

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Philip Peter Bald

Considered on: Tuesday, 21 September 2021

Location: Remotely via ACCA Offices, The Adelphi, 1-11 John
Adam Street, London WC2N 6AU using Microsoft Teams

Chair: Ms Valerie Paterson

Legal Adviser: Ms Valerie Charbit

Summary: Draft Consent Order approved

Severe Reprimand

Costs: £747.50 Cost and a fine of £5,000 payable to ACCA

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 a bundle of 338 pages which included a draft Consent Order.
3. The draft Consent Order was signed by Mr Bald on 18 August 2021 and by a representative of ACCA on 24 August 2021. It reads as follows:

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The Association of Chartered Certified Accountants ("ACCA") and Mr Philip Peter Bald ("the Parties"), agree as follows:

1. Mr Philip Peter Bald admits the following:

Allegations

- 1. It is alleged that Mr Philip Peter Bald, Director of Philip Bald Accountancy Limited ("the firm"):*
 - a) On dates between 26 June 2017 and 24 May 2021, failed to comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 in relation to practice conducted in the firm in that he:*
 - i) had not conducted and documented a firm-wide risk assessment, contrary to Regulation 18;*
 - ii) did not put in place adequate steps to ensure the firm had in place a dedicated policies and procedures document outlining the firm's anti- money laundering systems and controls, contrary to Regulation 19;*
 - iii) did not provide formalised anti-money laundering training to all relevant staff at the firm and retain a record of such training, contrary to Regulation 24;*
 - iv) did not take adequate steps to ensure the firm had in place formal enhanced customer due diligence processes, contrary to Regulations 27 - 32.*
 - b) His conduct in respect of 1 above was:*
 - i) Contrary to Section B2 of ACCA's Code of Ethics and Conduct (Anti money laundering) [as applicable between 2017 and 2021];*
 - ii) Contrary to Subsection 113 of ACCA's Code of Ethics and Conduct (the Fundamental Principle of*

Professional Competence and Due Care) [as applicable between 2017 and 2021];

iii) Contrary to Subsection 115 of ACCA's Code of Ethics and Conduct (the Fundamental Principle of Professional Behaviour) [as applicable between 2017 and 2021].

c) In light of any or all of the facts set out at Allegations 1a and 1b above, he is;

i) Guilty of misconduct pursuant to byelaw 8(a)(i);

ii) Liable to disciplinary action pursuant to byelaw 8(a)(iii).

2. That Mr Philip Bald shall be severely reprimanded, shall be fined £5000 and shall pay costs to ACCA in the sum of £747.50.

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.

Publicity

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 below from ACCA's draft Consent Order.:

Relevant Facts, Failings and/or Breaches

3. The Senior Investigations Officer has conducted their investigation into the allegations against Mr Philip Peter Bald 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 Philip Peter Bald 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:

Mr Philip Peter Bald is the Director of Philip Bald Accountancy Limited ("the firm") and the appointed Money-Laundering Supervision Officer of the firm;

On 01 September 2020, a desk-based monitoring review of the firm was conducted by ACCA's Anti-Money Laundering ("AML") Team in order to assess its compliance with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("MLRs 2017").

The review revealed evidence of poor AML compliance regarding the following AML controls:

- o The firm had not conducted and documented a firm-wide risk assessment ("FWRA"). This is a legal requirement and therefore the firm was in breach of Regulation 18 of the MLRs, Consequently, the firm was not aware of the AML risks within its operations and was not able to adequately mitigate them.*
- o The firm did not have AML policies and procedures ("P&Ps") in place. It is a legal requirement to have AML P&Ps and therefore the firm was in breach of Regulation 19 of the MLRs. Consequently, the firm did not have a documented process in place to state how it mitigated its money laundering risks.*

- o *The firm did not provide formalised AML training to all relevant staff, nor retain a copy of this. This is in breach of Regulation 24 of the MLRs. At the time of the review, the firm's AML training programme consisted of issuing staff an AML booklet to read independently. Additionally, the effectiveness of the training was not analysed. Consequently, the AML Supervision Officer believed it to be unclear whether staff were afforded the time to familiarise themselves with the training material and adequately understand its contents.*
 - o *Inconsistencies and anomalies were found when reviewing Customer Due Diligence files, such as: identification documents expired and were not always taken for each ultimate beneficial owner ("UBO"), Know your client forms documenting information regarding the nature of the client's business were not completed, proof of address was not always documented for each UBO, no evidence of client risk assessment. This is in breach of Regulations 27 - 32 of the MLRs.*
6. *The following has been included with the bundle of evidence:*
- i) *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017;*
 - ii) *Anti-Money Laundering Guidance for the Accountancy Sector("AMLGAS");*
 - iii) *Office of Financial Sanctions Implementation HM Treasury Financial Sanctions Guidance.*
7. *The evidence revealed failures to comply not only with the 2017 MLRs set out above, but also failure to apply the guidance set out within AMLGAS. This guidance is based on the law and the MLRs which came into force on 26 June 2017. It covers the prevention of money laundering and the countering of terrorist financing. It is intended to be read by anyone who provides audit, accountancy, tax advisory, insolvency, or trust and company services in the*

United Kingdom and has been approved and adopted by the UK accountancy AML supervisory bodies.

8. *The evidence also reveals the firm is not in compliance with Section B2 of ACCA's Rulebook (Anti-Money Laundering) [pages 334 - 338], in particular:*

- *Section 5 - Relationship with the local law;*
- *Sections 7 and 8 - Internal controls and policies;*
- *Section 17 - Record keeping;*
- *Sections 18 and 19- Recognition of suspicion.*

Following the AML Team's referral to ACCA's Investigations Department, Mr Bald took steps to rectify the breaches and provided evidence that the relevant documentation and processes had been put in place, to show how he had attempted to rectify the failures identified by the AML Team.

