

ACCA

# Guidance on publicity



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Think Ahead



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## SECTION 1: INTRODUCTION

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1. The purpose of the Guidance for Publicity ('the Guidance') is to assist the Disciplinary, Admissions and Licensing, Interim Orders, Health and 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 considering the appropriate action to take, for example based on the outcome of a hearing;
  - the Committee to provide clarification on ACCA's position on publicity;
  - ACCA members, firms, registered students or non-members bound by the ACCA disciplinary regime ('relevant person(s)') so that they are aware, prior to any hearing, of what the Committee's range of options are during a 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.

### Purpose of publicity

5. It is a settled principle of law that the purpose of publicity by a professional regulatory body is to:
  - Protect the public interest;
  - Maintain public confidence in the profession and the administration of justice;
  - Maintain proper standards of conduct.
6. ACCA is committed to being transparent and open about its processes and the outcomes of its disciplinary and regulatory proceedings, whilst also balancing the need to protect the confidentiality of relevant persons, witnesses or other people where necessary and/ or appropriate.

### Publication of information

7. Information concerning any ACCA hearing is published in two places:
  - On the ACCA website: In the list of forthcoming and concluded hearings in the form of a summary Pre and Post News Releases, together with the reasons;
  - Local press to whom the Post Hearing News Prelease is issued in all DC cases (UK and Ireland cases only).

## Open justice

8. ACCA adheres itself to the principle of open justice. The starting point is that Disciplinary Committee, Admissions and Licensing Committee and Appeal Committee hearings are held in public and that any member of the public may therefore attend and observe the proceedings. There are however certain exceptions and in general the Consent Orders Committee, Health Committee and Interim Orders Committee hearings will be heard in private and will not therefore be open for the public to attend.
9. In practice publicity will invariably follow a hearing that is held in public, save for those exceptions, and subject to the provisions, set out above and in more detail below.

## Open and private hearings

10. As set out above, in the majority of cases the starting point is that ACCA hearings are open to the public. The Committee can however determine upon application by either party or of its own motion to exclude the public from attending all or part of the hearing at any time during the case.
  - Regulation 11(1)(a), Complaints and Disciplinary Regulations (Disciplinary Committee);
  - Regulation 6(13)(a), Authorisation Regulations (Admissions and Licensing Committee);
  - Regulation 18(1), Appeal Regulations (Appeal Committee).
11. The Committee must satisfy itself that there are exceptional circumstances which outweigh the public interest in the hearing being open to the public before acceding to any application for a hearing to proceed in private. Common examples of exceptional circumstances would include the following (the list is not exhaustive):
  - health;
  - sexual allegations;
  - vulnerable third parties (adverse effect on third parties to infringe ECHR Art 8.);
  - minors involved with the factual nexus; and
  - interests of morals or public order.
12. In the event that all or part of the hearing is heard in private session, the Committee should prepare both a private and public decision. The private decision will be retained by ACCA and provided to the relevant person. The public decision will be publicised on ACCA's web site; in certain circumstances the hearing being held in private session will require ACCA to anonymise all or some parties named in the Committee's decision.

## Forthcoming hearings

13. ACCA will give advance publicity of any hearing taking place in such a manner as ACCA thinks fit. ACCA will give advance publicity of any hearing pursuant to the following:
  - Regulation 11(3)(a), Complaints and Disciplinary Regulations (Disciplinary Committee);
  - Regulation 3(5)(a), Authorisation Regulations (Admissions and Licensing Committee);
  - Regulation 6(14)(a), Authorisation Regulations (Admissions and Licensing Committee);
  - Regulation 6(3)(a), Interim Orders Regulations (Interim Orders Committee);
  - Regulation 18(1), Appeal Regulations (Appeal Committee).
14. The following information is put into the public domain, by being published on ACCA website under the heading 'Notices of Hearings' under the tab for the applicable year, as soon as possible after service of the notice of hearing. In most cases, this will be at least 14 days before the hearing starts:
  - The relevant person(s) name(s);
  - Date and venue of the hearing;
  - The public allegation(s) to be faced by the relevant person or a summary of those allegation(s) where appropriate. Where the allegation(s) relate to a conviction outside the workplace, it will identify the court(s) at which the relevant member, firm, registered student, non-member bound by the ACCA disciplinary regime was convicted and sentenced.
15. The website contains a notice to the effect that the allegation(s) published is the allegations(s) served on the relevant person, but it may be subject to amendment during the course of the hearing. The published allegation(s) will not include any information relating solely to the relevant person's health. The names of any witnesses or other people will not appear in the published allegation(s).

