

CONSENT ORDERS HEARING

CONSENT ORDERS COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Ryan Le Couteur
Considered on:	Thursday, 09 September 2021
Chair:	Ms Carolyn Tetlow
Legal Adviser:	Mr Robin Havard
Outcome:	Draft Consent Order approved
	Severe Reprimand
Costs:	£885.00

CONSTITUTION OF THE COMMITTEE

1. A Consent Order is made on the order of the Chair under the relevant regulations.

INTRODUCTION

2. The Chair had considered a draft Consent Order, signed by Mr Le Couteur and a signatory on behalf of ACCA, together with supporting documents in a bundle numbering 1 to 53 pages.
3. When reaching their decision, the Chair had been referred by the Legal Adviser to the requirements of Regulation 8 of the Complaints and Disciplinary

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Regulations 2014 (as amended) ("CDR8") and had accepted his advice. The Chair had also taken account of the content of ACCA's documents entitled "Consent Orders Guidance" and "Consent Orders Guidance FAQs".

4. The Chair was satisfied that Mr Moody was aware of the terms of the draft Consent Order and that it was being considered today.
5. The Chair was also satisfied that Mr Le Couteur was aware that he could withdraw his agreement to the signed draft Consent Order by confirming the withdrawal in writing. No such withdrawal had been received.

ALLEGATIONS

Allegation 1

Mr Ryan Le Couteur admits the following:

- (a) On 13 July 2020, Mr Ryan Le Couteur was convicted of criminally sending messages and photographs of an obscene and indecent character, via a telecommunication system using 'KIK' app., contrary to Article 51 (1) of the Telecommunications (Jersey) Law 2020; and accessing a computer, being a smart phone, belonging to another without authority, to access photographs contrary to Article 2(1) Computer Misuse (Jersey) Law 1995 at the magistrate's court of Jersey, which is discreditable to the Association or the accountancy profession;
- (b) By reason of his conduct at 1 (a) above, Mr Ryan Le Couteur is liable to disciplinary action pursuant to byelaw 8(a)(ix).

PRELIMINARY ISSUE

6. The Chair had considered whether it was appropriate to proceed in the circumstances of this case.

7. As set out below, the sentence imposed by the Court on 02 June 2020 for the offences of which he was convicted included a probation order for 18 months, i.e. until 02 December 2021, a sex offenders notification requirement for 5 years, and a restraining order for 5 years.
8. The Chair considered the guidance to be found in the judgment of Mr Justice Newman in the case of *CRHCR v General Dental Council and Fleischmann [2005] EWHC 87 (Admin)* ("the Fleischmann case"). At paragraph 54 of his judgment, Newman J stated as follows:

"I am satisfied that, as a general principle, where a practitioner has been convicted of a serious criminal offence, he should not be permitted to resume his practice until he has satisfactorily completed his sentence. Only circumstances which plainly justify a different course should permit otherwise."

9. The Chair also noted the written submissions of ACCA that, on the facts, this case can be distinguished from the Fleischmann case. Whilst the circumstances of the offence committed by Mr Le Couteur could certainly be described as serious, in the Chair's judgment, they related to one person and were less serious than the circumstances giving rise to the prosecution of Mr Fleischmann. Furthermore, Mr Fleischmann was a medical professional with access to vulnerable persons including children. That did not apply to Mr Le Couteur. Finally, the Fleischmann case related to a suspension. Under ACCA rules there is no power to suspend, and therefore the only alternative to the proposed severe reprimand would be an order removing Mr Le Couteur from the student register. ACCA submitted that sanction would be disproportionate and an unlikely sanction to be imposed by a Disciplinary Committee if the Consent Order was refused.
10. The Chair had also taken account of what had been said by the Probation Officer in his report in February 2021, which included the following:

"Mr Le Couteur has complied well with his Probation Order to date and participated well in supervision. He has attended all his appointments on time and done everything asked of him. He has no recorded absences. Most

importantly, he appears to have put into practice in his home life skills he has learnt in order to not make the same mistakes again."

11. Mr Le Couteur understands that, if he acts in breach of the terms of his Probation Order, this may lead to further regulatory proceedings being brought against him.
12. Finally, whilst the Fleischmann case refers to a registrant being unable to practice until his sentence is completed, Mr Le Couteur is not, and has never been, suspended, no application having been made, for example, for an Interim Order suspending his registration.
13. In the circumstances, the Chair decided that it was appropriate to proceed.

