

Guide to ACCA's complaints and disciplinary procedures



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Introduction

This guide aims to assist complainants and members to understand ACCA's complaints and disciplinary process. In the event of any conflict between this guide and the *ACCA Rulebook*, the latter shall at all times take precedence. The *ACCA Rulebook* can be found on our website at **www.accaglobal.com**

This guide was published in July 2019.

Any reference to 'members' should be read to include all members, students, affiliates and firms, unless the contrary is indicated.

Overview

Members of ACCA are required to observe proper standards of professional conduct as set out in ACCA's Code of Ethics and Conduct. ACCA takes disciplinary action where there is evidence of a serious failure to observe those standards. Approximately 20% of cases we deal with fall into that category.

Sometimes a mistake resulting in loss or inconvenience can occur despite a member's best efforts. It will usually be more practical and appropriate for ACCA's conciliation service to help resolve the problem before considering whether any issues require referral to the Investigations Department.

TYPES OF COMPLAINT THAT ACCA WILL INVESTIGATE

For details about the types of complaint that ACCA can investigate, visit our website at https://www.accaglobal.com/content/dam/ACCA_Global/disc/complain/complaints-ACCA-will-investigate.pdf

LEGAL CLAIMS

ACCA acts in the public interest and as such we act for the benefit of the public as a whole, rather than for individual complainants or members.

Making a complaint against a member is not a substitute for seeking compensation or other remedies through the courts. ACCA's jurisdiction over its members is regulatory and disciplinary in nature. We

cannot give you legal advice nor provide recompense for any monetary loss suffered. Therefore, if you feel you have a claim against an ACCA member we recommend that you seek independent legal advice.

Members in practice are required to hold professional indemnity insurance. They ought to acknowledge any letter sent to them setting out a legal claim, but neither they nor ACCA are obliged to provide their insurance details to you.

FEE DISPUTES

Fee disputes are legal claims, therefore the courts are the proper forum for deciding such matters. However, we will attempt to conciliate a fee dispute where possible. We cannot advise on what is a reasonable sum for work done, but can tell you whether members have complied with ACCA's regulations relating to fees.

HOW DO I MAKE A COMPLAINT?

Before raising a complaint with ACCA, you must give our member sufficient opportunity to resolve the matter through his or her firm's internal complaints procedures where appropriate. ACCA regulations require firms to have in place internal complaints-handling procedures. Your complaint should be investigated by a person of seniority within the firm who, where possible, has not been directly involved in the matter. Please use the '*How to complain*' standard letter provided

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at: <https://www.accaglobal.com/vn/en/footer/footer/contact-us/make-a-complaint-about-an-acca-member.html>. We will not consider your complaint unless this route has been exhausted.

If after four weeks the firm has not resolved your complaint, you may request ACCA's assistance by contacting the conciliation service on +44 (0)20 7059 5000. In the event that you are unable to resolve your complaint with the firm you may lodge a complaint using our online complaint form provided at the web address above. Failing to use the complaint form may result in your complaint being delayed or rejected.

To avoid delays, please ensure you answer all questions on the form and attach a copy of all your correspondence with the firm and copies (not originals) of all other documents which support your complaint. If you are unable to lodge the complaint online, you may send a hard copy to:

ACCA, Assessment Department
The Adelphi
1/11 John Adam Street
London WC2N 6AU
T: +44 (0)20 7059 5000
F: +44 (0)20 7059 5998
E: complaintassessment@accaglobal.com

Please note that we may be unable to proceed with your complaint if you fail to provide supporting documentation, or if you do not confirm that you will be willing to give evidence at any future disciplinary hearing if asked to do so.

AFTER THE COMPLAINT IS MADE

If you make a complaint but later decide to withdraw it, ACCA may nevertheless proceed with an investigation if it is in the public interest to do so.

It is important that members and complainants keep us informed of any changes in their contact details and indicate their preferred method of contact.

WHO WILL DEAL WITH THE COMPLAINT?

