

REGULATORY BOARD POLICY STATEMENT
and
REGULATORY GUIDANCE

**ANTI-MONEY LAUNDERING MONITORING AND
ACCA'S APPROACH TO NON-COMPLIANCE WITH UK
AND IRELAND ANTI-MONEY LAUNDERING
REQUIREMENTS**

Approved by the Regulatory Board and published by
The Association of Chartered Certified Accountants
September 2020

CONTENTS

	Pages
REGULATORY BOARD POLICY STATEMENT	
PS1: Background	1
PS2: Overview of approach	2 - 3
PS3: Professional competence	4 - 5
PS4: General approach to non-compliance	6
PS5: The importance of the response to the compliance review	7
PS6: Enforcement action	8
PS7: First compliance review	9 - 10
PS8: Second or subsequent compliance review	10
PS9: Approach taken by the Committee	11 - 12
PS10: Approach to non-cooperation with supervisory requirements	13 - 14
PS11: Effective date of orders and decisions	15
PS12: Preparation of written reasons	15
PS13: Flexibility of approach	15
APPENDIX	16

CONTENTS (continued)

	Pages
REGULATORY GUIDANCE	
Section 1: Introduction	17
Section 2: The role and regulatory powers of the Committee and Regulatory Assessor	
2.1 Introduction	18
2.2 The role of the Committee and Assessor	18
2.3 Purpose of an order	18 - 19
2.4 Regulatory powers	19 - 20
2.5 Proportionality	20
2.6 Publicity	21
Section 3: The approach adopted by ACCA	
3.1 Introduction	22
3.2 First compliance review	23
3.3 Second or subsequent compliance reviews	23
Section 4: Guidance for the Committee and Assessor	
4.1 Introduction	24
4.2 First referral of the findings of a compliance review	24 - 25
4.3 Second referral of the findings of a compliance review	25
4.4 Third referral of the findings of a compliance review	25
4.5 Exceptional reasons for not withdrawing as certificate	26 - 27
4.6 Re-application for a practising certificate	27
Section 5: Description of the available decisions/orders and application guidelines	
5.1 Introduction	28
5.2 Available decisions/orders	29 - 33
5.3 Guideline decisions and orders	34 - 37

REGULATORY BOARD POLICY STATEMENT

PS1 BACKGROUND

- 1.1 In the UK, ACCA is a supervisory authority which regulates the Anti-Money Laundering (AML) compliance of its supervised firms in accordance with the requirements of The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs 2017).
- 1.2 In Ireland, ACCA is a supervisory authority with assigned responsibility under the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018.
- 1.3 In the UK, ACCA follows the protocol agreed by the Accountancy AML Supervisors' Group (AASG) (a division of the Anti-Money Laundering Supervisors' Forum) to identify the AML supervisor of each practising firm within the accountancy sector based on the composition of the firm, and has adopted a similar approach in Ireland. Accordingly, the main categories of firms where ACCA is the supervisor are as follows:
- (i) all principals in the firm hold an ACCA practising certificate.
 - (ii) ACCA principals/members hold 51% or more of the voting rights and therefore control the firm.
 - (iii) the principals hold ACCA practising certificates on equal terms (50:50) with members of other professional body supervisors and it has been mutually agreed with those bodies that ACCA will be the supervisor.
- 1.4 Under both regimes, the Board recognises that ACCA is charged with playing a vital role in combating money laundering and terrorist financing, and fully supports the objective of ensuring AML compliance.

PS2 OVERVIEW OF APPROACH

- 2.1 Under the legislation described in PS1, ACCA is required to adopt a risk-based approach to AML supervision. Consequently, ACCA periodically risk-assesses every firm in its supervised population, taking into account such factors as the services provided by the firm, its client base and the outcomes of previous reviews; it will also update the risk assessment in response to intelligence received about the firm. The outcome of the risk assessment influences the type and frequency of monitoring, which ACCA may undertake at any time it considers appropriate and not by reference to any particular 'visit cycle'.
- 2.2 Regulation 18(1) of the MLRs 2017 provides that the firm must take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which its business is subject (the 'firm-wide risk assessment'). Regulation 18(4) further provides that the firm must keep an up-to-date record in writing of all the steps it has taken under regulation 18(1).

- 2.3 Regulation 19(1)(a) of the MLRs 2017 provides that the firm must establish and maintain policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified in the risk assessment undertaken under regulation 18(1) and regulation 19(1)(b) requires the firm to regularly review and update those policies, controls and procedures. Regulation 19(1)(c) requires the firm to maintain a record in writing of: the policies, controls and procedures established; any changes made as the result of a review and update; and the steps taken to communicate those policies, controls and procedures, or any changes to them, within the firm.
- 2.4 ACCA's main supervisory tool is the programme of compliance reviews which comprehensively assess the policies, controls and procedures a firm has in place to ensure compliance with AML requirements. Compliance reviews may be conducted by onsite visit to the firm or by desktop review.
- 2.5 The compliance review comprises:
- (i) inspection of documentation which sets out the firm's AML policies, controls and procedures;
 - (ii) inspection of other documents which demonstrate compliance with the requirements;
 - (iii) interviews with the Money Laundering Reporting Officer and other employees; and
 - (iv) review of a sample of client files.
- 2.6 Aside from being a specific requirement, documentation of the AML firm-wide risk assessment, policies and procedures is of critical importance to ACCA's assessment of the level of compliance as, together with reviews of client files, it provides evidence that the firm has developed appropriate controls and is consistently applying them.
- 2.7 ~~The onus is therefore on the firm to ensure that, at the point it provides it to ACCA for review, the AML documentation is complete and contains all evidence and information upon which it relies to demonstrate compliance with the AML requirements.~~ It is not generally appropriate for ACCA to extend its review to, or for any Committee of ACCA to place reliance on, information that was not provided at the outset of the review because of the risk that evidence might be generated after the event and in response to the deficiencies communicated to the firm as a result of the review.

2.8 The compliance review is broken down into different areas which broadly equate to the various headings in the requirements. Each area is assigned one of three ratings:

Per HM Treasury return	ACCA procedures	Definition
Compliant	Compliant	The control is in place and has been demonstrated during the review.
Generally compliant	Insufficient	The control exists but is not fully effective and/or is not consistently applied.
Not compliant	Non-compliant	The control does not exist or cannot be evidenced as in place historically and consistently applied.

2.9 ~~ACCA expects all supervised firms to achieve and maintain full compliance with the requirements.~~

PS3 PROFESSIONAL COMPETENCE

- 3.1 To be eligible for an ACCA practising certificate, members must possess a combination of theoretical knowledge and recent supervised practical experience, and applicants agree to be bound by the provisions of the ACCA Rulebook, including the Global Practising Regulations (GPRs).
- 3.2 In addition, all members are required to maintain their competence by undertaking a programme of Continuing Professional Development (CPD). Membership Regulation 4(4)(vi) provides that all members carrying on public practice, including those holding practising certificates, must:

- (aa) maintain competence in the specialised areas of their practice; and
- (bb) obtain an appropriate proportion of CPD units in those areas.

- 3.3 Furthermore, Regulation 4(4) in Annex 1 and Regulation 4(3) in Annex 2 remind members who intend to practise that they are required to attain professional competence appropriate to the professional services that they intend to provide. These regulations also refer to subsection 113 of the Code of Ethics and Conduct on the fundamental principle of professional competence and due care, which provides:

R113.1 A professional accountant shall comply with the principle of professional competence and due care, which requires an accountant to:

- (a) Attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organization receives competent professional service, based on current technical and professional standards and relevant legislation; and*
- (b) Act diligently and in accordance with applicable technical and professional standards.*

113.1 A1 Serving clients and employing organizations with professional competence requires the exercise of sound judgment in applying professional knowledge and skill when undertaking professional activities.

113.1 A2 Maintaining professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments. Continuing professional development enables a professional accountant to develop and maintain the capabilities to perform competently within the professional environment.

113.1 A3 Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.

- 3.4 Regulation 9(3) in Annex 1 to the GPRs sets out the requirements in relation to anti-money laundering compliance in the UK:

Individuals holding practising certificates and relevant persons...shall comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. If an anti-money laundering supervisory authority, including the Association, is to determine whether a relevant person has complied with its general ethical or regulatory requirements, it shall consider whether or not the relevant person has applied the provisions of the Anti-Money Laundering Guidance for the Accountancy Sector issued by the Consultative Committee of Accountancy Bodies.

