

CONSENT ORDERS HEARING

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Kevin John Holden
Considered on:	Wednesday, 08 September 2021
Location:	Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU using Microsoft Teams
Chair:	Mrs Helen Carter-Shaw
Legal Adviser:	Mr Andrew Granville Stafford
Outcome	Consent order approved

INTRODUCTION

1. This matter has been referred to a Consent Orders Chair 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 the Chair in the absence of the parties and without a hearing.
2. The Chair had before them a bundle of 683 pages which included a Consent Order Draft Agreement.

CONSENT ORDER DRAFT AGREEMENT

3. The Consent Order Draft Agreement was signed by Mr Holden on 18 May 2021 and by a representative of ACCA on 24 May 2021. It reads as follows.

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The Association of Chartered Certified Accountants (ACCA) and Mr Holden (the Parties), agree as follows:

Allegations, sanction and costs

1. Mr Holden admits the following allegations

In relation to the financial statements of Company A for the year ended 30 April 2019, Mr Holden:

1. Caused or allowed an audit report in his name, as Senior Statutory Auditor, on behalf of Firm B, to be signed and filed at Companies House by Firm B on 12 December 2019, which were not prepared in accordance with the International Standards on Auditing.

2. By virtue of the facts in Allegation 1 above, breached Subsection 113 of ACCA's Code of Ethics and Conduct (the Fundamental Principle of Professional Competence and Due Care) [as applicable in 2019];

3. By virtue of the facts in Allegations 1 and 2, is:

3.1 guilty of misconduct, pursuant to bye-law 8(a)(i); and/or

3.2 liable to disciplinary action, pursuant to bye-law 8(a)(iii).

2. Mr Holden shall be severely reprimanded and shall pay costs to ACCA in the sum of £966.

3. If the Consent Orders Chair is satisfied it is appropriate to deal with the complaint by way of Consent Order and the signed draft Consent Order is approved, it constitutes a formal finding and order. The Consent Orders Chair has the power to recommend amendments to the signed draft Consent Order and to subsequently approve any amended order agreed by the Parties.

4. All findings and orders of the Consent Orders Chair shall be published naming the relevant person, as soon as practicable, and in such manner as ACCA thinks fit.

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. *ACCA's Investigating Officer has conducted their investigation into the allegations against Mr Holden 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 Mr Holden 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. *The background to the allegations is that a routine monitoring visit was conducted at Firm B on 26 February 2020 by ACCA's Senior Compliance Officer; this was to review the firm's audit work and to ensure compliance with the Chartered Certified Accountants' Global Practising Regulations 2003.*
8. *Firm B had held three audit appointments in the previous twenty-four months. Mr Holden was asked to provide ACCA with the audit files of all those audit clients for inspection. The Senior Compliance Officer, conducting the monitoring visit, reviewed all files and concluded that, in relation to Company A, Mr Holden had signed its audit report, which stated that Firm B had carried out the audit in accordance with the International Standards on Auditing, when the evidence had shown that this was not the case. Annex 1 (pages 7 -10) sets out the deficiencies in the audit report that were identified by the Senior*

Compliance Officer.

9. *Mr Holden said the following in his responses to ACCA:*
 - o *"The whole point of conducting an audit, I believe, is to express an opinion on the financial statements to obtain reasonable assurance whether the financial statements as a whole are free from material misstatement, whether due to fraud or error and to issue a Report of the Auditors. I believe we have completed sufficient work to do that. All the work set out by and required by the ISAs was not undertaken but I believe I did enough work to be satisfied that the conclusion I reached on the accounts was correct and the opinion I gave was the correct one." (pages 24 - 25)*
 - o *He agrees that the firm "had not carried out sufficient audit work on the group as a whole." (page 31)*
 - o *"I provide a written undertaking here that [Firm B] will not be undertaking any audit work in the future and neither will I so this conduct or a further complaint arising out of the same conduct will not happen in the future." (page 45)*
10. *It is agreed by the parties that, by virtue of the above facts, Mr Holden breached the Regulations below:*
 - o *Subsection 113 of ACCA's Code of Ethics and Conduct (the Fundamental Principle of Professional Competence and Due Care) (page 54), in particular:*
 - o *Section R113.1 (b) - this requires professional accountants to act diligently and in accordance with applicable technical and professional standards. As Section 113.1 A3 goes on to explain, diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.*

