

guide to ACCA's conciliation service



A practical way of resolving disputes

This guide explains how ACCA can help resolve disputes involving ACCA members or firms 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 times take precedence. The ACCA Rulebook can be found on our website at www.accaglobal.com.

This guide is published annually and is up to date as at 1 January 2008. The next edition is scheduled to be issued on 1 January 2009.

HOW DOES THE CONCILIATION SERVICE WORK?

ACCA's conciliation service is run by a solicitor who is also an Accredited Mediator and Member of the Chartered Institute of Arbitrators. There are two main areas in which the conciliation service can assist.

Conciliation

When a complaint is lodged with ACCA about the conduct of a member or firm, a conciliation officer will try to assist the parties by conciliating any aspects of the complaint which do not indicate liability to disciplinary action. For example, fee disputes and other client care issues.

Can I lodge my complaint by telephone?

Yes, the conciliation service prefers to receive complaints by telephone. In this way, if conciliation is not appropriate or desired, the conciliation officer can give

immediate advice on how you may be able to resolve the issue. If disciplinary issues become apparent, the conciliation officer will ask you to put the complaint in writing so that it can be referred to the investigations team after any conciliation has concluded.

Mediation and arbitration

If members are in legal dispute with clients, fellow professionals or others, the parties can make use of ACCA's mediation and arbitration schemes to avoid having to go to court. Examples include fee disputes, negligence claims, breach of contract, partnership disputes and accusations of poaching clients.

Conciliation

Members and clients or former clients should try to resolve any disputes between them by using the member's own internal complaint-handling procedures. However, where the firm is unable to reach agreement with the client, this usually results in a complaint being lodged with ACCA.

The most common complaints arise from fee disputes, dissatisfaction with the level of client care, or the departure of a client to another accountant. When such complaints are investigated, they tend not to result in disciplinary action against our member unless there are other matters involved. Instead, we try to help the member and client resolve the complaint through conciliation.

WHAT IS CONCILIATION?

Conciliation is a flexible process which aims to provide a quick resolution to complaints.

The conciliation officer acts neither for the member nor for the complainant, but helps find a solution which is acceptable to both parties. There are four main steps to the process.

- The conciliation officer does most of the work on the telephone, contacting both parties in order to gain full background information and an understanding of what the complainant is seeking to achieve.
- The conciliation officer may need to remind the member of the member's obligations under ACCA's Rulebook. If the member is found to have breached

a regulation, the conciliation officer will require the breach to be rectified where appropriate.

- Once the conciliation officer has a clear picture of the problem, the conciliation officer will suggest possible ways of resolving it and will encourage the parties to adopt a practical approach.
- At the conclusion of the process, if the complaint was lodged in writing the conciliation officer will write to both parties confirming the outcome. If the complaint was lodged by telephone, the conciliation officer will give this confirmation by telephone. Most conciliation is successful, but occasionally it is unsuccessful if one or both of the parties is unwilling or unable to agree to a resolution.

WHAT ARE THE BENEFITS OF CONCILIATION?

Conciliation is a ‘win-win’ approach to complaints. When two 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 conciliation officer is able to take an objective view and suggest solutions.

A negotiated outcome is likely to be more satisfactory to both parties and conciliation can often help to repair any damage that has been caused to the member/client relationship.

WHAT HAPPENS TO THE COMPLAINT?

Complaints received by ACCA’s professional conduct department are reviewed by the conciliation service. Where a complaint, or aspects of it, can be conciliated, it is retained by the conciliation service. This does not mean that it is less serious than other complaints that have been received, but simply that it can be handled in a different way. All other complaints are referred to the investigations team to be dealt with under ACCA’s disciplinary procedures.

After the conciliation process has concluded (whether successful or unsuccessful), the case is usually closed.

If the conciliation officer has identified that a breach of ACCA’s regulations has occurred, which is not sufficiently serious to warrant disciplinary action, this will be stated when the case is closed. However, if there are any disciplinary issues indicated, including serious breaches of regulations, the case remains open and is referred to the investigations team.

If the complainant is unhappy with the conciliation officer’s decision to close a case, the complainant may request that it be reviewed by an independent assessor. The assessors are individuals with a wide range of expertise including insolvency, law and accountancy, and are independent of ACCA. If the assessor disagrees with the conciliation officer’s decision, the case will be referred to the investigations team.

Complainants’ and members’ guides to disciplinary procedures are available, which explain the procedures followed by the investigations team. These are available on ACCA’s website at www.accaglobal.com and in hard copy upon request from the professional conduct department, whose address is at the end of this guide.

Mediation and arbitration

While fee disputes can often be resolved by ACCA's conciliation officer, most legal disputes are not suitable for conciliation. However, resolving them through the Courts can be a costly and time-consuming process. Members facing such disputes are therefore encouraged to explore alternatives such as mediation or arbitration.

ACCA has negotiated an agreement with the Chartered Institute of Arbitrators to set up and independently administer The ACCA Mediation Scheme and The ACCA Arbitration Scheme. The schemes are summarised below. 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 the professional conduct department, whose address is at the end of this guide. 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 www.arbitrators.org.

THE ACCA MEDIATION SCHEME

Mediation is a more formal method of conciliation. The mediator brokers a settlement during the course of a session attended by both parties, in contrast to the conciliation process which is conducted by telephone and letter. If both parties are, in principle, willing to settle the dispute, mediation is likely to be successful.

While the mediation process cannot begin unless both parties agree to it, once it has started the parties are not obliged to accept the mediator's suggestions. However, if at the conclusion of the

mediation an agreement has been reached, the mediator will ask the parties to put the agreement in writing and sign it, at which point it will become legally binding.

THE ACCA ARBITRATION SCHEME

Arbitration is similar to a court procedure, but quicker and less costly. Both parties must agree to submit to arbitration before the process can begin and the arbitrator's decision is legally binding upon the parties.

THE LEGAL POSITION

Before agreeing to participate in mediation or arbitration:

- members are strongly recommended to contact their professional indemnity insurers to inform them of the dispute and seek their consent;

and

- both parties may wish to seek legal advice as to their claims in law.

Contacting the conciliation service

If you have any queries about ACCA's conciliation service, or if you would like our assistance with a dispute involving a member of ACCA, please telephone or write to the conciliation service, which can be contacted as follows:

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