

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS REASONS FOR DECISION

In the matter of:	Mr Muhammad Mansoor Nasir
Considered on:	Thursday, 14 July 2022
Location:	Held remotely by video conference
Chair:	Mrs Carolyn Tetlow
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 106 pages and a Consent Order Draft Agreement signed by both parties.

CONSENT ORDER DRAFT AGREEMENT

3. The Consent Order Draft Agreement was signed by Mr Nasir on 15 June 2022 and by a representative of ACCA on 21 June 2022. Mr Nasir admits the following allegations.

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Allegation 1

Contrary to Complaints and Disciplinary Regulation 3(1) 2014 (as amended in 2020), Mr Nasir failed to cooperate with the investigation of a complaint in that until 02 April 2022, he did not respond to ACCA's correspondence dated:

- a. 22 March 2021;
- b. 26 April 2021;
- c. 25 May 2021.

Allegation 2

By reason of Mr Nasir's conduct in respect of the matters set out at allegation 1 above, Mr Nasir is guilty of misconduct pursuant to byelaw 8(a)(i).

- 4. The Relevant Facts, Failings and/or Breaches are agreed between the parties and are set out in the Appendix to this decision below.

APPENDIX

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Mr Muhammad Mansoor Nasir

-and-

The Association of Chartered Certified
Accountants

Referral to Consent

Orders Chair

Consent Order:

Draft Agreement

The Association of Chartered Certified Accountants ("ACCA") and Mr Muhammad Mansoor Nasir (together, "the Parties"), agree as follows:

1. Mr Muhammad Mansoor Nasir ("Mr Nasir"), a student of ACCA admits the following:

Allegation 1

Contrary to Complaints and Disciplinary Regulation 3(1) 2014 (as amended in 2020), Mr Nasir failed to cooperate with the investigation of a complaint in that until 02 April 2022, he did not respond to ACCA's correspondence dated:

- a. 22 March 2021;
- b. 26 April 2021;
- c. 25 May 2021.

Allegation 2

By reason of Mr Nasir's conduct in respect of the matters set out at allegation 1 above, Mr Nasir is guilty of misconduct pursuant to byelaw 8(a)(i).

2. That Mr Nasir shall be reprimanded and shall pay costs to ACCA in the sum of £120.

Signed.......... Dated.....15-06-2022.....
Mr Muhammad Mansoor Nasir

Signed.......... Dated.....21 June 2022.....

(For and on behalf of ACCA)

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.

Article I. 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.

Relevant Facts, Failings and/or Breaches

3. The Investigating Officer has conducted their investigation into the allegations against Mr Nasir 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 06 – 106), and determined that there is a case to answer against Mr Nasir 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 Nasir was admitted onto ACCA’s student register on 14 January 2020.
 - On 14 September 2020, Mr Nasir sat a remotely invigilated, Managing Costs and Finance (“MA2”) computer-based exam (“CBE”).

- On 19 January 2021, a complaint was opened by ACCA following concerns that a third party may have assisted Mr Nasir in taking this exam.
- The Investigations Officer reviewed the webcam footage of Mr Nasir's MA2 exam and produced screenshots noting that he appeared to be looking away from the screen, that there appeared to be noise from a third party and that Mr Nasir failed to complete a full 360-degree room pan despite the instructions of the exam proctor. Mr Nasir was notified of the complaint and asked to respond to the allegations by letter dated 22 March 2021 sent to his ACCA registered email address.
- No response was received by Mr Nasir to ACCA's letter dated 22 March 2021. Accordingly, a chaser email was sent to Mr Nasir's ACCA registered email address on 26 April 2021.
- No response was received by Mr Nasir to ACCA's correspondence dated 22 March 2021 and 26 April 2021. A further chaser email was sent to Mr Nasir's ACCA registered email address on 25 May 2021.
- Records from ACCA's case management system showed that on 22 March 2021 and 27 April 2021 Mr Nasir had opened the emails sent by ACCA's Investigations Officer, however he had not responded to ACCA.
- Due to his lack of co-operation the case was referred to an assessor who referred the case to the Disciplinary Committee. Mr Nasir ultimately attended the Disciplinary Committee hearing on 24 March 2022, and the hearing was adjourned with a direction that Mr Nasir was to respond to ACCA's correspondence.
- As noted in the adjournment reasons dated 24 March 2022, Mr Nasir, "*had given an explanation regarding his non-engagement which was due to his lack of knowledge of English and that he had rarely checked his emails*".
- In compliance with the directions from the Disciplinary Committee,

and by email dated 31 March 2022, Mr Nasir was re-sent the correspondence dated 22 March 2021, with supporting documentation and the footage of the MA2 exam.