- 3.5 Similarly, Regulation 9(2) in Annex 2 sets out the requirements in Ireland:

Individuals holding practising certificates and relevant persons shall comply with the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2018. If an anti-money laundering supervisory authority, including the Association, is to determine whether a relevant person has complied with its general ethical or regulatory requirements, it shall consider whether or not the relevant person has applied the provisions of the Anti-Money Laundering Guidance for the Accountancy Sector issued by the Consultative Committee of Accountancy Bodies – Ireland.

- 3.6 These regulations establish that the holder of a practising certificate is required to:

- (i) comply with AML legislation; and
- (ii) apply the provisions of the CCAB Guidance.

- 3.7 ACCA therefore adopts the position that an individual holding a practising certificate is expected to demonstrate knowledge of, and compliance with, the relevant AML requirements. If at any time an individual or their firm falls significantly short of complying with the AML requirements and they fail to rectify the non-compliance promptly, it is not in the public interest to permit them to continue practising as an ACCA member or to have a management role in an ACCA-supervised firm (see PS6 on Enforcement action below).

PS4 GENERAL APPROACH TO NON-COMPLIANCE

- 4.1 ACCA adopts a constructive and educational approach when conducting AML compliance reviews, with the objective of encouraging firms to make any necessary improvements in compliance with AML requirements.
- 4.2 Nevertheless, ACCA is committed to improving standards by way of a robust approach to monitoring compliance, utilising the range of tools at its disposal (including, where appropriate, the enforcement action set out at PS6 below) in a way that is proportionate to the facts of the case. This approach is endorsed by lead regulators and its effectiveness, as reflected by the level of compliance in ACCA firms, is subject to independent oversight by the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) in the UK and by the Department of Justice and Equality in Ireland.
- 4.3 ACCA's basic approach is that, when it identifies non-compliance or partial compliance with the requirements, it issues the firm with a written AML compliance review report. The report specifies the action the firm is required to take to remediate all identified non-compliance together with a date by which it must complete the action and provide evidence that it has done so.
- 4.4 In cases where the findings of the compliance review indicate non-compliance with the requirements in one or more areas, ACCA will generally make an immediate referral for potential disciplinary action, notwithstanding that the firm is still required to provide a response to the compliance review report and implement the necessary improvements to its controls.

PS5 THE IMPORTANCE OF THE RESPONSE TO THE COMPLIANCE REVIEW

- 5.1 The AML compliance review report and the firm's response underpin the AML supervision monitoring approach and ACCA regards it as the principal tool in improving overall standards of AML compliance in ACCA supervised firms.
- 5.2 It is therefore extremely important that the firm uses its response to the written report as its opportunity to demonstrate insight into the identified weaknesses and to provide assurance that it has achieved full compliance with the requirements. ACCA assesses the action taken and, if satisfied that the firm is now compliant, will in many cases close the review. ACCA classifies this approach as 'informal action'.
- 5.3 If, however, ACCA considers the action taken by the firm or the evidence provided is not sufficient, it will respond to the firm, clarify the remaining shortfall in compliance and will generally allow the firm one further opportunity to update its response. Ultimately, if a firm fails to provide adequate evidence that it has achieved full compliance with the requirements within the specified timeframe, ACCA considers the need for formal regulatory action which, depending on the circumstances, may comprise the suspension, withdrawal or imposition of conditions on the practising certificate(s).
- 5.4 Similarly, if the firm or any of its managers or officers demonstrate insufficient insight into its or their non-compliance with the requirements, or persist in disputing ACCA's findings and the significance thereof, even if the firm provides evidence that it has achieved full compliance there will be doubts about its willingness or ability to sustain it. In these circumstances, ACCA is likely to undertake a focused re-review of the firm's controls and procedures for which the firm will be charged a fee to cover the cost. The scale of charges for such focused reviews is set out in the Appendix.
- 5.5 In addition to the potential regulatory action described above, if the firm fails to respond to the written report and provide evidence of the remedial action taken by the specified date, ACCA will consider the need to refer the firm for disciplinary action.
- 5.6 In considering any matter before it, the Admissions and Licensing Committee (or the Regulatory Assessor, if operating under delegated authority) shall take into account the quality of the firm's response, if any, to ACCA's written report and the effectiveness of the action taken. In particular, failure to maintain the improvements in controls and procedures implemented following a previous compliance review is a strong indicator of the firm's ability and commitment. The Committee (or Assessor) should therefore be cautious of the firm's assurances that it will maintain a state of full compliance with the requirements in future when it has been provided with a previous opportunity to do so and failed to take that opportunity.

PS6 ENFORCEMENT ACTION

- 6.1 Regulation 78 of the MLRs 2017 permits ACCA to impose measures on any person (who was at the material time an officer of the supervised firm) if they were knowingly concerned in a contravention of a relevant requirement by the firm. The available measures are:
- (a) a temporary prohibition on the individual concerned holding an office or position involving responsibility for taking decisions about the management of the firm (“having a management role”);
 - (b) a permanent prohibition on the individual concerned having a management role.
- 6.2 Under Regulation 78(3), a temporary prohibition may be for such period as ACCA may specify, but its expiry at the end of that period does not affect ACCA’s power to impose a new temporary prohibition.
- 6.3 Under Regulation 78(4), a prohibition may be on the individual having a management role in:
- (a) a named firm;
 - (b) a firm of a description specified by ACCA when the prohibition is imposed; or
 - (c) any ‘relevant person or payment service provider’ as defined by the MLRs 2017, whether or not supervised by ACCA.
- 6.4 Such action is consistent with the powers of ACCA’s Admissions and Licensing Committee to withdraw, suspend or impose conditions on a member’s practising certificate. If the officer of the firm is not a member of ACCA, the Committee is not precluded from imposing a condition on the practising certificate(s) of the ACCA member(s) in control of that firm that the individual concerned is prohibited from having a management role in any firm(s) with which the ACCA member(s) is/are associated.
- 6.5 None of the powers set out in the MLRs 2017 shall preclude ACCA from taking any other regulatory or disciplinary action in accordance with its Rulebook.
- 6.6 ACCA may initiate disciplinary and/or regulatory action against a person or firm at any time for apparent AML compliance breaches, whether the concerns arise as a result of:
- (i) the findings of a compliance review (notwithstanding that the review may be the person’s or firm’s first such review); or
 - (ii) intelligence or other information received, regardless of whether the person or firm has been subject to a compliance review.

PS7 FIRST COMPLIANCE REVIEW

- 7.1 As indicated at PS2.9, ACCA expects all supervised firms to achieve and maintain full compliance with the requirements and a failure to do so at any time, given the fundamental principle of ~~professional competence explained in PS3~~, is likely to result in ACCA referring the findings for regulatory action. The over-riding requirement is protection of the public and maintenance of proper standards of conduct.
- 7.2 Accordingly, ACCA may at any time and regardless of the outcome of any previous compliance review refer a matter to the Admissions and Licensing Committee (or Regulatory Assessor if acting under delegated authority). There is no presumption or requirement that the firm or any individual associated with it must first have been subject to a previous compliance review and been given the opportunity to improve their controls and procedures, before the Committee may order a temporary or permanent prohibition or the withdrawal of the practising certificate(s).
- 7.3 The approach taken by ACCA subsequent to a firm's AML compliance review will depend on the findings:
- (i) if all of the AML controls were found to be compliant, ACCA will complete the review and take no further action;
 - (ii) if a minority of the AML controls are found to be partially compliant and the remainder compliant, ACCA will issue a written compliance review report to the firm with required actions and, provided it is satisfied that the firm's response demonstrates it has achieved full compliance, will take no further action. An exception to this approach is where ACCA determines that there is a need to carry out a focused re-review of the firm's controls and procedures at the firm's cost, as described at 5.4 above;
 - (iii) if partial compliance is more pervasive, ACCA will issue a written compliance review report to the firm with required actions, and also refer the findings for potential disciplinary action. However, provided ACCA is satisfied that the firm's response to the review report demonstrates it has achieved full compliance, it is unlikely to make a referral to the Admissions and Licensing Committee. As in (ii), however, ACCA may determine that there is a need to carry out a focused re-review at the firm's cost;
 - (iv) if any of the AML controls are found to be non-compliant, regardless of the level of compliance on the other controls, it is likely that ACCA will refer the findings for potential disciplinary action and to the Admissions and Licensing Committee. ACCA will still issue a written compliance review report to the firm with required actions and will assess the firm's response to establish the extent of the improvements: these documents will be provided to the Committee and will influence the action recommended by ACCA. This approach is appropriate because such non-compliance indicates a scant regard for AML requirements, raises concerns about competency and/or integrity and significantly elevates the risk of future non-compliance.

