

Disciplinary action in respect of convictions before the courts



Scope and status

This factsheet provides guidance to members and students on the disciplinary action which is likely to ensue should members or students be convicted of offences before the courts. Under the provisions of bye-law 11(a) disciplinary action may be brought against members or students for offences committed before they became members or students.

This document has no regulatory status. It is issued for guidance purposes only. Nothing contained in this document should be taken as constituting the amendment or adaptation of the *ACCA Rulebook*. In the event of any conflict between the content of this document and the content of the *ACCA Rulebook*, the latter shall at all times take precedence.

Liability to disciplinary action

Liability to disciplinary action arises whenever members or students are guilty of misconduct, and the circumstances in which such liability may arise are defined in bye-law 8.

Under the provisions of bye-law 8 misconduct includes, but is not confined to, acts or defaults likely to bring discredit upon:

- the member himself/herself; or
- ACCA; or
- the accountancy profession.

Proof of misconduct

The fact that members or students have pleaded guilty to, or been found guilty of, offences before a court of superior jurisdiction in the United Kingdom, or in a superior court of

any country whose judgements are registerable in the United Kingdom, will be treated as conclusive proof of misconduct if the disciplinary tribunal finds that the offence brings discredit as above.

In addition, findings in civil proceedings that members acted fraudulently or dishonestly will be treated as conclusive proof of misconduct.

Accordingly, where the fact of such a finding or discreditable conviction is established before a disciplinary tribunal, that tribunal will concern itself only with mitigating circumstances that should be taken into account in reaching its decision as to how it should deal with the members or students concerned.

It should be borne in mind that liability to disciplinary action may arise from any act of misconduct or default whether in the course of professional work or otherwise.

Thus, it is clear that members and students are subject to disciplinary action even when the convictions are wholly unrelated to their professional duties. The question then arises as to what offences are “discreditable” within the meaning of bye-law 8.

Type of misconduct

Convictions relating to the personal life of members and students, such as obtaining money or goods by false pretences, forgery, theft and other offences involving dishonesty amount to prima facie cases of misconduct such as to bring “discredit to a member, ACCA or the accountancy profession”.

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It is essential that members of the accountancy profession, because of the nature of their work and the trust their clients place in them, are honest both in their professional and personal activities.

A very serious view must be taken of any lack of honesty in the behaviour of members and students outside their professional work. However, in certain cases Disciplinary Committee might take a lenient view; e.g. if a student is convicted of a petty theft that the Committee considers to be merely a student prank.

Similarly, isolated incidents of disorderly behaviour by members due to intoxication might be considered by the investigating officer, after taking into account all the circumstances, to be a case which should not be referred to Disciplinary Committee.

Criminal law deals with a wide range of offences and Council has examined some of the different categories of offence in an endeavour to identify which should be accepted as "discreditable" conduct within the meaning of bye-law 8.

It is dangerous to lay down rigid rules, and the investigating officer, Disciplinary and Appeal Committees decide each case on its merits.

Penalties

Once Disciplinary Committee has proved a charge of misconduct, it then has to determine what penalty, if any, should be imposed on the members or students concerned.

In the case of *Re H (a barrister)* [1981] 3 All ER 205, a case concerning disciplinary proceedings in the Inns of Court, Mr Justice Latey laid down three general principles with regard to sentencing:

(a) A distinction should be drawn between professional misconduct and misconduct outside the profession.

(b) An unsuccessful plea of not guilty is a factor which it is proper for the disciplinary tribunal to weigh with all others, but it should not be the predominant factor.

(c) The disciplinary tribunal should have regard to sentences imposed in comparable cases. The judgment stated: "For this purpose, we think that the record of the decisions ought to state matters such as the penalty imposed by the criminal court, the approximate length of the barrister's standing at the Bar, whether or not he is a practising barrister, and other matters material to the sentence which can be readily stated."

It seems clear that these three general guidelines should equally be applied to the determining of penalties by ACCA's Disciplinary and Appeal Committees, although the Committees consider each case in the light of its own special factors.

Conclusion

Disciplinary and Appeal Committees will reach their own conclusions as to whether a particular conviction is discreditable and therefore automatically amounts to misconduct within the meaning of bye-law 8 after taking into account the facts of the particular case, society's current attitude to that offence, the country in which the offence has been committed together with local attitudes, and earlier decisions of the Committees.

Penalties imposed will reflect the view which the Committees take in respect of the individual offences with which they have to deal and the degree of gravity of the matter under consideration.

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