

# Guidance for cost orders





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## SECTION 1: INTRODUCTION

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1. The purpose of the Guidance for Costs Orders ('the Guidance') is to assist all parties to proceedings. It is designed to manage regulatory risk, provide transparency of policies and procedures and ensure consistency in approach.
2. The guidance is for use by:
  - The Committee (including the Chairman, where applicable) to provide clarification on the relevant procedure and their powers;
  - Any relevant person bound by the disciplinary process by virtue of 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 any disciplinary matter;
  - ACCA staff when they are preparing a case on behalf of ACCA.
3. The Guidance is a 'living document' which will be updated and revised when the need arises. References to members in this document should be taken to include members, member firms, affiliates and students and words importing the masculine gender include the feminine.
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 independent legal advice.
5. It is important to bear in mind that an award of costs is not a sanction, but a consequence of a finding that allegations are proved (in whole or in part) or an unsuccessful appeal.
6. When a relevant person is ordered to pay costs to ACCA, this is intended to compensate ACCA and accordingly the membership as a whole for the costs reasonably incurred by ACCA in bringing the proceedings. All references to the regulations quoted in this guidance are taken from the 2019 Rulebook. The Rulebook is available on ACCA's website at:

[www.accaglobal.com/sg/en/about-us/regulation/rulebook.html](http://www.accaglobal.com/sg/en/about-us/regulation/rulebook.html)

## **SECTION 2: POWER TO AWARD COSTS**

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7. Regulation 9(e) and 15 of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 as amended on 1 January 2019 ('The Disciplinary Regulations') and Regulation 12 of The Chartered Certified Accountants' Appeal Regulations 2014 as amended on 1 January 2019 ('The Appeal Regulations') gives discretion to the Chairman, Disciplinary Committee and the Appeal Committee (the 'Committee') to award costs payable by the member to ACCA and vice versa. In exceptional circumstances, the Committee can direct that ACCA pay a contribution to the costs of a complainant incurred in relation to the case. Their discretion must be exercised in accordance with the principles of reasonableness, natural justice and relevant case law.
8. The member will be provided with a Statement of Financial Position and is requested to complete the form and provide supporting evidence of his means. This is to enable the Committee to take full account of their financial position before making any order for costs. Alternatively, if the member attends the hearing, he can address the Committee as to his financial situation.
9. Before making any order in relation to costs, the Committee should invite both parties to make verbal submissions to them as to whether and if so, how much costs should be awarded and to whom. When making an order for costs, the sum ordered will be for a fixed amount.

### **Costs payable by ACCA to the member**

10. Where none of the allegations against the member have been found proved, the Committee has discretion to direct ACCA to pay the member, a contribution to the costs incurred by the member in connection with the case in such amount as it thinks fit. Costs orders will not normally be made against ACCA unless the complaint should never have been brought or the case had been very badly handled throughout.
11. The fact that an allegation has been found not proved does not in itself constitute grounds for making a costs order against ACCA. You or your legal representative can make an application for such costs at the hearing or in advance if you are not going attend or be represented. Any such application should be supported by evidence of time spent and hourly charge out rates, together with evidence of any disbursements claimed.

### **Costs payable by ACCA to the complainant**

12. In exceptional circumstances, the Committee can direct ACCA to pay to the complainant, a contribution to the costs incurred in connection with the case.

### **Costs payable by the member to ACCA**

13. Where one or more of the allegations against the relevant person are found proved, the Committee has discretion to award such costs as it considers appropriate. The normal position is that the member, affiliate, student or firm against whom an allegation has been found proved, should pay the reasonable and proportionate costs of ACCA bringing the case. This is based on the principle that the majority of relevant persons should not be required to subsidise the minority who, through their own failings, have found themselves subject to disciplinary proceedings.

14. ACCA will produce a costs schedule which gives a detailed breakdown showing how the costs claimed have been calculated. This will include costs incurred up to the date that the costs schedule was produced and an estimate of the costs to be incurred from the date the schedule was produced up to and including the hearing. If the actual costs incurred are more or less than the estimate, ACCA has the right to adjust its claim. The member has a right to challenge any or all, of the sum claimed.
15. The schedule will be included in the bundle of documents which is considered by the Committee and is provided to the member at least 28 days' prior to the date of the disciplinary hearing.
16. If a firm is ordered to pay costs to ACCA, the partners, members (in a limited liability partnership) or directors at the date of the order are jointly and severally liable for payment of the sum ordered.

### **Relevant factors considered by the Committee**

17. In deciding whether to award costs and if so, how much, the Committee will take into various factors such as those listed below:
  - 17.1 Whether the costs sought are appropriate and reasonably incurred in the context of the case;
  - 17.2 The conduct of the party seeking their costs during the investigation and the disciplinary proceedings;
  - 17.3 The member's financial circumstances;
  - 17.4 Where some or all of the allegations have not been proved:
    - 17.4.1 Whether it was reasonable for ACCA to have pursued the unsuccessful allegation(s);
    - 17.4.2 Any extra costs incurred by ACCA as a result of pursuing the unsuccessful allegation(s) in terms of the case preparation and the Committee's time in dealing with those allegations;
    - 17.4.3 Any extra costs incurred by the member in defending the unsuccessful allegation(s);
    - 17.4.4 The complexity, seriousness and interplay between the allegations found proved compared to those which were found not proved;
  - 17.5 Any other factor/s which may be relevant in the particular case.

