

Guidance for interim orders hearings

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Section 1: Introduction

- 1 The purpose of the Guidance for Interim Orders Regulations ('the Guidance') is to assist the Interim Orders 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 where it appears:
 - during an investigation into any complaint;
 - after a case has been referred to the Disciplinary Committee;
 - at any time before or during a hearing before the Admissions and Licensing Committee;
 - after a case has been referred to the Appeal Committee;

that it is necessary to consider some form of interim action, either by suspension or by imposing conditions on their membership and/or any licence or certificate as the case may be;

 - the Committee to provide clarification on the relevant procedure and their powers;
 - any relevant person bound by ACCA's bye-laws and regulations so that they are aware of the relevant procedures and of what the Committee's powers, prior to any 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 INTERIM ORDERS HEARINGS

- 5 Interim Orders Regulation 4 states the Committee is empowered to make an interim order only if satisfied that it is necessary to do so in order to protect the public. The Committee must consider the seriousness of the alleged misconduct and/or impugned behaviour, and decide whether to impose an interim order on a relevant person's membership, and/or licence or certificate.
- 6 The Committee must act to protect the public and its primary consideration when deciding whether or not to impose an Interim Order is:
 - 6.1 Consider whether it is necessary to take interim measures in order to protect client/s, prospective clients or members having regard to issues of proportionality and any the consequences for the relevant person in question;

- 6.2 The Committee is not making an evidential decision or determining the veracity of any allegations against a relevant person; the principal basis upon which the Committee assesses whether or not to exercise its powers is by looking at the risks (actual or potential) to the public if the relevant person is permitted to continue to practice and/or retain unrestricted membership, registered student or affiliate status prior to a full determination.

PRE-INTERIM ORDER HEARING

- 7 Upon receipt of new information pertaining to a case, the Senior Investigation Officer will carry out a risk assessment and on some occasions, may seek to refer a case for interim order consideration. In such instances, and save in very urgent cases, an initial interim order hearing will be listed after 14 days' notice¹.
- 8 Where a report of disciplinary allegations has been referred to an assessor for consideration, if the assessor considers it necessary to do so for the protection of the public, he shall direct the Senior Investigation Officer to make an urgent application to the Committee for an interim order².

¹ Interim Orders Regulation 5(1)

² Complaints and Disciplinary Regulations 5(7)(a)

Section 1: Introduction

- 9** In the event that a hearing before the Disciplinary Committee or Admissions and Licensing Committee is adjourned, then on application by ACCA or upon the Committee's own motion, the Disciplinary Committee or Admissions and Licensing Committee may reconstitute itself as a Committee to decide whether or not to make an interim order, or vary or revoke the terms of an existing interim order³.
- 10** An application for an interim order must be made in writing setting out the basis on which the application is made and shall provide supporting evidence⁴.
- 11** The Senior Investigation Officer will send a request for an interim order hearing date to the Hearings Team, who will then confirm the date of the hearing.
- 12** The Hearings Officer will send the interim order notice of hearing giving the relevant person 14 days' notice of the hearing, save for in very urgent cases.
- 13** Pursuant to Interim Orders Regulation 5(4), save in urgent cases, the relevant person is required to give ACCA and the Committee at least seven days' advance notice of whether he intends to carry out the following:
- 13.1 attend the hearing;
 - 13.2 provide a statement of defence; and/or
 - 13.3 provide any evidence.
- 14** Prior to any hearing the papers and supporting documents are sent to the Committee, the relevant person, their respective legal representative, and the legal assessor. Due to the nature of Committee hearings, documents may be received at the last moment⁵; those documents are tabled on the day of the hearing and must, where possible, be read by the Committee before they hear any submissions on the case.
- 15** Both the Case Presenter and the relevant person or their representative may make submissions and adduce documentary evidence. Those submissions are limited to the question, whether given the circumstances of the case; it is necessary to impose and interim order or conditions.
- 16** It is always important to keep in mind that the Committee does not make finding of facts or resolve disputes of facts. For this reason the regulations provide that ordinarily no person shall give oral evidence. However, there are limited circumstances, where evidence may be given⁶.

³ Interim Orders Regulation 3(3)

⁴ Interim Orders Regulation 3(2)

⁵ Interim Orders Regulation 5(3)

⁶ Interim Orders Regulation 7(2)

Section 2: The role and regulatory powers of the Committee

ORDERS OF THE COMMITTEE

- 17** Pursuant to Interim Orders Regulation 8(1), the Committee may make one or more of the following interim orders against the relevant person:
- 17.1 suspend the relevant person's membership, registered student or affiliate status until further order of the Committee or Disciplinary Committee;
- 17.2 suspend or impose conditions upon the relevant person's practising certificate, investment business certificate (Ireland only) and/or other certificate issued by ACCA until further order of the Committee or Disciplinary Committee.
- 18** An order of the Committee is of immediate effect.

