See Complaints and Disciplinary Regulations 5(9)(h) in Section 2 of this publication.)

Suspension of certificate or other licence or eligibility to carry on exempt regulated activities

Where a hearing is being adjourned, the Committee should consider whether for the protection of the public it should make an interim order to suspend the member/firm's certificate or licence. (See Complaints and Disciplinary Regulations 5(4)(f)(vi) in Section 2 of this publication.)

Such an order ought normally to be made with immediate effect, pursuant to the Committee's general power to do anything which it deems to be necessary or desirable (see Regulatory Board and Committee Regulations Appendix 1 paragraph 1).

Members, affiliates and students

Suspension

Where a hearing is being adjourned, the Committee should consider whether for the protection of the public it should make an interim order to suspend an individual's membership or student or affiliate status pending further order of the Disciplinary Committee (see Complaints and Disciplinary Regulation 5(4)(f)(iv) in Section 2 of this publication).

An order for suspension of membership entails automatic suspension of any certificate or licence held by the member. However, in such a case the principle of proportionality requires the Committee to first consider whether suspension of the certificate or licence alone would be sufficient to protect the public during the period of the adjournment.

Such an order ought normally to be made with immediate effect, pursuant to the Committee's general power to do anything which it deems to be necessary or desirable (see Regulatory Board and Committee Regulations Appendix 1 paragraph 1).

Affiliates and students

Specified period not to be reckoned as part of approved accountancy experience

In order to become a member, a certain number of years of approved accountancy experience must be obtained. The Committee has the power to order that any part of the affiliate's or student's experience gained should not count towards such approved accountancy experience.

Affiliates

Ineligible for membership for a specified period

The Committee may order that an affiliate is not granted membership status for a specified period, notwithstanding that he may be eligible for membership.

Students

Ineligible to sit ACCA examinations for a specified period

The Committee may order that a student is not eligible to sit any examination, or part or an examination, for a specified period. This sanction might be suitable where, for example, the student has not been removed from the register but the Committee is of the view that the student should not be permitted to sit examinations for a period of time.

Disqualification from one or more examinations

This sanction is only available if the student has not already been given the examination result. It can be used in conjunction with an order that the student be removed from the register, so that if he were to apply for reinstatement in future he would have to re-sit the examination(s) in question.

Members, firms, affiliates and students

Other powers

The further powers contained in Complaints and Disciplinary Regulation 5(4)(f) are not sanctions but other orders which the Committee might wish to make where it is adjourning a case to a later date.

In addition, Complaints and Disciplinary Regulation 5(9)(i) enables the Committee to refer the matter to a health hearing, if medical evidence indicates that the member is too ill to participate in the disciplinary process.

Former members and former firms

Severe reprimand, reprimand or admonishment, fine, compensation, waiver of fees, and the other powers contained in Complaints and Disciplinary Regulation 5(9)(h) to the extent they are applicable.

Former affiliates

Severe reprimand, reprimand or admonishment, and the other powers contained in Complaints and Disciplinary Regulation 5(9)(h) to the extent they are applicable.

Former students

Severe reprimand, reprimand or admonishment, disqualification from one or more examinations, and the other powers contained in Complaints and Disciplinary Regulation 5(9)(h) to the extent they are applicable.

Costs

An order for costs is not a sanction, but it is mentioned here for completeness as it is an order which the Committee may make. Please refer to Complaints and Disciplinary Regulation 5(10) in ACCA's Rulebook for the Committee's powers in relation to costs.

Publicity

Publicity of the decision as soon as the Committee's order has become effective is automatic where an allegation has been found proved, unless no further action was ordered. Publicity is not a sanction, but it is mentioned here for completeness.

The normal order for publicity is that the findings and orders be published on ACCA's website and in the local press referring to the member by name.

However, the Committee has complete discretion to decide where the press release should be issued.

The Committee also has a discretion to order that publicity should not refer to the member by name, but this discretion may only be exercised in exceptional circumstances. Exceptional circumstances may exist where:

- a) publication of the name would lead to an unusual adverse impact upon the member or a third party, over and above the adverse impacts which flow naturally as a result of named publication of disciplinary action (for example, an unusual impact upon a person's health or safety)

and

the nature of the unusual adverse impact is such that the private interests of the member or third party in the name being withheld outweigh the public interest in publication of the name

- b) there is some other compelling reason why the member's name should be withheld, which outweighs the public interest in publication of the name.

Please refer to Complaints and Disciplinary Regulation 5(15) in ACCA's Rulebook for the Committee's powers in relation to publicity.