7.4 Where the firm fails to respond to the written compliance review report or provide sufficient evidence of the completed actions, ACCA will follow the approach set out in PS5.3 and PS5.5.

PS8 SECOND OR SUBSEQUENT COMPLIANCE REVIEW

8.1 There are two scenarios when ACCA conducts a second or subsequent compliance review and the firm is found not to be fully compliant:

- (i) the firm was found to be fully compliant at the previous review (or at each of the previous reviews, if more than one); or
- (ii) the firm was found to be non-compliant or partially compliant at any previous review.

8.2 AML policies, controls and procedures operate at a firm-wide level and all relevant personnel within the firm are expected to follow those procedures consistently. Once established, the firm is expected to maintain effective policies, controls and procedures notwithstanding that its owners, officers and other personnel will inevitably change over time.

8.3 For example, in the second scenario, in order to avoid withdrawal of, or the imposition of conditions on, the member(s) practising certificate(s) subsequent to the previous compliance review, the firm must have demonstrated to ACCA's satisfaction that it had achieved a state of full compliance. It must thereafter maintain that standard.

8.4 It is important that firms consistently apply effective controls in order to combat the threat of [money laundering](#). In cases where the level of a firm's compliance fluctuates over time, there will be serious concerns about its capability and willingness to maintain full compliance.

8.5 In either scenario, therefore, a failure to maintain full compliance with the requirements, given the fundamental principle of [professional competence](#) explained in PS3, is likely to result in ACCA referring the findings for regulatory action.

8.6 In deciding on a recommended course of action, ACCA will take into account:

- (i) the extent to which the recent non-compliance is related to any changes in the requirements introduced since the previous compliance review; and
- (ii) any apparent lapses in controls or procedures which were either in operation at, or introduced in response to the findings of, the previous compliance review(s).

8.7 ACCA is likely to refer the matter to the Admissions and Licensing Committee (or Regulatory Assessor, if acting under delegated authority) with the recommendation either that it imposes suitable conditions or that it withdraws the practising certificate(s).

PS9 APPROACH TAKEN BY THE COMMITTEE

9.1 ACCA's Authorisation Regulations ('ARs') set out the procedure to be followed at hearings of the Admissions and Licensing Committee. The Committee is concerned solely with the eligibility of the individual to continue to hold a practising certificate and the process is not subject to the requirements of the Complaints and Disciplinary Regulations which govern the conduct of Disciplinary Committee hearings.

9.2 In particular, cases concerning compliance with AML requirements are brought under AR 5(2)(f) which provides that the Committee may withdraw, suspend or impose conditions upon a certificate if:

"...it is notified or becomes aware that a holder of a certificate or any of its partners, members, directors or controllers has committed a material breach of any of these regulations or other rules and regulations or codes of practice to which he or they are subject (or were subject prior to 1 January 2014) in the carrying on of the activities to which the certificate relates or authorises;"

9.3 In applying this provision, the Committee is entitled to rely on the findings of the compliance review set out in ACCA's report as establishing non-compliance with AML requirements. In the absence of sufficient, reliable and credible evidence to the contrary the Committee should on the balance of probabilities find those matters set out in ACCA's report proved. The primary responsibility of the Committee is, based on those established facts, to determine the appropriate course of action in accordance with this policy.

9.4 Therefore, unless the Committee (or the Regulatory Assessor, if acting under delegated authority) is satisfied that there are clear exceptional reasons for not doing so, it will normally follow this policy and ACCA's recommended course of action.

Appropriateness of conditions

9.5 If the Committee decides to impose conditions that differ from those recommended by ACCA, it is very important to devise conditions that are practical, address a specific circumstance or risk factor, and are consistent with other elements of the decision. In particular, the Committee will need to articulate clearly in their written reasons the purpose of the condition and the outcome it is designed to achieve.

9.6 In a sole practice, the imposition of conditions prohibiting the principal from having a management role has the same consequence as withdrawal of their practising certificate (see below) because the individual cannot, in effect, continue to run their practice. Nevertheless, the principle 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 is applicable to AML supervision and the overriding need to mitigate the risks of money laundering.

Withdrawal of practising certificates

- 9.7 If the imposition of conditions on the practising certificate(s), including the temporary or permanent prohibition on an individual having a management role in accordance with PS6 above, is not regarded as sufficient to ensure the supervised firm's full compliance with the AML requirements in future, then ACCA and the Committee will need to consider withdrawal of the practising certificates.
- 9.8 Withdrawal of an ACCA member's practising certificate will in most cases result in the loss, or severe depletion, of the member's livelihood. Nevertheless, in some circumstances it remains the minimum action necessary to mitigate and manage effectively the risks of money laundering and terrorist financing to which the firm is subject. This is likely to be the case where there is a persistent or pervasive failure to establish and maintain effective AML controls and procedures, regardless of whether it can be established that the firm has been used, knowingly or unknowingly, to facilitate ~~the laundering of the proceeds of crime.~~
- 9.9 If it withdraws a practising certificate, the Committee will normally place appropriate conditions on the individual, such as passing a test of competence and attending a suitable practical CPD course, before being permitted to make any future reapplication for the certificate.

PS10 APPROACH TO NON-COOPERATION WITH SUPERVISORY REQUIREMENTS

10.1 GPR 14 provides that holders of all types of practising certificates and licences issued shall be subject to monitoring by ACCA, and this is reinforced by Regulation 11 of Annex 1 (UK) and Regulation 9 of Annex 2 (Ireland). GPR 14 further provides that certificate-holders shall co-operate with ACCA in its monitoring and enforcement of compliance with these regulations and with the bye-laws. Further, members must supply ACCA with all the information necessary to enable it to complete its monitoring process efficiently.

Arranging a compliance review

10.2 Given the underlying legislative requirements, cooperation with AML monitoring is extremely important. Accordingly, where the Monitoring department is experiencing difficulty in persuading a firm to accept a compliance review, or in cases where a firm postpones a review or otherwise prevents by action or inaction the completion of the review within a reasonable time, ACCA will consider the need to refer the matter to the Admissions and Licensing Committee with the recommendation that the Committee suspends the practising certificates until such time as ACCA is able to complete the monitoring process (or imposes conditions which adequately protect the public in the interim).

10.3 ACCA takes a proportionate approach to application of these provisions and will take into account the specific circumstances pertaining to the firm, its principals and its officers. One short postponement may therefore be appropriate where the firm can show reasonable grounds. Pressure of work is not an acceptable reason to defer an AML compliance review because ACCA, the oversight bodies and the Regulatory Board regard the timely completion of the review (which is driven by the level of risk to which the firm is subject) to be a fundamental obligation on certificate holders.

Non-provision of information

10.4 ACCA requires supervised firms to provide information and documentation in order to discharge its regulatory obligations. This information may be in connection with, but not limited to, the following:

- (i) the conduct of a compliance review (including the completion of employee interviews);
- (ii) the risk assessment process;
- (iii) identification of the firm's AML supervisor;
- (iv) identification of the firm's beneficial owners, officers and managers (BOOMs);
- (v) confirmation of whether the firm is a trust and company service provider (TCSP).

- 10.5 Whether or not the information relates to the conduct of a compliance review, it is required in connection with ACCA's monitoring of its supervised firms and therefore falls under the provisions of GPR 14(2). Firms must therefore provide complete and accurate information in a timely manner to ensure that ACCA is able to undertake its supervisory activities effectively and efficiently. As the information and documentation relates to policies, controls and procedures which the firm should have implemented in 2017 or 2018, it should be readily accessible and capable of submission to ACCA within a short period of time.
- 10.6 Failure to comply with this requirement without reasonable grounds (which must, where applicable, be supported by appropriate documentary evidence) is likely to result in the Monitoring department making a referral for potential disciplinary action and, if the failure persists, to the Admissions and Licensing Committee for regulatory action up to and including withdrawal of the practising certificate(s).

