

# Guidance for appeal hearings





# Contents

<b>Section 1: Introduction</b>	<b>4</b>
<i>Purpose of Guidance</i>	<b>4</b>
<i>Use of Guidance</i>	<b>4</b>
<b>Section 2: The role and regulatory powers of the Committee</b>	
<i>Introduction</i>	<b>5</b>
<i>The Role of the Committee</i>	<b>5</b>
<i>Appeal Applications</i>	<b>5</b>
<i>Permission to Appeal</i>	<b>7</b>
<i>Procedure for Appeal Hearings</i>	<b>10</b>
<i>Orders of the Committee</i>	<b>15</b>
<i>Correction of Errors</i>	<b>18</b>
<i>Public and Private Hearings</i>	<b>19</b>
<i>Publicity</i>	<b>19</b>
<i>The Statutory Auditors and Third Country Auditors Regulations 2016</i>	<b>20</b>
<i>Statutory Auditors practising and/or operating in Ireland</i>	<b>21</b>
<i>Information about a Relevant Person's health</i>	<b>22</b>
<i>Information about Witnesses</i>	<b>22</b>
<i>Public Protection, Proportionality &amp; the Application of Guidance</i>	<b>23</b>
<i>Miscellaneous</i>	<b>23</b>

## SECTION 1: INTRODUCTION

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1. The purpose of the Guidance for Appeal Hearings ('the Guidance') is to assist the Appeal 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 preparing to pursue or defend an appeal;
  - the Committee to provide clarification on the relevant procedure and their powers;
  - any relevant person bound by ACCA's bye-laws and regulations ('relevant person') so that they are aware of the relevant procedures and of what the Committee's powers are, prior to pursuing or defending an appeal.
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 material and submissions presented and their findings;
  - Taking account of the relevant regulatory history of the relevant person;
  - 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 determines all appeals referred to it in relation to finding(s) and/ or order(s) (as applicable) of the Disciplinary Committee, Admissions and Licensing Committee, or Health Committee.

### **Appeal applications**

7. Any relevant person who is the subject of a finding or order made by the Disciplinary Committee, an order made by the Admissions and Licensing Committee, or a finding or order made by the Health Committee may apply for permission to appeal the same within 21 days of being served with the written statement of the reasons for the decision of the Committee in question. The Chairman of the Committee may however extend this time limit where there is a good reason for the relevant person not meeting the 21 day time limit.
8. In exceptional circumstances, where there is a clear public interest in the matter being reviewed, the Association may apply for permission to appeal against a finding or order made by the Disciplinary Committee, an order made by the Admissions and Licensing Committee, or a finding or order made by the Health Committee, within 21 days after service of the written statement of the reasons for the decision of the Committee in question.
9. It is not possible for either party to appeal an order of costs alone unless the order was perverse or unreasonable (in the ordinary, as opposed to Wednesbury unreasonable, sense), or compliance with it would result in severe financial hardship to the relevant person.
10. It is not possible for either party to appeal against:
  - (a) any conditions imposed upon the grant of an adjournment;
  - (b) any interlocutory orders.

**Appeal notice**

11. An application for permission to appeal must be made by filing a written application notice with the hearings officer setting out the following:
  - (a) the appellant's name and address;
  - (b) whether the appellant has authorised a representative to act for him in the appeal and, if so, state the representative's name and address;
  - (c) whether the appellant intends to appear at the hearing of the appeal if permission is granted;
  - (d) in the case of an appeal from a finding or order made by the Disciplinary Committee, whether the appellant appeals against one or more of its findings and orders or one or more of its orders only. An appeal against an order may be made conditionally upon an appeal against a finding of the Disciplinary Committee failing;
  - (e) in the case of an appeal from an order made by the Admissions and Licensing Committee, which of the orders is appealed and the orders which the appellant wishes the Committee to make;
  - (f) in the case of an appeal from a finding or order made by the Health Committee, whether the appellant appeals against one or more of its findings and orders or one or more of its orders only. An appeal against an order may be made conditionally upon an appeal against a finding of the Health Committee failing;
  - (g) which of the grounds of appeal set out in paragraphs 13-15 below the appellant is putting forward in support of his application (and the grounds so stated shall not thereafter be amended except with the leave of the Committee);
  - (h) the reasons in support of each ground of appeal; and
  - (i) any documents which the appellant wishes the Appeal Committee to take into account.
12. Where an application notice is filed, the hearings officer shall notify the respondent and supply a copy to him within 14 days. The respondent may submit grounds of opposition within 21 days thereafter.

