

Think Ahead

ACCA

Guide to ACCA Hearings Team and Disciplinary Regulatory Committees

February
2017

Introduction

This guide explains the role of the Hearings Team in respect of ACCA's Disciplinary and Regulatory Committees and is intended to be a general guide only. In the event of any conflict between the content of this guide and the content of the *ACCA Rulebook*, the latter shall at all-times take precedence. The *ACCA Rulebook* can be found on ACCA's website at www.accaglobal.com

This guide is up to date as at 23 February 2017.

Any reference to 'members' should be read to include all members, students', affiliates and firms.

Before a hearing

Once a case has been referred to an ACCA Committee, the Hearings team will contact the member and provide them with:

- i a formal Notice of Hearing (identifying the date, time and location of the hearing);
- ii a full copy of the papers to be considered at the hearing;
- iii any other relevant information (to include guidance documents, proforma, regulations and adjournment policies).

WHEN TO EXPECT COMMUNICATION FROM THE HEARINGS TEAM

Members will be provided with information in accordance with the timescales set out below:

Disciplinary Committee

At least 28 days prior to the hearing, the hearings officer will serve upon the member a formal Notice of Hearing letter enclosing a full copy of the papers to go before the Disciplinary Committee, including a copy of:

- i the Guidance for Disciplinary Sanctions (GDS)
- ii a Witness Proforma
- iii the Adjournments Policy
- iv Statement of Financial Position
- v Costs Schedule
- vi Guide to ACCA Hearings team and Disciplinary Committees
- vii the Guide to Costs (where a costs schedule has been issued)

viii Interim Order Regulations (as applicable).

Members are strongly recommended to familiarise themselves with the Guidance to Disciplinary Sanctions (GDS) as this provides the Committee with useful guidance when deciding any order to be imposed.

Members are required to complete the Witness Proforma, which must be completed and returned to the Hearings team a minimum of 14 days prior to the date of the hearing. On this form members should provide details of any witnesses they wish to call in order to give evidence and/or any ACCA witnesses they wish to cross examine at the hearing.

Should you require the attendance of a witness, you will need to contact them with regards to attending the hearing. However, it is important to note that the attendance of any witness is entirely voluntary.

Members are encouraged to complete the Statement of Financial Position. Whilst the completion of the Statement of Financial Position is not mandatory, if an allegation is found proved against a member, the Committee will consider the members' financial position when considering making an order for costs and/or imposing a financial penalty.

Admissions and Licensing Committee

At least 28 days prior to the hearing, the hearings officer will serve upon the member a formal Notice of Hearing enclosing a full copy of the papers to go before the Admissions and Licensing Committee, including a copy of:

- i the Guidance for Regulatory Orders (GRO)
- ii a Witness Proforma
- iii the Adjournments Policy.

Members are strongly recommended to familiarise themselves with the Guidance for Regulatory Orders as this will be used by the Committee in deciding any order to be imposed.

Admissions and Licensing Committee (paper applications)

If the member is making an application before the Admissions and Licensing Committee (as opposed to being referred to a Committee by the Monitoring Department) the application will be considered by the Admissions and Licensing Committee at a private meeting (on the papers).

It is the member's responsibility to persuade the Committee on the application form as to why the application should be granted. For example if the member wishes to be reinstated to membership, the member must satisfy the Committee of their 'general character and suitability' (and any other requirements, depending on the membership regulation involved).

If the member is also applying for a practising certificate the member needs to persuade the Committee that they are a 'fit and proper' person.

Service provisions remain the same as for full Admissions and Licensing Committees (above), except in instances where service has been waived by agreement of parties.

The applicant will receive a full copy of the papers to go before the Admissions & Licensing Committee, including a copy of:

- i Guidance for Regulatory Orders (GRO)
- ii Adjournment Policy
- iii Guide to ACCA Hearings Team and Disciplinary Committees"

Interim Order Committee

At least 14 days prior to the hearing, the hearings officer will serve upon the member a Notice of Hearing enclosing a full copy of the papers to go before the Interim Order Committee, including a copy of the Adjournments Policy, Guide to the ACCA Hearing team and Disciplinary Committees and Interim Order Regulations.

In exceptional circumstances, short notice of an IOC can be provided less than 14 days prior to the hearing date.