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

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### Introduction

16. The Committee are totally independent of ACCA and are free to exercise their own judgement in making decisions:
  - According to the evidence provided and the facts found;
  - 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

#### *The Disciplinary Committee*

17. The Disciplinary Committee deals with any disciplinary matters referred to it by an independent assessor, following an investigation by ACCA of an allegation made against a relevant person.
18. Complaints and Disciplinary Regulation 11(3)(b) requires that, following a hearing ACCA shall publish all findings and orders of the Committee, together with the reasons for the Disciplinary Committee's decision in whole or summary form, naming the relevant person, as soon as practicable. Nevertheless, the reference to 'as applicable' infers that ACCA would not publicise any details of the findings where the Disciplinary Committee found none of the allegations proved.
19. Complaints and Disciplinary Regulation 11(3)(e) indicates the Insolvency Service may publish the names of holders or former holders of ACCA's insolvency licence who are subject to an order made by the Disciplinary Committee, and details of the findings and orders made in such a manner as it thinks fit.
20. The Disciplinary Committee no longer considers the issue of publicity except cases concerning statutory audit. The Disciplinary Committee may, however pursuant to Complaints and Disciplinary Regulation 11(1) determine of its motion or upon application of the parties or any third party shall conduct the whole or part of the hearing in private, therefore excluding the public from attending all or part of the hearing at any time, on the grounds that the particular circumstances of the case outweigh the public interest in holding the hearing in public.
21. Following a hearing which been held wholly or partly in private, the Disciplinary Committee pursuant to Complaints and Disciplinary Regulation 11(3)(c) shall prepare a private set of reasons to be served upon the parties only. A public set of reasons will also be prepared and will accordingly be published.

***The Consent Orders Committee***

22. The Consent Orders Committee is responsible for considering draft consent orders referred to it by the parties.
23. Complaints and Disciplinary Regulation 8(15) requires that all findings and orders of the Consent Orders Committee shall be published, naming the relevant person, as soon as practicable and in such manner as ACCA thinks fit.

***The Admissions and Licensing Committee***

24. The Admissions and Licensing Committee is responsible for considering applications and continuing eligibility for a practising certificate, auditing certificate, insolvency licence and investment business certificate (Republic of Ireland). Provided an application meets the criteria specified from time to time by the Committee, the power to grant the application is, in a large number of cases, delegated to ACCA staff.
25. Subject to paragraph 29 below, Authorisation Regulation 3(5)(b) provides that the Admissions and Licensing Committee shall publish all decisions made by it following a hearing in respect of any application made pursuant to Authorisation Regulation 3, together with the reasons for the decision in whole or summary form, naming the relevant person, as soon as practicable.
26. Subject to paragraph 29 below, Authorisation Regulation 6(14)(c)(i) requires that, where the Admissions and Licensing Committee has withdrawn, suspended or imposed conditions on a certificate pursuant to regulation 6(15)(a)(ii) to (iv), the decision shall be published as soon as practicable.
27. Subject to paragraph 29 below, Authorisation Regulation 6(14)(c)(ii) provides that, in the event the Admissions and Licensing Committee does not withdraw, suspend or impose conditions on a certificate pursuant to regulation 6(16)(a)(ii) to (iv), the decision shall not be published, unless the relevant person requests publication of the decision in whole or in summary form.
28. Subject to paragraph 29 below, Authorisation Regulation 6(14)(c)(iii) indicates that, in the event the relevant person relinquishes his certificate before a hearing takes place, details of the fact and of any consequential orders made by the Admissions and Licensing Committee shall be published as soon as practicable.
29. Where a hearing is held wholly or partly in private, Authorisation Regulations 3(5)(c) and 6(14)(d) requires that the Admissions and Licensing Committee shall prepare a private set of reasons in accordance with Authorisation Regulation 3(7) or 6(17) (as applicable) which must be served upon the parties only, together with a public set of reasons which comply with Authorisation Regulation 3(5)(b) or 6(14)(c) (as applicable), as soon as practicable.
30. Authorisation Regulation 6(12)(f) denotes the Insolvency Service may publish the names of holders or former holders of ACCA's insolvency licence who are subject to a decision made by the Admissions and Licensing Committee, and details of the findings and orders made in such a manner as it thinks fit.
31. The Committee no longer considers the issue of publicity except cases concerning statutory audit. The Committee may, however pursuant to Authorisation Regulation 6(12)(a) determine of its own motion or upon application of the parties or any third party shall conduct the whole or part of the hearing in private, therefore excluding the public from attending all or part of the hearing at any time, on the grounds that the particular circumstances of the case outweigh the public interest in holding the hearing in public.