DECISION ON FACTS

14. The following facts were agreed by Mr Le Couteur and ACCA.
15. On 13 July 2020, Mr Ryan Le Couteur was convicted of criminally sending messages and photographs of an obscene and indecent character, via a telecommunication system using 'KIK' app., contrary to Article 51 (1) of the Telecommunications (Jersey) Law 2020; and accessing a computer, being a smart phone, belonging to another without authority, to access photographs contrary to Article 2(1) Computer Misuse (Jersey) Law 1995 at the magistrate's court of Jersey (pages 36-37).
16. Mr Le Couteur received a probation order for 18 months, a community service order for 180 hours, or in default of this not being carried out, 12 months imprisonment; a compensation order for £5,000, or in default of this not being carried out, 24 weeks imprisonment. He was subject to sex offenders' notification requirements for 5 years and a restraining order was also put in place for 5 years.
17. There is no official summary of the facts giving rise to the conviction in the form of sentencing remarks or other independent information regarding the

background to the offence. However, the Chair had taken account of the content of the Certificate of Conviction and the Court Orders which had been provided by Mr Le Couteur and by the Magistrate's Court of Jersey. In addition, Mr Le Couteur has set out his version of events in his emails to ACCA. In brief, he stated that due to his own stresses caused by a bad breakup, he set up a fake dating profile in his ex-girlfriend's name and uploaded images of her of an indecent nature without her consent. His ex-girlfriend found out about his actions and reported him to the police. He fully co-operated with the police and told them everything, because he did not want to hide anything anymore and wanted help with his mental state.

DECISION ON ALLEGATIONS AND REASONS

18. In accordance with Regulation 8 of the CDR, the Chair has the power to approve or reject the draft Consent Order or to recommend amendments. The Chair can only reject a signed draft Consent Order if they are of the view that the admitted breaches would more likely than not result in exclusion from membership or removal from the student register.
19. The Chair was satisfied that there was a case to answer and that it was appropriate to deal with the complaint by way of a Consent Order. The Chair considered that the Investigating Officer had followed the correct procedure.
20. The Chair considered the bundle of evidence and, on the basis of the documentary evidence, including the certificate of conviction, and the admissions of the allegations by Mr Le Couteur, found the facts of the allegations proved. The Chair considered that the admitted facts and Mr Le Couteur's actions leading to his criminal conviction justified disciplinary action under bye-law 8(a)(ix).

SANCTION AND REASONS

21. In deciding whether to approve the proposed sanction of a severe reprimand, the Chair had considered the Guidance to Disciplinary Sanctions ("the Guidance"). This includes the key principles relating to the public interest,

namely, the protection of members of the public, the maintenance of public confidence in the profession and in ACCA, and the need to uphold proper standards of conduct and performance. The Chair also considered whether the proposed sanction was appropriate, proportionate and sufficient.

22. In reaching their decision, the Chair had noted the following aggravating features as identified by ACCA:

- The convictions for sending indecent photos and messages without consent and accessing a computer without authority are discreditable to the Association and the accountancy profession, given that they constitute a serious departure from the standards that one would expect from an ACCA student member;
- The sentence imposed re-emphasises the seriousness of the offences committed.

23. The Chair had also noted that Mr Le Couteur is still subject to the Probation Order, will be on the sex offenders register for five years from June 2020 and the subject of a restraining order for the same period.

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

- Mr Le Couteur has been a student of ACCA since February 2013 and has a previous good record with no complaint or disciplinary history;
- Mr Le Couteur has paid the compensation order imposed by the court and completed his community service;
- According to Mr Le Couteur's Probation Officer, he has '*complied well with his Probation Order to date*';
- The actions which led to the conviction arose from a breakdown of a personal relationship;
- Mr Le Couteur has expressed remorse for his actions, apologised to those involved, and considers that he has learnt from this incident and

“...intends to be a law abiding citizen and not be in trouble with the police or the courts again”;

- The fact that he is committed to pursuing a career in accountancy;
 - Mr Le Couteur’s poor mental health at the time of the incidents that led to the conviction;
 - Mr Le Couteur has fully co-operated with the investigation and regulatory process.
25. The Chair also placed reliance on the positive remarks made by his probation officer as outlined at paragraph 10 above.
26. The Chair considered that both the aggravating and mitigating features identified by ACCA were supported by documentary evidence and were relevant.
27. In the Chair’s view, the conviction was in relation to a serious offence and the public interest would not be served by making no order, nor would an admonishment or reprimand adequately reflect the seriousness of Mr Le Couteur’s conduct. The conduct must have caused considerable distress to his former girlfriend and had extended over a number of months.
28. In all the circumstances, the Chair was satisfied that the sanction of severe reprimand was appropriate, proportionate, and sufficient, that removal of Mr Le Couteur from the register would be a disproportionate outcome and that a Disciplinary Committee would be unlikely to remove him from the student register.

COSTS AND REASONS

29. ACCA is entitled to its costs in bringing these proceedings. The claim for costs in the sum of £885, which had been agreed by Mr Le Couteur, appeared appropriate.

ORDER

30. Accordingly, the Chair approved the terms of the attached Consent Order. In summary:

- a. Mr Le Couteur shall be severely reprimanded; and
- b. Mr Le Couteur shall pay costs of £885 to ACCA.

Ms Carolyn Tetlow
Chair
09 September 2021