

CONSENT ORDERS HEARING

CONSENT ORDERS COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Dr Rakesh Sachdev

Heard on: Tuesday, 01 October 2019

Location: ACCA, The Adelphi, 1-11 John Adam Street,
London, WC2N 6AU

Committee: Mr John Crawley (Chairman)

Legal Adviser: Mr Leighton Hughes (Legal Adviser)

Summary: **Consent Order approved**

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CONSTITUTION OF THE COMMITTEE

1. The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014, amended 1 January 2017, Regulation 5(7) provides:

"The Consent Orders Committee shall consist of either a chairman and a legal adviser, or an assessor and a legal adviser."

2. For avoidance of doubt, a Legal Adviser is an independent barrister or solicitor; the meaning of a Legal Adviser is as generally set out in ACCA's Regulations. The Committee proceeds on the basis that the Legal Adviser's role is advisory only. The Legal Adviser is not a voting member of the Committee, as this would be a departure from his function. The Chairman alone makes a determination on the signed draft consent order.

THE BACKGROUND

3. Dr Sachdev's case comes before the Committee by virtue of a Consent Order draft agreement that has been reached in this case between ACCA and Dr Sachdev. The agreement sets out his full admissions to the facts of the allegation that he faces, and an acceptance that an appropriate sanction in this case would be a severe reprimand. It was also agreed that Dr Sachdev would pay the sum of £2537.50 to ACCA by way of costs. The draft agreement was signed by Dr Sachdev on 20 August 2019, and on behalf of ACCA on 2 September 2019.
4. On 23 September 2019, Dr Sachdev was notified that the draft agreement would be considered by the Committee on 1 October 2019. Neither ACCA nor Dr Sachdev has subsequently withdrawn their agreement to the draft consent order.

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5. The Committee has carefully considered the draft agreement reached by the parties and for the reasons set out below approves it as a Consent Order, in accordance with Regulation 11 of the Chartered Certified Accountants Complaints and Disciplinary Regulations 2014.

THE DRAFT AGREEMENT AND THE AGREED FACTS UPON WHICH IT IS BASED

Dr Sachdev admits the following allegation:

1. *Dr Sachdev, a fellow member of ACCA, signed an unqualified audit report on 15 September 2012 in respect of the accounts of Charity B for the year ended 31 March 2012 but failed to design and perform audit procedures that were appropriate in the circumstances for the purpose of obtaining sufficient appropriate audit evidence, in relation to the reclassification of Fund A from restricted funds to unrestricted (designated) funds in those accounts and accordingly failed to have sufficient regard to any or all of:*
 - (a) International Standard on Auditing (UK and Ireland) 200;*
 - (b) International Standard on Auditing (UK and Ireland) 330;*
 - (c) International Standard on Auditing (UK and Ireland) 500;*
 - (d) International Standard on Auditing (UK and Ireland) 700;*
 - (e) International Standard on Auditing (UK and Ireland) 705.*
2. *By virtue of the facts in allegation 1, Dr Sachdev's conduct was contrary to paragraph 130.1(b) of the fundamental principle of professional competence and due care (2012).*
3. *By virtue of the facts in allegations 1 and/or 2 Dr Sachdev, in connection with his professional duties, performed his work incompetently and is liable to disciplinary action pursuant to bye-law 8(a)(ii).*

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4. *Dr Sachdev shall be severely reprimanded and shall pay costs to ACCA in the sum of £2,537.50.*
5. *The parties have concluded that the appropriate sanction is a severe reprimand. Regard has been had to ACCA's Guidance for Disciplinary Sanctions ("the Guidance") and the importance of addressing the public interest, which includes the following:*
 - *The protection of members of the public;*
 - *The maintenance of public confidence in the profession and in the ACCA; and*
 - *Declaring and upholding proper standards of conduct and performance.*
6. *The parties also acknowledged the principle of proportionality, that is, balancing the member's own interests against the public interest. Further, the following aggravating and mitigating features of the case were considered:*
7. *The aggravating factors are considered to be as follows:*
 - *The audit was of the accounts of a charity, which use monies donated by the public.*
 - *The accounts have been available on the public record (via the Charity Commission website).*
 - *A reclassification of a fund from restricted funds to unrestricted (designated) funds significantly impacts on the use a charity can make of monies held and collected from the public, and it is therefore a very significant matter.*

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- *There were a number of deficiencies in the audit work undertaken/evidence obtained in relation to the reclassification of the [Fund A], not just one single deficiency.*
8. *The mitigating factors are considered to be as follows:*
- *Dr Sachdev has agreed to disposal by consent order*
 - *Dr Sachdev has responded to all questions put to him by ACCA during the investigation.*
 - *The relevant audit report dates from September 2012, which is more than six years ago.*
9. *The parties agree that a severe reprimand proportionately reflects Dr Sachdev's conduct and the public policy considerations which ACCA must consider in deciding on the appropriate sanction. This is a public interest sanction due to the misconduct bringing discredit to ACCA; this conveys a message of the importance of fundamental standards of professional conduct.*
10. *The other possible sanctions have been considered, in ascending order:*
- *It was deemed that to take no further action in this matter would not be appropriate or proportionate and would not adequately address the misconduct or the public interest in this case.*
 - *An admonishment or reprimand were not considered appropriate, as these sanctions are applicable for cases at the lower end of the spectrum of misconduct, and Dr Sachdev's conduct is considered to be of a serious nature.*

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- *However, exclusion from membership is considered to be disproportionate in all the circumstances of the case, as this is not the only sanction which will be sufficient to protect the public.*

11. *Dr Sachdev has agreed to pay costs to ACCA in the sum of £2,537.50.*

THE COMMITTEE'S DECISION

6. The Committee bore in mind that, notwithstanding the parties having reached the above draft agreement, the final decisions on the issues of sanction and costs remain a matter for the Committee. It has the power to approve, reject or propose amendments to the Consent Order draft agreement.
7. The Committee found the allegation proved by way of Dr Sachdev's admission, and it accepted the agreed facts contained within the draft agreement.
8. The Committee accepted the aggravating and mitigating factors set out in the draft agreement. It proceeded to consider sanction, and had in mind the guidance, and kept at the forefront of its considerations the wider public interest.
9. The Committee agreed with the careful reasoning set out in the draft agreement in relation to the appropriate sanction to impose in this case. In all the circumstances, the Committee concluded, in agreement with the draft agreement, that the proportionate and appropriate sanction, sufficient to protect the public, and maintain confidence in the profession, is a severe reprimand.
10. The Committee only had the power to reject the draft Consent Order if it was of the view that the admitted breaches would more likely than not result in exclusion from membership, if considered by the Disciplinary Committee.

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11. This was a finely balanced case where there had been a serious departure from proper professional standards. Many of the features in ACCA's Sanctions Guidance were present that could gravitate towards nothing less than an exclusion from membership. On balance, the Committee was just persuaded by the arguments advanced by ACCA that exclusion from membership would be disproportionate.
12. The Committee was satisfied that there was no need to recommend any amendments to the draft Consent Order, to the Association and Dr Sachdev.
13. Accordingly, the Committee approved the draft Consent Order.

PUBLICITY

14. 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.

Mr John Crawley
Chairman
1 October 2019