**Appeal grounds**

13. Save for as specified in paragraph 14 below, an appeal by a relevant person who is the subject of a finding or order made by the Disciplinary Committee, an order made by the Admissions and Licensing Committee, or a finding or order made by the Health Committee, may only be upheld upon one or more of the following grounds:
  - (a) the relevant Committee made an error of fact or law, which would have altered one or more of the Committee's findings or orders (or findings in relation to the Disciplinary Committee);
  - (b) the Committee misinterpreted any of the Association's bye-laws or regulations or any relevant guidance or technical standards, which would have altered one or more of the Committee's findings or orders;
  - (c) the relevant Committee failed to take into account certain relevant evidence, which would have altered one or more of the Committee's orders (or findings in relation to the Disciplinary Committee);
  - (d) there is new evidence not previously available, which would have altered one or more of the relevant Committee's orders (or findings in relation to the Disciplinary Committee);
  - (e) one or more of the relevant Committee's orders is disproportionate and/or unreasonable (in light of its findings in relation to the Disciplinary Committee only);
  - (f) one or more of the relevant Committee's orders (and/ or findings in relation to the Disciplinary Committee) are unjust because of a serious procedural irregularity in the proceedings.
14. An appeal by the Association against a finding or order made by the Disciplinary Committee, an order made by the Admissions and Licensing Committee, or a finding or order made by the Health Committee, may only be upheld upon the ground that the decision was one that no Committee acting reasonably (in the ordinary, as opposed to Wednesbury unreasonable, sense) would have made.

**Permission to appeal****Standard to be applied**

15. Where the application notice has been filed by a relevant person who is the subject of a finding or order made by the Disciplinary Committee, an order of the Admissions and Licensing Committee, or a finding or order made by the Health Committee, permission to appeal may only be granted if the appeal would have a real prospect of success on one or more of the grounds under paragraph 13 above as set out in the appellant's application notice.
16. Where the application notice has been filed by the Association, permission to appeal may be granted only if:
  - (a) there is a clear public interest in the finding and/or order being reviewed; and
  - (b) the appeal would have a real prospect of success on the ground set out in paragraph 14 above.

**Process**

17. An application notice, whether filed by the Association or by any other party, shall be considered by the Chairman on the papers in private without a hearing.
18. The Chairman may grant or refuse permission to appeal. If permission is granted, the Chairman must specify the grounds upon which permission has been granted.
19. Before making a decision about permission, or in conjunction with such a decision, the Chairman may make such directions as he deems to be necessary or desirable.
20. The Chairman may not grant permission to appeal solely on the question of costs unless paragraphs 9 and 15 or 16 (as the case may be) are satisfied.
21. The Chairman may of his own motion amend the application notice to add one or more of the grounds of appeal set out in paragraph 13 above as applicable.
22. The Chairman must give written reasons at the time his decision is made, which shall address each of the grounds of appeal set out in the application notice. The written reasons shall be provided to the parties by the hearings officer within 21 days thereafter.
23. If the Chairman refuses permission to appeal:
  - (a) where the application notice filed pursuant to paragraph 11 above related solely to the question of costs, the Chairman's decision is final;
  - (b) in all other cases where the Chairman has refused permission to appeal, in whole or in part, the appellant may request that his application notice be reconsidered by the Appeal Committee in accordance with paragraphs 26-35 below. Such request:
    - i. must be filed with the hearings officer within 21 days after service of the Chairman's written reasons for refusing permission (or such longer period as the Chairman who would reconsider the application notice may allow where there is good reason for the appellant having failed to meet the time limit); and
    - ii. must be supported by written grounds setting out which aspects of the Chairman's decision he disagrees with and why;
  - (c) where an application for reconsideration is filed, the hearings officer shall notify the respondent and supply a copy to him within 7 days. The respondent may submit grounds of opposition within 21 days thereafter;
  - (d) the Chairman who refused permission shall not sit on any Committee convened in relation to the case.
24. If the Chairman grants permission to appeal:
  - (a) where permission is granted solely on the question of costs, the Chairman shall proceed to make a decision on the appeal and his decision shall be final;
  - (b) in all other cases, the appeal shall be heard by the Committee in accordance with paragraphs 39-66 below and the Chairman who granted permission to appeal may sit on that Committee.
25. If the Chairman grants permission to appeal an order which was made with immediate effect, he may also grant a stay of the order if it is justified in all the circumstances.