PS11 EFFECTIVE DATE OF ORDERS AND DECISIONS

- 11.1 The primary purpose of withdrawing, suspending or imposing conditions on a certificate is the risk of money laundering and terrorist financing posed to the public because of the poor standard of AML compliance. It therefore follows that in making such an order or decision, the Admissions and Licensing Committee or Regulatory Assessor should, in the interests of the public, direct that it has immediate effect. If the Committee or Assessor considers that immediate withdrawal is not necessary, they should provide full written reasons for such a decision addressing specifically (but not limited to) how the public is protected in the absence of such a direction.
- 11.2 For cases concerning individuals or firms that are also Republic of Ireland statutory auditors, special provisions apply. If the Committee were to withdraw an ACCA member's practising certificate(s) owing to non-compliance with ~~anti-money laundering~~ requirements, this would result in the mandatory withdrawal of the individual's (and in many cases their firm's) statutory auditor status. Under law, mandatory withdrawal of statutory auditor status can only be upon determination of any appeal process. Therefore, in the event that the Admissions and Licensing Committee orders withdrawal of a practising certificate which consequently leads to mandatory withdrawal of Irish statutory auditor status, ACCA shall make an application to the Committee that it immediately reconstitutes itself as an Interim Orders Committee (IOC). In order to afford the public the same level of protection as immediate withdrawal, ACCA will recommend that the IOC suspends the practising certificate(s) pending determination of the appeal process.

PS12 PREPARATION OF WRITTEN REASONS

- 12.1 The Admissions and Licensing Committee (or Regulatory Assessor if acting under delegated authority) shall ensure that their written reasons clearly explain how, and why, they have arrived at their decision. This is particularly important in cases where the Committee or Assessor deems it appropriate to depart from ACCA's recommended action or from the normal approach set out in this policy statement. This explanation assists ACCA and the firm in understanding the reasoning and in some cases contributes to effective implementation of the decision as it provides additional context for aspects which may otherwise not be entirely clear.

PS13 FLEXIBILITY OF APPROACH

- 13.1 This policy allows for some flexibility in application depending on the facts of each case. Accordingly, ACCA's Monitoring department, the Admissions and Licensing Committee and Regulatory Assessors will consider all of the relevant information before deciding on the appropriate course of action to achieve the desired regulatory outcomes set out in PS1.4.

APPENDIX

Following completion of a compliance review, in the event that ACCA determines it is necessary to undertake a focused re-review to confirm that the firm has introduced, and sustained, the necessary improvements to its controls and procedures, the firm will be charged a fee (plus VAT at the prevailing rate) for the re-review according to the following scale :

Sole practice	£1,200
Two principal practice	£1,700
Larger practice	£700 plus £500 for each principal

REGULATORY GUIDANCE

SECTION 1: INTRODUCTION

- 1.1 This Regulatory Guidance (“Guidance”) has been developed by ACCA’s Regulatory Board, which oversees the regulatory and disciplinary committees and reports to ACCA’s Council on the fairness and impartiality of the arrangements in place. The purpose of the Guidance is to assist the Admissions and Licensing, Interim Orders and Appeal Committees (“the Committee”) and the Regulatory Assessors (“Assessor”) in the exercise of their powers. It is designed to manage regulatory risk, provide transparency of policies and procedures and ensure consistency of approach.
- 1.2 The Guidance reflects the approach to those firms or individuals that fail to comply with anti-money laundering (“AML”) requirements. It is based on the principles and practice set out in the Regulatory Board’s Policy Statement (“PS”) ‘Anti-money laundering monitoring and ACCA’s approach to non-compliance with UK and Ireland anti-money laundering requirements’.
- 1.3 The Guidance is for use by:
- ACCA staff when they are considering the appropriate action to take, for example based on the outcome of a compliance review; and
 - the Committee and the Assessor when they are considering what order or decision to make; and
 - individuals or firms supervised by ACCA for AML purposes so that they are aware, prior to any decision being made, of the range of options available to the Committee or Assessor and which matters the Committee or the Assessor may take into account when making a decision.
- 1.4 The Guidance is a ‘living document’ which will be updated and revised when the need arises.

SECTION 2: THE ROLE AND REGULATORY POWERS OF THE COMMITTEE AND ASSESSOR

2.1 INTRODUCTION

2.1.1 The Committee and the Assessors are independent of ACCA and exercise their own judgement in making decisions:

- according to the established facts and supporting evidence provided
- with particular regard at all times to the regulatory framework set out in ACCA's Rulebook, policy statements issued by the Regulatory Board and any other relevant guidance
- taking account of the risk posed by the regulatory history of the supervised individual or firm
- in accordance with the standard of proof, which for ACCA regulatory matters is on the balance of probabilities
- balancing the need to maintain public confidence in the profession with appropriate proportionality

2.2 THE ROLE OF THE COMMITTEE AND ASSESSOR

2.2.1 The Admissions and Licensing Committee is responsible for considering applications for a practising certificate, auditing certificate and other licences (dealt with in a separate guidance document). Provided an application meets the criteria specified from time to time by the Committee, the power to grant the application is usually delegated to ACCA staff. Although, as set out in PS 1.3, in general terms ACCA only supervises firms controlled by holders of an ACCA practising certificate, the Committee has no role in determining applications for AML supervision.

2.2.2 The Committee is also tasked with considering cases concerning continuing eligibility for a certificate or licence, and in particular cases concerning non-compliance with applicable requirements identified during a monitoring review, where ACCA concludes that withdrawal of the relevant certificate(s) should be considered.

2.2.3 The Assessor has the delegated power of the Committee to impose conditions on a certificate and/or conditions on a future re-application for a certificate that the holder has voluntarily relinquished.

2.3 PURPOSE OF AN ORDER

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

- protect the public;
- maintain public confidence in the profession; and
- maintain proper standards of conduct

2.3.2 AML compliance in the profession is viewed by the governments of the UK and Ireland as crucial in the fight against economic crime and is consistently highlighted in the periodic National Risk Assessments. It is therefore vitally important that ACCA members meet the high standards expected by the public. The function of the Assessor and Committee is to take appropriate action to ensure that the holder of a practising certificate is complying with AML requirements, thereby protecting the public and maintaining public confidence in the profession. Their function is not to discipline a firm or individual for any past wrongdoing of which it or they may be culpable.

2.3.3 **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.**

2.4 REGULATORY POWERS

2.4.1 In accordance with Authorisation Regulation 7(3) the Assessor may either:

- consider that no regulatory action is necessary;
- impose conditions on the holder of a certificate; or
- refer the case to the Committee (primarily, if they decide that the withdrawal or suspension of a certificate should be considered).

2.4.2 In accordance with Authorisation Regulation 6(16)(a) the Committee has the following basic options for an existing certificate:

- dismiss or refuse the application i.e. make no order;
- order that the certificate be withdrawn;
- suspend the certificate;
- impose conditions on the certificate;
- specify that no future application for a certificate by the relevant person will be entertained for a specified period or until the occurrence of a specified event.

2.4.3 The last point above is usually imposed by the Committee in conjunction with an order to withdraw the certificate. In the event that the holder voluntarily relinquishes a certificate before the matter can be considered, Authorisation Regulations 6(16)(a) and 7(4) respectively empower the Committee and the Assessor to impose similar conditions on any future re-application for that certificate.

Conditions

2.4.4 As indicated in PS9, the imposition of conditions is only an appropriate alternative to withdrawal or suspension of a certificate where it is clear that the conditions will adequately protect the public. The Assessor or Committee must ensure that any conditions they devise are:

- enforceable;
- applied to the certificate holder and not third parties (including ACCA);
- relevant, in that they address a specific circumstance or risk factor;
- necessary (see proportionality below);
- workable, in that they are capable of practical application by the certificate holder and are consistent with other elements of the decision; and
- written in such a way that compliance can be easily verified.

2.5 PROPORTIONALITY

2.5.1 In deciding on the appropriate decision, the Assessor or the Committee must weigh the need to fulfil the purpose of a regulatory order set out in paragraph 2.3.1 (i.e. to safeguard the public interest) against the interests of the certificate holder.

2.5.2 Any order and/or conditions imposed should, taking into account all the circumstances of the case, be proportionate to the risk of the individual or their firm failing to comply with AML requirements in the future.

