

CONSENT ORDERS HEARING

CONSENT ORDERS COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Kevin Joseph Cuddy
Considered on:	Monday, 22 February 2021
Location:	Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU
Chair:	HH Suzan Matthews QC
Legal Adviser:	Mr Andrew Granville Stafford
Outcome	Consent Order approved Member Reprimanded
Costs:	£917

INTRODUCTION

1. This matter has been referred to the Consent Orders Committee of ACCA ('the Committee') pursuant to Regulation 8(8) of the Complaints and Disciplinary Regulations ('CDR') for the Committee to determine on the basis of the evidence before it whether to approve the draft Consent Order.
2. The Committee had before it a bundle of documents (105 pages), a Consent Order Draft Agreement and a service bundle.

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



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

CONSTITUTION OF THE COMMITTEE

3. Regulation 5(7) of The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014 states:

'(7) The Consent Orders Committee shall consist of either a Chairman and a Legal Adviser, or an Assessor and a Legal Adviser.'

4. For avoidance of doubt, the 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 the function of a Legal Adviser. Therefore, this is the determination of the Chair alone.

CONSENT ORDER DRAFT AGREEMENT

5. The Consent Order Draft Agreement was signed by Mr Cuddy on 02 December 2020 and by an unidentified representative of ACCA on 03 December 2020. It reads as follows:

'The Association of Chartered Certified Accountants (ACCA) and Mr Kevin Joseph Cuddy (the Parties), agree as follows:

'1. Mr Kevin Joseph Cuddy admits the following:

ALLEGATIONS

- 1) *That as a holder of an ACCA practising certificate and as a director of White & Company (UK) Ltd ('the Firm') (being a public practice firm registered with ACCA), failed to give written notice to ACCA forthwith or at all that the Firm had been placed into administration (and subsequently liquidation), contrary to Global Practising Regulation 12(2)(b) and (h)(v);*
- 2) *That in accordance with byelaw 8(a)(vii) and as a director of the Firm he is liable to disciplinary action on the basis the Firm has entered Administration (and subsequently liquidation);*

2. *That Mr Kevin Joseph Cuddy shall be reprimanded and shall pay costs to ACCA in the sum of £917.'*
6. The background and facts are set out in an appendix to the agreement which reads as follows:

'RELEVANT FACTS, FAILINGS AND/OR BREACHES

3. *The Investigating Officer has conducted their investigation into the allegations against Mr Kevin Joseph Cuddy in accordance with Regulation 8(1)(a) of the Complaints and Disciplinary Regulations (CDR) (2020) and is satisfied that:*
 - a) *They have conducted the appropriate level of investigation as evidenced by the enclosed evidence bundle (see pages 6 - 110), and determined that there is a case to answer against Mr Kevin Joseph Cuddy and there is a real prospect of a reasonable tribunal finding the allegations proved; and*
 - b) *The proposed allegations would be unlikely to result in exclusion from membership.*
4. *The relevant facts, failings and/or breaches have been agreed between the parties and are set out in the detailed allegations above together with the proposed sanction and costs.*
5. *A summary of key facts is set out below:*
 - *Between 28 March 2019 to 07 August 2020, Mr Kevin Joseph Cuddy failed to give written notice to ACCA that White & Company Ltd had been placed into administration (and subsequent liquidation); (page 11)*
 - *ACCA Investigations wrote to Mr Kevin Joseph Cuddy on 07 August 2020 to request a written response to allegations; (pages 11 - 16)*
 - *Mr Kevin Joseph Cuddy provided his response on 13 August 2020 (page 98 - 100)*

- *ACCA Investigations wrote to Mr Kevin Joseph Cuddy proposing consent order on 15 September 2020; (page 104 - 109)*
- *Mr Kevin Joseph Cuddy provided his response on 22 September 2020 (page 110).*