Interim Orders can be imposed for up to 18 months, with a review being held at least every six months as required.

Appeal Committee

At least 28 days prior to the hearing, the hearings officer will serve upon the member a Notice of Hearing enclosing a full copy of the papers to go before the Appeal Committee, including a copy of:

- i the Adjournments Policy
- ii a Witness Proforma
- iii a Statement of Financial Position.

Consent Order Committee

Consent Order Committees consider an application by parties (ACCA and the member) to confirm, amend or reject a mutually agreed draft Consent Order in respect of minor misconduct cases.

It is the duty of the Consent Order Committee to consider whether the proposed Consent Order is appropriate and represents a fair and appropriate disposal of a case which might otherwise require to be considered at a full Disciplinary Committee hearing, but which would not likely result in exclusion.

The hearings officer will serve upon the member a Notice of Hearing enclosing a full copy of the papers to go before the Consent Order Committee, including a copy of:

- i a draft Consent Order signed by both parties
- ii the Guidance for Disciplinary Sanctions (GDS)
- iii Statement of Financial Position
- iv the Guide to Costs (where a costs schedule has been issued).

Available guidance

Members can access the Guidance for Regulatory Orders and the Guidance for Disciplinary Sanctions on ACCA's website at <http://www.accaglobal.com/gb/en/member/standards/committees/guidance.html> and <http://www.accaglobal.com/gb/en/member/standards/committees/guidelines-disciplinary.html>

PROVIDING FURTHER INFORMATION IN RESPECT OF A HEARING

Members may submit additional documentary evidence that they wish to be drawn to the Committee's attention, in accordance with the timescales set out below:

Disciplinary Committee

Members may submit additional documentary evidence up to 14 days prior to the hearing.

Admissions and Licensing Committee

Members may submit additional documentary evidence up to 14 days prior to the hearing.

Appeal Committee

Members may submit additional documentary evidence up to 14 days prior to the hearing.

Interim Orders Committee

Members may submit additional documentary evidence up to seven days prior to the hearing.

Any documentary evidence submitted outside of these timescales will only be considered in exceptional circumstances and with the permission of the relevant Committee.

REQUESTING AN ADJOURNMENT OF THE HEARING

When a member is sent a copy of the papers, they will also be sent a copy of the Adjournment Policy.

This should be read before the submission of any request for an adjournment. A copy of the Adjournments Policy can also be found at <http://www.accaglobal.com/gb/en/member/standards/committees/adjournments.html>

If a member wishes to request an adjournment of their hearing, this should be done in writing directly to the Hearings team for the attention of the designated hearings officer.

An application for an adjournment should be made at the earliest possible opportunity, setting out the reason(s) for the application, together with supporting documentary evidence. Such request will be considered by the chairman of the Committee.

If the adjournment is refused by the chairman, it shall be re-considered by the Committee at the outset of the hearing.

If an adjournment is granted, the member will be informed in due course of the new hearing date.

It is important to note that conditions may be imposed on the granting of such an adjournment, which may include, for example:

- i the suspension of a member's practising certificate (if applicable)

- ii or suspension of membership during the adjournment period.

Details of any conditions imposed on the granting of an adjournment may be published if the Committee so directs.

QUESTIONS ABOUT THE HEARING

If a member has any questions about the hearing process, they may contact the Hearings team directly who will be able to provide assistance on procedural matters only.

The Hearings team does not take part in ACCA's investigative processes and therefore cannot provide any advice relating to the substance of the matter before the Committee.

On the hearing day

The hearing will typically commence at 10:00am (unless advised otherwise), however the member should arrive at the hearing venue at least 30 minutes before the hearing is due to start.

The member will be met by the hearings officer who will show them to their allocated retiring room. Before the hearing commences the member, together with their legal representative or support person will have the opportunity to speak with ACCA's case presenter and ACCA's legal adviser.

The legal adviser is an experienced barrister or solicitor who advises the Committee on legal points. All advice received is given or subsequently repeated in public and the member, their representative and ACCA's case presenter can make submissions in relation to it.

The legal adviser will accompany the Committee when it is deliberating in private (in camera) but takes no part in the decision making process.

It is important to understand that the legal adviser cannot provide legal assistance to members, ie the legal adviser cannot be the member's advocate.