2.5.3 In order to ensure that the decision (including any conditions imposed) is the minimum necessary to achieve the purpose, the Assessor or Committee will need to consider:

- the extent of any evidence provided by the firm or individual which successfully rebuts any of the findings of the monitoring review that are critical to the determination of its overall outcome
- the credibility and reasonableness of any explanation offered for non-compliance with AML requirements
- the level of insight demonstrated in relation to the findings, in particular the extent and significance of non-compliance with the requirements
- the willingness and ability of the individual or firm to achieve and maintain full compliance with the requirements in future
- the extent to which the member has ensured effective implementation of any previous improvements in AML controls and procedures and the implications for effective implementation of any current or future planned improvements
- if the individual or their firm has taken action to remedy the non-compliance since the most recent monitoring review, why appropriate action was not taken previously and whether the apparent improvement can be relied on as effective, representative and sustainable

2.6 PUBLICITY

Withdrawal, suspension or conditions on an existing practising certificate

- 2.6.1 Authorisation Regulation 6(14)(c)(i) provides that, in the event that the Committee makes an order to withdraw, suspend or impose conditions on a certificate pursuant to regulation 6(16)(a)(ii) to (iv), ACCA **shall** publish the same, together with the reasons for the Committee's decision, in whole or in summary form, naming the relevant person, as soon as practicable.
- 2.6.2 Authorisation Regulation 7(6)(a) provides that, save where the Assessor determines upon the application of either party or upon receiving representations from any third party from whom the Assessor considers it appropriate to hear that the particular circumstances of the case outweigh the public interest in publishing the decision made by the Assessor under regulation 7(3), all such decisions **shall** be published, together with the reasons for the same in whole or in summary form, naming the relevant person, as soon as practicable in such manner as ACCA thinks fit.

Conditions on future re-application for a certificate

- 2.6.3 Authorisation Regulation 6(14)(c)(iii) provides that, in the event that the holder relinquishes the certificate before the hearing takes place, details of that fact and of any consequential orders made by the Committee **shall** be published, together with the reasons for the Committee's decision, in whole or in summary form, naming the relevant person, as soon as practicable.
- 2.6.4 Similarly, save where the circumstances in regulation 7(6)(c)(ii) exist, regulation 7(6)(c)(i) provides that, in the event that the holder relinquishes the certificate before the Assessor makes a decision, details of that fact and of any consequential decisions taken by the Assessor **shall** be published, together with the reasons for any such consequential decision in whole or in summary form, naming the relevant person, as soon as practicable in such manner as ACCA thinks fit.

General

- 2.6.5 In addition to the specific circumstances set out above, Authorisation Regulation 6(14) sets out the requirements in relation to publicity in other specified circumstances following a hearing of the Committee. ACCA also publishes separate guidance on publicity, for use by all of ACCA's disciplinary and regulatory committees, which is updated from time to time as the need arises.

SECTION 3: THE APPROACH ADOPTED BY ACCA

3.1 INTRODUCTION

Objectives of monitoring

- 3.1.1 As set out in PS2.1, ACCA is required to adopt a risk-based approach to AML supervision. The focus of any monitoring review is on ensuring that the firm, and the ACCA practising certificate holder(s) within it, are complying with AML requirements. All supervised firms present a degree of future-licensing risk and a careful yet robust assessment of this risk is paramount in order to protect the public and maintain public confidence in the profession. The ability and commitment to take swift, effective and proportionate regulatory action is an important component of ACCA's approach to ensuring compliance with AML requirements.
- 3.1.2 The achievement of effective outcomes is dependent on lead regulators, ACCA staff, the Regulatory Board and the regulatory and disciplinary Committees remaining aligned and focused on working in the public interest.
- 3.1.3 The risk profile of each supervised firm does not remain static and ACCA will periodically refresh the risk assessment of the whole population. The timing of a compliance review is therefore not necessarily determined by the outcome of previous compliance reviews, although it is a factor that will be taken into consideration. The Assessor or Committee cannot bind ACCA as to the timing of the next compliance review, and any references to a re-review in an order or decision are intended to secure the certificate holder's compliance with the conditions imposed.
- 3.1.4 PS3 establishes that the holder of a practising certificate is expected to demonstrate knowledge of, and compliance with, the relevant AML requirements at all times. Where concerns exist about an individual's professional competence, it would be contrary to the public interest to permit them to continue practising as an ACCA member, or to have a management role in a supervised entity, whilst improving their competence to the required level. Similarly, it would be inappropriate to permit an individual to retain a practising certificate or a management role if it was apparent that they were unable to sustain compliance with AML requirements without being subject to continuous supervision.

Report on non-compliance and the firm's response

- 3.1.5 ACCA issues the firm with a written AML compliance review report which sets out the areas of non-compliance and specifies the remedial action the firm is required to take, the date by which it must do so and the supporting evidence required.
- 3.1.6 PS5 emphasises the importance of the firm's response to the compliance report in assessing regulatory risk. The firm is expected to demonstrate insight into the existence and causes of the non-compliance, and to take swift and effective action to achieve full compliance. ACCA must be satisfied that remediation is adequate and likely to be sustained, otherwise it will take further action: in some cases, this might be a focused re-review at the firm's cost, but in most instances it is likely to be a referral to the Committee or Assessor.

3.2 FIRST COMPLIANCE REVIEW

3.2.1 PS7 sets out the expectation that all firms have been fully compliant since the requirements came into effect: it is not sufficient to put in place appropriate controls and procedures several years later or in response to notification of a compliance review. Accordingly, ACCA will refer to the Assessor or Committee the findings of a first compliance review in the following circumstances:

- if the firm fails to provide adequate evidence that it has achieved full compliance with the requirements within the specified timeframe, in accordance with PS5.3; and/or
- if any of the controls are found to be non-compliant (as defined at PS2.8), in accordance with PS7.3; and/or
- if ACCA experiences difficulties in arranging the compliance review within a reasonable time or the firm fails to provide the necessary information to enable ACCA to complete the review, in accordance with PS10.

3.2.2 ACCA expects to see evidence of consistent application of controls since the requirements were introduced, and therefore does not necessarily restrict the compliance review to current procedures and recent activity.

3.3 SECOND OR SUBSEQUENT COMPLIANCE REVIEWS

3.3.1 PS8 sets out the approach to second and subsequent reviews and identifies two scenarios in which the firm may be found not to be fully compliant. However, as explained, either scenario is likely to result in regulatory action. Changes in the firm's personnel are irrelevant because controls and procedures operate at a firm-wide level and should be adopted immediately by new joiners. ACCA will consider the extent to which the requirements may have changed since the previous review but, because of the fundamental principle of professional competence, the firm is expected to be fully compliant from the date on which these came into force.

3.3.2 Nevertheless, a member whose firm is found to be less than fully compliant on a second or subsequent occasion should consider their practising certificate at serious risk of withdrawal.

SECTION 4: GUIDANCE FOR THE COMMITTEE AND ASSESSOR

4.1 INTRODUCTION

- 4.1.1 In all cases where it makes a referral, ACCA sets out in its report the extent of the firm's non-compliance with AML requirements. Where applicable, the report will also summarise the results of any previous compliance reviews to which the firm, or any of the ACCA practising certificate holders within it, have been subject.
- 4.1.2 If the firm and its principals have been asked to provide details of remedial action in response to the compliance review report, and ACCA considers that action to be inadequate, the report will contain an analysis.
- 4.1.3 In all referrals, ACCA makes a recommendation based on the circumstances of the case, citing relevant sections of the Regulatory Board's Policy Statement and this supporting Guidance. It is then for the Assessor or Committee to determine the appropriate action to take in accordance with that framework.
- 4.1.4 In some cases, ACCA may refer a case to the Assessor with the recommendation that they impose conditions on the certificate but the Assessor disagrees with the recommendation and refers the matter to the Committee because they consider that withdrawal of the certificates should be considered (see [Decision B5](#)).