Orders made with immediate effect

Normally, an order made by the Committee is effective only after the appeal period has expired or, if an appeal is lodged, after the resolution of that appeal. However, where the Committee has made an order to exclude or fine a member, or remove a student from the register, it has the power to direct that, in the interests of the public, the order should have immediate effect. Such a direction will normally only be appropriate where there is evidence of a continuing risk to the public, such as a likelihood of the breach continuing or the member remaining in practice.

SECTION 6: GUIDELINE SANCTIONS

The guidelines set out on the pages to follow relate to the most common types of conduct that are brought before the Committee.

The guideline sanction is **guidance only** and is not intended to be treated as a tariff. Each case will be judged on its own facts.

In assessing the appropriate sanction, the Committee must consider any aggravating or mitigating factors relevant to the conduct in question. **The guideline sanction may be departed from where there are aggravating factors which would increase it or mitigating factors which would decrease it.** The Committee is free to attach such weight as it thinks fit in its absolute discretion to any aggravating or mitigating factors. **The aggravating and mitigating factors listed are examples only and are not exhaustive.**

When the Committee has assessed the appropriate sanction, it will then consider any personal mitigation advanced by the member/student.

Before reaching a decision, the Committee will consider whether the sanction it has arrived at is the minimum necessary to achieve the purpose, and whether personal mitigation has been taken into account, in accordance with the principle of proportionality outlined in Section 4 of this publication.

AUDIT

<p>Acting as an auditor when ineligible.</p> <p>Responsible Individual signs audit report without conducting audit.</p> <p>Repeated seriously defective work</p>	<p>Audit work of a seriously defective standard (eg breaches of Statements of Auditing Standards).</p> <p>Lesser forms of poor audit work.</p>
GUIDELINE: EXCLUSION	GUIDELINE: SEVERE REPRIMAND
<p>The Committee may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction. See Sections 3 and 5 in this publication for further information.</p>	
<p>The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts. See further the introductory paragraphs of Section 6 of this publication.</p>	

THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE

<u>Aggravating factors</u>	<u>Mitigating factors</u>
<ul style="list-style-type: none"> Whether any loss to clients or third parties Consequences of incorrect/poor audit work Number of accounts audited and the period of time involved 	<ul style="list-style-type: none"> Inadvertent/minor breach of the regulations Steps taken to correct matters Subsequent audit work satisfactory

The aggravating and mitigating factors listed are examples only and are not exhaustive.

If there is previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account (including any character references).

INSOLVENCY

<p>Acting as an Insolvency Practitioner without a licence</p> <p>Repeated seriously defective work by a member practitioner</p>	<p>Repeated seriously defective work by a non-member practitioner</p>	<p>Failure to comply with the requirements of the Insolvency Act, Rules and Regulations and/or best practice (SIPS)/ethical guidance</p>
GUIDELINE: EXCLUSION	GUIDELINE: SUSPENSION OF LICENCE	GUIDELINE: SEVERE REPRIMAND
<p>The Committee may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction. See Sections 3 and 5 in this publication for further information.</p>		
<p>The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts. See further the introductory paragraphs of Section 6 of this publication.</p>		

THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE

<u>Aggravating factors</u>	<u>Mitigating factors</u>
<ul style="list-style-type: none"> • Persistent course of conduct • Evidence that creditors have been prejudiced • Poor record keeping eg minutes of creditors meetings • Period of time failings covered • Any personal benefit to the Practitioner 	<ul style="list-style-type: none"> • Prompt completion of outstanding work
<p>The aggravating and mitigating factors listed are examples only and are not exhaustive.</p>	

If there is previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account (including any character references).

BREACHES OF CLIENT MONIES* REGULATIONS

*(this includes other monies held on trust for clients and/or third parties such as insolvency estate monies and investment business monies)

Drawing remuneration from client monies without prior authorisation	Paying monies other than client monies into client account
Failure to properly/adequately account for client monies	Failure to account for interest on client monies
Failing to repay client monies in accordance with terms of agreement	Failing to maintain accurate records and controls of client monies received
Client monies not held in designated client account	
Paying a personal or business expense from client account	
GUIDELINE: EXCLUSION	GUIDELINE: SEVERE REPRIMAND
<p>The Committee may also consider other sanctions available to it. See Sections 3 and 5 in this publication for further information.</p>	
<p>The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts. See further the introductory paragraphs of Section 6 of this publication.</p>	

THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE

<u>Aggravating factors</u>	<u>Mitigating factors</u>
<ul style="list-style-type: none"> • Large number of clients involved • Repeated breach • Loss to clients/third parties • Account overdrawn 	<ul style="list-style-type: none"> • No benefit to the practitioner resulting from the breach • Matters promptly rectified when brought to member's attention • Breach occurred only once • Sums held for a very short period • No loss to clients/third parties • Clients compensated for any loss • Procedures introduced to avoid recurrence

The aggravating and mitigating factors listed are examples only and are not exhaustive.

