

**APPLICATION ON PAPERS
CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED
CERTIFIED ACCOUNTANTS**

REASONS FOR DECISION

In the matter of: Mr Stephen Richard Clark

Considered on: Thursday, 06 January 2022

Chair: HH Suzan Matthews QC

Legal Adviser: Mr Richard Ferry-Swainson

Summary: Consent Order for Severe Reprimand and costs approved

INTRODUCTION

1. The Chair considered a draft Consent Order in respect of Mr Clark. The matter was listed to be considered on the basis of documents only. Neither Mr Clark nor ACCA were present or represented.
2. The Chair had before them the draft Consent Order, dated 15 December 2021, signed by Mr Clark and a signatory on behalf of ACCA, together with supporting documents in a bundle numbered 1 to 52. In addition, there was a service bundle numbered 1 to 7.

SERVICE

3. The Committee was satisfied that Mr Clark had been properly notified of the meeting by an email dated 04 January 2022.

BACKGROUND

4. It was alleged by ACCA, and Mr Clark admitted, that he was liable to disciplinary action pursuant to byelaw 8(a)(vi) because of the action taken against him, on 07 December 2020, by the Chartered Institute of Public Finance and Accountancy (CIPFA).

5. The details were set out in the attached draft Consent Order. ACCA's Investigating Officer and Mr Clark had agreed the form of order which proposed a severe reprimand and made an order for costs.

DECISION AND REASONS

6. In accordance with Regulation 8 of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014, as amended, 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.
7. 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 was also satisfied that the Investigating Officer had followed the correct procedure.
8. The Chair considered the bundle of evidence and, on the basis of Mr Clark's admission, found the facts proved. They were satisfied that the admitted facts and Mr Clark's actions meant that he was liable to disciplinary action pursuant to byelaw 8(a)(vi) in that he had been disciplined by another regulatory body.
9. Mr Clark is a member of ACCA, having joined in September 2008.
10. On 04 and 07 December 2020, Mr Clark, who is also a member of CIPFA, appeared before a CIPFA Disciplinary Committee, to face an allegation of misconduct based upon the following conviction:

"On or about 6 November 2019, at Derby Magistrates Court, you pleaded guilty to, and were convicted of, an offence - namely that on 20 April 2019 at Derby when suspected of having driven a vehicle and having been required to provide a specimen of blood for a laboratory test pursuant to section 7 of the Road Traffic Act 1988 in the course of an investigation into whether you had committed an offence under section 3A, 4, 5, or 5A thereof failed without reasonable excuse to do so."
11. Mr Clark's sentence was as follows :
 - a) A Community Order for 200 hours unpaid work within the next 12 months, with a Rehabilitation Activity Requirement;
 - b) Pay Costs of £300 to the Crown Prosecution Service; and
 - c) Pay a surcharge to fund victim services of £85.00.

12. Mr Clark was at all material times a member of ACCA, having joined in 2008. He is also a member of the Institute of Chartered Accountants of England and Wales and a member of CIPFA. He was employed by Company A as a Senior Statutory Auditor and Key Audit Partner in respect of signing the audits of financial statements relating to Public Bodies.
13. At 10.19pm on Good Friday, 19 April 2019, Police Constable C ("PC C") attended the scene of a road traffic collision at Long Lane, Dalbury Lees, Derbyshire. The collision involved two vehicles on a bend in the road and from the position of the vehicles it was apparent that they had collided head on. Both cars had extensive front-end damage. The location was a rural country lane, just wide enough for two cars.
14. The two cars involved were a blue Toyota, driven by Mr Clark, and a red Ford Fiesta, driven by Person H. Paramedics were at the scene treating Person H and Mr Clark. PC C spoke to Mr Clark and could smell alcohol on his breath. Suspecting Mr Clark had been drinking alcohol, PC C requested he provide a breath test. Mr Clark did so and failed the test, with a reading of 91 micrograms of alcohol per 100 millilitres of breath. The breath test was not, of itself, evidence for the commencement of proceedings under the Road Traffic Act 1988, but as an indication, the legal limit is 35 micrograms per 100 millilitres of breath. Mr Clark, who had a laceration to his head, was then taken to Derby Hospital for treatment. The Fiesta was upside down resting on its roof. Person H was heard by the attending officer, PC C, to be in significant pain and screaming out. She was later found to have a broken ankle, among other unnamed injuries.
15. PC C attended Derby Hospital and visited Mr Clark's hospital bay at 12:30am to carry out the blood procedure in order to ascertain the precise amounts of alcohol in his body. Mr Clark was conscious and being treated.
16. Permission was given by the Doctor in charge for a blood sample to be taken for analysis, however Mr Clark failed to provide a sample, claiming he did not know who PC C was. In her statement, PC C said that she was in full uniform and introduced herself as a police officer, showing Mr Clark her warrant card. She said Mr Clark appeared to have no difficulty talking with the medical staff at the hospital, but that when speaking with her he acted confused and kept his answers vague. When asked if he would provide a sample he said "*I don't know.*" When PC C asked Mr Clark for consent to take a specimen of blood for analysis, he said "*I don't know who you are, I don't know.*" When she gave him a warning, he said "*struggling to know who you are.*" This was treated by PC C as a refusal to provide a sample.
17. Following the refusal Mr Clark was reported by the police for failure without reasonable excuse to provide a specimen of blood in the course of an investigation into whether he

had committed an offence under sections 3A, 4, 5 or 5A of the Road Traffic Act 1988, contrary to section 7(6) of the same Act.

