

## CONSENT ORDERS HEARING

### CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

#### REASONS FOR DECISION

<b>In the matter of:</b>	<b>Mr Maxwell Foote</b>
<b>Considered on:</b>	<b>Thursday, 07 October 2021</b>
<b>Chair:</b>	<b>Mr Martin Winter</b>
<b>Legal Adviser:</b>	<b>Mr Andrew Granville Stafford</b>
<b>Outcome</b>	<b>Consent Order approved</b>

#### 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 124 pages, which included a Consent Order Draft Agreement.

#### CONSENT ORDER DRAFT AGREEMENT

3. The Consent Order Draft Agreement was signed by Mr Foote on 17 August 2021 and by a representative of ACCA on 18 August 2021. It reads as follows.

*'The Association of Chartered Certified Accountants (ACCA) and Mr Maxwell Foote (the Parties), agree as follows:*

#### ACCA



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1. *Mr Maxwell Foote, an ACCA member, and director of Max Foote Associates Limited (the firm), admits the following:*

***Allegation 1***

*From 02 April 2008 to 23 June 2020, he failed to document any or all the firm's quality control policies and procedures in accordance with International Standard on Quality Control (UK) 1 (ISQC 1), contrary to Global Practising Regulation 13(1) (as applicable 2008 to 2020).*

***Allegation 2***

*From 02 April 2008 to 23 June 2020, he failed to provide all clients of the firm with signed letters of engagement before or as soon as practicable after the engagements commenced, contrary to section 3.18.5 and B9.5 of ACCA's Code of Ethics and Conduct (as applicable from 2008 to 2020).*

***Allegation 3***

*By reason of his conduct in respect of all the matters set out at Allegations 1 to 2, Mr Maxwell Foote is guilty of misconduct pursuant to byelaw 8(a)(i)*

2. *That Mr Maxwell Foote (Mr Foote) shall be severely reprimanded, shall pay a fine of £1,500 and costs to ACCA in the sum of £1,500.'*
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***

3. *The Investigating Officer has conducted their investigation into the allegations against Mr Foote 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 (pages 6 to 93), and determined that there is a case to answer against Mr Foote 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.*

5. *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.*

6. *A summary of key facts is set out below:*

- *The firm was subject to ACCA monitoring reviews in April 2008, May 2014, May 2018 and June 2020 (pages 8 to 56).*
- *Each review ascertained that the firm had, amongst other things, failed to carry out a review of its quality control policies and procedures and document these procedures in order to comply with ISQC1, and that the firm had failed to issue signed letters of engagement to all its clients.*
- *After each review, the firm was advised to regularise its position in relation to both ISQC1 and signed letters of engagement to clients.*
- *ISQC1 came into effect on 15 June 2005 and requires firms to document their quality control policies and procedures including leadership responsibilities for quality, compliance with the ethical requirements, engagement acceptance and continuance, human resources, engagement performance and monitoring.*
- *ACCA's Code of Ethics and Conduct requires firms to prepare signed letters of engagement clearly defining the scope of responsibilities and the terms of the contract with each client.*

### **Sanction**

7. *The appropriate sanction is a severe reprimand and a fine of £1,500.*

8. *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.*
9. *Other key principles are that of proportionality, that is, balancing the member's own interests against the public interest, and that self-regulatory organisations must make arrangements to ensure, amongst other things, that contravention of a relevant requirement by a person they are responsible for supervising renders that person liable to effective, and proportionate disciplinary measures under their rules.*
10. *Further, the aggravating and mitigating features of the case have been considered.*
11. *The aggravating factors are as follows:*
  - *The length of time (12 years) over which the breaches have taken place;*
  - *The repeated failure to comply with directions from ACCA's Monitoring officers in 2008, 2014 and 2018;*
  - *The lack of understanding and insight into the seriousness of the breaches.*
12. *In deciding that a severe reprimand is the most suitable sanction, paragraphs C4.1 to C4.5 of ACCA's Guidance (page 106) have been considered and the following mitigating factors have been noted:*
  - *Mr Foote has been a member of ACCA since May 1992 and has a*

*previous good record with no previous complaint or disciplinary history;*

- *Mr Foote has fully co-operated with the investigation;*
- *Mr Foote has admitted his conduct and expressed regret for it (pages 62 to 70);*
- *Mr Foote now accepts that the firm did not place enough resources into what it failed to appreciate were fundamental processes (page 69);*
- *The firm has now taken significant steps to regularise its position, and as at 10 May 2021, had obtained signed letters of engagement in respect of 81 % of its clients as it works towards obtaining 100% (pages 73 to 93).*

13. *ACCA has considered the other available sanctions and is of the view that they are not appropriate. ACCA considers that a severe reprimand proportionately reflects Mr Foote'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 and the profession; and it conveys a message of the importance of fundamental standards of professional conduct.'*

## **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 considered all the papers provided to them. They were satisfied, in light of the facts agreed by the parties and the information set out in the papers before them, that disciplinary action was justified in this case. They considered that Mr Foote's admissions to the allegations were properly made in all the circumstances and that the sanction of a severe reprimand and a fine was appropriate and proportionate.
7. The Chair was therefore satisfied it was appropriate to make an order by consent in the terms agreed between the parties.

### **ORDER**

8. The Chair made the following order:
  - i. The draft Consent Order is approved.
  - ii. Allegations 1, 2 and 3 are proved by admission.
  - iii. Mr Foote is severely reprimanded and fined £1,500.
  - iv. Mr Foote is ordered to pay costs to ACCA in the sum of £1,500.
9. Under CDR 8(17) there is no right of appeal against this order. Therefore, this order comes into effect immediately.

**Mr Martin Winter**  
**Chair**  
**07 October 2021**