Once your complaint is received we will write to confirm that we have received it. The complaint will then be assessed by a manager who will decide if the complaint is appropriate for conciliation or investigation. You may be contacted during this time to discuss the complaint in more detail. If the complaint is not appropriate for ACCA to investigate or is outside ACCA's jurisdiction, it will be rejected and the member will be notified.

If appropriate, attempts will be made to resolve the matter by conciliation, for example where the complaint is a fee dispute or has arisen because of misunderstandings or lack of communication. Further information about ACCA's conciliation service is provided later in this guide.

If conciliation is not appropriate, or if after conciliation there are potentially serious matters which require further investigation, the case will be referred to Investigations.

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ANONYMOUS COMPLAINTS

Members are generally entitled to know the identity of the person making the complaint against them. However, we appreciate that sometimes this is not appropriate, and therefore complainants may ask ACCA to refrain from sharing their identity with the member. Note that their identity may be apparent to a member from the context of the complaint as well as their name; so complainants should let us know if they have any particular concerns relating to other information they provide.

If you do ask for your identity not to be shared, you will not be a 'complainant' within the definition of our regulations and will not have the right to challenge our decisions or be kept informed of the progress of the investigation. In addition, we may not be able to take the complaint forward or investigate it fully.

Note that in exceptional circumstances (for example where a complaint reveals a potential criminal matter), we may need to involve you even if you have requested not to be identified, in which case we will seek to discuss this with you. We may still retain your personal details within our own records and these may be shared with other parties during the course of the investigation, and in other appropriate circumstances referred to under 'Disclosure of information to other parties' below.

CONFIDENTIALITY

As a general rule, ACCA's complaints procedures are private and confidential. Information which you or your representative exchanges with ACCA about the complaint should be kept securely, and not disclosed or discussed with parties not directly involved with the complaint. Complaints and investigations are sensitive matters, and it could cause detriment to one or more parties if information is shared or disclosed without proper authority.

INFORMATION YOU PROVIDE TO US

During the course of an investigation, we will seek to obtain information and evidence from both sides.

Please aim to provide us with all relevant information requested to enable us to assess the matter. You should not, however, provide us with unnecessary information about individuals unrelated to the complaint. If, for example, you extract records from your business systems and databases, please send us relevant extracts only. This is to ensure that both you and we comply with applicable data protection requirements.

You may suggest other people we should contact to discuss the complaint. If so, please make such other people aware that you are sharing their contact details with us (or let us know if this is not feasible).

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Similarly, if the evidence you send to us includes significant information relating to another person, we may need to discuss with you whether to involve such other person in the matter.

SOURCES OF INFORMATION

In order to investigate a complaint effectively, we may obtain and use information from a variety of sources. These include the parties to the complaint and any witnesses, ACCA's existing records (including current or former membership records and complaints files), public sources and other third parties (such as company information databases, websites, other regulators and legal authorities).

HOW WE USE YOUR INFORMATION

ACCA will use information about you or which you provide to us in order to assess and manage the complaint and, as appropriate, conduct conciliation, investigate the complaint and take disciplinary action. These procedures are described in more detail later in this booklet.

ACCA will continue to maintain records of complaints and disciplinary proceedings following closure of the matter in accordance with its records retention procedures.

DISCLOSURE OF INFORMATION TO OTHER PARTIES

Information about you or which you provide to us may be disclosed to other parties during the course of the complaints and disciplinary process, as described elsewhere in this booklet. These may include the other party to the complaint, independent assessors, Disciplinary Committee members, legal advisers, professional bodies of dual members and third parties undertaking investigations on our behalf.

The other party to a complaint may also make a subject access request to us (see 'Further information'), which may require us by law to disclose additional information relating to them. This right of access is subject to some exceptions, so please let us know any concerns in disclosing information you have provided. If you are a complainant, we will seek to maintain the confidentiality of your identity where you have asked us to do so (as referred to above).

ACCA may notify professional bodies of dual members, its oversight bodies and other relevant regulators (within and outside of the UK) of disciplinary action taken against a member and the outcome of hearings. The scheduling and outcome of hearings may also be published on ACCA's website and in the press, and hearings are usually open to the public. As a member, note you may also have your own obligations to notify other regulators of disciplinary matters. Further information about Disciplinary Hearings is provide below.

