

CONSENT ORDERS

CONSENT ORDER CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Jonathan Innes
Considered on:	Thursday, 24 June 2021
Chair:	Mr Neil Dalton
Legal Adviser:	Mr Andrew Granville Stafford
Outcome	Consent order approved

INTRODUCTION

1. This matter has been referred to a Chair of the Disciplinary Committee of ACCA ('the Chair') pursuant to Regulation 8(8) of the Complaints and Disciplinary Regulations ('CDR') to determine on the basis of the evidence before them whether to approve the draft Consent Order. Under CDR 8(8), a Consent Order is made by a Chair of the Disciplinary Committee in the absence of the parties and without a hearing.
2. The Chair had before them a bundle of 153 pages which included a Consent Order Draft Agreement.

CONSENT ORDER DRAFT AGREEMENT

3. The Consent Order Draft Agreement was signed by Mr Innes on 06 May 2021 and by a representative of ACCA on 11 May 2021. It reads as follows.

1. *Mr Innes admits the following allegation:*

- a) *Mr Jonathan Innes FCCA, a director at Innes & Partners*

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Limited, accepted appointments as an auditor, in particular signed the audit reports in 2017 and 2016 set out in Schedule 1, when the firm did not hold an ACCA firm's auditing certificate, in breach of Global Practising Regulation 2(1) (Annex 1, Appendix 1) (as applicable in 2017) and Global Practising Regulation 3(2) (Annex 1) (as applicable in 2016)

b) *By reason of the conduct at 1(a) above, Mr Innes is guilty of misconduct pursuant to byelaw 8(a)(i).*

2. *That Mr Innes shall be admonished and shall pay costs to ACCA in the sum of £1315.00.*
4. The relevant background and facts are set out in an appendix to the agreement which reads as follows.

Relevant Facts, Failings and/or Breaches

5. *The Investigating Officer has conducted their investigation into the allegations against Mr Innes in accordance with Regulation 8(1)(a) of the Complaints and Disciplinary Regulations (CDR) (2019) and is satisfied that:*
 - a. *they have conducted the appropriate level of investigation as evidenced by the enclosed evidence bundle, and determined that there is a case to answer against Innes 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.*
6. *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.*
7. *A summary of key facts is set out below:*

- *Mr Innes is the managing director of Innes & Partners Limited, having been appointed a director of the firm on 07 July 2008.*
- *On 09 December 2015, Mr Innes submitted to ACCA an application to renew the firm's auditing certificate (FAC) for 2016 (pages 16 to 23).*
- *In circumstances that were not the fault of Mr Innes or the firm, ACCA did not receive the application for the firm's FAC renewal for the year 2016.*
- *In consequence, the firm's FAC was withdrawn/expired with effect from 31 December 2015. ACCA however did not inform Mr Innes or the firm of this until 02 November 2016 (14, 15). In response to this, Mr Innes informed ACCA he had submitted an application for renewal (pages 16 to 23).*
- *On 18 November 2016, ACCA replied saying that it would seek clarification of the situation and would let him know as soon as possible (page 24). ACCA did not revert to Mr Innes in respect of this matter.*
- *ACCA's records for Innes and Partners Limited include a document dated 25 November 2016 and headed 'Online Firms Renewals'. It gave the certificate type as 'annual return' and the certificate year as 2017. Under the heading 'Audit Registration' the document said: 'Registered by ACCA to act as an Auditor Y' Mr Innes explained that as:*

"far as I was concerned at this point everything was on hold until they had got back to me which they didn't. Just over a week later I had a reminder to complete my renewals which I duly logged in and did and I printed off the form and was able to renew the audit registration as clearly shown on the annual return previously submitted which shows that we were audit registered by the letter Y. I believed therefore that the necessary paperwork would come

through without any problem. Please note that the only place my business partners details are mentioned as an ICAS member was on the firm's Annual renewal for Audit registration. This is the only place that has her details and therefore I stand by my previous assertions that somehow my personal record was overwritten instead of the firms renewal being completed at the time and had this not happened we wouldn't have been in the situation we are now in.” (page 38)

- *ACCA accepts that if the FAC renewal application had been received the firm's FAC would have been renewed for 2016.*
- *In October 2018, ACCA received an FAC application from Innes and Partners for 2019 (page 27 to 28). The firm's FAC application was put before ACCA's Admissions and Licensing Committee who granted the application on 09 July 2020 (page 29 to 33)*
- *Accordingly, the firm did not hold an FAC between 01 January 2016 and 09 July 2020 and during this period, Mr Innes and the firm signed the audits set out in Schedule 1.*
- *However, Mr Innes believed the firm was FAC registered when he signed the audit reports on the basis that he thought ACCA was resolving matters internally (page 38).*

Sanction

8. *The appropriate sanction is admonishment.*
9. *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.*

