

Guide to ACCA's Committee Unit and the Disciplinary and Regulatory Committees

DECEMBER 2011

Introduction

This guide explains the role of the Committee Unit in respect of ACCA's Disciplinary and Regulatory Committees and is intended to be a general guide only. In the event of any conflict between the content of this guide and the content of the *ACCA Rulebook*, the latter shall at all time take precedence. The *ACCA Rulebook* can be found on ACCA's website at www.accaglobal.com

This guide is up to date as at 23 December 2011. Any reference to 'members' should be read to include all members, students', affiliates and firms.

Overview of the role of the Committee Unit

The role of the Committee Unit is to ensure the effective operation of ACCA's Disciplinary and Regulatory Committees in line with ACCA's regulations and procedures. The Committee Unit is therefore responsible for the administration of the Admissions and Licensing, Disciplinary and Appeal Committees.

The Committee Unit is separate from the various departments within ACCA which refer cases to the Disciplinary and Regulatory Committees; it has no investigatory or regulatory function and takes no part in the referral of any matter to a Committee.

Before a hearing

Once a case has been referred to Committee, the Committee Unit will contact the member and provide them with:

- i a copy of the papers for the hearing and
- ii any other relevant information, including the date, time and location of the hearing.

WHEN TO EXPECT COMMUNICATION FROM THE COMMITTEE UNIT

Members will be provided with information in accordance with the timescales set out below:

Disciplinary Committee – At least six weeks prior to the hearing, the committee officer will provide the member with a copy of the papers which will be presented to the Disciplinary Committee, including a copy of the Guideline Disciplinary Sanctions, a witness proforma sheet, the adjournments policy and a financial statement. Members are strongly recommended to familiarise themselves with the guideline disciplinary sanctions as this provides the Committee with useful guidance when deciding what order will be imposed.

Members are required to complete the witness proforma, which must be completed and returned to the Committee Unit a minimum of 21 days prior to the date of the hearing. On this form, members should provide details of any witnesses they wish to give evidence during their hearing. Should you require the attendance of a witness the witness will be contacted and invited to attend the hearing. However, it is important to note that the attendance of any witness is entirely voluntary. ACCA

does not have the power to compel any witnesses to attend a hearing.

Members should also complete the financial statement. Whilst the completion of the financial statement is not mandatory, if an allegation is found proved against a member, the Committee will consider the members' financial position when considering making an order for costs and/or a financial penalty.

Admissions and Licensing Committee –

At least three weeks prior to the hearing, the committee officer will provide the member with a copy of the papers which will be presented to the Admissions and Licensing Committee, including a copy of the Guidance for Regulatory Orders and the adjournments policy if the member has not already been provided with these. Members are strongly recommended to familiarise themselves with the Guidance for Regulatory Orders as this will be used by the Committee in deciding what order to impose.

Appeal Committee – At least six weeks prior to the hearing, the committee officer will provide the member with a copy of the papers which will be presented to the Appeal Committee including a copy of the adjournments policy.

Members can also access the Guidance for Regulatory Orders and the Guideline Disciplinary Sanctions on ACCA's website at: www2.accaglobal.com/members/professional_standards/committees

PROVIDING FURTHER INFORMATION IN RESPECT OF A HEARING

Members may submit additional documentary evidence that they wish to be drawn to the Committee's attention, in accordance with the timescales set out below:

Disciplinary and Appeal Committee

Members may submit additional documentary evidence up to 21 days prior to the hearing.

Admissions and Licensing Committee

Members may submit additional documentary evidence up to seven days prior to the hearing.

Any documentary evidence submitted outside of these timescales will only be considered in exceptional circumstances and with the permission of the relevant Committee.

REQUESTING AN ADJOURNMENT OF THE HEARING

When a member is sent a copy of the papers, they will also be sent a copy of the Adjournments Policy. This should be read before the submission of any request for an adjournment. A copy of the Adjournments Policy can also be found at: **www2.accaglobal.com/members/professional_standards/committees/adjournments**

If a member wishes to request an adjournment of their hearing, this should be done in writing to the Committee Unit.

An application for an adjournment should be made at the earliest possible opportunity, giving reasons with supporting documentary evidence. Such requests will be considered by the chairman of the Committee.