- Upon reviewing the MA2 exam footage additional enquiries were sent to Mr Nasir on 07 April 2022, focusing on what appeared to be communication between him and a third party.
- On 02 April 2022, and after being directed to do so, Mr Nasir provided a response to the initial investigation enquiries, in which he stated,

“i live in a congested area and there was no one in the room other than me but the noises were from outside the room from people outside.. it was bothering me more than you as an exam candidate during the exam .. i was also very disturbed by that nuisance ... as i was disturbed by the noises of people outside the room so i was frustrated and looked from where the noises were coming in the room for a brief moment ...(sic)”

- On 15 April 2022, Mr Nasir responded to the additional enquiries and in summary, he denied that he received any assistance with the exam but he did “accept” that his “*brother was helping [him] to start exam.and then he went out of room by locking door.As i was not known how to adminster computer (sic)*”.
- Upon responding to ACCA’s enquiries regarding the complaint investigation on 02 April 2022, Mr Nasir ended the period of him failing to co-operate with his regulator.

Article II. Sanction

6. The appropriate sanction is a 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:

- It is the public interest and necessary for a registered professional to declare and uphold proper standards of conduct and behaviour. By not engaging with his professional body, Mr Nasir frustrated ACCA's central duty to regulate its members and so undermined ACCA's reputation and public confidence in it. The length of time that Mr Nasir failed to cooperate, 12 months.
- Mr Nasir's conduct fell below the standards expected of a ACCA student and brought discredit upon himself, ACCA and the accountancy profession.

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:

- Mr Nasir has a previous good record with no previous complaint or disciplinary history.
- Mr Nasir's personal circumstances at the time that he sat the exam.
- There does not appear to be any continuing risk to the public.

11. ACCA has considered the other available sanctions and is of the view that they are not appropriate. A reprimand proportionately reflects Mr Nasir'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.

JURISDICTION

5. The jurisdiction to deal with a disciplinary allegation by consent is set out in CDR 8. Regulations 8(1) and 8(7) read as follows:

(1) At any time up to and including the date of any disciplinary hearing, the investigating officer may propose that a complaint be disposed of by way of consent order . . .

(7) If the relevant person provides a signed copy of the draft consent order after the expiry of the 21 day deadline referred to in regulation 8(5) above, and up until the disciplinary case arising from the complaint is opened before the Disciplinary Committee, the investigating officer may in their absolute discretion reconsider whether the matter should proceed under the consent order provisions set out within regulation 8, having regard to all of the circumstances.

6. It is of note that the wording of CDR 8(1) changed in 2020. Prior to that, the Investigation Officer could propose that a matter be disposed of by consent at any time during the consideration of the complaint. The rules now provide that a proposal to deal with an allegation by consent must be made at any time before or including the date of any disciplinary hearing. Further, CDR 8(7) prohibits a member from agreeing to a consent disposal once a case has been opened before the Disciplinary Committee. The Chair considered that both the intent and the effect of these rules is that, once a Disciplinary Committee has become seized of an allegation, the option to deal with it by consent is no longer available.
7. In this case the Independent Assessor referred the above allegations to the Disciplinary Committee on 12 November 2021. A hearing before the Disciplinary Committee was listed to take place remotely on 24 March 2022. Mr Nasir attended the hearing and made an application for an adjournment. The application was considered as a preliminary matter. The application was granted, and the Committee gave directions. It directed ACCA to reserve its requests for information, in the three letters referred to in Allegation 1, on Mr Nasir. It directed Mr Nasir to respond to those requests by 06 May 2022. He did so by email on 15 April 2022.

