

CONSENT ORDERS HEARING

CONSENT ORDERS COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Divyash Patel
Heard on:	Friday, 11 November 2022
Location:	Remotely via Microsoft Teams
Chair:	Mrs Helen Carter-Shaw
Legal Adviser:	Mr Robin Havard
Summary	Severe Reprimand and fine of £5,000 Costs payable to ACCA of £555

CONSTITUTION OF THE COMMITTEE

1. A Consent Order is made on the order of the Chair under the relevant regulations.

INTRODUCTION

2. The Chair had considered a draft Consent Order, signed on 21 October 2022 by Mr Patel and on 26 October 2022 by a signatory on behalf of ACCA, together with supporting documents in a bundle numbering pages 1 to 119.
3. When reaching her decision, the Chair had been referred by the Legal Adviser to the requirements of Regulation 8 of the Complaints and Disciplinary

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Regulations 2014 (as amended) ("CDR8") and had accepted his advice. The Chair had also taken account of the content of ACCA's documents entitled "Consent Orders Guidance" and "Consent Orders Guidance FAQs".

4. The Chair understood that Mr Patel was aware of the terms of the draft Consent Order and that it was being considered today.
5. The Chair also understood that Mr Patel was aware that he could withdraw his agreement to the signed draft consent order by confirming the withdrawal in writing. No such withdrawal had been received.

ALLEGATIONS

Allegation 1

On dates between 26 June 2017 and 15 December 2021, failed on behalf of the Firm, to comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 namely:

- a) Regulation 18 (Risk assessment by relevant persons:
Firm wide risk assessments)
- b) Regulation 19 (Policies, controls and procedures: AML policy
and procedures, Escalation/Internal SAR)
- c) Regulation 21 (Internal controls: MLRO, MCLP, Escalation/Internal SAR)
- d) Regulation 24 (Training).

Allegation 2

By reason of the conduct set out in Allegation 1, Mr Patel failed to comply with Section B2 (Anti-Money Laundering) of ACCA's Code of Ethics and Conduct and the Fundamental Principle of Professional Behaviour) (as applicable from 2017 to 2021).

Allegation 3

By reason of the conduct set out at Allegations 1 and 2 above, Mr Patel is guilty of misconduct pursuant to bye-law 8(a)(i).

DECISION ON FACTS

6. The Chair noted that the following facts were agreed and therefore adopted them as her findings of fact.
7. On 24 June 1996, Mr Patel became a Member of ACCA.
8. On 24 June 2001, Mr Patel became a Fellow of ACCA.
9. On 24 May 2001 Mr Patel was issued with an ACCA practising certificate which he continues to hold.
10. On 10 March 2008 the Firm was incorporated, and Mr Patel was appointed as one of the directors.
11. On 26 June 2017, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the Money Laundering Regulations") came into force.
12. Mr Patel was the Money Laundering Reporting Officer ("the MLRO") of the Firm.
13. On 12 November 2021, ACCA's Anti-Money Laundering team ("the AML Team") undertook a desk-based monitoring of the Firm. The monitoring review revealed evidence of non-compliance with relevant AML controls including:
 - a. Firm-wide risk assessment - The Firm had not conducted and documented a firm-wide risk assessment;

- b. AML policies and procedures - The Firm had not put in place adequate AML policies and procedures;
 - c. Training - The Firm had not provided adequate AML training to all relevant staff and retained a record of this;
 - d. Escalation/internal activity report (SAR) - The Firm had not put in place a formal process for staff to make an internal Suspicious Activity Report ("CSAR");
 - e. Control Assurance- The Firm had not put in place an appropriate process to independently assess the adequacy and effectiveness of the Firm's AML controls.
14. On 15 December 2021 Mr Patel responded to the AML team's monitoring report and provided documents and information to remediate the identified concerns.
15. On 24 January 2022, the AML team confirmed that they had considered this information and while they recommended some amendments to the Firm's policies and procedures and the Firm Wide Risk Assessment, they confirmed that the review was closed as they were, in general, satisfied with the actions that the Firm had undertaken to address the concerns.
16. On 24 January 2022, following the completion of the AML team's monitoring review a complaint was referred to the Professional Conduct Department in light of the failures to fully comply with the following Money Laundering Regulations:
- a. *"Regulation 18 - Risk assessment by relevant persons: Firm-wide risk assessment;*
 - b. *Regulation 19 - Policies, controls, and procedures: AML policy and procedures, Escalation/Internal SAR;*
 - c. *Regulation 21 - Internal controls: MLRO, MCLP, Escalation/Internal SAR;*
 - d. *Regulation 24: "Training".*