**Reconsideration**

26. In the event that a request complying with paragraph 23(b) above is filed, the application notice shall be reconsidered by the Committee on the papers in private without a hearing
27. No application notice will be reconsidered by the Chairman unless, in the opinion of the Chairman, the request complies with paragraph 23(b)(ii) above.
28. When carrying out their reconsideration the Chairman shall be supplied with:
  - (a) all the documents which had been placed before the relevant Committee whose finding and/or order is the subject of the application notice;
  - (b) the notice of the relevant Committee's finding and/or order;
  - (c) the statement of the relevant Committee's reasons for its decision;
  - (d) the appeal application notice and any documents submitted with it;
  - (e) the Chairman's reasons for refusing permission;
  - (f) the applicant's grounds for asking the Committee to reconsider the application notice;
  - (g) any written submissions that may have been made by the respondent;
  - (h) any other documents or information which the Committee may request.
29. The Chairman may grant or refuse permission to appeal. If permission is granted, the Committee must specify the grounds upon which permission has been granted.
30. Before making a decision about reconsideration, or in conjunction with such a decision, the Chairman may make such directions as it deems to be necessary or desirable.
31. If the appellant so requests, the Chairman may grant permission to substitute one or more of the grounds of appeal set out in paragraph 13 above as applicable for any ground of appeal submitted by the appellant.
32. The Chairman may of its own motion amend the appeal notice to add one or more of the grounds of appeal set out in paragraph 13 above as applicable.
33. If the Chairman refuses permission to appeal, the Chairman's decision is final.
34. If the Chairman grants permission to appeal, the appeal shall be heard by the Appeal Committee in accordance with paragraph 37 below and the Chairman who granted permission to appeal may sit on that Appeal Committee.
35. If the Chairman grants permission to appeal an order which was made with immediate effect, he may also grant a stay of the order if it is justified in all the circumstances.

***Concessions made during the Permission to Appeal process***

36. At any time during the permission to appeal process the respondent may indicate in writing that they concede that the findings and/ or orders of the relevant Committee that are subject to appeal should be rescinded and that matters should be heard afresh. Where such concessions are made, the matter will be referred to the Chairman who shall have the power to make orders in accordance with paragraphs 83(d), 84(c), 85, 86(d), 87(c), and/ or 88-92 below (as applicable).

**Procedure for appeal hearings**

37. The grounds of appeal upon which permission to appeal has been granted, and the reasons for granting permission, shall be considered by the Committee at a hearing except where the appeal is withdrawn by the appellant.

***Preparing for Appeal Hearings***

***Further enquiries***

38. Where the appeal is from a finding and/or order of the Disciplinary Committee or the Health Committee, an investigating officer may make such further enquiries as he shall consider appropriate in order to assist in the preparation of the case to the Committee. It shall be the duty of the person who is the subject of the decision under appeal to co-operate fully with such enquiries and a failure by him to do so shall constitute a breach of the Appeal Regulations and may render the relevant person liable to disciplinary action.

***Submissions, documents and evidence***

39. The appellant and respondent may submit such written submissions and additional documentary evidence as they may wish to be drawn to the Committee's attention, provided that any such written submissions and documentary evidence are submitted not less than 21 days before the hearing of the appeal.
40. Written submissions and documents submitted less than 21 days before the hearing will only be considered by the Committee in exceptional circumstances.
41. No later than 14 days prior to the hearing of his case the appellant must confirm whether he wishes to attend the appeal hearing.

***Witnesses***

42. Where permission to appeal has been granted upon the ground set out in paragraph 13(d) above, no later than 14 days prior to the hearing of his case the appellant must submit:
- (a) the names of any witnesses on behalf of the Association that he requires to attend for cross-examination, explaining to what extent he disputes their evidence in light of the new evidence; and
  - (b) the names of any witnesses on his behalf that he wishes to call, explaining the nature of the new evidence they will be giving. For the avoidance of doubt, the Association will require such witnesses to attend the hearing for cross-examination unless it indicates otherwise.
43. If there is a dispute as to whether a witness is required to attend, the parties shall make written submissions to the Chairman who shall have the power to order the attendance of a witness or to make such other order as in his discretion he thinks fit. The decision of the Chairman shall be final.
44. If the appellant fails to comply with paragraph 42(a) and/ or (b) above, he shall forego the right to have witnesses attend the hearing save at the discretion of the parties or by order of the Chairman who shall give both parties an opportunity to make submissions on the point. The decision of the Chairman shall be final.