Sanction

11. *The appropriate sanction is **severe reprimand**.*
12. *In deciding that severe reprimand is the most appropriate sanction, ACCA's Guidance for Disciplinary Sanctions has been considered, in particular Sections C4.1 to C4.5, and the key principles. One of the key principles is that of the public interest, which includes the following:*
 - o *Protection of members of the public;*
 - o *Maintenance of public confidence in the profession and in ACCA; and*
 - o *Declaring and upholding proper standards of conduct and performance.*
13. *Another key principle is that of proportionality, that is, balancing the member's own interests against the public interest.*
14. *Further, the aggravating and mitigating features of the case have been considered.*

Aggravating factors

- o *The purpose of an audit is to enhance the degree of confidence of intended users in the financial statements and this is achieved by the expression of an opinion by the independent auditor. The audit report in the name of Mr Holden and the firm was placed on the public record at Companies House and readers were intended to rely upon it. The fact that the filed audit report was not in accordance with the International Standards on Auditing and was not wholly supported by the documentation in the firm's files are serious matters.*
- o *The standard of the firm's work fell below that expected in a member firm of ACCA.*

Mitigating factors

- o *Mr Holden has been a member of ACCA since 2002 and has no previous disciplinary findings against him.*
 - o *Mr Holden has fully co-operated with ACCA's investigation.*
 - o *Although Mr Holden believed that the audit opinion he gave was the correct one, and that the accounts issued gave a true and fair view of the parent company's affairs and of the group's profit and had been properly prepared in accordance with the Companies Act, he accepted, ultimately, that there were deficiencies in the audit and that it had not been prepared in accordance with the requirements of the International Standards on Auditing.*
 - o *The allegations relate to a single audit, and was one of three audit clients of the firm, and therefore this appears to have been an isolated incident.*
 - o *The misconduct was not intentional.*
 - o *Mr Holden and Firm B no longer hold audit registration with ACCA, having relinquished the certificates in December 2019 and therefore the same conduct is unlikely to happen in the future.*
15. *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 Holden'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 conduct bringing discredit to ACCA and the profession, and it conveys a message of the importance of the 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 was satisfied it was appropriate to make a Consent Order in the terms agreed between the parties.
7. In terms of mitigating factors, this was an isolated incident against the background of a previously good disciplinary record. Mr Holden had co-operated with the ACCA investigation and had, albeit after some equivocation, made a full admission. Mr Holden showed some insight when he explained why neither he nor his firm continue to hold audit registration. The Chair also noted that as neither now hold audit registration, there is little or no risk of repetition.
8. The Chair did not, however, accept that the conduct in question could be described as unintentional. It was clear from the papers before them that Mr Holden had, in effect, made a commercial decision to conduct the audit in the way he did. Therefore, the breaches of auditing standards were deliberate or, at the very least, reckless by someone who was an experienced auditor.
9. Apart from the deliberate or reckless nature of the conduct, the Chair did not consider that there were any other aggravating factors which went beyond the nature of the misconduct set out in the allegations.
10. The Chair considered that in light of the above factors, and in particular the isolated nature of the misconduct, an order for expulsion is not an appropriate or proportionate sanction in this case and that disposing of this matter by consent was entirely proper.
11. The Chair had regard to the factors set out in ACCA's Guidance for Disciplinary

Sanctions which point to a severe reprimand being an appropriate sanction. This was a serious matter. In light of Mr Holden's previous good record, his co-operation with the investigation, the insight shown by him and the fact this was an isolated breach, the Chair was satisfied that a severe reprimand was an appropriate and proportionate sanction.

12. The Chair considered the Statutory Auditors and Third Country Auditors Regulations 2016 ('SATCAR'). They were satisfied that the proposed sanction and publication of this decision were in accordance with and complied with the requirements of Regulations 5 and 6 of SATCAR.

ORDER

13. 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 Holden is severely reprimanded.
 - iv. Mr Holden is ordered to pay costs to ACCA in the sum of £966.
14. Under CDR 8(17) there is no right of appeal against this order. Therefore, this order comes into effect immediately.

Mrs Helen Carter-Shaw
Chair
08 September 2021