***The Interim Orders Committee***

32. The Interim Orders Committee is empowered to make an interim order against a relevant person, only if it is satisfied that it is necessary to do so in order to protect the public.
33. The Interim Orders Committee sits in private, however Interim Orders Regulation 6(2)(b) provides that the Committee may hold a hearing in public where it considers that to do so would be appropriate, having regard to all the circumstances, including the public interest.
34. Interim Orders Regulation 6(3)(b) indicates that in the event an order is made, ACCA shall publish the order, the reference to 'where applicable' infers that the order will not be published where no order is made.
35. Following the hearing, the Interim Orders Committee pursuant Interim Orders Regulation 7(9) shall prepare a private set of reasons to be served upon the parties only, as soon as practicable.

***The Health Committee***

36. The Health Committee is responsible for determining whether a relevant person is fit to participate in the process or proceedings they are subject to, and if not, what orders should follow as a consequence.
37. The Health Committee sits in private, however Health Regulation 10(1) provides that the Committee may hold a hearing in public where it considers that to do so would be appropriate, having regard to all the circumstances, including the public interest.
38. Health Regulation 10(3)(b) indicates that in the event an order is made, ACCA shall publish the order, the reference to 'as applicable' infers that the order will not be published where no order is made.
39. Following the hearing, the Health Committee pursuant Health Regulation 10(2)(c) shall prepare a private set of reasons to be served upon the parties only, as soon as practicable.

***The Appeal Committee***

40. The Appeal Committee hears appeals from decisions of the Disciplinary Committee, the Admissions and Licensing Committee, and the Health Committee.

***Appeals from the Disciplinary Committee***

41. Appeal Regulation 18(2)(a) requires that, all orders and findings by the Appeal Committee shall be published, together with the reasons for the Appeal Committee's decision in whole or in summary form, naming the relevant person, as soon as practicable.
42. Following a hearing which been held wholly or partly in private, the Appeal Committee pursuant to Appeal Regulation 18(2)(b) shall prepare a private set of reasons to be served upon the parties only. A public set of reasons will also be prepared and will accordingly be published.

***Appeals from the Admissions and Licensing Committee***

43. Appeal Regulation 18(3)(a) indicates that, all orders and findings by the Appeal Committee shall be published, together with the reasons for the Appeal Committee's decision in whole or in summary form, naming the relevant, as soon as practicable in such a manner as ACCA thinks fit.
44. Appeal Regulation 18(3)(b) provides that, in the event that the relevant person relinquishes his certificate before a hearing, details of the fact and of any consequential orders made by Appeal Committee shall be published, together with reasons for the Appeal Committee's decision in whole or summary form, naming the relevant person, as soon as practicable in such manner as ACCA thinks fit.