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From time to time we receive requests for information from third parties carrying out public functions, for example the Police, the Official Receiver or from other professional bodies in respect of dual members. Such requests are assessed on a case by case basis, and information may be disclosed where required by law or where, in ACCA's opinion, the legitimate interest of the third party and/or the public interest outweighs any prejudice to your rights and interests. Additional disclosures may be made in appropriate circumstances in order to carry out our regulatory functions, protect or defend legal rights, investigate or prevent crime or to comply with legal obligations.

FURTHER INFORMATION

Further information for members about how ACCA uses your personal data is available in our data protection notice on our website at: <https://www.accaglobal.com/my/en/footer/footer/privacy/data-protection.html>

CONDUCT TOWARDS ACCA STAFF

ACCA appreciates that it can be stressful to make or receive a complaint. However, that does not excuse rude, abusive or bullying communications, or any other inappropriate behaviour amounting to harassment of ACCA staff. It can be both personally upsetting and counterproductive as it is likely to slow down the investigation process while resources are diverted to dealing with it.

ACCA does not tolerate such conduct towards its staff and will take action against any party who, after a warning, continues to communicate with ACCA in an inappropriate manner.

Conciliation: a practical way of resolving disputes

WHAT IS CONCILIATION?

Conciliation is a flexible process that involves negotiation and discussion between the member and complainant with a conciliator assisting. It allows both parties to settle a problem and reach a satisfactory outcome. The conciliator assists both parties as he or she acts neither for the member nor the complainant, rather seeks to find a solution which is acceptable to both.

WHAT ARE THE BENEFITS OF CONCILIATION?

When people are in dispute with each other, it is sometimes difficult for them to step back from the situation and take stock. As a neutral party, the investigating officer is able to take an objective view and suggest solutions. A negotiated outcome is likely to be more satisfactory to both parties and often has the advantage of avoiding legal action.

IS CONCILIATION APPROPRIATE FOR MY CASE?

When a complaint is lodged with ACCA about a member, the assessment manager will assess the complaint for any aspects which may be appropriate for conciliation and a member of the conciliation service will contact you shortly thereafter to discuss your complaint with you. Examples of areas that the conciliation service can assist with are fee disputes, dissatisfaction with the level of client care and problems when moving to a new accountant.

If a complaint would benefit from conciliation and is retained by the conciliation service, it does not mean that it is less important than other complaints, but simply that it can be handled in a different way.

HOW DOES CONCILIATION WORK?

ACCA's conciliation service is run by a lawyer and accredited mediator. In addition there are two senior investigations officers, both of whom are accredited mediators. There are four main steps to the process.

- The investigating officer does most of the work on the telephone, contacting both parties in order to gain full background information and an understanding of what you are hoping to achieve. You will be required to inform the investigating officer of your full complaint during the initial phone call and provide supporting evidence if requested. Complaints added later may not be considered and delays in providing supporting evidence may result in the investigating officer being unable to assist.
- Once the investigating officer has a clear picture of the problem, he or she will suggest possible ways of resolving it and will encourage the parties to adopt a practical approach.

Conciliation: a practical way of resolving disputes

- The investigating officer may need to remind the member of his or her obligations under ACCA's *Rulebook*. If the member is found to have breached a regulation, the investigating officer will require the breach to be rectified where appropriate.
- At the conclusion of the process, the investigating officer will normally confirm the outcome by telephone and in writing. Many cases are resolved successfully. However, sometimes parties are unwilling or unable to accept a solution and in such cases conciliation is considered to have been unsuccessful.

WHAT HAPPENS TO THE COMPLAINT?

After the conciliation process has concluded (whether successful or unsuccessful), the case is usually closed. If the investigating officer has identified that a breach of ACCA's regulations has occurred and it is not sufficiently serious to warrant disciplinary action it will be stated when the case is closed. However, if there are any disciplinary issues indicated, such as serious breaches of regulations, the case remains open and is referred to the investigations team.