If there is previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account (including any character references).

STUDENT ISSUES

(This section relates to issues which can only apply to students)

<p>Misconduct relating to examinations, such as:</p> <p>Impersonation of another ACCA student</p> <p>Obtaining improper assistance from another</p> <p>Plagiarism</p> <p>Unauthorised materials in the possession of the student with intention to cheat.</p> <p>Student holding out as ACCA Member</p>	<p>Failing to comply with instructions from invigilator</p> <p>Unauthorised materials in the possession of the student with no intention to cheat.</p>
GUIDELINE: REMOVAL FROM REGISTER	GUIDELINE: SEVERE REPRIMAND
<p>The Committee may also consider other sanctions available to it. See Sections 3 and 5 in this publication for further information.</p>	
<p>The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts. See further the introductory paragraphs of Section 6 of this publication.</p>	

THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE

<u>Aggravating factors</u>	<u>Mitigating factors</u>
<ul style="list-style-type: none"> • Failure to rectify conduct, where rectification is possible 	<ul style="list-style-type: none"> • Rectified conduct immediately, where rectification is possible
<p>The aggravating and mitigating factors listed are examples only and are not exhaustive.</p>	

If there is previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account (including any character references).

CRIMINAL CONVICTIONS

Dishonesty offences

Serious assault

GUIDELINE: EXCLUSION

The Committee may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction. See Sections 3 and 5 in this publication for further information.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts. See further the introductory paragraphs of Section 6 of this publication.

THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE

Aggravating factors

- Nature and circumstances of the offence
- Sentence imposed by the Court

Mitigating factors

- Nature and circumstances of the offence
- No issue of integrity arises
- Sentence imposed by the Court

The aggravating and mitigating factors listed are examples only and are not exhaustive.

If there is previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account (including any character references).

PRACTISING CERTIFICATE ISSUES

Engaging in public practice without holding a PC

Being a director, partner or sole proprietor in firm engaged in public practice without holding a PC

Falsely described/misrepresented the firm as Chartered Certified Accountants

Failing to hold (or hold adequate) PII

Students carrying on public practice

GUIDELINE: EXCLUSION

The Committee may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction. See Sections 3 and 5 in this publication for further information.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts. See further the introductory paragraphs of Section 6 of this publication.

THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE

Aggravating factors

- Extensive practice
- Over significant period of time
- Continued conduct after became aware he was in breach
- Wilful failure

Mitigating factors

- Minimal public practice work carried out
- Short period of time
- Rectified the conduct immediately

The aggravating and mitigating factors listed are examples only and are not exhaustive.

If there is previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account (including any character references).

PROFESSIONAL COMPETENCE AND DUE CARE

Defective accountancy work (eg poor quality, late filing, not in statutory format, not complying with rules/requirements of client's regulator such as Solicitors' Accounts Rules. For Audit work please see separate guidelines on page 20.)

Poor advice/delay in advising in relation to client's affairs/neglect of client's affairs

Failing to exercise adequate control and supervision over a practice

Failing to respond expeditiously or adequately or at all to professional correspondence

GUIDELINE: SEVERE REPRIMAND

The Committee may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction. See Sections 3 and 5 in this publication for further information.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts. See further the introductory paragraphs of Section 6 of this publication.

THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE

<u>Aggravating factors</u>	<u>Mitigating factors</u>
<ul style="list-style-type: none">• Nature of inefficient or incompetent work• Attempt to cover up errors• Financial loss to client or third party• Period of time and number of sets of accounts• Deliberate/reckless• Size of loss/error involved	<ul style="list-style-type: none">• No loss• Client promptly recompensed for any loss• Had taken professional advice• Client unhelpful in providing accounts or gave insufficient or misleading information• Evidence of lack of co-operation by client

The aggravating and mitigating factors listed are examples only and are not exhaustive.

If there is previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account (including any character references).