8. On 28 April 2022, the Investigations Officer wrote to Mr Nasir proposing that this matter be dealt with by consent on the basis set out in the Consent Order Draft Agreement. Mr Nasir informed ACCA on 12 May 2022 that he agreed to that course.
9. The Chair had to be satisfied that, given this matter has been previously listed for a hearing before the Disciplinary Committee, they had jurisdiction to deal with it as a Consent Order under CDR 8.
10. The Chair noted that the hearing listed on 24 March 2022 had been adjourned on the basis of a preliminary application. It appears that the charges had not been formally put to Mr Nasir, the case had not been opened and no evidence had been called. Therefore, in accordance with normal principles applied by courts and tribunals, the members who formed the Disciplinary Committee on that occasion were not seized of the matter. The hearing had been adjourned to be relisted on a future date and could be dealt with by a differently constituted committee.
11. The Chair therefore considered that there was nothing in CDR 8(7) which precluded them from dealing with this case by consent. The case had not been opened and the Committee was not seized of it. Further, CDR 8(1) permits the Investigating Officer to propose a consent disposal at any time before *'the date of any disciplinary hearing'*. That includes a disciplinary hearing which is yet to be listed and, therefore, covers the situation here where an adjournment has been granted and the resuming hearing has not yet been listed.
12. Further, the Chair noted that, under paragraph 1 of Appendix 1 of the Regulatory Board and Committee Regulations, they are given a discretionary power to do anything which is calculated to facilitate, or to be conducive to, the discharge of any of their functions. The Chair considered that, insofar as it may be necessary to do so, they could exercise that power to give effect to the express wishes of the parties by considering this Consent Order application.
13. Therefore, the Chair was satisfied that they had jurisdiction to deal with this matter.

DECISION

14. The powers available to the Chair on this Consent Order application are:

- (a) to 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) to 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) to 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)).
15. The Chair was satisfied it was appropriate to make a Consent Order in the terms agreed between the parties.
16. The Chair noted that Mr Nasir had accepted he had failed to respond to ACCA's correspondence, in breach of the requirement to do so under CDR 3(1), and that this amounted to misconduct. The Chair was satisfied that this admission was, on the basis of the evidence before her, properly made and, furthermore, that if the case proceeded to a hearing, there was a real prospect that the allegations would be found proved. She was satisfied that the investigation carried out by ACCA was sufficiently full and thorough.
17. The Chair noted the contents of paragraphs 9 and 10 of the Appendix which set out the aggravating and mitigating features of this case, as agreed between the parties. Although it was said to be a mitigating feature that Mr Nasir had no previous disciplinary record, the Chair noted that he had been a student member of ACCA since January 2020. The matters which gave rise to the investigation arose in September 2020 and the letters which Mr Nasir failed to respond to were sent in Spring 2021. Therefore, the fact that Mr Nasir had no previous disciplinary record amounted to little or no mitigation given the short time he had been an ACCA member.
18. The Chair accepted that the other factors identified in paragraphs 9 and 10 were relevant and that, overall, a reprimand was an appropriate and proportionate sanction. Exclusion was not, in the Chair's view, a sanction which the Disciplinary Committee would consider if this case proceeded to a final hearing. The Chair was satisfied that the public interest did not require a hearing in this matter and was appropriately met, in terms of protecting the

public, maintaining confidence in the profession and upholding proper standards, by the agreed disposal.

19. The Chair noted that the proposed costs order took into account Mr Nasir's means and reflected the time spent investigating the allegations in question rather than the underlying allegation which had not been pursued.
20. Therefore, the Chair approved the draft Consent Order.

ORDER

21. The Chair made the following order:
 - i. The draft Consent Order is approved.
 - ii. Allegations 1 and 2 are proved by admission.
 - iii. Mr Nasir is reprimanded.
 - iv. Mr Nasir is ordered to pay costs to ACCA in the sum of £120.00.
22. Under CDR 8(17) there is no right of appeal against this order. Therefore, this order comes into effect immediately.

Ms Carolyn Tetlow
Chair
14 July 2022