45. Appeal Regulation 18(5) requires that the Insolvency Service may publish the names of holders or former holders of ACCA's insolvency licence who are subject to an order made by the Appeal Committee, and details of the order made, in such publications and in such a manner as it thinks fit.
46. The Committee no longer considers the issue of publicity except cases concerning statutory audit. The Committee may, however pursuant to Appeal Regulation 17(1) determine of its own motion or upon application of the parties or any third party shall conduct the whole or part of the hearing in private, therefore excluding the public from attending all or part of the hearing at any time, on the grounds that the particular circumstances of the case outweigh the public interest in holding the hearing in public.

### **SECTION 3: INFORMATION ABOUT A MEMBER OR STUDENT'S HEALTH**

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47. The Committee shall ensure that any information relating solely to the health of a relevant person is not set out within their publicly available decisions. This information will be treated as confidential regardless of when the case was heard or whether the case was heard by Disciplinary Committee, Interim Orders Committee, Admissions and Licensing Committee or Appeal Committee.
48. The published decision and reasons will not include any information relating solely to the relevant person's health. Where necessary, the Committee will prepare private reasons for disclosure solely to the relevant person concerned and public reasons for the decision and wider disclosure.

#### **Multi-factorial cases**

49. Some cases involve a number of different factors, such as convictions, health or conduct. These are known as multi-factorial cases. When they are heard by the Disciplinary Committee, the panel hearing the case will endeavour to hold as much of the hearing in public and will only enter into private session whilst dealing with matters relating to the relevant person's health. The published reasons will also follow this approach.

#### **Witnesses**

50. 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.
51. The names of witnesses and third parties are not granted legal anonymity and can be released into the public domain on request.
52. In most public hearings, all the witnesses will give live evidence in public. In some circumstances witnesses may be allowed to give evidence by video or telephone link, albeit the hearing will still be in public and 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.

## **SECTION 4: STATUTORY AUDITORS AND THIRD COUNTRY AUDITORS REGULATIONS 2016**

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53. 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.
54. 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.
55. 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.
56. 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.

## **SECTION 5: STATUTORY AUDITORS PRACTISING AND/OR OPERATING IN IRELAND**

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57. The default position is that the relevant Committee's 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.
58. These provisions are relevant to the 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.
59. 59. Section 934F of the Companies Act 2014 (as amended) provides as follows:-
- '(3) The Supervisory Authority shall publish the particulars, comprising a public notice of a relevant sanction imposed, on an anonymous basis on its website in any one or more of the following circumstances:
- (a) the Supervisory Authority, following an assessment of the proportionality of the publication of those particulars in accordance with subsection (1) in so far as personal data are concerned, is of the opinion that, in relation to the relevant sanction imposed on a specified person who is an individual, such publication would be disproportionate;
  - (b) the Supervisory Authority is of the opinion that the publication of those particulars in accordance with subsection (1) would jeopardise the stability of financial markets or an ongoing criminal investigation;
  - (c) the Supervisory Authority is of the opinion that the publication of those particulars in accordance with subsection (1) would cause disproportionate damage to the specified person.
60. 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 relevant Committee exercises its discretion in this manner it will set out in writing the reasons for the decision.
61. 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.

## **SECTION 6: POST-HEARING OUTCOMES**

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62. At the end of a hearing before the Disciplinary Committee, Admissions and Licensing Committee, Consent Orders Committee, Health Committee and the Appeal Committee; the relevant Committee decisions list on the ACCA website is updated to show the decisions and reasons in all cases. All decisions concerning non-statutory audit cases remain on the website for approximately 24 months, however in cases where the relevant person is excluded for a specified period (for example five years); the decision will remain on the web site for duration of the specified period. In addition, regulation 6(4)(b) of SATCAR requires publication of the Committee's order and/or reasons must remain on ACCA's website for at least five years from the date of publication.
63. Any Interim Order made will remain on the website for the duration of the Order only.
64. All previous decisions remain in the public domain, and are available to the public on request.

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