INVESTMENT BUSINESS

Carrying on investment business without authorisation

Carrying on investment business outside the firm's authorisation category

Seriously negligent/reckless investment advice

Breach of investment business regulations

GUIDELINE: EXCLUSION

The Committee may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction. See Sections 3 and 5 in this publication for further information.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts. See further the introductory paragraphs of Section 6 of this publication.

THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE

<u>Aggravating factors</u>	<u>Mitigating factors</u>
<ul style="list-style-type: none">• Number of clients/ number of transactions conducted• Failure to make clients aware of risks• Lack of documentation on advice• High value commission earned• Breach is a criminal offence	<ul style="list-style-type: none">• Improved office procedure immediately• Steps taken on behalf of client to recover loss• Level of seriousness of breach

The aggravating and mitigating factors listed are examples only and are not exhaustive.

If there is previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account (including any character references).

CONDUCT AS A COMPANY DIRECTOR

Disqualification as a company director

GUIDELINE: EXCLUSION

The Committee may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction. See Sections 3 and 5 in this publication for further information.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts. See further the introductory paragraphs of Section 6 of this publication.

THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE

<u>Aggravating factors</u>	<u>Mitigating factors</u>
<ul style="list-style-type: none">• Length of disqualification	<ul style="list-style-type: none">• Length of disqualification

The aggravating and mitigating factors listed are examples only and are not exhaustive.

If there is previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account (including any character references).

OTHER LIABILITIES AND BREACHES OF BYE-LAWS OR REGULATIONS

<p>Failure to comply with an Admissions and Licensing Committee order or an undertaking given to ACCA</p> <p>Failure to co-operate with a disciplinary investigation</p> <p>Failure to co-operate with ACCA's monitoring process</p> <p>Bankruptcy</p>	<p>Being subject to an insolvency process other than bankruptcy</p> <p>Failure to satisfy a judgment debt without reasonable excuse for a period of 2 months</p> <p>Failure to inform ACCA of relevant matters indicating that member himself may be liable to disciplinary action (eg non disclosure of criminal conviction)</p> <p>Failure to comply with CPD requirements</p> <p>Failing to provide professional clearance or transfer information</p>
GUIDELINE: EXCLUSION	GUIDELINE: SEVERE REPRIMAND
<p>The Committee may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction. See Sections 3 and 5 in this publication for further information.</p>	
<p>The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts. See further the introductory paragraphs of Section 6 of this publication.</p>	

<p>THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE</p>	
<p><u>Aggravating factors</u></p> <ul style="list-style-type: none"> • Period of time involved • Deliberate/reckless disregard of order/regulations 	<p><u>Mitigating factors</u></p> <ul style="list-style-type: none"> • Steps swiftly taken to rectify breach

The aggravating and mitigating factors listed are examples only and are not exhaustive.

If there is previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account (including any character references).

DISCIPLINED BY ANOTHER PROFESSIONAL BODY

GUIDELINE:

The Committee should have regard to the sanction imposed by the other body, but is not constrained to follow it. The Committee may impose a greater or lesser sanction than that imposed by the other body.

The Committee may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction. See Sections 3 and 5 in this publication for further information.

The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts. See further the introductory paragraphs of Section 6 of this publication.

THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE

<u>Aggravating factors</u>	<u>Mitigating factors</u>
<ul style="list-style-type: none">• Any matters which may have arisen since the disciplinary action taken by the other body	<ul style="list-style-type: none">• Any matters which may have arisen since the disciplinary action taken by the other body

The aggravating and mitigating factors listed are examples only and are not exhaustive.

If there is previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account (including any character references).

ETHICAL CONDUCT

<p>Deceiving/misleading ACCA/a statutory regulator</p> <p>Failing to act with integrity</p> <p>Lack of objectivity/independence</p> <p>Conflict of interest</p> <p>Breach of confidentiality</p>	<p>Unprofessional behaviour (a lack of courtesy and consideration)</p>
GUIDELINE: EXCLUSION	GUIDELINE: SEVERE REPRIMAND
<p>The Committee may also consider other sanctions available to it, for example a fine in addition to or instead of another sanction. See Sections 3 and 5 in this publication for further information.</p>	
<p>The guideline sanction is guidance only and is not intended to be treated as a tariff. Each case will be judged on its own facts. See further the introductory paragraphs of Section 6 of this publication.</p>	

THE GUIDELINE MAY BE AFFECTED BY AGGRAVATING AND MITIGATING FACTORS RELEVANT TO THE ALLEGATION(S) AND THE WEIGHT TO ATTACH TO EACH, WHICH MAY INCREASE OR DECREASE THE SANCTION AWAY FROM THE GUIDELINE

<u>Aggravating factors</u>	<u>Mitigating factors</u>
<ul style="list-style-type: none"> • Deliberate/reckless • Position of trust held • Size of loss and/or error involved 	<ul style="list-style-type: none"> • Information provided carelessly/accidentally

The aggravating and mitigating factors listed are examples only and are not exhaustive.