45. If the appellant indicates that he does not wish to attend, or fails to give an indication within the required deadline, the Association shall not be obliged to ensure the attendance of any witness at the hearing.

***Withdrawal of applications***

46. Where the appellant wishes to withdraw their appeal, they must set out their withdrawal in writing to the respondent and Appeal Committee. Such withdrawals can be made at any time up until the appeal is determined by the Appeal Committee. A withdrawal will have the effect of bringing the appeal proceedings to an end, subject to any application for costs in accordance with paragraphs 93-95 below.

***Notice, Representation and Adjournments***

***Notice***

47. Subject to paragraph 48 below, the Association shall provide the parties with no less than 28 days prior written notice of the time and place of the hearing of the appeal.
48. The parties may be provided with less than 28 days prior written notice of the hearing. The Committee shall consider at the outset the appropriateness of short notice including the degree of urgency and may, in its absolute discretion, 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.

***Proceeding in the absence of a party***

49. The appeal may be heard in the absence of a party provided that the Committee is satisfied that he has been served with no less than 28 days prior written notice of the date set for the hearing or, in the case of an urgent hearing, that proceeding with the hearing is in the public interest.

***Representation***

50. At the hearing of the appeal, the person who is the subject of the finding or order under appeal shall be entitled to be heard before the Committee and/or to be represented by such person as he may wish.
51. The Association shall be represented by such person as it may nominate (the "case presenter").

***Advisers to the Appeal Committee***

52. All hearings of the Committee shall be attended by a legal adviser. The legal adviser shall:
- (a) act as adviser to the Committee on all procedural and legal matters;
  - (b) retire with the Committee when it goes into private session;
  - (c) ensure that any advice given to the Committee in private is repeated in public and an opportunity given to the parties to make submissions on that advice;
  - (d) record the Committee's reasons for its decisions; and
  - (e) carry out any other activity commensurate with the role of legal adviser.
53. At a hearing concerning a party's state of health, the Committee may instruct a medical expert to act as its medical adviser.

### **Adjournments**

54. A party may make a written request to the Committee that the hearing be adjourned to a future hearing. Such request will be considered at the outset of the hearing and the Committee may, in its absolute discretion, agree to the request.
55. Any such request made in advance of the hearing shall be considered as follows:
  - (a) If the request is made after the provision of notice in accordance with paragraph 47 above, it shall be considered by the Chairman, who may in his absolute discretion agree to the request. If such request is refused by the Chairman, it shall be considered at the outset of the hearing by the Committee in accordance with paragraph 54 above. For the avoidance of doubt, the Chairman shall be entitled to participate in the reconsideration of the request, and the Chairman's written reasons for refusing the request shall be provided to the Committee.
  - (b) If the request is made by the person who is the subject of the finding or order under appeal before the provision of notice in accordance with paragraph 47 above, the Association may agree to the request. If the Association opposes the request, it shall be considered by the Chairman in accordance with paragraph 55(a) above. If such request is refused by the Chairman, it shall be considered at the outset of the hearing by the Committee in accordance with paragraph 54 above. For the avoidance of doubt, the Chairman shall be entitled to participate in the reconsideration of the request, and the Chairman's written reasons for refusing the request shall be provided to the Committee.
56. In advance of the hearing, at the outset of the hearing, or at any time during the hearing, the Committee may itself direct that the case should be adjourned.
57. The Chairman or Committee may give such directions or impose such conditions as he or it may determine upon the grant of an adjournment.
58. The Committee may (but need not) agree to or direct an adjournment where criminal or civil proceedings concerning a relevant matter are pending to which the person who is the subject of the finding or order under appeal is a party.
59. Before making a decision, the Chairman or Committee as appropriate shall invite representations from the other party.
60. The Chairman or the Committee shall give written reasons for a decision to refuse or grant a request for an adjournment.

### **Concessions made during the appeal process**

61. At any time during the appeal process the respondent may indicate in writing that they concede that the findings and/or orders of the relevant Committee that are subject to appeal should be rescinded and that matters should be heard afresh.
62. Where such concession(s) are made, the matter will be referred to the Chairman who shall have the power to make orders in accordance with paragraphs 83(d), 84(c), 85, 86(d), 87(c) and/ or 88-92 below (as applicable).

