

# Guidance for health hearings



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## SECTION 1: INTRODUCTION

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1. The purpose of the Guidance for Health Hearings ('the Guidance') is to assist the Health Committees ('the Committee') in the exercise of their powers. It is designed to manage regulatory risk, provide transparency of policies and procedures and ensure consistency of approach.
2. The Guidance is for use by:
  - ACCA staff when they are considering the appropriate action to take, for example where it appears:
  - during an investigation into any complaint;
  - after a case has been referred to the Disciplinary Committee;
  - at any time before or during a hearing before the Admissions and Licensing Committee;
  - after a case has been referred to the Appeal Committee;
  - that a relevant person may be too ill to participate in the process or proceedings;
  - the Committee to provide clarification on the relevant procedure and their powers;
  - any relevant person bound by ACCA's bye-laws and regulations so that they are aware of the relevant procedures and of what the Committee's powers, prior to any hearing.
3. The Guidance is a 'living document' which will be updated and revised when the need arises.
4. Nothing in this document should be treated as a source of legal advice to any user of the guidance. When appropriate, the independent Legal Adviser will advise the Committee on questions of law, including questions about the use of this guidance. Relevant persons are recommended to obtain their own legal advice.

## **SECTION 2: THE ROLE AND REGULATORY POWERS OF THE COMMITTEE**

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### **Introduction**

5. The Committee are totally independent of ACCA and are free to exercise their own judgment in making decisions:
  - according to the evidence provided and the facts found;
  - taking account of the relevant regulatory history of the licence holder;
  - in accordance with the standard of proof, which on regulatory matters is generally accepted to be on the balance of probabilities;
  - with regard at all times to the regulatory framework set out in ACCA's Rulebook, and any other relevant guidance;
  - balancing the need to maintain public confidence in the profession with appropriate proportionality.

### **The role of the Committee**

6. The Committee deals with all fitness to participate determinations referred to it at the request of the parties or by order of the Disciplinary Committee, Admissions and Licensing Committee, Interim Orders Committee or Appeal Committee.

### **Purpose of health hearings**

7. The purpose of a health hearing is for the Committee to determine in the first instance whether it is satisfied that the relevant person is unfit to participate in the process and proceedings. If so satisfied, the Committee shall then determine whether the process of proceedings shall be withdrawn, rested on the file or be deferred for such period as it sees fit (but for no longer than 12 months), and whether any further consequential orders are required.

### **Pre-health hearing**

8. Where it appears:
  - during an investigation into any complaint;
  - after a case has been referred to the Disciplinary Committee;
  - at any time before or during a hearing before the Admissions and Licensing Committee;
  - after a case has been referred to the Appeal Committee.

9. Where a relevant person may be too ill to participate in the process or proceedings, the following process will apply:

***Assertion by relevant person***

10. Where it is asserted by, or on behalf of a relevant person, that they are too ill to participate in the process or proceedings that they are engaged in, the relevant person must submit within 7 days:
- medical evidence to support their assertion, including a prognosis and indication as to when, if at all, the relevant person would be well enough to participate in the process or proceedings, either with or without necessary reasonable adjustments;
  - if he has been or is a principal of a firm, details of any arrangements he had made for the continuity of his practice during the period of his ill health; and
  - if he holds a certificate of licence from the Association, medical evidence addressing the extent to which his asserted ill health impacts upon his fitness to carry out the activities authorised by that certificate or licence and his ability to conduct his practice with reasonable care and skill.

***Action by the Association***

11. Where the relevant person is not necessarily asserting that they are too ill to participate in the process or proceedings that they are engaged in but it appears to the Association that this may be the case, the Association may:
- invite the relevant person to be examined by a doctor or other medical professional of the Association's choice;
  - invite the relevant person to sign a form of consent, granting the doctor or other medical professional of the Association's choice access to his clinical records for the purpose of the examination and report.
12. In the event of any written opinion or information being received at ACCA's invitation, ACCA shall disclose such material to the relevant person and give him a reasonable opportunity to respond.
13. Any failure on the part of the relevant person to co-operate with this process shall be taken into account in the assessment of that person's ill-health, and in assessing the weight to be given to the evidence filed on his behalf.
14. If it appears that the circumstances in paragraph 8 above may have arisen:
- (a) the investigating officer has discretion to defer the investigation (see Complaints and Disciplinary Regulation 4(5));
  - (b) the case presenter may apply to the Committee to withdraw, defer, or rest on file the allegation(s).
15. In any event, at any time at the request of the Association the relevant person, the assessor, or by order of the Disciplinary/ Admissions and Licensing/ Interim Orders/ Appeal Committee, the question of the relevant person's fitness to participate in the process or proceedings shall be considered by the Committee at a health hearing.