If there is previous disciplinary history, its relevance should be considered. It may be an aggravating factor.

Any personal mitigation will be taken into account (including any character references).

13 January 2011 © ACCA 2011

ACCA 29 Lincoln's Inn Fields London WC2A 3EE United Kingdom
tel: +44 (0)20 7059 5000 / fax: +44 (0)20 7059 5050 / www.accaglobal.com

The Association of Chartered Certified Accountants

Appendix 2

ACCA REGULATORY BOARD - STANDING ORDERS

1. Status

- 1.1 The ACCA Regulatory Board is established pursuant to ACCA bye-laws 12 and 28 ("the Bye-laws"). The composition and principal functions of the Board are specified in regulations made by Council under the Bye-laws, known as the Chartered Certified Accountants' Regulatory Board and Committee Regulations 2008 ("the Regulations").
- 1.2 In accordance with the Bye-laws and Regulations, the Board shall comprise a Lay Chairman, six further lay members and three members of the ACCA Council. All members are appointed and removed on such terms as Council, in its absolute discretion, deems appropriate.
- 1.2 The Board shall determine its own procedures, which are set out in these Standing Orders ("the Standing Orders"). In the event of any conflict between the Bye-laws and the Regulations and these Standing Orders, the Bye-laws shall take precedence over both the Regulations and Standing Orders and the Regulations shall take precedence over the Standing Orders.

2. Role of the Regulatory Board

- 2.1 The Regulatory Board shall, working with the Lay Chairman, carry out general oversight of ACCA's regulatory and disciplinary arrangements, including the resourcing and overall performance of the Governance Directorate (but excluding issues relating to the performance of individual members of staff in the Directorate, which shall be a matter for the Executive Director - Governance).
- 2.2 The Regulatory Board shall assist the Lay Chairman, as he deems appropriate, in his monitoring of the fairness, impartiality and integrity of ACCA's complaints, licensing and practice monitoring processes as set out in Standing Order 3.
- 2.3 The Regulatory Board shall receive minutes and/or reports of all meetings of:
 - Appeal Committee
 - Admissions and Licensing Committee

- Disciplinary Committee
- Chairmen and Deputy Chairmen
- committee panel members
- Assessors
- Regulatory Assessors
- Appointments Sub-committee
- Regulations Sub-committee
- working parties it has created.

2.4 The Regulatory Board shall also receive regular reports as follows:

- from the Executive Director - Governance on recent issues
- on the operation of ACCA's investigative processes, licensing arrangements and practice monitoring activities.

2.5 The Regulatory Board shall receive reports of inspections of ACCA's operations by its lead regulators and shall advise Council on any matters likely to affect the proper discharge of ACCA's statutory recognitions.

2.6 The Regulatory Board may develop and adopt policy statements in respect of non-operational regulatory and disciplinary matters as may arise from time to time.

2.7 All Board policy statements shall be subject to review and revision by the Board at any time as the Board, in its absolute discretion, sees fit, subject to each policy statement being reviewed by the Board at intervals not greater than five years.

3. Role of the Chairman of the Regulatory Board

3.1 The Lay Chairman shall monitor the fairness, impartiality and integrity of ACCA's complaints, licensing and practice monitoring processes, through:

- attending, as he sees fit, hearings of the Association's Appeal, Disciplinary and Admissions and Licensing Committees and retiring with the committees when they withdraw to make decisions

- observing, as he sees fit, work undertaken by Assessors and Regulatory Assessors
- attending, as he sees fit, interviews conducted by the Appointments Sub-committee for the appointment of disciplinary and regulatory committee members and Assessors and Regulatory Assessors
- inspecting, on such occasions as he sees fit, whether by way of random reviews or otherwise, such files or other documents held by the ACCA Governance Directorate as he considers necessary or desirable
- inspecting the ACCA Governance Directorate's log of complaints about the exercise of its functions
- observing other operational activities, such as monitoring visits, on such occasions as he sees fit.

3.2 ***The Lay Chairman shall report to Council on the above work and that of the Regulatory Board not less than once a year.***

3.3 The Lay Chairman may provide advice to Council, as necessary, on measures designed to improve the fairness, impartiality and integrity of ACCA's complaints, licensing and practice monitoring processes.