SANCTION

6. *The appropriate sanction is reprimand.*
7. *In considering this to be the most appropriate sanction, ACCA's Guidance for Disciplinary Sanctions (Guidance) has been considered, and particularly, the key principles. One of the key principles is that of the public interest, which includes the following:*
 - *Protection of members of the public;*
 - *Maintenance of public confidence in the profession and in ACCA;*
and
 - *Declaring and upholding proper standards of conduct and performance.*
8. *Another key principle is that of proportionality, that is, balancing the member's own interests against the public interest. Further, the aggravating and mitigating features of the case have been considered.*

AGGRAVATING FACTORS

9. *The aggravating factors are considered to be as follows:*
 - *The severity of Mr Kevin Joseph Cuddy failing to notify ACCA of White & Company Ltd's administration (and subsequent liquidation) fell below the standards expected of a qualified ACCA member;*
 - *Lack of understanding and insight into the seriousness of the acts/omissions and the consequences thereof;*

- *Actual loss or adverse impact on client and/or members of the public;*
- *The length of time since the administration of White & Company Ltd;*
- *Conduct continued over a period of time.*

10. *In deciding that a reprimand is the most suitable sanction, paragraphs C4.1 to C4.5 of ACCA's Guidance have been considered and the following mitigating factors have been noted:*

- *Mr Kevin Joseph Cuddy has been a member of ACCA since 30 January 2007 and has a previous good record with no previous complaint or disciplinary history;*
- *Mr Kevin Joseph Cuddy has provided an explanation into failings that led to the conduct;*
- *The incident was not deliberate;*
- *Mr Kevin Joseph Cuddy has apologised for the conduct which led to the complaint raised against him;*
- *Mr Kevin Joseph Cuddy has expressed genuine remorse.*

11. *In deciding that a reprimand is the most suitable sanction paragraphs C4.1 to C4.5 of ACCA's Guidance, ACCA has considered the other available sanctions and is of the view that they are not appropriate. ACCA considers that a reprimand proportionately reflects HMRC and ICAEW's intervention 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 and the profession, and it conveys a message of the importance of fundamental standards of professional conduct.'*

DECISION

7. The powers available to this Committee are to:
 - (a) Approve the draft Consent Order, in which case the findings on the allegations and the orders contained in it become formal findings and orders (CDR 8(11) and 8(14));
 - (b) Reject the draft Consent Order, which it may only do if it is of the view that the admitted breaches would more likely than not result in exclusion from membership (CDR 8(12));
 - (c) Recommend amendments to the draft Consent Order, if it satisfied it is appropriate to deal with the complaint by way of consent but wishes the terms of the draft order to be amended (CDR 8(13)).
8. The Committee was satisfied it was appropriate to make a Consent Order in the terms agreed between the parties.
9. The Committee is satisfied that the evidence is sufficient to prove the allegations and that Mr Cuddy's admissions are, therefore, properly made.
10. The Committee agrees that the relevant aggravating and mitigating factors are as set out in paragraphs 9 and 10 of the agreed background. In particular, the Committee notes that Mr Cuddy had been a director of the company for only a very short time when it entered into administration. There is evidence suggesting he suffered from a situation which was not of his own making. The Committee accepted that his expression of apology and remorse was genuine and that he had not acted deliberately. The Committee also took into account his previous good character.
11. The Committee considered that a sanction of reprimand was in line with the guidance set out in ACCA's Guidance on Sanctions. Given this was an isolated incident, the Committee did not consider that a more severe sanction was merited in the circumstances of this case.
12. Given that Mr Cuddy has agreed to pay costs in the sum of £917, the Committee was satisfied that making an order in the terms set out in the

agreement was appropriate and proportionate.

ORDER

13. The Committee made the following order:
 - i. The draft Consent Order is approved;
 - ii. Allegations 1 and 2 are proved by admission.
 - iii. Mr Cuddy is reprimanded.
 - iv. Mr Cuddy is ordered to pay costs to ACCA in the sum of £917.
14. Under CDR 8(17) there is no right of appeal against this order. Therefore, this order comes into effect immediately.

HH Suzan Matthews QC
Chair
22 February 2021