4.2 FIRST REFERRAL OF THE FINDINGS OF A COMPLIANCE REVIEW

- 4.2.1 As described in 3.2, ACCA will normally refer the findings of a first compliance review to the Assessor or Committee if any of the controls are found to be non-compliant or, where following the review the member has been given the opportunity to improve the controls, in the absence of adequate evidence that their firm has achieved full compliance with the requirements within the specified timeframe.
- 4.2.2 In other cases which the Assessor or Committee considers, the member will have had at least one previous compliance review, been notified of the findings and subsequently provided ACCA with information that appeared to demonstrate the implementation of suitable controls and procedures. Despite this, ACCA has found at a subsequent compliance review that the member or their firm is not fully compliant.
- 4.2.3 The action recommended by ACCA is influenced by the extent and seriousness of the non-compliance with the requirements, the member's insight into the findings of the most recent compliance review and the effectiveness of the remedial action taken as a result. Of paramount importance is the assessment of the risk that the member's firm may be exposed to on-going complicit or unwitting facilitation of money laundering.
- 4.2.4 In accordance with PS7.2, it is not necessary for the member to have been subject to previous regulatory action before the Committee withdraws their practising certificate but the member's previous monitoring history and evidence of previous, or recurring, non-compliance should be regarded as a significant aggravating factor.

4.2.5 If the Assessor or Committee, having carefully considered the facts of the case, the approach set out in the Policy Statement and ACCA's recommendation, concludes that the imposition of appropriate conditions appears sufficient to manage the regulatory risk, as indicated in PS9.5 the conditions must be designed to address the specific risk factors present. Decisions B2 to B4 (Assessor) and Orders B8 to B10 (Committee) provide guideline wording (including for the temporary or permanent prohibition on members and non-members having a management role) but the Assessor or Committee may vary the terms according to the circumstances. See 5.2.7 to 5.2.10 below for further guidance.

4.2.6 However, in other cases ACCA and the Assessor or Committee will conclude that the risk of on-going non-compliance and exposure to money laundering is significant and the imposition of conditions will not adequately protect the public. As indicated in PS 9.7, in these circumstances the minimum action necessary is withdrawal of the practising certificate(s) coupled with a prohibition on having a management role and conditions on any future re-application (Order B11).

4.3 SECOND REFERRAL OF THE FINDINGS OF A COMPLIANCE REVIEW

4.3.1 A second referral will almost certainly be to the Committee rather than the Assessor as ACCA will be recommending withdrawal of the member's practising certificate. A second referral will be the result of either:

- a failure to improve standards of compliance sufficiently whilst under the terms of existing regulatory conditions; or
- ACCA concluding that standards of compliance have deteriorated at a subsequent monitoring review after the member was previously released from conditions.

4.3.2 In either scenario, the member has been given the opportunity to establish and maintain effective AML controls and procedures but has failed to do so. This raises serious concerns about the member's willingness and ability to comply with the requirements, increasing the risk of their firm being used, knowingly or unknowingly, to facilitate the laundering of the proceeds of crime. Therefore, in the absence of clear exceptional circumstances (see 4.5 below), the Committee will normally order withdrawal of the practising certificate(s) together with conditions on any future re-application and impose a prohibition on holding a management role (Order B11).

4.4 THIRD REFERRAL OF THE FINDINGS OF A COMPLIANCE REVIEW

4.4.1 Such referrals will be rare because there will have had to have been exceptional circumstances for the Committee not to withdraw the certificate at the second referral (see below). If, by this stage, the member is unable to demonstrate consistent compliance with AML requirements, the Committee should order withdrawal of the practising certificate(s) together with conditions on any future re-application and impose a prohibition on holding a management role (Order B11).

4.5 EXCEPTIONAL REASONS FOR NOT WITHDRAWING A CERTIFICATE

- 4.5.1 In exceptional cases, despite ACCA's recommendation to withdraw the practising certificate(s) and the approach set out in the Policy Statement and this Guidance, the Committee may decide that it is appropriate to impose conditions on the certificate instead (Orders B8 to B10). Before taking such an exceptional course of action, however, the Committee will need to carefully assess the risk of future non-compliance, taking account of the following:
- the primary need to protect the public
 - the reputation of the profession as a whole is more important than the fortunes of an individual member
 - the extent to which the non-compliance indicates a disregard for AML requirements and/or a serious lack of competence
 - the ineffectiveness of any previous opportunities, whether or not under regulatory conditions, to achieve and sustain compliance with the requirements.
- 4.5.2 In some cases the member, or the firm in which they are a principal, may indicate to the Committee a belated intention to implement appropriate controls and procedures. The Committee should **not** regard this as an exceptional reason for allowing a member to retain their practising certificate and/or continue in a management role, as they have had ample opportunity since the requirements were introduced to ensure full compliance.
- 4.5.3 In other cases the member, or the firm in which they are a principal, may wish the Committee to take into account controls and procedures introduced shortly before the hearing (whether or not reported on by a consultant or other third party) which appear to demonstrate compliance with the requirements. This should **not** be accepted as exceptional because:
- ACCA should not rely on reports prepared by a member or third parties as a basis for future licensing decisions
 - the report may have been prepared under a commercial arrangement and the third party may not be impartial
 - the controls and procedures were not in place at the time of the monitoring review and, having been introduced as a last resort to prevent withdrawal of the practising certificate, are not representative of "normal" levels of compliance
 - the Admissions and Licensing Committee (and the Appeal Committee) has a responsibility to protect the public and so should not accept the high future licensing risk that controls recently introduced and reported on by a third party gives a better indication of future compliance than one or more monitoring reviews conducted under ACCA's robust and consistent methodology.

4.5.4 Where the Committee decides not to follow ACCA's recommendation to withdraw the practising certificate(s), it must be satisfied that appropriate controls and procedures are in place and the member has the necessary commitment and ability to apply them consistently, such that the Committee considers there to be a low risk of future non-compliance with the requirements. The Committee should, however, avoid basing its decision on the member's oral representations or on information and evidence which ACCA has not had an opportunity to review and verify. In any event, ACCA will make its own assessment of risk and is likely to schedule an accelerated compliance review at the member's cost.

4.6 RE-APPLICATION FOR A PRACTISING CERTIFICATE FOLLOWING ITS WITHDRAWAL BY THE COMMITTEE OR WHERE THE COMMITTEE OR ASSESSOR HAS PLACED CONDITIONS ON A FUTURE RE-APPLICATION

4.6.1 Where an individual re-applies for a practising certificate following a decision of the Committee or Assessor that any future application should be considered by the Committee, the applicant first has to meet any condition(s) placed on the re-application such as those indicated in [Decision B6 or Orders B11 and B12](#).

4.6.2 The Committee considers re-applications for a practising certificate in the same way as initial applications and, in addition, takes into account the circumstances in which the applicant previously ceased to hold the certificate. For instance, the Committee will carefully consider the applicant's insight into the findings of past monitoring reviews and their proposals for achieving and maintaining full compliance with applicable law, standards or guidance, including those relating to anti-money laundering. Where the Committee decides to grant the application, it considers whether to place any conditions on the certificate, bearing in mind that these must be sufficient to protect the public given the high regulatory risk based on the monitoring history. The Committee will usually consider it appropriate to order an early monitoring review at the applicant's cost.

SECTION 5: DESCRIPTION OF THE AVAILABLE DECISIONS/ORDERS AND APPLICATION GUIDELINES

5.1 INTRODUCTION

5.1.1 In this section, references to an 'individual' include ACCA members (whether or not they hold a practising certificate) and non-members. Although ACCA supervises firms (including sole practices), decisions made by the Assessor or the Committee are usually imposed on the practice's owners and managers as they are responsible for any weaknesses in the firm's controls and non-compliance with AML requirements. The order then follows the individual if they move to another firm and ACCA will share appropriate information with other supervisors.

5.1.2 **Before reaching a decision, the Assessor or Committee will consider whether it, including any conditions, is sufficient to protect the public, maintain public confidence in the profession and maintain proper standards of conduct while ensuring proportionality, in accordance with the principles outlined in Section 2 of this Guidance.** The Assessor or Committee will need to focus on:

- the extent and/or seriousness of non-compliance with AML requirements and whether it is consistent with the competence expected of members and non-members holding management roles in an ACCA practice;
- the individual's insight into, and explanations for, the failures;
- any indications, despite knowledge of the requirements, of a disregard for the importance of their application; and
- the effectiveness of any remedial action taken and the likelihood that it will ensure sustained full compliance with AML requirements in future.

5.1.3 **The Assessor and Committee may depart from ACCA's recommendation and the guideline decisions/orders and conditions; however, the Assessor or Committee should have regard to the Policy Statement and the guidance in this document and must ensure that the written reasons for decision clearly explain the exceptional circumstances which resulted in any such departure.**

5.2 AVAILABLE DECISIONS/ORDERS

No action

See [Decision B1 and Order B7](#).