## Procedure and evidence for health hearings

### **Notice of hearings**

16. The Association shall, no later than 14 days before the date set for the hearing, provide the relevant person with a notice specifying the following:
  - (a) the date, time and place fixed for the hearing of the case;
  - (b) the basis on which the referral is made, and (to the extent to which it has not already been provided) the evidence that is relevant to the same;
  - (c) the relevant person's right to attend the hearing and be represented;
  - (d) the power of the Health Committee to proceed in the absence of the relevant person at the hearing;
  - (e) the relevant person's right to cross-examine any witness called by the Association and to call his own witnesses;
  - (f) that not later than 7 days before the date set for the hearing the relevant person must notify the Association whether he intends to attend the hearing and call any witnesses;
  - (g) to the extent that the same has not already been provided, a list of witnesses whose evidence is relied upon by the Association, indicating those who have provided documentary evidence and those who have provided witness statements, whether in formal form or otherwise, or letters;
  - (h) the names of any witnesses for the relevant person whose details have already been disclosed to the Association by the relevant person whom the Association requires to attend the hearing for cross-examination, identifying to what extent the Association disputes their evidence; and
  - (i) a summary of the powers of the Health Committee.
17. For the avoidance of doubt, the information and notifications specified in paragraph 16 above may be provided at different times and supplemented as necessary from time to time. In exceptional circumstances the Association may also provide any or all of the documents referred to in paragraph 16 above to the relevant person less than 14 days before the date set for the hearing. In such circumstances the Health Committee will consider at the outset the appropriateness of the short notice and the degree of urgency and may, if it is of the view that it is necessary in the public interest as weighed against any prejudice to the relevant person, order that the hearing proceed or be adjourned for such period and under such directions as it sees fit.
18. Save in very urgent cases, the relevant person shall give the Association and the Health Committee at least 7 days' advance notice of:
  - (a) Whether he intends to attend the hearing;
  - (b) Any statement of defence to the application;
  - (c) Any documentary evidence or witness statements (whether in formal form or otherwise) on which he wishes to rely; and
  - (d) The names of any witnesses from the list provided by the Association that he requires to attend for cross-examination explaining to what extent he disputes their evidence.

***Attendance/ Proceeding in the absence of the relevant person***

19. If the relevant person is too ill to be present at the hearing in person, he may attend by way of telephone or video link. Alternatively they can be represented by someone else, who can attend the hearing via any of the aforementioned mediums.
20. Where the relevant person fails to attend a hearing, the case may be heard in his absence provided the Committee is satisfied that he has been provided with any documentation submitted by the Association in accordance with paragraph 16 above.

***Presentation of the Application***

21. The Case Presenter will explain the basis on which the application, in accordance with paragraph 14(b) above, is being made and will refer the Committee to the documents and other evidence which are of relevance to the issue of whether the relevant person is unfit to participate in the process and proceedings, and if so, what further determinations and/ or orders are appropriate in the circumstances. The relevant person or their representative may also make submissions on these issues.
22. It shall be for the applicant, or, if the issue is referred by the Disciplinary/ Admissions and Licensing/ Interim Orders/ Appeal Committee, the Association, to satisfy the Committee that the relevant person is unfit to participate in the process or proceedings.
23. The Committee may hear oral evidence from witnesses, including expert witnesses, whose written evidence has been submitted in accordance with paragraph 16 above, if the evidence is not agreed by the parties, or if it considers that supplementary oral evidence or questioning of a witness will assist it in discharging its functions fairly and properly.
24. The Committee may also instruct an expert to act as its medical adviser at any stage.

**Determinations of the Committee**

25. The Committee shall first determine whether it is satisfied that the relevant person is unfit to participate in the process and proceedings.
26. If it finds that the relevant person is fit to participate, the Committee shall make any directions required to enable the process or proceedings to continue as soon as reasonably practicable.
27. If it finds that the relevant person is not fit to participate, the Committee shall then determine whether the process or proceedings shall be withdrawn, rested on the file or be deferred for such period as it sees fit (but for no longer than 12 months), having regard to the nature of the allegations against the relevant person and the supporting evidence. If the process or proceeding in question relate to an appeal, as an alternative to the powers set out in the preceding sentence, the Committee may instead determine that the appeal process shall continue where it appears to the Committee to be in the interests of justice to do so having regard to all the circumstances.

