

APPLICATION ON PAPERS

CONSENT ORDER CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Gerard Francis O'Brien
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 78 pages which included a Consent Order Draft Agreement.

CONSENT ORDER DRAFT AGREEMENT

3. The Consent Order Draft Agreement was signed by Mr O'Brien on 21 March 2022 and by a representative of ACCA on 07 April 2022. It reads as follows.

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Allegations

The Association of Chartered Certified Accountants (ACCA) and Mr Gerard Francis O'Brien (the Parties), agree as follows:

1. *Mr Gerard Francis O'Brien, an ACCA member, and a sole practitioner at Gerard O'Brien & Co (the firm), admits the following:*

Allegation 1

- a) *Between 1 January 2020 and 31 December 2020, he failed to comply with paragraph R113.2 (the Fundamental Principle of Professional Competence and Due Care) of ACCA's Code of Ethics and Conduct (as applicable in 2020) in that he failed to adequately supervise Mr B's work.*
 - b) *By reason of the conduct at 1(a) above, Mr O'Brien is guilty of misconduct pursuant to byelaw 8(a)(i).*
2. *That Mr O'Brien shall be severely reprimanded and pay costs to ACCA in the sum of £1,100.*
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 O'Brien in accordance with Regulation 8(1)(1) of the Complaints and Disciplinary Regulations (CDP) (2019) and is satisfied that:*
 - a) *Evidenced by the enclosed evidence bundle (pages 1 to 77), and determined that there is a case to answer against Mr O'Brien 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 O'Brien became a member of ACCA on 15 April 2002 (page 6) and is a sole practitioner at Gerard O'Brien & Co, 27 Main Street, Belleek, County Fermanagh, Northern Ireland (page 10).*
- *On 13 August 2020, Gerard O'Brien & Co presented an annual return, made up to 30 June 2020 (page 42), and Abridged Financial Statements of Company A, for the period ended 30 September 2019 (page 15 to 26), to the Companies Registration Office Ireland, which stated or confirmed that Firm C was Company A's auditor and that Firm C had audited the financial statements of Company A.*
- *On 13 October 2020, Gerard O'Brien & Co presented an annual return, made up to 2 October 2020 (page 63), and Abridged Financial Statements for Company B, for the year ended 31 March 2020 (page 44 to 54), to the Companies Registration Office, Ireland which stated or confirmed that Firm C was Company B's auditor and that Firm C had audited the financial statements of Company B.*
- *In fact, neither Company A nor Company B was a client of Firm C and Firm C had not audited the Abridged Financial Statements of either company. Firm C's details and audit registration number had been used without Firm C's authorisation or knowledge by a "3rd party external agent" (Mr B) hired by Mr O'Brien for a short period during 2020 when Mr O'Brien was under extreme pressure and after Mr O'Brien had provided Mr B with access to Gerard O'Brien & Co's Companies Registration Office, Ireland web-filing system and company credit card (page 64).*
- *Mr O'Brien did not know what Mr B had done until he received a phone call from Firm C in late 2020 by which point Mr B was no longer hired by Mr O'Brien and Mr O'Brien was unable to recontact Mr B (page 64).*
- *As a result of Mr B's actions Mr O'Brien has requested Firm C to conduct the audits so that the approved Abridged Financial Statements and annul [sic] returns can be properly filed at*

Companies Registration Office, Ireland. In addition, Mr O'Brien has taken steps to ensure that he is now the only person authorised to submit financial statements and annual returns to Companies Registration Office, Ireland (page 67 & 70).

Sanction

6. *The appropriate sanction is a severe reprimand.*
7. *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.*
8. *Other key principles are that of proportionality, that is, balancing the member's own interests against the public interest*
9. *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 O'Brien has been a member of ACCA since 2002 and has a previous good record with no previous complaint or disciplinary history;*
 - *Mr O'Brien has co-operated with the investigation; and*
 - *Mr O'Brien is taking remedial steps.*
10. *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 O'Brien'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 was satisfied it was appropriate to make a Consent Order in the terms agreed between the parties.
7. The Chair noted that Mr O'Brien had made a full admission to the allegation that he breached the paragraph R113.2 of the Code of Ethics and Conduct and that he accepted this amounted to misconduct. Whilst he may have been unfortunate to employ someone who had acted inappropriately, Mr O'Brien clearly bears responsibility for that person's actions, which he had accepted.
8. The Chair considered that a sufficiently full and thorough investigation had been carried out and that there clearly was, if the case proceeded to a hearing, a real prospect that the allegations would be found proved.
9. The Chair noted the mitigating factors, as set out in paragraph 9 of the agreed background. They included Mr O'Brien's lengthy career and previously unblemished record, his co-operation with the investigation and the fact he had taken appropriate remedial action. In light of those factors and the nature of the misconduct in question, the Chair did not consider that exclusion was a likely sanction if the matter proceeded to a hearing before the Disciplinary Committee. The Chair considered that the proposed sanction of a severe reprimand was appropriate and proportionate in the circumstances of the case.
10. Therefore, the Chair approved the draft Consent Order.

ORDER

11. The Chair made the following order:
 - i. The draft Consent Order is approved.
 - ii. Allegations 1(a) and 1(b) are proved by admission.
 - iii. Mr O'Brien is severely reprimanded.
 - iv. Mr O'Brien is ordered to pay costs to ACCA in the sum of £1,100.
12. 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