5.2.1 The Assessor or Committee may decide to take no action. However, bearing in mind that before making the referral ACCA has followed the principles set out in the Policy Statement, and the overriding need to protect the public and maintain confidence in the profession, this option is usually only appropriate in clearly defined circumstances:

- where the individual or their firm has provided evidence which successfully rebuts all findings of non-compliance; or
- the significant failings occurred for exceptional reasons, the firm or individual has acknowledged the weaknesses and had, prior to the monitoring review or shortly thereafter, taken clearly demonstrable action which carries a high probability of preventing a recurrence.

5.2.2 For example, the inconsistent application of controls may have been limited to one individual who has subsequently left the firm or been removed from a management role (as defined in PS6.1). Nevertheless, the Assessor or Committee will need to consider whether it is necessary to place conditions on that individual's practising certificate.

Decision placing conditions on the individuals' certificates

See [Decisions B2 to B4 and Orders B8 to B10](#).

5.2.3 A decision placing conditions on a practising certificate is effectively the alternative to withdrawal where instances of non-compliance were found but the Assessor or Committee is able to identify conditions which will adequately protect the public. Where there are concerns about the competence or insight of the certificate holder, doubts will exist about their ability and willingness to make the necessary improvements and the Assessor or Committee should be mindful of the risk that the conditions will not be effective.

5.2.4 For example, as set out at PS7.3, if at any time the level of non-compliance indicates either that an individual lacks appropriate competence or has a scant regard for the requirements, there must be a real prospect of the Committee withdrawing the practising certificate and/or imposing a prohibition on the individual having a management role. Similarly, as set out in PS8.5, where the firm in which the individual works does not achieve and maintain full compliance with the AML requirements, there are very few circumstances in which it would be appropriate for the individual to avoid the same outcome.

5.2.5 As a general principle, it would not be appropriate for the Assessor or Committee to impose conditions on a certificate on a second occasion. Because the previous conditions were not effective in bringing about a significant and sustained improvement in compliance levels, the likelihood of conditions being effective in the future is significantly impaired.

5.2.6 Relevant factors which, taken together, indicate that the imposition of conditions may be sufficient to protect the public (this list is not exhaustive):

- the individual has generally demonstrated an understanding of the requirements but the most recent compliance review found instances of partial compliance that were not extensive or pervasive
- and there were no areas where the weaknesses in controls and procedures were so serious as to indicate a significant lack of competence or a disregard for the requirements
- the response to the findings of the most recent compliance review appears to demonstrate that the individual's firm has achieved full compliance with the requirements (or, if weaknesses remain in the controls, these are minor and can be addressed through suitable conditions which will protect the public)
- the individual's monitoring history does not indicate the tendency to inconsistency in compliance with the requirements
- the effectiveness of the action taken following any previous compliance review, and the plausibility of the individual's explanation as to why full compliance with the requirements has not been maintained
- there are no significant concerns about the insight of the individual into the findings of the compliance review and there is a clear acceptance of, and commitment to, the need to achieve and sustain full compliance with AML requirements

5.2.7 In addition to the primary purpose of protecting the public, any conditions imposed by the Assessor or Committee must have a reasonable prospect of being effectively met by the member(s). PS9.5 indicates that conditions must:

- be practical; and
- address a specific circumstance or risk factor; and
- be consistent with other elements of the decision.

5.2.8 Prohibiting an individual from holding a management role is a form of condition. In some cases, a non-member bears some or all responsibility for non-compliance with the requirements and it is appropriate to temporarily or permanently prohibit them from holding a management role in accordance with PS6. However, as ACCA does not issue a certificate to those firms it supervises, in order to effect the prohibition on a non-member it is necessary for the Assessor to impose the condition on the ACCA practising certificate holders who control the firm, as explained in PS6.4.

5.2.9 In addition to prohibiting the holding of a management role, the Assessor or Committee may consider it appropriate to impose other conditions, such as placing restrictions on the member accepting appointment to clients with particular characteristics or which pose specific risks. However, the Assessor or Committee should always be mindful of the mechanism by which such conditions might be lifted in the future (for example, if there is no exposure to a particular risk because of the restrictions imposed, ACCA will not be able to verify effective operation of the corresponding control).

Application of accelerated compliance reviews

- 5.2.10 Although in each case the firm should already have implemented appropriate controls as part of its response to the findings, in some instances ACCA may recommend that an accelerated re-review should form part of the conditions imposed by the Assessor or Committee because further testing is necessary to confirm the effectiveness or consistent application of the controls. There is no reason to delay this re-review but, in order to secure the member's cooperation, the Assessor or Committee should specify the latest date by which it should take place (subject to the availability of ACCA resources). Unless there are exceptional reasons, the Assessor or Committee should order the member(s) to contribute to the cost of the accelerated re-review in accordance with the scale of charges set out in the Appendix to the Policy Statement.

Order to withdraw the practising certificate

See **Decision B5 and Order B11**.

- 5.2.11 Withdrawal of the practising certificate (coupled with a prohibition on having a management role) is the only appropriate action where the Committee is satisfied that the individual does not possess the insight, willingness and capability to achieve and maintain full compliance with AML requirements. Where the Committee does withdraw the practising certificate it is usually appropriate to place conditions on any future re-application. These would usually take the form of a requirement to provide evidence of having completed a suitable programme of anti-money laundering learning and detailed submissions on how the applicant intends to apply that learning to prevent a recurrence of the non-compliance with anti-money laundering requirements identified as part of ACCA's previous monitoring review.
- 5.2.12 Withdrawal of the practising certificate will prevent the individual from providing all public practice services - including audit, accountancy and tax - whilst they remain an ACCA member. Nevertheless, protection of the public and adherence to high professional standards is paramount and submissions that the member will suffer loss of income and/or need to make staff redundant are not sufficient to avoid withdrawal of the practising certificate where failure to meet AML requirements indicates that it is appropriate.

- 5.2.13 Relevant factors, any or a combination of which indicate that withdrawal of the practising certificate is appropriate (this list is not exhaustive):
- any of the AML controls are assessed as ‘non-compliant’, indicating a significant lack of competence or a disregard for the requirements
 - partial compliance is extensive or pervasive with indications that the individual lacks sufficient understanding of the requirements
 - the individual’s monitoring history indicates the tendency to inconsistent compliance with the requirements
 - action taken following any previous compliance review was not effective in achieving and maintaining full compliance with the requirements and the individual’s explanation as to why this is the case lacks plausibility
 - the response to the findings of the most recent compliance review does not demonstrate that the individual’s firm has subsequently achieved full compliance with the requirements
 - there are significant concerns about the insight of the individual into ACCA’s findings, expressed either during the compliance review, in subsequent correspondence with ACCA or in the action subsequently proposed or taken
 - the individual has not demonstrated a clear acceptance of, and commitment to, the need to achieve and sustain full compliance with AML requirements
- 5.2.14 **It is not a pre-requisite for withdrawal of the practising certificate that the individual has previously been subject to conditions imposed as a result of non-compliance with AML requirements. However, if such conditions have previously applied and compliance has either not improved sufficiently whilst the conditions were in place, or full compliance has not been sustained following release from the conditions, the risk of non-compliance in future is significantly increased.**

Order to suspend the practising certificate

- 5.2.15 The Committee has the power to suspend a practising certificate, provided the suspension is for a specified period or until the occurrence of a specified event or until specified conditions are complied with. The power has limited application in cases where neither withdrawal nor the imposition of conditions would serve the intended purpose. Because of the provision that while the certificate is suspended it shall be deemed not to be held, suspension means that the member is prevented from engaging in public practice (according to the definition contained in the Global Practising Regulations). This includes “holding oneself out, or allowing oneself to be held out, as a sole proprietor, partner or director of a firm, or designated member or member of a limited liability partnership, where public practice is carried on” (Regulation 4(1)(d)).
- 5.2.16 In view of the consequences, the Committee will therefore need to consider carefully whether suspension of a practising certificate is the most appropriate order to achieve the intended purpose and ensure that it aligns with the period, future event or conditions which accompany the suspension.

Conditions on future re-application following voluntary surrender of certificate

See [Decision B6 and Order B12](#).

