

APPLICATION ON PAPERS

CONSENT ORDER CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Milan Chandulal Pandaya

Considered on: Friday, 22 April 2022

Chair: Mr Andrew Gell

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 60 pages which included a Consent Order Agreement.

CONSENT ORDER DRAFT AGREEMENT

3. The Consent Order Agreement was signed by Mr Pandya on 10 March 2022 and by a representative of ACCA on 04 April 2022. It reads as follows.

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Allegations

The Association of Chartered Certified Accountants (ACCA) and Mr Milan Chandulal Pandya (together 'the Parties'), agree the following:

1. *Milan Chandulal Pandya, an ACCA member admits the following:*

Allegation 1

Pursuant to byelaw 8(a)(vi), Mr Pandya is liable to disciplinary action by virtue of the action taken against him on 15 March 2021 by the Institute of Chartered Accountants of England and Wales ('ICAEW').

Allegation 2

Mr Pandya failed to promptly inform the ACCA that he had been disciplined by the ICAEW in breach of byelaw 10(b) and/or the Global Practising Regulation 12(2)(g).

Allegation 3

By reason of the conduct set out at Allegation 2, Mr Pandya is:

- a. *Guilty of misconduct pursuant to bye-law 8(a)(i); or, in the alternative*
- b. *Liable to disciplinary action pursuant to bye-law 8(a)(iii).*

2. *That Mr Pandya shall:*

- a. *Be reprimanded; and*
- b. *Pay costs to ACCA of £912.25*

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 Pandya in accordance with Regulation 8(1)(a) of*

the Complaints and Disciplinary Regulations ("the CDR") and is satisfied that:

- a) *They have conducted the appropriate level of investigation as evidenced by the enclosed evidence bundle (pages 1-53), and determined that there is a case to answer against Mr Pandya 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 the key facts is set out below:*
 - 5.1 *On 16 July 1992, Mr Pandya became a Member of ACCA (page 1).*
 - 5.2 *On 16 July 1997, Mr Pandya became a Fellow of ACCA (page 1).*
 - 5.3 *On 1 January 1998, Mr Pandya was issued with an ACCA practicing certificate with audit qualification which he continues to hold (page 2).*
 - 5.4 *On 15 March 2021 disciplinary action was taken against Mr Pandya by the Investigation Committee of ICAEW, whereby Mr Pandya entered into a Consent Order with the ICAEW (page 5).*
 - 5.5 *The sanction imposed by ICAEW's Investigation Committee was that Mr Pandya be reprimanded, fined and pay costs. Mr Pandya paid the fines and costs (pages 33- 34).*
 - 5.6 *The ICAEW notified ACCA of their Investigation Committee's decision by email dated 18 May 2021 (page 6).*

Sanction

6. *The appropriate sanction is **reprimand**.*

7. *In considering this 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*
8. *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.*
9. *The **aggravating factors** are considered to be as follows:*
- 9.1 *By being publicly sanctioned by another professional body Mr Pandya has brought discredit upon himself, ACCA and the accountancy profession.*
- 9.2 *The conduct which led to Mr Pandya being the subject of action by the ICAEW fell below the standards expected of a qualified ACCA member*
- 9.3 *ICAEW's Disciplinary Committee ordered that Mr Pandya be reprimanded, fined and pay costs.*
- 9.4 *The underlying conduct for which he was disciplined involved audit work.*
10. *In deciding that a **reprimand** is the most suitable sanction paragraphs C3.1 to C3.5 of ACCA's Guidance have been considered and the following **mitigating factors** have been noted:*
- 10.1 *Mr Pandya has been a member of ACCA since 1992 and has a previous good record with no previous complaint or disciplinary history.*
- 10.2 *Mr Pandya co-operated with the investigation and regulatory process.*

10.3 *Mr Pandya has shown insight and acknowledged his failings.*

10.4 *Mr Pandya has paid the penalty and costs imposed on him by the ICAEW.*

10.5 *The ICAEW did not consider the matter so serious as to require his exclusion from membership or cancellation of his practising certificate.*

11. *The other possible sanctions have been considered. A **reprimand** proportionately reflects Mr Pandya'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; this 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 he 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. The Chair noted that Mr Pandya had made full admissions to the three allegations against him and was satisfied, on the basis of the evidence before them, that those admissions had been properly made.
7. The Chair considered that a proper investigation had been carried out and that there was a real prospect, if the case proceeded to a hearing, that the allegations would be found proved.

8. The Chair noted the contents of paragraphs 9 and 10 of the agreed background, which set out the aggravating and mitigating factors. Although Mr Pandya's insight has been somewhat limited by a failure to fully accept the blame for his actions, he has nonetheless made admissions and co-operated with the investigation. Further, Mr Pandya has been a member of ACCA for a lengthy period without any previous blemishes on his record. In all the circumstances, exclusion was not a likely sanction if the matter proceeded to a hearing before the Disciplinary Committee. The Chair was satisfied that the proposed sanction of a reprimand was appropriate and proportionate in the circumstances of the case.
9. Therefore, the Chair approved the draft Consent Order.

ORDER

10. 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 Pandya is reprimanded.
 - iv. Mr Pandya is ordered to pay costs to ACCA in the sum of £912.25.
11. Under CDR 8(17) there is no right of appeal against this order. Therefore, this order comes into effect immediately.

Mr Andrew Gell
Chair
22 April 2022