In Mr Bald's initial response to ACCA on 13 May 2021, he says: 'Of course I undertake that this conduct will not arise again. I will add to my CPD training at least one AML course each year to ensure I am fully aware of any changes in regulations. I undertake to carry out a regular FWRA and update my policy and procedures if needed.'

On 24 May 2021, the AML Team confirmed in writing that they were satisfied that the breaches identified in the AML report had been sufficiently rectified.

Mr Bald provided a final response to the consideration of this matter by ACCA's Investigations Department on 13 June 2021 [pages 50 - 51.] The information he has provided in this letter should be considered by way of mitigation.

Sanction

The appropriate sanction is a severe reprimand and a fine of £5,000.

9. *In considering what is to be the most appropriate sanction, ACCA's Guidance for Disciplinary Sanctions ("the 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 to be considered as follows:*

The potential risks arising from a failure to put in place adequate AML policies and procedures in the firm:

The length of time since the MLRs came into force (in June 2017), during which adequate AML policies and procedures were either not in place or unsatisfactory.

12. *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 have been noted:*

Mr Bald has now satisfactorily rectified the deficiencies identified by ACCA's AML Team and the firm has now put adequate AML policies and procedures in place

Mr Bald has been a member of ACCA since 1990 and has a previous good record with no previous complaint or disciplinary history

Mr Bald has fully co-operated with the investigation and regulatory process

By taking remedial action, Mr Bald has ultimately admitted his conduct

There is no evidence to suggest that Mr Bald's conduct was dishonest or deliberate

There is no continuing risk to the public as all anti-money laundering procedures have now been put in place in the firm.

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 Bald'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 fundamental standards of professional conduct.*

DECISION

5. The powers available to the Chair in ACCA's Complaints and Disciplinary Regulations 2014 (amended 01 January 2020) ("CDR") 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 the draft Consent Order on the basis of all the information before them which included correspondence from Mr Bald to

ACCA. They further took into account the ACCA's Guidance for Consent Orders and ACCA's Guidance for Disciplinary Sanctions. They accepted the advice of the Legal Adviser.

7. The Chair found that ACCA had appropriately investigated these matters.
8. The Chair decided that expulsion was not an appropriate or proportionate sanction in this case and that it was therefore a suitable matter to deal with by way of a Consent Order. They did not consider that any amendments were required to the draft order.
9. The Chair did not consider that there were any additional aggravating or mitigating factors which were not set out by ACCA above in its draft report.
10. In deciding whether a severe reprimand was the appropriate sanction, the Chair referred to the Guidance for Disciplinary Sanctions and considered the sanctions from the least serious upwards. They also considered whether exclusion would be proportionate or the correct sanction to meet the public interest, having taken into account all the aggravating and mitigating factors. The Chair decided that a severe reprimand was a sufficient and appropriate sanction in this case and met the public interest. They noted that Mr Bald had made an early admission of his firm's failings and he had made unqualified admissions. He had therefore demonstrated good insight. He had taken appropriate remedial actions within a short period of time. The Chair was satisfied that exclusion from membership would be a disproportionate sanction as his behaviour was not fundamentally incompatible with being an ACCA member. He had not deliberately committed misconduct and he had displayed good insight in seeking to rectify matters promptly. The Chair is satisfied that there appeared to no longer be a risk to the public.
11. The Chair considered that there was good mitigation in this case. It is clear that Mr Bald regrets the deficiencies in his AML policy and procedures for his firm that came to light during a routine desk-based monitoring review to monitor the firm's compliance with MLRs 2017.
12. The firm did not have a documented set of AML policy and procedures and it had therefore not articulated what its process was to mitigate the risk of MLTF occurring. This is also a legal requirement and therefore the firm were in breach of the Money Laundering Terrorist Financing and Transfer of Funds

(Information on the Payer) Regulations 2017. Mr Bald also stated that he was unaware of AML guidance for the accountancy sector until the review.

13. Mr Bald and his firm have taken appropriate steps to ensure AML obligations and requirements are fully complied with in the future. Mr Bald has a previously no disciplinary findings against him. He has co-operated fully with the ACCA investigation and has fully and unequivocally admitted his misconduct. The Chair was satisfied that there was no evidence that any adverse consequences were suffered by any third party.
14. The Chair further considered Mr Bald's means and decided that a £5000 fine in addition to the sanction of a severe reprimand was in accordance with his means and adequately reflected the seriousness of the misconduct.
15. Having taken account of all the above factors and ACCA's Guidance for Disciplinary Sanctions, the Chair was satisfied a severe reprimand combined was a £5000 fine is the appropriate sanction in this case.
16. The Chair considered ACCA's figure for costs was reasonable and having taken into account Mr Bald's statement of means, it decided that Mr Bald should pay that amount to ACCA for the costs of dealing with this case.
17. The Chair was therefore satisfied it was appropriate to make a Consent Order in the terms agreed between the parties.

ORDER

18. The Chair made the following order:
 - i. The draft Consent Order is approved.
 - ii. Allegations 1(a), 1(b) and 1(c) are proved by admission.
 - iii. Mr Bald is severely reprimanded.
 - iv. Mr Bald is ordered to pay a £5000 fine
 - v. Mr Bald is ordered to pay costs to ACCA in the sum of £747.50.
19. Under CDR 8(17) there is no right of appeal against this order. Therefore, this order comes into effect immediately.

**Ms Valerie Paterson
Chair
21 September 2021**