HEARINGS IN PRIVATE AND PUBLICITY

- 19** Ordinarily cases are considered by the Committee are held in private, although they may be heard in public in certain circumstances, for example the member requests the Committee to sit in public⁷.
- 20** ACCA will give advance publicity of the proceedings of the Committee. The outcome of the Committee hearing will also be published⁸.

ABSENCE OF THE RELEVANT PERSON

- 21** The absence of the relevant person does not preclude the proceedings from taking place. The Committee may, however, make an order if the member has been given the opportunity to attend.
- 22** In the event that the relevant person does not attend, the Committee should proceed if it is satisfied that appropriate notice of the hearing is given in accordance with Interim Orders Regulations 5(1), (5) and (6).
- 23** The Committee does not have to be satisfied that the relevant person is aware of proceedings, only that all reasonable efforts have been made to serve the notice of hearing.

PROCEDURE AT HEARINGS

- 24** The Case Presenter will open the case on behalf of ACCA; he will explain the basis on which the application for an interim order is being made and will refer the Committee to the documents and other evidence which are of relevance to the issue of whether it is necessary to make an interim order to protect the public⁹.

- 25** Both the Case Presenter and the relevant person or their representative may make submissions and adduce documentary evidence. Those submissions are limited to the question, whether given the circumstances of the case; it is necessary to impose and interim order or conditions.
- 26** It is always important to keep in mind that the Committee does not make finding of facts or resolve disputes of facts. For this reason the regulations provide that ordinarily no person shall give oral evidence. However, there are limited circumstances, where evidence may be given¹⁰.
- 27** Upon hearing the application for an interim order, the Committee:
- 27.1 may give such directions as it deems to be necessary or desirable in addition to or instead of the interim order;
- 27.2 at any time during the hearing may direct that the hearing should be adjourned for such period and subject to such conditions it sees fit.

⁷ Interim Orders Regulation 6(2)

⁸ Interim Orders Regulation 6(3)(a)

⁹ Interim Orders Regulation 7(1)

¹⁰ Interim Orders Regulation 7(2)

Section 2: The role and regulatory powers of the Committee

TEST TO BE APPLIED

28 A Committee considering whether to impose an interim order should consider the following:

28.1 The Committee may only impose an order if it is necessary to protect the public¹¹;

28.2 For an order to be necessary for the protection of the public the Committee must be satisfied, that there is a real risk (not fanciful) to clients, potential clients, colleagues or other members of the public if an order is not made. It is not enough for the Committee to consider that an order is merely desirable or appropriate;

28.3 The Committee should consider the seriousness of the risk to members of the public if the relevant were allowed to continue practising/ retain their status without restriction. This includes consideration of the seriousness of the allegation, the nature of the evidence and likelihood of the alleged conduct being repeated if an interim order were not imposed. It is of note that the seriousness of an allegation can be indicative of risk.

29 The Committee must take into account the impact which an order may have on the relevant person. An order may impact upon the relevant person's right to practise his/her profession and may also impact financially and on the relevant person's reputation. The Committee must balance the need for an interim order against the consequences for the relevant person and satisfy them that the consequences of the order are not disproportionate to the risk from which the Committee is seeking to protect the public¹².

30 When considering an interim order, the Committee is not making findings of fact nor making findings as to whether the allegations are or are not established. It is sufficient for the Committee to act, if they take the view that there is a prima facie case and that the prima facie case, having regard to such material as is put before them by the relevant person, requires that the public be protected by an interim order¹³.

31 As regards the amount of evidence before the Committee, the High Court has indicated that it would expect the allegation to have been made or confirmed in writing, whether or not it has yet been reduced to a formal witness statement. The Committee will need to consider the source of the allegation and its potential seriousness. An allegation that is trivial or clearly misconceived should not be given weight¹⁴.

32 The High Court has also indicated that, where a member has been charged with a criminal offence, the Committee will not always be obliged to hear evidence or submissions as to any alleged weaknesses in the criminal case. The Committee can proceed on the basis that the Crown Prosecution Service has concluded there was sufficient substance in the matter to justify charges being brought¹⁵.

33 It should be noted that an interim order can be imposed before a finding of a criminal court.

34 In the case of *R (on the application of Sosanya) v General Medical Council*, Mr Justice Davis considered the implication of imposing an interim suspension order where the practitioner was facing criminal charges.

'One would like, all the same to think, that in all these kinds of cases of potential interim suspension an interim orders panel would at least be asking itself, as part of its thought process, the following: will it be acceptable for us not to suspend in a case of this kind if at the end of the day the charges are proved and the guilt of the applicant is established? That is one aspect. Another part of the thought process should be: will it be acceptable for us to suspend an applicant in a case of this kind if, at the end of the day; the applicant may be acquitted of all charges?