If the complaint is closed following unsuccessful conciliation, the complainant may request that the investigating officer's decision be reviewed by an independent assessor. The role of the assessor is explained later in this guide.

A request must be submitted in writing with detailed grounds for review within 30 days of notification of the decision.

THE ACCA MEDIATION AND ARBITRATION SCHEMES

ACCA has an agreement with the Chartered Institute of Arbitrators to set up and independently administer The ACCA Mediation Scheme and The ACCA Arbitration Scheme. Full details, including guidance notes and application forms, are available in the scheme documents on our website at www.accaglobal.com or in hard copy upon request from ACCA.

Copies can also be obtained direct from the Chartered Institute of Arbitrators by telephoning +44 (0)20 7421 7444. Further information about the Chartered Institute of Arbitrators can be found at <http://www.ciarb.org>

Investigation

HOW DOES THE PROCESS WORK?

When a decision is made to investigate a complaint, an investigating officer will confirm their understanding of the complaint and the issues to be investigated with the complainant. The investigating officer will then send details of the complaint, including a copy of the material submitted by the complainant, to the member and request their written response and relevant documents.

Complaints and Disciplinary Regulation 4(3) sets out the investigation process. For further information on the regulations see ACCA's *Rulebook* at: <https://www.accaglobal.com/gb/en/about-us/regulation/rulebook.html>

During the course of the investigation, ACCA may disclose to the member the correspondence and documents received from the complainant, and vice versa, unless a specific request is received to the contrary and that request is reasonable.

DUTY TO CO-OPERATE

In accordance with Complaints and Disciplinary Regulation 3(1), members are required to co-operate with an investigation. A failure or partial failure to co-operate fully with an investigation may render the member liable to disciplinary action.

HOW LONG DOES THE PROCESS TAKE?

ACCA takes complaints very seriously. In common with other complaints-handling bodies, ACCA is required to follow due process and this may mean it takes longer to conclude the investigation than you might expect. We aim to complete the majority of investigations within approximately six months from the point at which the case is allocated to an investigating officer. However, the time taken to investigate will depend on the circumstances and complexity of each complaint and how quickly we are provided with the evidence we request.

Where civil or criminal proceedings concerning the same issues as the complaint are pending, an investigation may not be possible until they are resolved.

In accordance with ACCA's Membership Regulations, ACCA will not accept any notice of resignation from the member until such time as the matter has been concluded.

Investigation

INVESTIGATION OUTCOMES

At the conclusion of the investigation, the investigating officer will decide whether:

- i a report of disciplinary allegations should be made, in which case a report will be prepared and sent to the member to comment in writing upon it;
- ii the allegations or some of them should rest on the member's file, in which case the investigating officer shall notify the member and the complainant accordingly, giving reasons for their decision; or
- iii the case should be closed, in which case the investigating officer shall notify the person and the complainant accordingly, giving reasons for his decision.

Rest on file means that no action will be taken on this occasion, but that the allegations may be taken into account by ACCA in the course of dealing with any further complaints received about the member within five years.

If the investigating officer decides that the complaint should be closed with or without a Rest on file, both parties will be informed of the reasons for the decision and given an opportunity to request that the investigating officer's decision be reviewed by an independent assessor. Such a request must be submitted within 30 days of notification of the investigator's decision.

CONSENT ORDERS

At any time during the investigation the investigating officer may decide that there is enough evidence to support the allegations, but the member's removal from membership is unlikely such that a Consent Order would be appropriate.

A Consent Order is a formal disciplinary finding. Consent Orders are issued when a member accepts responsibility for misconduct and an agreed sanction, which obviates the need for a full disciplinary hearing.

ACCA may use a consent order if we are satisfied that:

- there is a case to answer against the member;
- there is a real prospect of a reasonable tribunal finding the allegation(s) proved; and
- if proved, the allegation(s) would be unlikely to result in the member being excluded from membership by ACCA's Disciplinary Committee.