17. While there were other issues identified during the AML monitoring review, they were not referred to Professional Conduct as there was partial compliance.
18. On 13 May 2022, Professional Conduct put the complaint to Mr Patel. On 22 June 2022 Mr Patel provided a response. Mr Patel also provided further documents to address the further recommendations made by the AML team.
19. On 22 June 2022, ACCA proposed that the matter be disposed of via consent. On 7 July 2022 Mr Patel confirmed that he agreed to the matter being disposed of via consent.
20. ACCA considered that the evidence from the AML monitoring review revealed that the firm was not compliant with sections of the Money Laundering Regulations as outlined in the allegations. As such, Mr Patel acted contrary to the Fundamental Principle of Professional Behaviour, which requires members to comply with relevant laws and regulations and avoid any conduct that a professional accountant knows, or should know, may discredit the profession. In addition, the conduct amounted to misconduct and is contrary to the requirements in Section 82 of ACCA's Code of Ethics and Conduct (Anti-Money Laundering):
 - a. Relationship with the local law; section 5
 - b. Internal controls and policies; sections 7-8
 - c. Recognition of suspicion; sections 18-19.

DECISION ON ALLEGATIONS AND REASONS

21. In accordance with CDR8, 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 she is of the view that the admitted breaches would more likely than not result in exclusion from membership.

22. 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 considered that the Investigating Officer had followed the correct procedure.
23. The Chair considered the bundle of evidence and, on the basis of the admissions of the allegations by Mr Patel, found the facts of the allegations proved. She considered that the admitted facts and Mr Patel's actions amounted to misconduct in that they brought discredit to him, the Association, and the accountancy profession. They therefore justified disciplinary action under bye-law 8(a)(i).

SANCTION AND REASONS

24. In deciding whether to approve the proposed sanction of a severe reprimand together with a fine of £5,000, and for Mr Patel to pay ACCA's costs in the sum of £555, the Chair had considered the Guidance to Disciplinary Sanctions ("the Guidance"), including the key principles relating to the public interest, namely: the protection of members of the public; the maintenance of public confidence in the profession and in ACCA, and the need to uphold proper standards of conduct and performance. The Chair also considered whether the proposed sanction was appropriate, proportionate, and sufficient. She paid particular regard to section H of the Guidance which deals with AML allegations.
25. In reaching her decision, the Chair had noted, and found, the following aggravating features, as identified by ACCA:
 - a. Compliance with the Money Laundering Regulations is a legal requirement and mandatory;
 - b. Mr Patel was the MLRO of the Firm and the identified failures exposed the Firm to AML risks given that the extent of the Firm's non-compliance with the Money Laundering Regulations was significant;
 - c. The length of time since the Money Laundering Regulations came into effect; and

- d. Mr Patel's conduct fell below the standards expected of a qualified ACCA member and brought discredit upon himself, ACCA, and the accountancy profession.
26. In deciding that a severe reprimand and fine was the most suitable sanction, the Guidance had been considered by ACCA and the following mitigating factors had been considered:
 - a. Mr Patel had been an ACCA member in continuous good standing since 1996 and had no previous complaint or disciplinary history;
 - b. Mr Patel had demonstrated insight by regularising his position promptly;
 - c. There was no evidence of continuing risk to the public;
 - d. Mr Patel made admissions early in the investigatory process and admitted his conduct;
 - e. Mr Patel explained that he was dealing with difficult circumstances which had placed a particular strain on him over the last few years;
 - f. The investigation found no evidence to suggest that Mr Patel's conduct was deliberate or dishonest; and
 - g. There was no evidence of the actual enabling of any money laundering.
27. The Chair considered that both the aggravating and mitigating features identified by ACCA were supported by documentary evidence and were relevant.
28. In the Chair's judgement, the conduct was such that the public interest would not be served by making no order, nor would an admonishment or a reprimand alone adequately reflect the seriousness of Mr Patel's conduct. When considering the criteria set out in the Guidance, the Chair took into consideration the fact that the non-compliance could not be described as short-term. However, once detected, the failures were rectified promptly and the necessary improvements were implemented.
29. Therefore, the Chair concluded that it would be proportionate and sufficient to impose a severe reprimand together with a financial penalty of £5,000 to reflect

the seriousness of the findings against Mr Patel and that the exclusion of Mr Patel from the register would be a disproportionate outcome.

COSTS AND REASONS

30. ACCA was entitled to its costs in bringing these proceedings. The claim for costs in the sum of £555, which had been agreed by Mr Patel, appeared appropriate.

ORDER

31. Accordingly, the Chair approved the terms of the attached Consent Order. In summary:
- a. Mr Patel shall be severely reprimanded and ordered to pay a fine of £5,000; and
 - b. Mr Patel shall pay costs of £555 to ACCA.

Mrs Helen Carter-Shaw
Chair
11 November 2022