## **The Appeal Hearing**

### **Constitution of Appeal Committee**

63. The Chairman who considered the application notice in accordance with paragraph 17 above may hear the appeal.

### **Burden and standard of proof**

64. On the hearing of any appeal it shall be for the appellant to satisfy the Committee that the grounds of the appeal are made out. To the extent that the appeal turns on matters of fact, the standard of proof to be applied by the Committee shall be the balance of probabilities.

### **Amendment of grounds of appeal**

65. If the appellant so requests, or of its own motion, at any time during the hearing the Committee may amend the grounds of appeal which it is considering to:
- (a) replace any ground of appeal upon which permission to appeal had been granted with one or more of the grounds of appeal set out in paragraph 13 above as applicable;
  - (b) add one or more of the grounds of appeal set out in paragraph 13 above as applicable, including any ground upon which permission to appeal had not been granted.

### **Procedure**

66. The appellant shall present his case first, followed by the respondent. The appellant then has a right of reply.

### **Witnesses**

67. Pursuant to paragraphs 42-45 above, witnesses may only be called if permission to appeal has been granted upon the ground set out in paragraph 13(d) above. Any such witnesses shall be liable to cross-examination by the other party. The Committee may ask questions of either party and their witnesses (if any) at any time.

## **Service of notices and documents**

### **General**

68. Service of any notice or document required to be served on an individual or firm may be carried out in one of the following ways (AR 19(1)):
- (a) Sent by post or other delivery service in which delivery or receipt is recorded to, or by leaving it at his or its registered address or to any other address nominated in writing by the individual or firm for the service of notices and correspondence;
  - (b) Sent by e-mail to an address notified to the Association by the individual or firm as an address for communications.
69. Service by post or other delivery service shall be deemed served 72 hours after it was sent by the postal operator or delivery service (AR 19(8)(a)). Service by any other means as set out in paragraph 68 above shall be deemed served on the day on which it was left or sent (AR 19(8)(b)).
70. Where an individual is represented by a solicitor or a professional body, a copy of the notice served in accordance with paragraph 68 above may also be:
- (a) sent or delivered to the solicitor's practising address;
  - (b) sent or delivered to the professional body's business address; or
  - (c) sent by electronic mail to an e-mail address of the solicitor or professional body, where the address has been notified to the Association as an address for communications.

71. Any notice or document required to be served on the complainant may be provided to him personally, sent by post or courier to the address nominated in writing by the complainant for service of any notice or document for the purpose of these proceedings, or sent by e-mail.
72. Any notice or document required to be served on the Association may be provided by sending it by post or courier to the investigating officer at the principal office of the Association or sending it by e-mail.
73. Where a notice or document is served by electronic means, the party serving the document (be it the Association, the relevant person or the complainant) need not in addition send or deliver a hard copy.
74. The service of any notice or document may be proved by:
  - (a) a confirmation of posting issued by or on behalf of the postal operator or delivery service;
  - (b) a confirmation of delivery of the notice or document sent by electronic mail; or
  - (c) a signed statement from the person sending by post or delivering the notice in accordance with this regulation.

### **Hearings**

75. Where a case is of particular interest to a particular government or government agency, or primarily affects persons resident in a particular country, either the Committee or the Secretary may direct that the hearing before the Committee take place in that country. In the absence of any such direction, hearings before the Committee shall take place in London.

### **Public interest cases**

76. The Association shall refer a case to the Financial Reporting Council (FRC) where:
  - (a) it considers that the case raises or appears to raise serious issues affecting the public interest in the United Kingdom; and
  - (b) it considers that a relevant person may have committed an act of misconduct in relation to the case; and
  - (c) it is satisfied that no disciplinary proceedings going beyond an investigation have been instituted by the Association or any other FRC participant in relation to the conduct in question. This paragraph is unlikely to be satisfied in the case of an appeal unless evidence of the conduct in question was not available prior to the hearing of the Disciplinary Committee.
77. Where the Association receives notice that FRC has decided to deal with a case relating to a relevant person, either in response to a referral under paragraph 76 above or of its own motion, the Association shall suspend any investigation relating to the case and, upon FRC's request, provide to FRC any such documentary information in its possession or control which it can lawfully provide.
78. The Irish Auditing and Accounting Supervisory Authority (IAASA) may undertake its own investigation into a case relating to a relevant person if IAASA forms the opinion that it is appropriate or in the public interest to do so. In such circumstances, the Association shall suspend any investigation relating to the case and, upon IAASA's request, provide to IAASA any such documentary information in its possession or control which it can lawfully provide.

