

Proposed bye-law amendments

ACCA's **Peter Large** and **Nicole Ziman** explain why changes are thought to be necessary

Council is considering proposing a number of amendments to bye-laws 7, 8, 10 and 11 at the Annual General Meeting on 19 September. This article explains why the changes are thought to be necessary.

It is important that ACCA keeps its disciplinary bye-laws under regular review to ensure that they remain fit for purpose against a background of developments in regulatory case law and best practice. In this context, the ACCA Regulatory Board has led a wide-ranging review and has produced, in conjunction with leading counsel in the field of regulatory and disciplinary law, a number of proposed amendments.

Jurisdiction

Proposed changes to bye-law 7 seek to remove any ambiguity as to the law applicable to ACCA's relationship with its members (see note at end of article). They confirm that English law would apply irrespective of where the member resides or where the issue arose and that disciplinary hearings shall ordinarily be convened in London with discretion to hold them elsewhere (currently, ACCA also holds its hearings in Dublin). The proposed changes also confirm that a member upon whom a disciplinary penalty has been imposed remains liable to pay the penalty after removal from the register.

Judgment debts

Bye-law 8(a)(viii) concerns failure to satisfy a judgment debt within two months without reasonable excuse. Somewhat perversely, it precludes an insufficiency of funds from constituting a 'reasonable excuse'. ACCA does not operate such a rigid rule in practice, but examines whether members have responded professionally to situations (for example, genuine attempts to agree instalment payments). A change

is proposed so that allegations brought under the bye-law may be successfully defended if members can prove the existence of a reasonable excuse.



Court findings

Amendments are being proposed which bring greater coherence to bye-law 8 and would bring ACCA more fully into line with the practice of other regulators.

Liability to disciplinary action would follow where a member has been convicted or cautioned for an offence discreditable to ACCA or the profession, or has been found in civil proceedings to have acted dishonestly. This is similar to the current position. However, an important distinction would be drawn between a member who was a party to the proceedings

– and had an opportunity to challenge any adverse findings – and a member who was, for example, a witness. In the latter case, the member would be entitled to submit evidence to contradict an adverse court finding.

The proposed provisions also remove an unnecessary layer of complexity regarding the status of proceedings outside the UK. In relation to criminal offences, the discredibility test would apply irrespective of where in the world the offence was committed. In relation to civil judgments, the test would be whether the court – wherever located – is of competent jurisdiction.

Obligation to report

Clarifications are proposed to bye-law 10(b). The main driver for these is to emphasise that the obligation to notify ACCA that a person may have become liable to disciplinary action includes a duty to 'self-report' and applies not just to members but to all individuals who have undertaken to be bound by the bye-laws.

Liability to disciplinary action

Currently, members are liable to disciplinary action up to five years after membership ceased, for any matters which occurred during membership. An extension beyond five years is proposed in bye-law 11 in exceptional circumstances where it is in the public interest, for example serious allegations which could cause reputational damage to ACCA or the accountancy profession. The change would bring ACCA in line with regulators in other professions.

Note: References to members include students and firms

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