3.4 The Lay Chairman may report to Council on any urgent regulatory or disciplinary matter at any time as he sees fit.

3.5 The Lay Chairman shall chair meetings of the Regulatory Board.

4. Meetings of the Regulatory Board

4.1 The Regulatory Board shall meet a minimum of three times each year, normally in January/February, June/July and September/October.

4.2 ***The quorum for meetings, and therefore for decisions of the Board to be valid, is a minimum of six Board members present.***

4.3 The location of meetings shall be London. Best endeavours will be used to enable members so wishing to participate in meetings by telephone or video conference. Board members participating by telephone or video conference shall count towards the quorum.

- 4.4 The Lay Chairman of the Board shall chair meetings. In the absence of the Lay Chairman from a meeting, a chairman for that meeting shall be elected from among those Board members present.
- 4.5 All matters requiring decisions shall be determined by a majority of the votes of the Board members present, every board member having one vote save that in the event of an equality of votes the meeting chairman shall have a second or casting vote.
- 4.6 The Executive Director - Governance or his nominee may attend all meetings of the Board and its Sub-committees and working parties. Other members of staff may attend meetings as agreed between the Executive Director - Governance and the Lay Chairman.
- 4.7 Staff attending meetings may participate in discussions but may not vote.

5. Minutes of Board meetings

- 5.1 Minutes of the proceedings of all meetings of the Regulatory Board and of the attendance of Board members thereat shall be recorded in a format prescribed by Council.
- 5.2 The minutes shall be supplied to Council, save that any references relating to individual ACCA members, student or firms involved in cases shall be redacted.
- 5.3 Minutes of Board meetings shall be published on the ACCA website when approved by the Board, save that any references to individual members, students or firms involved in cases shall be redacted.

6. Appointment of Sub-committees

- 6.1 *The Regulatory Board shall annually appoint an Appointments Sub-committee and a Regulations Review Sub-committee.*
- 6.2 The Regulatory Board shall determine the numbers of members to be appointed to each Sub-committee, subject to the provisions of Standing Order 6.5 and each Sub-committee consisting of not less than three members. The quorum for meetings of the Sub-committees shall be fifty-one percent, rounded-up as necessary, of the appointed members.
- 6.3 The Regulatory Board shall appoint, from among those it has appointed to the Sub-committees, Chairmen who shall serve for a maximum of three years in succession subject to annual re-appointment. The

Chairmen of Sub-committees shall each be provided with a letter from ACCA setting out the duration and any other terms of their appointments.

- 6.4 The Lay Chairman shall be an ex officio member of all Sub-committees and working parties and may attend and vote at all meetings.
- 6.5 *Membership of the Appointments Sub-committee shall be restricted to lay members of the Board and other lay persons appointed by the Board from time to time on such terms as the Regulatory Board determines.*
- 6.6 The Regulatory Board shall agree annually terms of reference for the Sub-committees.
- 6.7 *In the case of the Appointments Sub-committee, the terms of reference shall be designed to ensure that it fulfils its obligations under the Regulations to appoint and appraise committee members, assessors and regulatory assessors. In the case of the Regulations Review Sub-committee, the terms of reference shall be designed to ensure that it fulfils its obligations under the Regulations to review and make recommendations to the Board for changes to ACCA's Rulebook.*
- 6.8 Where necessary and appropriate, the respective Chairmen of the Sub-committees may take decisions between meetings which cannot reasonably or safely be held over to the next following meetings, in consultation, as necessary, with the Executive Director - Governance . Such decisions shall be reported to the next following meetings.
- 6.9 The Regulatory Board may also appoint task-related working parties from time to time on such terms as it determines.
- 6.10 The Executive Director - Governance or his nominee may attend all meetings of Sub-committees and working parties. Other members of staff may attend meetings of Sub-committees and working parties as agreed between the Executive Director – Governance and the Lay Chairman.
- 6.11 Minutes of the proceedings of all meetings of the Sub-committees (and any working parties formed) and of the attendance of members thereat shall be recorded in a format prescribed by Council. Such minutes shall be supplied to Board.

7. **Code of conduct**

- 7.1 Lay members of the Board and any non-Board individuals appointed to the Appointments Sub-committee or any working party created by the Board shall agree to abide by the Council's Code of Conduct for Non-member Committee Appointees, as attached to these Standing Orders.
- 7.2 Council members of the Board shall remain subject to the Code of Practice for Council Members, contained in the Council Standing Orders, in the course of carrying out their duties as members of the Board.

ooOoo

[N.B. Sections set out in ***bold/italics*** are requirements of the Regulations.]