79. It is the duty of all relevant persons to co-operate with FRC and IAASA during the course of any investigations they may undertake, and abide by and satisfy any disciplinary sanction imposed by FRC. A failure to co-operate fully with FRC or IAASA shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.
80. Regulation 11(4) of the Membership Regulations shall apply to disciplinary orders made by FRC save that the reference therein to any amount 'payable to the Association' shall for these purposes read 'payable to FRC'. For the avoidance of doubt, the failure to satisfy in full any amount imposed by way of fine or costs payable to FRC shall result in removal from the register of members, affiliates or registered students of the Association.
81. For the avoidance of doubt, the provisions of this section apply notwithstanding that the Association did not exercise its powers under regulation 25 of the Complaints and Disciplinary Regulations.

### **Orders of the committee**

82. On the conclusion of the hearing of the appeal, the Committee shall consider its decision on the appeal.
83. In the case of an appeal against both one or more of the findings and one or more orders of the Disciplinary Committee, the Committee may do any one or more of the following:
  - (a) affirm, vary or rescind any findings of the Disciplinary Committee;
  - (b) affirm, vary or rescind any order of the Disciplinary Committee;
  - (c) substitute any other order which the Disciplinary Committee could have made;
  - (d) in relation to any findings and/or orders that have been rescinded, order that the matters be heard afresh by the Disciplinary Committee.
84. In the case of an appeal against one or more of the orders, but not the findings, of the Disciplinary Committee, the Committee may do one or more of the following:
  - (a) affirm, vary or rescind any order of the Disciplinary Committee;
  - (b) substitute any other order which the Disciplinary Committee could have made;
  - (c) in relation to any orders that have been rescinded, order that the matters be heard afresh by the Disciplinary Committee.
85. In the case of an appeal against an order of the Admissions and Licensing Committee, the Committee may make such order as it sees fit in respect of the appeal.
86. In the case of an appeal against both one or more of the findings and one or more orders of the Health Committee, the Committee may do any one or more of the following:
  - (a) affirm, vary or rescind any findings of the Health Committee;
  - (b) affirm, vary or rescind any order of the Health Committee;
  - (c) substitute any other order which the Health Committee could have made;
  - (d) in relation to any findings and/or orders that have been rescinded, order that the matters be heard afresh by the Health Committee.

87. In the case of an appeal against an order of the Health Committee, the Committee may do one of the following:
- (a) affirm, vary or rescind the order of the Health Committee;
  - (b) substitute any other order which the Health Committee could have made;
  - (c) in relation to any orders that have been rescinded, order that the matters be heard afresh by the Health Committee

**Costs**

88. In this subsection, reference to "the appeal" includes consideration of the appeal notice by the Chairman in accordance with paragraphs 26-36 above.

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

89. Where the appellant is a person who is the subject of a finding or order made by the Disciplinary Committee, an order made by the Admissions and Licensing Committee, or a finding or order made by the Health Committee, the Committee may direct the appellant to pay to the Association by way of costs of the appeal such sum as the Committee shall consider appropriate. In considering what sum shall be paid by way of costs, if any, the Committee shall take into account (and without limiting its discretion in any way) any effect the appellant's actions in relation to the conduct of the appeal have had upon the costs of dealing with the appeal, whether beneficial or otherwise.

***Costs to be paid by the Association to the appellant***

90. Where the appellant is a person who is the subject of a finding or order made by the Disciplinary Committee, the Admissions and Licensing Committee or the Health Committee as the case may be, and the Committee has wholly rescinded a finding or order of such Committees, the Committee may direct the Association to pay a sum to the appellant by way of contribution to his costs incurred in connection with the case and the appeal in such amount as the Committee shall in its discretion decide.

***Costs to be paid by the Association to the complainant***

91. Where the appeal is against a finding or order of the Disciplinary Committee or of the Health Committee, the Committee may in exceptional circumstances direct the Association to pay a sum to a complainant by way of contribution to his costs incurred with the case in such amount as the Committee shall in its discretion think fit.

***Costs to be paid by the Association to the respondent***

92. Where the Association is the appellant and has not been successful on all the grounds of its appeal, the Committee may direct that the Association pay to the respondent by way of costs of the appeal such sum as the Committee shall consider appropriate.