If the adjournment is refused by the chairman, it shall be considered by the Committee at the outset of the hearing. If an adjournment is granted, the member will be informed in due course of the new hearing date. However, it is important to note that the Committee may impose conditions on the granting of such an adjournment, which may include, for example, the suspension of a member's practising certificate (if applicable) or membership during the adjournment period.

QUESTIONS ABOUT THE HEARING

If a member has any questions in advance of the hearing, they are given the opportunity to contact the clerk to the Disciplinary and Regulatory Committees. The clerk does not take part in ACCA's investigative processes. The clerk is not able to give legal advice, but can provide assistance on procedural matters and answer any questions the member may have.

On the hearing day

The member should arrive at the hearing venue at least 30 minutes before the hearing is due to start, in order to meet with the clerk.

The role of the clerk is to assist members, and the Committee, in understanding the hearing procedure and to ensure the hearing is conducted fairly.

Before the hearing commences, the clerk will speak to the member in private, along with any legal representative or support person that they have chosen to accompany them. The clerk's discussion with the member will include topics such as the nature of the allegation and the details of the hearing process.

The clerk will also ensure that the member is aware of the Committee's powers, and the range of possible orders, including sanctions, costs and publicity, available to them. It is important to understand that the clerk cannot provide legal assistance to members, i.e. the clerk cannot be the member's advocate.

ATTENDING THE HEARING

Members are encouraged to attend the hearing. The Committee finds it very helpful to hear from members personally at a hearing, particularly if questions arise on the day. It would also enable members to respond to any points that arise during the hearing. If in doubt as to whether attending would be advantageous, members should consult their own professional adviser. If members do not attend, or in addition to attending, members may make written submissions for the Committee to consider.

If a member decides to attend the hearing (and they may do so, even if they have previously indicated that they do not intend to), the member should telephone or email the committee officer prior to the hearing date in order to be allocated a time for their case to be heard. Before being allocated a time they may also be asked to give an indication as to how long their evidence and representations may take. It is important to note that due to the nature of ACCA's hearings, there may be delays on the day and members should be aware that their hearing may start later than expected. Where possible, members will be advised if this is the case.

If neither the member nor the member's representative attends the hearing, the case may be heard in their absence unless an adjournment is granted at the member's request or at the Committee's own volition. Complaints and Disciplinary Regulation 5 (4) (b) provides:

"Where the relevant person fails to attend a hearing, the case may be heard in his absence provided the Disciplinary Committee is satisfied that he has been served with the documents referred to in regulation 5(1) in accordance with regulation 7(1)."

The Committee must therefore make a two-stage decision:

- 1 has service been effected in accordance with the regulations?
- 2 if yes, is it appropriate in all the circumstances to proceed with the hearing in the absence of the relevant person?

Members are strongly advised to seek legal representation. Members can also bring along a support person if they wish such as friend or family member.

DURING THE HEARING

The Committee does not operate like a court but as a tribunal where a member's conduct is assessed. The Committee is not bound by the strict rules of evidence that apply in courts of law and may consider any relevant evidence brought to its attention.

Hearings are generally held in public, which means that anyone may attend. The Committee may, in an appropriate case, decide to hear a matter in private for all or part of the proceedings and for documentary evidence to be received without being read aloud.

When the Committee is ready, the Committee members will enter the hearing room. Once seated, the Chairman of the Committee will introduce the Committee members, the members of the Appointments Sub-Committee (if attending), ACCA staff and the case presenter, who is the individual responsible for presenting the case on ACCA's behalf.

The Chairman will then briefly explain the procedure of the hearing, and confirm that the hearing will be recorded to provide an accurate record of the proceedings.

The Chairman will ask the clerk to confirm the member's identity and particulars. If the member is attending a Disciplinary Committee hearing, the clerk will read out the allegations and ask the member whether or not the allegations are denied

or admitted. The case presenter then presents the case by reference to the documents and evidence before the Committee and may call witnesses.

When the case presenter has concluded his/her presentation, the Committee may ask questions of him/her, if it requires clarification on any point. It may also ask questions of any witnesses. The member may also ask the case presenter for any clarification and may ask questions of any witnesses.

If the member has denied the allegations against him/her, the member will then be asked to present his/her case. The member is not obliged to give evidence and may present his/her case either verbally or by way of written representations. The member may call witnesses to support his/her case and the case presenter and members of the Committee may ask questions of them.

On completion of the member's presentation, members of the Committee and the case presenter may ask the member questions. The member is not obliged to answer, but usually the Committee finds it helpful to obtain additional information in this way. After any questioning has finished, the case presenter and the member or the member's representative will be given an opportunity to make further representations upon any matter raised during the questioning.