¹¹ Interim Orders Regulation 4

¹² *Madan v General Medical Council* [2001] EWHC 577

¹³ *R (George) v General Medical Council* [2003] EWHC 1124 (paragraph 42)

¹⁴ *General Medical Council v Sheill* [2006] EWHC 3025

¹⁵ *Fallon v Horse Racing Regulatory Authority* [2006] EWHC 2030

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Those considerations should form at least part of the thinking of an interim orders panel...¹⁶

Reasons

- 35** The panel must give clear and adequate reasons for its decision. Such reasons must be given whether or not an order is imposed. Reasons should include the following:
- 35.1 the ground(s) on which the panel has made its decision;
- 35.2 what impact an interim order might have on the relevant person, and how the Committee has balanced that impact against the need for an interim order;
- 35.3 why an interim order is (or is not) proportionate to any risks the Committee has identified and proportionate (or not) to the consequences for the relevant person;

INTERIM ORDER REVIEW HEARINGS

- 36** Pursuant to Interim Orders Regulation 9(1), an interim order shall:
- 36.1 be subject to review by the Committee at intervals of no longer than six months after the date of the order or such shorter period as the Committee may order;
- 36.2 automatically expire 18 months after the date of the order unless the Committee makes a further order.

37 Interim Orders Regulation 9(5) denotes the powers of Committee during a review of an interim order, the Committee may:

- 37.1 revoke the order or any condition imposed by the order;
- 37.2 confirm the order;
- 37.3 vary the order or any condition imposed by the order;
- 37.4 replace the order with one or more of the interim orders set out Interim Orders Regulation 8.

38 An interim order may be reviewed by a Chairman alone (the Chairman will constitute the Committee), that is, the Chairman considers the review application without the attendance of either party. Consent by both parties is required in order for this to take place. The Chairman will need to satisfy himself, that both parties consent has been obtained. There is a pro-forma which should be before the Chairman to assist with this decision¹⁷.

39 The review process must involve a comprehensive reconsideration of the initial order in the light of all the circumstances which are before the panel at the review hearing.

40 The Chairman or Committee will be provided with the same bundle that was sent to the panel which heard the first interim order consideration in addition to any further documentation as well as the previous Committee decisions in relation to the existing order and the transcript of the original hearing;

41 ACCA or the relevant person may request that an interim order be reviewed before the scheduled date of the next review on the grounds that there is information which indicates that the order should be varied or revoked. The Senior Investigation Officer or Case Progression Officer will continue to risk assess any new information and will refer for early review if deemed necessary.

PUBLIC PROTECTION, PROPORTIONALITY AND THE APPLICATION OF THE GUIDANCE

- 42** 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.
- 43** The panel should consider cases in a way which are proportionate to the complexity of the issues and the resources of the parties; seeking flexibility in proceedings wherever possible.
- 44** The Committee must ensure that all parties have been given the opportunity to participate fully in the proceedings.

¹⁶ [2009] EWHC 2814 (Admin)

¹⁷ Interim Orders Regulation 9(3)

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45 The Committee should apply its knowledge and experience effectively; and avoid delay, as far as possible.

Costs

46 In the event an interim order is imposed on a relevant person, the Committee may direct that the relevant person pay costs to ACCA. Similarly, where no order is made under Interim Orders Regulation 8(1), the Committee may order ACCA to pay costs incurred in connection with the interim order to the relevant person.

47 The Case Presenter is entitled to request that costs incurred in connection with the application are reserved until the conclusion of the case.

SLIP RULE AND CORRECTION OF ERRORS

48 Where the interim order or reasons for the decision of the Committee contains an accidental error or omission, either party may apply by way of application for it to be corrected. The application must be in writing and describe the accidental error or omission¹⁸.

49 The Chairman may deal with the application without notice if the error or omission is obvious, or he may direct notice is given to the other party. The application may be considered by the Chairman without a hearing with the consent of both parties.

50 In the event the application is opposed, if practicable, it should be heard by the same Committee which made the interim order and/or decision.

51 The Committee may of its own motion amend the wording of its own decision and/or order for the purpose of making the meaning and intention clear to all parties.

EXAMPLES OF CASES WHERE AN INTERIM ORDER HAS BEEN IMPOSED OR IS LIKELY TO BE IMPOSED

- Member who was involved in the management of a college, absconded with student funds;
- Evidence that client funds are at risk;
- Member charged with fraud - with no trial date set;
- Evidence that the relevant person's work has fallen far below the standard expected of a reasonable accountant that there is a general risk to proper compilation of client accounts and/or monies;
- Evidence from the police pre charge that member involved in suspicious activity with regard to client monies/accounts. Ordinarily, it would be expected that there is a charge; therefore such cases will depend greatly on the evidence presented by the police;
- Signing audit reports without the requisite certificate/licence.

* The list is not exhaustive.

¹⁸ Interim Orders Regulation 12(1)

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