- 5.2.17 On rare occasions a member relinquishes their practising certificate before the Assessor or Committee can make a decision. The Assessor or Committee always takes into account the particular facts of each case in deciding what action to take and should impose whatever conditions on any future re-application that they consider necessary to protect the public.
- 5.2.18 Where ACCA would have recommended withdrawal of the certificate had the holder not relinquished it, the Committee is expected to:
- order a prohibition on the member having a management role; and
 - impose the same conditions on re-application as it would if it had withdrawn the certificate i.e. the requirement to provide evidence of having completed a suitable programme of anti-money laundering learning and detailed submissions on how the applicant intends to apply that learning to prevent a recurrence of the non-compliance with anti-money laundering requirements identified as part of ACCA's previous monitoring review.
- 5.2.19 Where ACCA would have recommended the imposition of conditions had the member continued to engage in public practice work, the Assessor or Committee will still need to consider whether it is necessary to impose a prohibition on the member having a management role. In addition, the Assessor or Committee would ordinarily decide that any future re-application must be referred to the Committee. However, any pre-conditions imposed on a future re-application should be designed to address the findings of the most recent compliance review and provide assurances that the applicant has demonstrated appropriate competence and commitment to complying with AML requirements before being permitted to engage in public practice.

5.3 GUIDELINE DECISIONS AND ORDERS

5.3.1 The guideline decisions and orders below reflect the preceding guidance and relate to the most common situations where the Assessor or Committee is considering the action necessary in relation to the findings of a compliance review. Each case will be judged on its own facts and the actual wording of the decision/order may vary according to the circumstances.

Index to Guideline decisions and orders

Outcome	Authority	
	Regulatory Assessor	Committee
No regulatory action	Decision B1	Order B7
Prohibition on member having a management role	Decision B2	Order B8
Prohibition on non-member having a management role	Decision B3	Order B9
Other conditions on the practising certificate(s)	Decision B4	Order B10
Withdrawal of practising certificate(s)	Decision B5	Order B11
Conditions on future re-application	Decision B6	Order B12

5.3.2 Guideline decisions for the Regulatory Assessor

Decision B1: no regulatory action

On the basis of the above I have decided pursuant to Authorisation Regulation 7(3)(a) that no regulatory action is necessary in this case.

Decision B2: prohibition on a member having a management role

On the basis of the above I have decided pursuant to Authorisation Regulations 7(2)(f) and 7(3)(b) that M XX shall be *permanently prohibited for a period of xx months/years* from holding an office or position involving responsibility for taking decisions about the management of *(a named firm)/(a firm of a specified description)/any relevant person or payment service provider whether or not supervised by ACCA*.

Decision B3: prohibition on a non-member having a management role

On the basis of the above I have decided pursuant to Authorisation Regulations 7(2)(f) and 7(3)(b) that M XX shall be required to ensure that M YY is *permanently prohibited for a period of xx months/years* from holding an office or position involving responsibility for taking decisions about the management of *(a named firm)/any relevant person or payment service provider with which M XX is associated whether or not supervised by ACCA*.

Decision B4: other conditions on the practising certificate(s)

On the basis of the above I have decided pursuant to Authorisation Regulations 7(2)(f) and 7(3)(b) that M XX and M XX shall be required to:

- i cease accepting appointment to clients that *(describe particular characteristics or specific risks posed)* until M XX and M XX demonstrate to ACCA's satisfaction that their firm has in place adequate controls and procedures that are capable of consistent application; and
- ii be subject to an accelerated compliance review before (specify date) at a cost to M XX and M XX (plus VAT at the prevailing rate) of £700 and £500 for each principal; and
- iii note that failure to achieve and maintain full compliance with anti-money laundering requirements in future will place their practising certificates at serious risk of withdrawal.

Decision B5: withdrawal of practising certificate(s) to be considered

On the basis of the above I have decided pursuant to Authorisation Regulation 7(3)(c) to refer this case to the Admissions and Licensing Committee so that it can consider whether to exercise its powers under Authorisation Regulation 5(2) to withdraw M XX's and M XX's practising certificates.

I have further decided pursuant to Authorisation Regulations 7(2)(f) and 7(3)(b) that M XX shall be *permanently prohibited for a period of xx months/years* from holding an office or position involving responsibility for taking decisions about the management of *(a named firm)/(a firm of a specified description)/any relevant person or payment service provider whether or not supervised by ACCA*.

Decision B6: where the member has already relinquished their practising certificate

I note that M XX has *relinquished/not renewed* their practising certificate. On the basis of the above I have decided pursuant to Authorisation Regulations 7(2)(f), 7(3)(b) and 7(4) that:

- i M XX shall be *permanently prohibited for a period of xx months/years* from holding an office or position involving responsibility for taking decisions about the management of *(a named firm)/(a firm of a specified description)/any relevant person or payment service provider whether or not supervised by ACCA*; and
- ii any future re-application for a practising certificate by M XX must be referred to the Admissions and Licensing Committee, which will not consider the application unless M XX has provided (a) evidence of having completed a suitable programme of anti-money laundering learning, and (b) detailed submissions on how they intend to apply that learning to prevent a recurrence of the non-compliance with anti-money laundering requirements identified as part of ACCA's previous monitoring review.

5.3.3 Guideline orders for the Admissions and Licensing Committee

Order B7: no regulatory action

The Committee decided to make no order.

Order B8: prohibition on a member having a management role

The Committee made an order pursuant to Authorisation Regulations 6(16)(a)(iv) and 5(2)(f) that M XX shall be *permanently prohibited for a period of xx months/years* from holding an office or position involving responsibility for taking decisions about the management of *(a named firm)/(a firm of a specified description)/any relevant person or payment service provider whether or not supervised by ACCA*.

Order B9: prohibition on a non-member having a management role

The Committee made an order pursuant to Authorisation Regulations 6(16)(a)(iv) and 5(2)(f) that M XX shall be required to ensure that M YY is *permanently prohibited for a period of xx months/years* from holding an office or position involving responsibility for taking decisions about the management of *(a named firm)/any relevant person or payment service provider with which M XX is associated whether or not supervised by ACCA*.

Order B10: other conditions on the practising certificate(s)

The Committee made an order pursuant to Authorisation Regulations 6(16)(a)(iv) and 5(2)(f) that M XX and M XX be required to:

- i cease accepting appointment to clients that (*describe particular characteristics or specific risks posed*) until M XX and M XX demonstrate to ACCA's satisfaction that their firm has in place adequate controls and procedures that are capable of consistent application; and
- ii be subject to an accelerated compliance review before (specify date) at a cost to M XX and M XX (plus VAT at the prevailing rate) of £700 and £500 for each principal; and
- iii note that failure to achieve and maintain full compliance with anti-money laundering requirements in future will place their practising certificates at serious risk of withdrawal.

Order B11: withdrawal of practising certificate(s)

The Committee made an order pursuant to Authorisation Regulations 5(2)(f) and 6(16)(a)(ii), (iv) and (v) that:

- i M XX's practising certificate be withdrawn; and
- ii M XX shall be *permanently prohibited for a period of xx months/years* from holding an office or position involving responsibility for taking decisions about the management of (*a named firm*)/(*a firm of a specified description*)/*any relevant person or payment service provider whether or not supervised by ACCA*; and
- iii any future re-application for a practising certificate by M XX must be referred to the Admissions and Licensing Committee, which will not consider the application unless M XX has provided (a) evidence of having completed a suitable programme of anti-money laundering learning, and (b) detailed submissions on how they intend to apply that learning to prevent a recurrence of the non-compliance with anti-money laundering requirements identified as part of ACCA's previous monitoring review.

Order B12: where the member has already relinquished their practising certificate

The Committee noted that M XX had *relinquished/not renewed* their practising certificate.

The Committee made an order pursuant to Authorisation Regulations 5(2)(f) and 6(16)(a)(iv) and (v) that:

- i M XX shall be *permanently prohibited for a period of xx months/years* from holding an office or position involving responsibility for taking decisions about the management of (*a named firm*)/(*a firm of a specified description*)/*any relevant person or payment service provider whether or not supervised by ACCA*; and
- ii any future re-application for a practising certificate by M XX must be referred to the Admissions and Licensing Committee, which will not consider the application unless M XX has provided (a) evidence of having completed a suitable programme of anti-money laundering learning, and (b) detailed submissions on how they intend to apply that learning to prevent a recurrence of the non-compliance with anti-money laundering requirements identified as part of ACCA's previous monitoring review.