The Committee will then withdraw, accompanied by members of the Appointments Sub-Committee (who do not take part in the Committee's deliberations),

On the hearing day

to consider its decision. The member will remain in the hearing room until the Committee members have reached their decision. When the Committee reconvenes, the Chairman will announce its findings. The Committee will firstly decide whether the facts set out in each allegation are proved and secondly decide whether those facts engage the disciplinary bye-law referred to in the allegation.

If the Committee has not found any allegations proved, the proceedings are terminated, subject only to any order for costs that might be made in the member's favour, and no record of the matter for disciplinary purposes will be retained on the member's file.

If the Committee has found one or more of the allegations proved, or the member has admitted them and the Committee has found them proved, the Committee will provide a brief summary of any matters it considered in finding the allegation(s) proved in order to assist the member when making submissions in mitigation and in relation to costs and publicity.

The clerk will then inform the Committee whether any disciplinary orders have previously been made against the member. The Committee will then withdraw to consider the sanction(s) and other orders to be made.

The Committee may request clarification of its powers from the clerk but the clerk does not take part in the decision-making. The Committee will return to announce:

- the content of any advice received from the clerk;
- the sanction(s) imposed;
- the costs to be awarded; and
- the order for publicity of its decision.

ACCA's regulations require ACCA to publish its findings and orders by way of a news release naming the member, as soon as the order has become effective. This applies to all decisions of the Disciplinary Committee where an allegation has been found proved, all decisions of the Admissions and Licensing Committee where a member's practising certificate or licence has been withdrawn, and all decisions of the Appeal Committee.

The Committee has discretion as to which publications the news release should be sent and discretion in exceptional circumstances to direct that the member is not named. During the hearing, members will have a chance to make representation to the Committee about any exceptional circumstances which may affect the Committee's order in respect of publicity.

If appearing before the Appeal or Admissions and Licensing Committee the procedure is slightly different to that of the Disciplinary Committee there are no 'allegations' to read out just the member's particulars.

If the member is making an application before the Admissions and Licensing Committee (as opposed to being referred to Committee by the Practice Monitoring Directorate) it is the member's responsibility

to persuade the Committee as to why the application should be granted. For example if the member wishes to be reinstated to membership, the member must satisfy the Committee of their 'general character and suitability' (and any other requirements, depending on the Membership Regulation involved). If the member is also applying for a Practising Certificate the member needs to persuade the Committee that (s)he is a 'fit and proper' person.

In terms of presentation and the procedures that should be followed before the Appeal or Admissions and Licensing Committee, it is the same as that of the Disciplinary Committee except that the Committee will only retire once to consider their decision. On appeal, if it is the member's application the member will present their case first.

After the hearing

At the end of the hearing, the Committee will announce their decision. When the hearing has concluded, the clerk will explain to the member the next steps.

Members will be formally notified by letter of the decision of the Committee. Shortly thereafter, and usually within 21 days, they will receive written reasons for the decision of the Committee. If a decision was taken by the Disciplinary Committee or the Admissions and Licensing Committee, along with the reasons the member will also be sent a form of application notice for permission to appeal.

A member has a right to apply for permission to appeal within 21 days after receiving the written reasons for the decision. The decision of the Committee will normally not take effect until the appeal period has expired, or until the outcome of any application for permission to appeal which has been lodged. However, in certain circumstances the Committee may order that its decision takes effect immediately.

In exceptional circumstances, where there is a clear public interest in the decision being reviewed, ACCA may apply for permission to appeal the decision of the Admissions and Licensing or Disciplinary Committee.

If a decision is made by an Appeal Committee, that decision is effective immediately, ie as soon as it is announced. When the hearing has concluded, the clerk will explain the implications of the decision and the steps the member needs to take in order to comply with the Committee's decision.

For further information or any queries about ACCA's Disciplinary and Regulatory Committees, please contact:

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ACCA
29 Lincoln's Inn Fields
London WC2A 3EE
Committeeunit@accaglobal.com

Please also see:

Member's guide to Admissions and Licensing Hearings

www2.accaglobal.com/documents/ALC_Guide.pdf

Member's guide to Disciplinary Procedures

www2.accaglobal.com/documents/members_guide_2008.pdf

December 2011 © ACCA 2011

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