### **Factors taken into account by the Committee**

18. When deciding, what if any, order for costs should be made, the Committee will take into account the member's financial, personal and all other relevant circumstances. Each case is specific to its individual facts and will be considered on that basis, although the Committee seek to take act proportionately and to achieve consistency in our approach. The Committee will remind itself that it has a discretion, whether or not to award costs in accordance with the principles of reasonableness and natural justice.

19. Where the Committee is agreed that the sum of costs claimed is appropriate, the Committee shall award costs. Alternatively, where the Committee is agreed that the sum of costs claimed is unreasonable and/or disproportionate, the Committee shall exercise its professional judgement having regard to the relevant factors affecting its discretion. As part of the Committee's consideration, it will determine that any reduction in the sum of costs claimed is appropriate by taking into account the member's financial, personal and all other relevant circumstances.

### **Financial circumstances**

20. The Committee will review member's financial circumstances to assess what amount they are able to pay. A number of factors might be relevant here. For example, the Committee will consider the member's current income and their earning potential. The Committee will also take into account any savings and assets they have, as well as their regular liabilities and any other debts.
21. Relevant financial factors may include:
  - 21.1 current Income and likelihood of income in the future;
  - 21.2 existence and nature of assets;
  - 21.3 involvement with, or ownership of other businesses;
  - 21.4 amount of debt and any other liabilities, or likely future liabilities;
  - 21.5 amount and reasonableness of stated outgoings;
  - 21.6 insolvency (actual or pending).

### **Personal circumstances**

22. As well as financial factors, the Committee will also consider the member's personal circumstances. The Committee will look at their current health, family situation, ability to earn, whether they have any dependants and what, if any, impact our decision to recover money due will have on them.

### **ACCA's claim for costs**

23. ACCA's claim for costs will typically include the reasonable costs of:
  - 23.1 Time spent by staff from the Investigation and Adjudication Departments in investigating the case and bringing the disciplinary proceedings;
  - 23.2 Disbursements, for example, the cost of obtaining translations of foreign documents, fees of the independent assessor, expert witness fees;
  - 23.3 Disciplinary hearing costs which comprise fees and expenses paid to members of the Committee and the legal adviser, venue and catering costs. Where the hearing takes place outside London, the fees claimed will be based on London rates not the actual costs incurred (as these are more expensive);
  - 23.4 Photocopying and postage costs incurred in sending out the document bundles which are used during the hearing;
  - 23.5 The expenses of any witnesses called by ACCA and/or the member to give oral evidence at the disciplinary hearing. These costs may include the reasonable costs of their travel, meals and demonstrable loss of earnings.

## **SECTION 3: POST-HEARING**

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### **Appealing against a costs order**

24. Regulation 3(3) of the Chartered Certified Accountants' Appeal Regulations 2014, as amended on 1 January 2018 provides that a member cannot appeal solely on the question of costs unless the order was perverse or unreasonable or paying the sum ordered, would cause him severe financial hardship. If an appeal is made against the findings and/or orders made by the Committee, this can include an appeal against the costs awarded. Where an oral hearing takes place before an Appeal Committee, ACCA will as a matter of course seek the costs of dealing with the appeal in addition to any costs awarded by the Committee.
25. Where the party appealing (the appellant) withdraws their appeal, and the other party applies for their costs, the Appeal Committee has discretion to make any such order for costs as it sees fit.

### **Payment of costs**

26. Any order that a sum be paid to ACCA or the complainant must be complied with immediately from the date the order becomes effective (unless the Council otherwise agrees) and, where the member 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.
27. ACCA will notify the member in writing that payment of the costs owed to ACCA must be paid immediately.
28. Where an order for costs is made against ACCA, payment must be complied within 21 days from the date the order becomes effective.



## Deferral of payment date or variation of payment

29. The member can seek to defer the due date for payment or vary any payment providing any representations are submitted in advance of the due date for payment. Where the member intends to defer the due date for payment or vary any payment, written representations should be submitted to ACCA's Adjudication Department. Upon receipt of any written representations, ACCA will determine whether the due date for payment or the payment itself can be varied. The ACCA's decision is final.

## Enforcement of a costs order

30. ACCA is entitled to recover from the member or his personal representatives, any costs which the member has been ordered to pay even if membership has ceased irrespective of how this has come about. Where a member has been ordered to pay ACCA's costs, an invoice for payment of the full sum will be sent to the member after the due date for payment has lapsed.
31. If the outstanding sum remains unpaid, ACCA will take action to enforce the costs order. Where appropriate, ACCA will commence legal proceedings in the civil courts to recover the debt and will seek the costs or doing so from the member. Where proceedings are issued, ACCA will also claim interest on the outstanding sum and will take appropriate enforcement action to ensure the sum is paid. ACCA has been successful in recovering unpaid costs where we have found it necessary to issue civil proceedings.
32. Additionally, Regulation 11(1) of The Chartered Certified Accountants' Membership Regulations 2014, as amended on 1 January 2018 provides a member shall be removed from the applicable register where any sum owed to ACCA remains unpaid for three months from the date on which it was due to ACCA.
33. Accordingly, where a member fails to pay when due, any costs imposed by the Disciplinary Committee or Appeal Committee, he will be removed from the relevant register. Following any such removal, any application by the same member for readmission to ACCA's register at a later date, cannot be processed administratively as would normally be the case. The member must first pay all outstanding sums to ACCA before his readmission application can be processed and his suitability for readmission to membership will be considered by ACCA's Admissions and Licensing Committee who are required to have specific regard to the circumstances surrounding the member's cessation of membership.



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