18. Mr Clark's version of events, as given to the Probation Officer preparing his pre-sentence report to assist the Court with sentencing, was as follows. He was driving home and on passing his local public house, three miles from his house, he decided to stop and have a drink. He stayed at the pub for approximately two hours but was unable to remember how much alcohol he had had to drink. He told the Probation Officer, *"I felt OK, I wouldn't have got in the car if I thought I was incapable of driving."* However, after being challenged by the Probation Office on this account, Mr Clark confirmed he did feel the effects of the alcohol, but that getting a taxi would have been difficult due to the remote location. Mr Clark told the Probation Officer that he did take a risk and said, *"I would have felt intoxicated, it's a stupid thing to do and put a lot of people at risk."*
19. On discussing his failure to provide a blood sample at the hospital, Mr Clark told the Probation Office that he had very little memory of events after the accident due to the head injury he suffered when hitting his head against the windscreen. He said, *"I think I failed to provide because I was confused and didn't understand what was being asked of me - I can't remember."*
20. On discussing victim impact, the Probation Officer noted that Mr Clark was keen to perceive himself a victim and the Probation Officer had to direct discussions to the other injured party on several occasions. Although Mr Clark was able to identify the impact of the injuries Person H suffered, such as physical pain, time off work and potentially feeling traumatised, the Probation Officer noted that Mr Clark was more concerned about the impact on his own life, rather than that of the driver of the other car.
21. Mr Clark received a notice of intended prosecution on the 26 July 2019 for failing to provide a blood specimen to the police for analysis. The charge was one of failure without reasonable excuse to provide a specimen of blood for a laboratory test pursuant to section 7 of the Road Traffic Act 1988. An offence under section 7 is, under schedule 2 of the Road Traffic Offenders Act 1988, punishable by up to 6 months' imprisonment.
22. Initially Mr Clark tendered a not guilty plea but changed his plea on legal advice and pleaded guilty as charged and was convicted at the Chesterfield Magistrates Court on 12 November 2019. The change of plea came one week before trial. The Justices regarded the case as a 'Category One' offence with both greater culpability and harm. Category One is the highest category. Additionally, the injuries sustained by the other driver were of a more serious nature than those of Mr Clark. Consequently, the starting point for sentencing involved custody and a high level of community service. In the event, as a result of the mitigation pleaded on behalf of Mr Clark, the ultimate sentence was a Community Order requiring Mr Clark to participate in a specified activity up to a maximum

of 6 days, an Unpaid Work Requirement of 200 hours, to be completed within 12 months, a victim surcharge of £85 and a £300 payment in respect of the prosecution's costs. Mr Clark was also disqualified for driving for a period of 29 months, subject to a 25% reduction upon satisfactory completion of an appropriate driving course. This was duly undertaken, and the period of driving suspension reduced accordingly.

23. Mr Clark had no previous convictions before this incident.
24. Following his conviction Mr Clark's employers, Company A, commenced internal disciplinary proceedings against Mr Clark and, on 25 November 2019, he was given a Final Written Warning under the terms of his employment for a period of 24 months. He was required to comply fully with the conviction terms imposed upon him. His working hours and pay were reduced by 10% during the period that he was obliged to undertake work in accordance with the Community Service Order. Mr Clark was also required to attend a consultation with the firm's occupational health provider to discuss his "*alcohol consumption and current lifestyle management.*"
25. Mr Clark admitted the matters alleged when he appeared before CIPFA's Disciplinary Committee.
26. [Private]
27. The CIPFA Disciplinary Committee found the following aggravating and mitigating factors:

Aggravating

- the indication from the roadside breath test was that Mr Clark was over twice the legal limit
- he endangered the life of another road user and potentially others
- serious injuries were sustained by Person H
- attempts taken to avoid responsibility for his actions
- limited insight
- the seriousness of the offence as reflected by the sentence in the Magistrates' Court

Mitigating

- previous good character prior to the conviction
- guilty pleas at Court and to this tribunal
- developing insight
- expressions of remorse and apology for his behaviour

- an indication in his oral evidence that he took full responsibility for his actions
- measures put in place to prevent a recurrence
- positive testimonial

28. The CIPFA Disciplinary Committee concluded that a severe reprimand was the appropriate sanction for Mr Clark.

29. CIPFA subsequently referred the matter to ACCA.

30. In an email to ACCA dated 26 July 2021, Mr Clark said:

"I wholly accept CIPFA's findings and take full responsibility for my actions.

I have undertaken all aspects of the community order including remedial work on my thought process as required. [Private] and have put in place appropriate measures to ensure I will never drink and drive again. [Private].

31. The Chair noted the agreed aggravating and mitigating factors as set out in the Consent Order. In particular, the Chair noted that Mr Clark had: a previous good record with no complaint or disciplinary history; fully complied with the terms of his sentence; fully co-operated with the investigation and regulatory process; expressed remorse for his actions. The Chair also noted Mr Clark's explanation into failings that led to the conduct.

32. In all the circumstances, and following ACCA's Guidance on sanctions, the Chair was satisfied that the sanction of severe reprimand was appropriate in this case and that exclusion would be disproportionate. He had been convicted of a serious offence and thereafter been disciplined by CIPFA. However, there had been full admissions to the behaviour, his sentence had been fully complied with and completed and Mr Clark had clearly learnt from the episode. The Chair also noted that Mr Clark had since retired from practice as an accountant.

33. The order for costs for this Consent Order appeared appropriate.

34. Accordingly, the Chair approved the attached Consent Order. In summary:

- a. Mr Clark shall be severely reprimanded; and
- b. Mr Clark shall pay costs of £792.00 to ACCA.

HH Suzan Matthews QC
Chair
06 January 2022