ATTENDING THE HEARING

Members are highly encouraged to attend the hearing in person. The Committee finds it very helpful to hear from members personally at a hearing, particularly if questions arise on the day. Please note that failure to engage and attend does have the potential to prejudice the case being considered.

If in doubt as to whether attending would be advantageous, members should consult their own professional adviser. Where the individual cannot or is otherwise unable to attend in person, the Hearings team can make alternate arrangements to include video and/or telephone conference.

Where a member does not attend - or in addition to attending - the member may submit written submissions for the Committee to consider.

If a member decides to attend the hearing - they may do so, even if they have previously indicated that they do not intend to. If at all possible the member should notify the hearings officer by telephone, email or in writing prior to the hearing date in order that sufficient time can be allocated for the case to be heard.

The member may be asked to give an indication as to how long their evidence and representations are likely to take.

It is important to note that due to the nature of ACCA's hearings, there may be delays on the day and members should be aware that their hearing may start later than expected. Where possible, members will be advised if this is the case.

PROCEEDING IN ABSENCE

If neither the member nor the member's representative attends the hearing, the case may be heard in their absence, unless an adjournment is granted at the member's request or at the Committee's own volition.

Complaints and Disciplinary Regulation 10(7) [as amended 2017] provides:

‘Where the relevant person fails to attend a hearing, the case may be heard in his absence provided the Disciplinary Committee is satisfied that he has been served with the documents referred to in regulation 9(1) and/or 10(1) in accordance with regulation 22.’

The Committee must therefore make a two-stage decision:

- 1 Has service been effected in accordance with the regulations?
- 2 If yes, is it appropriate in all the circumstances to proceed with the hearing in the absence of the relevant person?

Members are strongly advised to seek legal representation. Members can also bring along a support person if they wish, such as a friend or family member.

DURING THE HEARING

Hearings are generally held in public, which means that anyone may attend. The Committee may, in an appropriate case, decide to hear a matter in private for all or part of the proceedings and for documentary evidence to be received without being read aloud.

At the start of the hearing, the Committee will enter the room and once seated the chairman will formally introduce the Committee (comprising of a chairman, an accountant member and a lay member), the legal adviser, any ACCA staff and the case presenter presenting the case on behalf of ACCA.

The chairman will then briefly explain procedures and protocols associated with the hearing itself and confirm that the hearing will be audio recorded to provide an accurate record of the proceedings.

In a Disciplinary Hearing the chairman will request the hearings officer to formally open the case by reading the allegations. If the member is in attendance, the hearings officer will ask the member whether they admit or deny the allegations.

This is slightly different in the case of Appeal Committee; Admissions and Licensing Committee; and Interim Order Committee hearings in that there are no ‘allegations’ to read out.

The case presenter will begin proceedings and present the case (make submissions) on behalf of the ACCA by reference to the documents and evidence before the Committee. They may call witnesses in support of their case.

Once the ACCA case presenter has concluded their submissions, the Committee will invite the member or their representative to ask any questions arising from the presentation of the ACCA case presenter. The Committee reserve the right to ask further questions thereafter.

If the member has denied the allegations, the member (or their representative) will then be asked to present their case. The member is not obliged to give evidence and may present their case either verbally or by way of written representations.

The member may call witnesses (identified in advance) to support their case and upon conclusion both the ACCA case presenter and Committee may ask questions of them also.

On completion of the member's presentation, members of the Committee and the ACCA case presenter may ask the member questions. The member is not obliged to answer, but usually the Committee finds it helpful to obtain additional information in this way.

ON THE HEARING DAY – DECISION ON FACTS AND MISCONDUCT

After both parties have concluded their presentations and questioning has finished, the ACCA case presenter and the member (or the member's representative) will be given an opportunity to make further representations upon any matter raised during the questioning.

The Committee will then withdraw, accompanied by the legal adviser, to consider its decision on facts in private (in camera). The member will retire to their allocated retiring room until the Committee have reached their decision.

When the Committee reconvenes, the chairman will announce its findings on fact and announce the Committee's decision as to whether any of those facts it has found proved amount to misconduct.

If the Committee has not found any allegations proved, the proceedings are terminated, subject only to any order for

costs that might be made in the member's favour. In these circumstances, no record of the matter for disciplinary purposes will be retained on the member's file.