28. In the event that the proceedings are deferred in accordance with paragraph 27 above, the Committee shall further consider whether to make one or more of the following consequential orders:
- (a) that any certificate and/or licence issued to the relevant person and/or their eligibility to conduct exempt regulated activities be suspended or made subject to conditions;
  - (b) that the relevant person's membership, registered student or affiliate status be suspended or made subject to conditions;
  - (c) that the matter of the relevant person's fitness and propriety to hold a certificate and/or licence, and/or his or its eligibility to conduct exempt regulated activities, be considered by the Admissions and Licensing Committee by a specified date (and for any such certificate or licence etc. to potentially be suspended or made subject to conditions in the interim);
  - (d) that any future application by the relevant person for any certificate or licence, or to conduct exempt regulated activities, be referred to the Admissions and Licensing Committee;
  - (e) in the case of a relevant person who is an affiliate or registered student, that any future application for membership be referred to the Admissions and Licensing Committee.
29. In the event that the proceedings are withdrawn or rested on file in accordance with paragraph 27 above, the Committee shall further consider whether to make one or more of the following consequential orders:
- (a) that any certificate and/or licence issued to the relevant person and/or the relevant person's eligibility to conduct exempt regulated activities be withdrawn or made subject to conditions;
  - (b) that the relevant person's membership, registered student or affiliate status be made subject to conditions;
  - (c) that any future application by the relevant person for any certificate or licence, or to conduct exempt regulated activities, be referred to the Admissions and Licensing Committee;
  - (d) in the case of a relevant person who is an affiliate or registered student, that any future application for membership be referred to the Admissions and Licensing Committee.
30. A determination that proceedings should rest on file entails a decision to the effect that there is a case to answer against the relevant person in relation to the matters specified but that it is not in the public interest for the case to be heard by the Admissions and Licensing Committee, Disciplinary Committee or Appeal Committee, as the case may be.
31. Where a matter is rested on file, it shall remain on the relevant person's file for five years from the date of such determination. In the event of a subsequent matter against the relevant person coming to the attention of the Association within this period of five years, any matter which has been rested on file may:
- (a) be taken into account by the Association or assessor or regulatory assessor in determining how to deal with the subsequent matter, even if it has already been taken into account in determining how to deal with another complaint brought subsequent to it; and/or
  - (b) be the subject of subsequent disciplinary or regulatory action.
32. The Committee must announce its findings and orders at the hearing, and specify whether any elements of any orders made are to have immediate effect regardless of any appeal.

33. The Committee must give clear and adequate reasons for its decision. Such reasons must be given whether or not any determinations and/ or orders are made and must be recorded in writing and given to the relevant person within 14 days of the hearing unless, in the circumstances, a longer period for the delivery of such reasons is necessary. Reasons should include the following:
- (a) the ground(s) on which the panel has made its decision;
  - (b) what impact any determination and/or order might have on the relevant person, and how the Committee has balanced that impact against the need for any such determination and/ or order;
  - (c) why a determination and/ or order is (or is not) proportionate to any risks the Committee has identified and proportionate (or not) to the consequences for the relevant person.

### **Reviews**

34. Orders to defer the proceedings shall be reviewed by the Committee not more than 12 months after the date when the order was imposed or last reviewed, or at an earlier date if the parties request an earlier review.
35. In the event that the parties have reached agreement upon the future conduct of the proceedings, a review may be carried out by the Chairman of the Committee.
36. If at the end of a three year period, or at any time thereafter, the relevant person is still unfit to participate in the proceedings, the Committee may order his exclusion from membership or removal from the relevant students' or affiliates' register.

### **Appeals**

37. A relevant person against whom an order has been made by the Committee may appeal to the Appeal Committee in accordance with the Association's appeal procedures as set out in the Appeal Regulations.
38. No appeal shall lie solely on the question of costs save as provided by the Appeal Regulations.
39. No appeal shall lie against any conditions imposed upon the grant of an adjournment.
40. The Association may appeal against an order made by the Committee subject to the conditions and procedures set out in the Appeal Regulations.