In turn, the member needs to:

- be willing to admit all of the allegation(s) or relevant breaches in full;
- accept a sanction; and
- be willing to pay the costs of ACCA's investigation into the complaint.

Investigation

For further information on Consent Orders and their application see the Consent Orders Guidance and FAQ documents on our website at:

https://www.accaglobal.com/content/dam/ACCA_Global/disc/complain/Consent-orders-guidance.pdf

https://www.accaglobal.com/content/dam/ACCA_Global/disc/complain/Consent-orders-FAQs.pdf

The independent assessors

The panel of independent assessors is a group of individuals with a wide range of expertise. Each assessor's role is to consider a report of disciplinary allegations referred to them and to decide whether the evidence against the member is sufficiently strong that they should be called on to answer it before a Disciplinary Committee.

NO CASE TO ANSWER

If the assessor finds there is no case to answer, the complainant has the right to request a review by a second assessor. If the second assessor upholds the decision, that is the end of the matter and no record of it for disciplinary purposes will be retained on the member's file.

A CASE TO ANSWER

If the assessor decides there is enough evidence to support the allegations, these may be rested on file or referred to the Disciplinary Committee if there is a real prospect of success and it is in the public interest to do so.

REST ON FILE

Rest on file means that while no action will be taken on this occasion, the allegations may be taken into account by ACCA in the course of dealing with any later complaints received about the member within five years.

The complainant has the right to request a review by a second assessor. The member has the right to request that the case is referred to the Disciplinary Committee for consideration in open hearing.

REFER TO DISCIPLINARY COMMITTEE

The Disciplinary Committee decides whether the allegations have been proved and what sanction to impose. For further information about sanctions see the Guideline Disciplinary Sanctions at:

<https://www.accaglobal.com/an/en/about-us/regulation/disciplinary-and-regulatory-hearings/guidelines-disciplinary.html>

For further information about the disciplinary hearing process, please refer to the Guide to ACCA's Hearings Team and the Disciplinary and Regulatory Committees at:

https://www.accaglobal.com/content/dam/ACCA_Global/Members/news/2019/January/10_3968_Guidance%20hearings%20team%202018_v1.pdf

The independent assessors

COSTS ORDERS

If an investigation results in the matter reaching a Disciplinary Committee hearing and if the Committee finds any of the allegations proved, ACCA will ask the Committee to make an order against the member for the costs of investigating the case and taking disciplinary action.

There would be costs for all hearings relating to the case, such as interim order hearings and case management meetings as well as the Disciplinary Committee hearing. The Committee may decide to award all or part of the costs that ACCA claims.

At the start of the investigation, it is not possible to give details of any costs that may be claimed if ACCA takes disciplinary action. But at least four weeks before any hearing, ACCA will send the member a breakdown which will show how the sum claimed by ACCA has been calculated. This will accompany the Disciplinary Committee papers.

The member has the right to challenge any or all of the sums claimed by ACCA – in writing before the hearing, or orally at the hearing itself. The Disciplinary Committee will ultimately decide what costs are fair and reasonable.

The costs of a consent order are considerably less than the costs of complaints that reach a Disciplinary Committee hearing. For further information about costs orders see the Guidance for costs orders at:

https://www.accaglobal.com/content/dam/ACCA_Global/Members/news/2018/March/Guide%20to%20costs%20orders.pdf

How to complain about the handling of a case

ACCA aims to ensure that the investigation is impartial and that members under investigation are treated fairly. Any party who is unhappy with the way the investigation has been handled is encouraged to raise his or her concerns with the investigating officer directly.

If the investigating officer is unable to allay your concerns, you may lodge a formal complaint by sending it to complaintassessment@accaglobal.com

The investigating officer's manager will normally conduct a review of the way in which the investigation has been handled. In appropriate cases, a review will be conducted by an independent assessor. Such a review is limited to the handling of the investigation and is not a way of appealing a decision.

ACCA

ACCA

The Adelphi
1/11 John Adam Street
London WC2N 6AU

t: +44 (0)20 7059 5000

f: +44 (0)20 7059 5998

www.accaglobal.com

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Think Ahead