If the Committee has found one or more of the allegations proved, or the member has admitted them and the Committee has found them proved, the Committee will provide a brief summary of any matters it considered in finding the allegation(s) proved in order to assist the member when making submissions in mitigation and in relation to costs.

The chairman will ask the ACCA case presenter to make submissions on sanctions and costs. If the member is in attendance and /or represented, submissions are also invited from the member in defence.

The Committee will then withdraw to consider the sanction(s) and other orders to be made.

The Committee will return to announce:

- the sanction(s) imposed;
- any costs or fines to be awarded;
- the reasons for their decision.

The presentation and procedures that should be followed before the Appeal Committee or Admissions and Licensing Committee, are similar to those of the Disciplinary Committee. There is one main difference however in that the Committee will only retire once to consider their decision (rather than twice).

PUBLICITY

ACCA's regulations require ACCA to publish advance notice of upcoming hearings naming the individual member and/or firm concerned together with the date and venue of the proposed hearing event.

In addition ACCA regulations require publication of the Committee's findings and orders by way of a news release naming the member, as soon as practicable following the hearing event.

This applies to all decisions of the Disciplinary Committee where an allegation has been found proved and all decisions of the Admissions and Licensing Committee where a member's practising certificate or licence has been withdrawn, in addition to all decisions of the Appeal and Interim Order Committees.

Anything heard in private during the hearing shall not be published.

After the hearing

At the end of the hearing, the Committee will announce their decision. In most cases where the member is present they shall receive a written copy of the reasons for the Committee's decision on the day of the hearing.

In all cases the hearings officer will issue a formal Notice of Decision letter together with the written reasons for the decision of the Committee within 14 days of the hearing event – however in reality reasons are often made available within five working days.

Following any decision taken by the Disciplinary Committee or the Admissions and Licensing Committee, parties shall also be sent a Form of Application Notice for Permission to Appeal.

PERMISSION TO APPEAL

Either party has a right to apply for Permission to Appeal within 21 days of the date of the formal Notice of Decision enclosing the written reasons for the Committee's decision.

In exceptional circumstances, where there is a clear public interest in the decision being reviewed, ACCA may apply for permission to appeal the decision of the Admissions and Licensing or Disciplinary Committee.

EFFECT OF AN ORDER

The decision of the Committee will not normally take effect until an appeal period has expired, unless otherwise stated by the Committee in their reasons that an order should have immediate effect.

If a member wishes to appeal, the order made at the original hearing shall not take effect until the outcome of any application for permission to appeal lodged has been exhausted.

All decisions of the Appeal Committee become effective immediately (ie as soon as that decision has been announced).

COSTS

The Committee has discretion to make an order for costs at a hearing.

An Interim Order Committee has the power to reserve costs where the ACCA case presenter has made such an application.

Where costs have been reserved, the Committee shall not consider costs until the substantive Disciplinary Committee hearing. Any order for costs made by any Committee shall be stated in the full reasons.

Members shall be advised in the formal Notice of Decision letter to expect an invoice and next steps in relation to payment of costs. Please note costs invoices shall be sent out to the member only after the appeal deadline has passed and the case is complete.

Where a member has applied for permission to appeal, costs will not be raised until the Appeal process has been exhausted.

Costs are payable in full 30 days after the formal invoice has been raised and issued.

In exceptional circumstances and by discretionary agreement costs can be paid by instalment over a period less than 12 months in duration. All applications to pay costs over a longer period must be made in writing prior to the end of the identified appeal period and supported by relevant documentary evidence for consideration by the Committee chairman.

All enquires in respect of costs made after the identified appeal period should be addressed for the attention of the identified contact once the formal paperwork has been issued to the member from ACCA's Finance Department.

CONTACT US

For further information or any queries about ACCA's Disciplinary and Regulatory Committees, please contact:

Hearings Team
ACCA

The Adelphi, 1/11 John Adam Street, London WC2A 6AU, United Kingdom

hearingsteam@accaglobal.com

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ACCA
The Adelphi
1/11 John Adam Street
London WC2A 6AU
United Kingdom

tel: +44 (0)20 7059 5000
fax: +44 (0)20 7059 5998

www.accaglobal.com