## Publicity and open hearings

41. Ordinarily cases considered by the Committee are held in private, although they may be heard in public in certain circumstances where the Committee determines that the public interest or the interests of any third party outweigh the need to protect the privacy or confidentiality of the relevant person, and require all or part of the hearing to be held in public.
42. The Health Committee may exclude from any hearing, or limit the participation of, any person whose conduct, in the opinion of the Committee, is likely to disrupt the orderly conduct of the proceedings. For the avoidance of doubt, this includes the relevant person and/ or his representative.
43. The Association shall give advance publicity of the proceedings of the Health Committee, in such manner as the Association thinks fit. Following a hearing, the Association shall the publish the order (as applicable) of the Health Committee, and the Health Committee shall prepare a private set of reasons to be served upon the parties only, as soon as practicable.

## The Statutory Auditors and Third Country Auditors Regulation 2016

44. The Statutory Auditors and Third Country Auditors Regulation 2016 (SATCAR) came into force as of 17 June 2016. The legislation conveys specific duties on the Financial Reporting Council (FRC) as the Competent Authority. FRC delegates specific duties to ACCA as part of a delegation agreement signed in June 2016.
45. The SATCAR provisions are relevant to Disciplinary Committee, Admissions and Licensing Committee, Interim Orders Committee, Health Committee and Appeal Committee in cases concerning statutory auditors practising and/or operating in the United Kingdom.
46. At the relevant stage of the hearing, the Case Presenter will invite the Committee to consider whether the statutory auditor's name should not be published. Regulation 6(3) of SATCAR provides four grounds where a relevant person's name should not be published:
  - (a) *where A is an individual and the competent authority considers the publication of personal data would be disproportionate;*
  - (b) *where publication would jeopardise the stability of financial markets;*
  - (c) *where publication would jeopardise an ongoing criminal investigation; and*
  - (d) *where publication would cause disproportionate damage to any institution or individual involved.*
47. SATCAR further requires the publicity of the imposition of a sanction under ACCA's Enforcement Arrangements. Regulation 6(4)(b) requires that publicity of such sanctions are made available on ACCA's website for at least 5 years from the date of the sanction, or where the sanction has been appealed, at least 5 years from the conclusion of that appeal, or such longer period as is proportionate to the breach in question.

## Statutory Auditors practising and/or operating in Ireland

48. Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts ("the Directive") came into force as of 17 June 2016. The legislation conveys specific duties on IAASA as the Competent Authority as well as ACCA as a Recognised Accountancy Body.
49. The provisions of the Directive are relevant to Disciplinary Committee, Admissions and Licensing Committee, Interim Orders Committee, Health Committee and Appeal Committee in cases concerning statutory auditors practising and/or operating in Ireland.
50. Article 30(b) of the Directive provides that when determining the type and level of administrative sanctions and measures, competent authorities (and relevant ACCA Committees) are to take into account all relevant circumstances, including where appropriate:
  - (a) the gravity and the duration of the breach;
  - (b) the degree of responsibility of the responsible person;
  - (c) the financial strength of the responsible person, for example as indicated by the total turnover of the responsible undertaking or the annual income of the responsible person, if that person is a natural person;
  - (d) the amounts of the profits gained or losses avoided by the responsible person, in so far as they can be determined;
  - (e) the level of cooperation of the responsible person with the competent authority;
  - (f) previous breaches by the responsible legal or natural person.

Additional factors may be taken into account by competent authorities (and relevant ACCA Committees), where such factors are specified in national law.

51. In relation to publicity in cases concerning Statutory Auditors practising and/ or operating in Ireland, the default position is that the Health Committee reasons for decision, including details in relation to the identity of the relevant person and any sanctions or penalties imposed will be disclosed to the public.
52. The Health Committee will not issue a direction that the identity of the relevant person should be made available to the public where it considers that disclosure of the identity of the relevant person:
  - (a) may have an adverse impact on the interests of third parties;
  - (b) may have an adverse impact on the health or safety of a member such that publication would be unduly harsh;
  - (c) is not necessary for the publication of the public interest having regard to the nature and seriousness of the offence; in this regard the Health Committee should take into consideration the following:
    - (i) whether the offence concerned dishonesty, integrity, theft, fraud, negligence, recklessness or incompetence;
    - (ii) any likely consequences of non-disclosure;
    - (iii) the sanction imposed;

- (iv) the likelihood of the repetition of the offence;
  - (v) the disciplinary history of the relevant person; and
  - (vii) any other circumstances or factor it considers relevant.
53. There must be sufficient reasons to justify making a direction that the identity of the relevant person should not be made available to the public; essentially, the case must cross a high threshold to satisfy one or more of the exceptions denoted above. However, where the Health Committee exercises its discretion in this manner it will set out in writing the reasons for the decision.
54. Publicity of such sanctions will be publicised by ACCA as soon as possible and will be made available on ACCA's website for at least five years from the date of the sanction, or where the sanction has been appealed, at least five years from the conclusion of that appeal, or such longer period as is proportionate to the breach in question.