Appendix 3



Appointments Sub-committee

Terms of Reference



1. Status

1.1 The Appointments Sub-committee ('the Sub-committee') is established by the Regulatory Board in accordance with the Chartered Certified Accountants' Regulatory Board and Committee Regulations 2008.

2 Objective of the Sub-committee

2.1 The objective of the Sub-committee is to safeguard the integrity of the disciplinary and regulatory processes by:

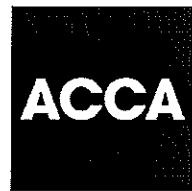
- ensuring there is an appropriate number of experienced panel members, including chairmen and deputy chairmen, disciplinary assessors and regulatory assessors available at all times, providing an appropriate type and level of experience and being as diverse as possible
- monitoring the performance of panel members, including chairmen and deputy chairmen, disciplinary assessors and regulatory assessors
- promoting consistency in the performance of panel members, including chairmen and deputy chairmen, disciplinary assessors and regulatory assessors
- identifying training and support needs of all panel members, including chairmen and deputy chairmen, disciplinary assessors and regulatory assessors
- developing and keeping under review a code of conduct for panel members, including chairmen and deputy chairmen, disciplinary assessors and regulatory assessors, and ensuring that appropriate procedures are in place to support the application of that code
- encouraging and promoting best practice.

3. Role of the Sub-committee

3.1 The functions of the Sub-committee shall include the following.

3.2 Appointment of panel members, including chairmen and deputy chairmen, disciplinary assessors and regulatory assessors

To appoint panel members, including chairmen and deputy chairmen, as and when required, so that there is an appropriate number of experienced panel members, including chairmen and deputy chairmen, available to sit on committees at all times.



To appoint disciplinary assessors and regulatory assessors, as and when required, ensuring that there is an appropriate number of experienced disciplinary assessors and regulatory assessors available at all times.

3.3 Appraisal of the performance of chairmen and deputy chairmen and panel members at committee hearings

To observe the performance of panel members, including chairmen and deputy chairmen, at committee hearings in line with the observation policy and to subsequently prepare a report of the observation.

3.4 Review of reasons produced by chairmen and deputy chairmen

To review a selection of reasons for decisions in line with the review of reasons policy and to subsequently prepare a report of the review.

3.5 Appraisal of disciplinary and regulatory assessors

To review a selection of cases referred to disciplinary and regulatory assessors in line with the review policy and to subsequently provide a report of the review.

3.6 Renewal of panel member, chairmen and deputy chairmen, disciplinary assessor and regulatory assessor contracts

To decide on the renewal of contracts of panel members (including chairmen and deputy chairmen) and disciplinary and regulatory assessors.

Appointments are made for an initial term of up to five years, renewable for a further term of up to five years if both the appointee and the Sub-committee so agree.

Appointments can be made for a further term of three years at the Sub-committee's sole discretion.

3.7 Review of standing information

To review standing information provided by ACCA and to address any issues raised.

3.8 Breaches of Code of Conduct



To deal with referrals concerning breach of code of conduct for panel members and disciplinary and regulatory assessors and to make appropriate decisions.

3.9 Production of ad-hoc reports, memoranda and notes

To issue reports, memoranda and notes to the chairmen and deputy chairmen, panel members, disciplinary assessors and/or regulatory assessors on ad-hoc issues that have arisen such as:

- changes to the appraisal process
- panel member conduct at committee hearings
- the responsibilities of chairmen and deputy chairmen.

3.10 To issue an annual report, as appropriate, to panel members, including chairmen and deputy chairmen, disciplinary assessors and regulatory assessors, concerning the work of the Sub-committee, such as:

- summarising the performance of panel members and disciplinary and regulatory assessors
- identifying areas of particularly good practice
- highlighting issues which should be addressed.

3.11 Decisions between meetings

To ratify decisions made by the Chairman of the Sub-committee, in consultation with the Executive Director – Governance, between meetings which cannot reasonably or safely be held over to the next following meeting.

3.12 Reports to the Regulatory Board

To provide a report of Sub-Committee meetings and its activities to the Regulatory Board at its next meeting.

3.13 Review of terms of reference

To review, at least annually, the Sub-committee's terms of reference to ensure they remain fit for purpose.