10. *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.*

11. *The aggravating factors are considered to be as follows:*

- *Mr Innes signed audits during a period that the firm did not hold an FAC.*
- *A number of the audits were signed after Mr Innes had been informed by ACCA, in November 2016, that the firm's 2015 FAC had expired that there was at the least a potential issue about whether or not the firm held an FAC. While ACCA did not revert to Mr Innes as it said it would, he should have chased the matter up but failed to do so.*
- *It is a criminal offence to conduct audit work if not properly authorised to do so.*

12. *In deciding that an admonishment is the most suitable sanction paragraphs C2.1 to C2.6 of ACCA's Guidance have been considered and the following mitigating factors have been noted:*

- *Mr Innes has been a member of ACCA in good standing for over 20 years with no previous complaint or disciplinary history;*
- *Mr Innes held a practicing certificate with audit qualification throughout the period of the breach (page 12);*
- *I have seen no evidence to indicate that audits performed while the firm did not hold an FAC were below the expected standards;*

- *Mr Innes fully co-operated with the investigation and regulatory process and has been transparent including disclosing an additional audit the firm signed while it did not hold an FAC which did not appear in a FAME search (37);*
- *ACCA's Admissions and Licensing Committee did not consider that the actions of Mr Innes led to the conclusion that either he or the firm were not fit and proper.*
- *Mr Innes took action to regularise the position by applying for an FAC and engaged with the Admissions and Licensing Committee who issued the FAC on 09 July 2020 (page 29 to 33);*
- *The firm had professional indemnity insurance in place during the period it did not hold an FAC (page 39 to 49);*
- *Mr Innes put in place measures to reduce the risk of repetition (page 37 to 38). Indeed, ACCA's Admissions and Licensing Committee expressed the view that there was 'no risk of these events occurring again' (page 32).*
- *In the reasons for decision of the Admissions and Licensing Committee (page 29 to 30):*

"It is not disputed that Mr Innes had tried to send the application for renewal to ACCA. In consequence, the Firm's auditing certificate was withdrawn with effect from 31 December 2015. ACCA however did not inform Mr Innes or the Firm of this until November 2016. Once Mr Innes learned what had happened, he contacted ACCA, seeking clarification of the situation. In correspondence, ACCA informed Mr Innes that the position would be investigated and that ACCA would revert to him following such investigation. In the event, ACCA did not ever revert to Mr Innes. It does not seem to be in dispute that if the renewal application had been received, the auditing certificate would have been renewed for 2016, and presumably for the ensuing years also."

13. *Although ACCA had informed Mr Innes in November 2016 that the firm's FAC had expired, he contacted ACCA seeking clarification of the situation. In correspondence, ACCA informed Mr Innes that the position would be investigated and that ACCA would revert to him. In the event, ACCA did not revert to Mr Innes. Mr Innes has explained that in these circumstances he believed at the time that he signed the audits the firm was registered and says he was waiting for ACCA to resolve matters internally. He states that he did not knowingly sign off audit reports believing that he wasn't registered to do so. However, he frankly accepts that he did not follow matters up with ACCA in the way he should have. ACCA has considered the other available sanctions and is of the view that they are not appropriate. ACCA considers that an admonishment proportionately reflects Mr Innes' 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 and the profession and it conveys a message of the importance of fundamental standards of professional conduct.*

Schedule 1 of audits conducted by the firm in 2016 and 2017

- *A Ltd, audit dated 20 April 2016 (pages 51 to 60)*
- *BC, audits dated 20 July 2016 (page 61 to 83) and 24 August 2017 (page 132 to 153)*
- *DE, audits dated 23 July 2016 (page 84 to 119)*
- *F Ltd, audit dated 08 June 2017 (page 120 to 131)*
- *GH, audits dated 31 March 2016, 31 March 2017**
- *I Church, audits dated 31 January 2016, 31 January 2017**
- *JK, audit dated 31 March 2016**
- *L Church, audit dated 31 December 2016*; and*
- *M Trust, audit dated 30 June 2015*
- *N Church, audits dated 31 August 2016, 31 August 2017¹*

¹ *This audit was signed off by another director in the firm.*

DECISION

5. The powers available to the Chair 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 they may only do if they are 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 they are satisfied it is appropriate to deal with the complaint by way of consent but wish the terms of the draft order to be amended (CDR 8(13).

6. The Chair carefully considered the documents before them, the agreed background, the evidence relating to the allegations and the proposals in relation to sanction. The Chair agreed that the proposed sanction was appropriate and proportionate in all the circumstances. The Chair was satisfied it was appropriate to make a Consent Order in the terms agreed between the parties

ORDER

7. The Chair made the following order:
 - i. The draft Consent Order is approved;
 - ii. Allegations 1(a) and 1(b) are proved by admission;
 - iii. Mr Innes is admonished.
 - iv. Mr Innes is ordered to pay costs to ACCA in the sum of £1,315.00.

8. Under CDR 8(17) there is no right of appeal against this order. Therefore, this order comes into effect immediately.

Mr Neil Dalton
Chair
24 June 2021