### **Information about a member or student's health**

55. ACCA does not publish any information relating solely to the health of a member, registered student, or non-member bound by the ACCA disciplinary or regulatory regime. This information will be treated as confidential regardless of when the case was heard.
56. Where necessary, the Committee will prepare private reasons for disclosure solely to the member, firm, registered student, or non-member bound by the ACCA disciplinary or regulatory regime concerned and public reasons for the decision and wider disclosure.

### **Witnesses**

57. The names of clients, witnesses and complainants are not anonymised during the hearing, however will be anonymised in the decisions and reasons published on ACCA's website after the hearing.
58. The names of witnesses and third parties are not granted legal anonymity and can be released into the public domain on request.
59. In some circumstances witnesses may be allowed to give evidence by video link, albeit the witness will still be subject to questioning. In exceptional circumstances, vulnerable witnesses may be allowed to give evidence to the Committee in private session, however their evidence will still be noted in the reasons and some details may be published in accordance with this Guidance. Full details will be explained to the witness in question at the time.

## Costs

### ***Costs to be paid by the relevant person to the Association***

60. The Committee may direct that the relevant person pay such sum by way of costs to the Association as it considers appropriate taking into account any effect the relevant person's actions in relation to the conduct of the case have had upon the costs of dealing with the case, whether beneficial or otherwise.

### ***Costs to be paid by the Association to the relevant person***

61. Where the issue of ill health has been raised by the Association or by a Committee upon its own motion, and the relevant person has been found fit to participate in the proceedings under regulation 6(1)(a), the Health Committee may direct that the Association pay a sum to the relevant person by way of contribution to his costs incurred in connection with the proceedings in the Health Committee, in such amount as the Health Committee shall in its discretion think fit.
62. The Case Presenter is entitled to request that costs incurred in connection with the application are reserved until the conclusion of the case.

## Correction of errors

63. Where the order or reasons for the decision of the Committee contains an accidental error or omission, either party may apply by way of application for it to be corrected. The application must be in writing and describe the accidental error or omission and state the correction required.
64. The Chairman may deal with the application without notice if the error or omission is obvious, or he may direct notice be served on the other party. The application may be considered by the Chairman without a hearing with the consent of both parties.
65. In the event the application is opposed, if practicable, it should be heard by the same Committee which made the order and/or decision.
66. The Committee may of its own motion amend the wording of its own decision and/or order for the purpose of making the meaning and intention clear to all parties.

## Public protection, proportionality & the application of guidance

67. In exercising its professional judgement, the Committee should in all cases have regard to the requirements of public protection and the principle of proportionality in applying this guidance.
68. The panel should consider cases in a way which are proportionate to the complexity of the issues and the resources of the parties; seeking flexibility in proceedings wherever possible.
69. The Committee must ensure that all parties have been given the opportunity to participate fully in the proceedings.
70. The Committee should apply its knowledge and experience effectively; and avoid delay, as far as possible.

## Examples of cases where process/proceedings are likely to be withdrawn, rested on file or deferred

### **Cases that are likely to be withdrawn**

71. Any case where there is no realistic prospect of the relevant person being fit to participate in the proceedings within a reasonable frame of time (Nb. also Health Regulation 9(3) which provides that the Committee may order exclusion from membership/ removal from the students' or affiliates' register where the relevant person remains unit for 3 years or more).

### **Cases that are likely to be rested on file**

72. Any case where the Committee determines that there is a case to answer against the relevant person in relation to the matters specified but that it is not in the public interest for the case to be heard by the Admissions and Licensing, Disciplinary, or Appeal Committees, as the case may be.

### **Cases that are likely to be deferred**

73. Any case where the Committee is satisfied that the relevant person is currently too ill to participate in the process or proceedings but where it is in the public interest for the case to proceed and the relevant person is likely to fairly be able to participate within a reasonable period of time in all the circumstances (normally not exceeding 3 years).
74. Any case where the Committee is satisfied that the relevant person is too ill to participate in the process or proceedings but where that person's prognosis, in terms of them being well enough to participate in the proceedings either with or without reasonable adjustments, is currently unclear.

*\* These lists are not exhaustive*

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**Think Ahead**