**Effect on Costs of withdrawal of an Appeal****Costs of the complainant**

93. Where the appeal is against a finding or order of the Disciplinary Committee or of the Health Committee and is withdrawn by the appellant, the Committee may in exceptional circumstances direct the Association to pay a sum to the complainant by way of contribution to his costs incurred in the case in such amount as the Committee shall in its discretion think fit.

**Costs of the respondent to be covered by the appellant**

94. If at any time prior to the conclusion of the hearing of the appeal the appellant makes a request to withdraw the appeal, and the respondent makes an application for costs, the Committee shall make such order as it sees fit in respect of costs. In particular, the Committee may order the appellant to pay to the respondent by way of costs of the appeal such sum as the Committee shall consider appropriate. In considering what sum shall be paid by way of costs, if any, the Committee shall take into account (but without limiting its discretion in any way) any effect that the appellant's actions in relation to the conduct of the appeal and its withdrawal have had upon the costs of dealing with the appeal, whether beneficial or otherwise.
95. Applications for costs under paragraph 95 above may be considered without a hearing, if the parties agree, or by such mode of hearing (including a telephone hearing) as the Committee may direct.

**Notice**

96. The Committee must announce its findings and orders at the hearing.
97. 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;

**Effective Date****Permission to appeal**

98. Where a Chairman has refused permission to appeal an order of the Admissions and Licensing Committee, Disciplinary Committee or Health Committee, that order shall take effect as follows:
- (a) where the order was made with immediate effect, on the date the relevant Committee made the order;
  - (b) where the Chairman's decision is final pursuant to paragraph 23(a) above, on the date of the Chairman's decision;
  - (c) in all other cases, 21 days after service of the Chairman's written reasons for refusing permission, unless pursuant to paragraph 23(b) above the appellant has by that date filed a request that his application notice be reconsidered by a second Chairman.

### ***Withdrawn Applications***

99. Where, at any time during the appeal process the appellant withdraws their appeal against an order of the the Admissions and Licensing Committee, Disciplinary Committee or Health Committee, that order shall take effect as follows:
- (a) where the order was made with immediate effect, on the date the relevant Committee made the order;
  - (b) in all other cases, on the date the appeal was withdrawn.

### ***Appeal Committee determinations***

100. Any order made by the Appeal Committee shall take effect from the date it is made (that is, for the avoidance of doubt, the date its decision is announced and not the date it is formally notified to the appellant) unless the Committee, in its absolute discretion, directs that it shall take effect as from some other date (not being earlier than the date of the finding or order under appeal) as shall be specified in the order of the Committee.

### ***Payment***

101. Any order that a sum be paid to the Association or the complainant must be complied with within 21 days from the date the order becomes effective (unless the Council otherwise agrees) and, where the appellant who is the subject of the order is a firm, shall be jointly and severally due from, and shall be paid by, the persons who are specified persons in relation to the firm on the date of the order.

## **Correction of errors**

### ***Slip rule***

102. Where the order and/ or reasons for the decision of the Committee contains an accidental error or omission, either party may apply for it to be corrected. The application must be in writing and describe the error or omission and state the correction required.
103. The Chairman may deal with the application without notice if the error or omission is obvious, or he may direct that notice of the application be served on the other party.
104. If notice of the application is served on the other party, the application may be considered by the Chairman without a hearing with the consent of both parties, such consent not to be unreasonably withheld.
105. In the event the application is opposed, if practicable, it should be heard by the same Committee which made the order and/or reasons which are the subject of the application. The Committee may not conduct a re-hearing of the case.
106. The Committee may of its own motion amend the wording of its own order and/or reasons for the purpose of making the meaning and intention clear to all parties.

### ***New evidence***

107. The Committee may at any stage and in its absolute discretion amend, vary or rescind any of its orders or decisions where new evidence comes to light which fundamentally invalidates the same, but may only do so to the advantage of a relevant person.

## Public and private hearings

108. Ordinarily, cases considered by the Committee are held in public, although they may be heard in private in certain circumstances where the Committee determines, having given the parties and any third party that it is appropriate to hear from the opportunity to make representations and having received advice from the legal adviser, that the particular circumstances of the case outweigh the public interest in holding the hearing in public, which may include but is not limited to prejudice to any of the parties.
109. Appeals from orders or findings of the Health Committee will however be heard in private but the Appeal Committee's order shall be subject to publicity in accordance with paragraph 115 below.
110. The Committee may establish such procedures as it deems necessary or desirable in connection with attendance by the public at its hearings and the procedure to be adopted in respect of any hearing shall, subject to paragraphs 108-109, be such as the Committee in its absolute discretion so determines.
111. The 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.