Appendix 4



Regulations Review Sub-committee

Terms of Reference



1. Status

1.1 The Regulations Review Sub-committee ('the Sub-committee') is established by the Regulatory Board in accordance with the Chartered Certified Accountants' Regulatory Board and Committee Regulations 2008.

2 Objective of the Sub-committee

2.1 The objective of the Sub-committee is to ensure that ACCA's *Rulebook* is compliant with ACCA's statutory obligations, Privy Council and rule-change decisions by Council.

3. Role of the Sub-committee

3.1 The Sub-committee shall have the following terms of reference.

3.2 Review of regulation changes

To provide detailed scrutiny and due diligence to the proposed changes to ACCA's rules, regulation and code of ethics and conduct necessitated by

- policy decisions by Council
- legislation and requirements of lead regulators, in particular the Professional Oversight Board
- considerations of public interest, public policy and best practice
- court judgments and interpretations
- the requirement to eliminate uncertainties, conflicts and other drafting issues.

3.3 Recommendations to the Regulatory Board

To make recommendations to the Regulatory Board for changes to ACCA's *Rulebook* concerning ACCA's rules, regulations and code of ethics and conduct.

3.4 Decisions between meetings

To ratify decisions made by the Chairman of the Sub-committee, in consultation with the Executive Director – Governance, between meetings which cannot reasonably or safely be held over to the next following meeting.



3.5 Review of terms of reference

To review, at least annually, the Sub-committee's terms of reference to ensure they remain fit for purpose.

Appendix 5

REGULATORY BOARD ROLLING WORK PLAN

November 2010

Substantive business

- Receive a presentation from Laurie Gillow, Executive Director - Markets on the international spread and scope of ACCA's activities (from 1 December 2009 Board meeting)
- Review the proposed content and format of the 2011 annual report to ACCA's Council, including statistics (annually recurring business)
- Review the proposed content and format of the 2011 annual public Report on Regulation (annually recurring business)
- Endorse membership and terms of reference of the Appointments and Regulations Review Sub-committees for the coming year (annually recurring business)
- Endorse Standing Orders for the coming year (annually recurring business)
- Review the geographical annual statistics for the last five years to determine whether it would be beneficial to receive such information in the future (from 14 July 2009 Board meeting)
- Review and endorse updates of Guideline Disciplinary Sanctions (annually recurring business – moved from September 2010 meeting)
- Confirm annual work plan for the forthcoming Council year.

January 2011

Substantive business

- Receive a presentation from Neil Stevenson, Executive Director - Brand, on ACCA's branding, technical and public policy activities (from 1 December 2009 Board meeting)
- Approve 2011 annual report to Council (annually recurring business)

March 2011

Substantive business

- Approve the 2011 public *ACCA Report on Regulation* (annually recurring business)
- Review the publication of reasons (from 14 July 2009 Board meeting)
- Discussion surrounding independent expert evidence in cases (from 27 April 2010 Appointments Sub-committee meeting)
- Update and review of the implementation of the recommendations from the Listing Times Working Party (from 19 May 2010 Board Meeting)

June 2011

Substantive business

- Approve Board's report to Governance Committee (annually recurring business, at last meeting of Council year).
- Receive a report from the Regulations Review Sub-committee on proposed changes to the ACCA Rulebook (annually recurring business)
- Approve dates of Board meetings in 2012 (annually recurring business)
- Review statistics for 2009 and 2010 to identify any trends, which may give an indication of areas of risk and to identify the main causes of complaints and what is being done about them (from Blue Skies session on 14 September 2010)

September 2011

Substantive business

- RB to determine if it wishes to revive the idea of benchmarking ACCA's regulatory governance practice with that of other comparable bodies (from September 2010 meeting)

Meetings Council year 2011 - 2012

Substantive business

- No follow up items currently identified

Annually recurring business

- The items identified above as 'annually recurring business' will repeat at roughly similar intervals in the Council year 2011 to 2012.

All meetings

Routine business

- Approve minutes of previous meeting
- Review actions taken since the last meeting
- Consider new policy statements and revise extant statements, as necessary
- Receive an update on recent developments and/or operational issues from the Executive Director-Governance and/or other Directors
- Approve a revised version of the rolling work plan
- Receive an update on lead regulator matters
- Receive and note minutes of Appointments and Regulations Review Sub-committee meetings (if any)
- Receive and note an aggregated report of disciplinary and regulatory hearings
- Receive and note minutes of meetings of assessors, the panel and chairs/deputy chairs (if any).

Catriona Spedding
Planning Officer
catriona.spedding@accaglobal.com
+44 (0)20 7059 5514

ooOoo