## Publicity

112. The Association shall give advance publicity of the proceedings of the Committee, in such manner as the Association thinks fit.
113. In the case of an appeal against findings or orders made by the Disciplinary Committee:
  - (a) subject to paragraph 113(b) below, all orders and any findings 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.
  - (b) following a hearing which has (in whole or in part) been held in private, the Appeal Committee shall prepare a private set of reasons in accordance with paragraph 97 above to be served upon the parties only, together with a public set of reasons which comply with paragraph 113(a) above, as soon as practicable.
114. In the case of an appeal against an order of the Admissions and Licensing Committee:
  - (a) subject to paragraph 114(b) below, all orders and any findings (as applicable) 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;
  - (b) following a hearing which has (in whole or in part) been held in private, the Appeal Committee shall prepare a private set of reasons in accordance with paragraph 97 above to be served upon the parties only, together with a public set of reasons which comply with paragraph 114(a) above, as soon as practicable
  - (c) in the event that the relevant person relinquishes his certificate before a hearing under this regulation 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.

115. In the case of an appeal against findings or orders of the Health Committee:
- (a) all orders and any findings 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 in such manner as the Association thinks fit;
  - (b) any matters against the relevant person which had been referred to the Admissions and Licensing Committee, Disciplinary Committee or Appeal Committee prior to the health hearing shall be set out in the publicity.
116. The Insolvency Service may publish the names of holders or former holders of the Association's insolvency licence who are subject to an order made by the Committee, and details of the order made, in such publications, and in such a manner as it thinks fit. For the avoidance of doubt, the details contained in such publicity are not limited to those published by the Association pursuant to paragraphs 113-115 above.

### **The Statutory Auditors and Third Country Auditors Regulation 2016**

117. The Statutory Auditors and Third Country Auditors Regulation 2016 (SATCAR) transposes the European Union Audit Regulation Directive into UK law which came into force as of 17 June 2016. The legislation additionally conveys numerous duties on ACCA by FRC as part of a delegation agreement signed in June 2016.
118. The SATCAR provisions are relevant to cases before the Committee concerning statutory audit, typically FRC Professional Oversight Team (POT) cases. Regulation 5(1) of SATCAR introduces a number of additional sanctions available to a Committee where an auditor has contravened a relevant requirement.
119. 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.
120. 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

121. 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.
122. The provisions of the Directive are relevant to the Committee in cases concerning statutory auditors practising and/or operating in Ireland.
123. 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.
124. In relation to publicity in cases concerning Statutory Auditors practising and/ or operating in Ireland, the default position is that the Appeal 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.
125. These provisions are additionally relevant to Disciplinary Committee, Health Committee and Admissions and Licensing Committee in cases concerning statutory auditors practising and/or operating in Ireland.

126. The Appeal 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 Appeal 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
    - (vi) any other circumstances or factor it considers relevant.
127. 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 Appeal Committee exercises its discretion in this manner it will set out in writing the reasons for the decision.
128. 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 relevant person's health**

131. ACCA does not publish any information relating solely to the health of a relevant person. This information will be treated as confidential regardless of when the case was heard.
132. 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.

## Information about witnesses

133. 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.
134. The names of witnesses and third parties are not granted legal anonymity and can be released into the public domain on request.
135. 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.

## Public protection, proportionality & the application of guidance

136. 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.
137. The panel should consider cases in a way which is proportionate to the complexity of the issues and the resources of the parties; seeking flexibility in proceedings wherever possible.
138. The Committee must ensure that all parties have been given the opportunity to participate fully in the proceedings.
139. The Committee should apply its knowledge and experience effectively; and avoid delay, as far as possible.

## miscellaneous

### *Transitional provisions*

140. The grounds of appeal available to the appellant shall be those in force at the date of the finding or order which is the subject of the application notice.
141. The test to be applied when considering whether permission to appeal should be granted shall be the test in force at the date of the application notice.

### *Waiver*

143. The Committee may dispense with any requirement of these regulations in respect of notices, service or time in any case where it appears to the Committee to be in the interests of justice, having regard to all the circumstances, provided it is satisfied that neither the relevant person nor the Association has been prejudiced in the conduct of his or its case.

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Think Ahead