

CONSENT ORDERS HEARING

CONSENT ORDERS COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Simon Jeremy
Heard on:	Friday, 11 November 2022
Location:	Remotely via Microsoft Teams
Chair:	Mrs Helen Carter-Shaw
Legal Adviser:	Mr Robin Havard
Summary	Reprimand Costs payable to ACCA - £4,000

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 by Mr Jeremy and a signatory on behalf of ACCA on 21 and 24 October 2022 respectively, together with supporting documents in a bundle numbering pages 1 to 451.

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

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 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 Jeremy was aware of the terms of the draft Consent Order and that it was being considered today.
5. The Chair also understood that Mr Jeremy 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

1. Contrary to the fundamental principle of professional competence and due care (2017-2019), Mr Simon Jeremy, a fellow member of the Association of Chartered Certified Accountants and principal of Eagle Accountancy & Bookkeeping ('Eagle'), caused or permitted:
 - (a) A corporation tax return in respect of Company A to be submitted to HM Revenue & Customs ('HMRC') for year ended 31 July 2017 showing an amount of net profit (and a corporation tax liability thereon) which was not consistent with the unaudited accounts of Company A produced by Eagle for that year.
 - (b) Incorrect accounts of Company A to be filed at Companies House by Eagle for year ended 31 July 2017.
 - (c) VAT returns in respect of Company A covering the period March 2017 to May 2019 to be prepared and submitted to HMRC by Eagle which were incorrect, in that they did not include VAT payable by Company A in respect of customers'

self-billing invoices and understated the VAT payable to HMRC by a total amount of £14,539.93.

(d) Unaudited accounts of Company A for years ended 31 July 2017 and/or 31 July 2018 to be prepared by Eagle:

(i) Without reconciling turnover in the accounts to the VAT returns which Eagle had produced.

(ii) Which were incorrect, in that they did not include VAT payable by the company to HM Revenue & Customs on customers' self-billing invoices and therefore overstated turnover and net profit as a result.

2. By virtue of any or all of the facts in allegation 1, Mr Jeremy is:

(a) Guilty of misconduct contrary to bye-law 8(a)(i); or

(b) Liable to disciplinary action pursuant to bye-law 8(a)(iii).

DECISION ON FACTS

6. The Chair noted that the following summary of the facts were agreed and therefore adopted them as her findings of fact.
7. Mr Jeremy has been a member of ACCA since 15 April 2002 and a Fellow since 15 April 2007. Mr Jeremy is the principal of Eagle Accountancy (UK) Ltd ('Eagle') and he holds a general practising certificate with ACCA.
8. On 20 February 2020 ACCA received a complaint about Mr Jeremy/Eagle in relation to a former client of Eagle's, ('the company'). A copy of the engagement letter between Eagle and the company was enclosed in the bundle reviewed by the Chair.

9. The company's successor accountant had raised concerns with the company about Eagle's work and these concerns had been put to Mr Jeremy by the company's directors. Mr Jeremy had replied but the successor accountant was not satisfied with his responses, as set out in her complaint to ACCA.

Allegation 1(a)

10. The corporation tax return which Eagle submitted to HM Revenue & Customs ('HMRC') in respect of the company for year ended 31 July 2017 **showed** turnover of £128,487 and profit before tax of £61,172. The tax liability calculated on the net profit of £61,172 was £12,029.93.
11. However, Mr Jeremy has provided ACCA with what he says were the final unaudited accounts of the company prepared by Eagle for year ended 31 July 2017 and these showed a higher amount of turnover, £149,782, and net profit before tax of £78,592. Taxation was shown at £12,030, the amount in the corporation tax return submitted to HMRC calculated on a net profit of £61,172. These were the figures which also appeared in the comparatives in the unaudited accounts of the company produced by Eagle for the following year ended 31 July 2018.
12. The company's successor accountant identified that there was, accordingly, an apparent additional amount of profit before tax of £17,040 - being £78,592 less £61,172 - which had not been reported to HMRC. The successor accountant therefore obtained a copy of the corporation tax return which had been submitted by Eagle to HMRC and informed HMRC of the apparent additional net profit and resulting tax liability of £3,536.30 - being £15,566.23 less £12,029.93 - which Eagle had not declared to HMRC in the company's corporation tax return.

Allegation 1(b)

13. The statement of financial position in the final unaudited accounts of the company produced by Eagle for year ended 31 July 2017 included a number of closing balances including, for example, stocks of £3,000, cash at bank and in hand of £86,204 and retained earnings of £65,609.
14. However, the statement of financial position in the accounts of the company filed by Eagle at Companies House for year ended 31 July 2017 did not show the same balances. The only balances shown were cash at bank of £11,997 and retained earnings of the same amount.
15. *In this regard, Mr Jeremy informed ACCA 'The submitted accounts to 31 July 2017 were clearly incorrect and.../ am unsure how this has happened. From the attached you can see that the accounts on file which we prepared bear no resemblance to those submitted to Companies House. I can only assume that an incorrect initial draft were generated and filed with Companies House in error. By this I mean that the software allows us to generate draft accounts which are then held on the system and can be submitted to Companies House and/or HMRC if generated in a particular way. This leads me to believe that such a set must have been generated before the accounts were finalized resulting in an incorrect transmission. This based on manager/partner review should not have ever happened and it is my disbelief that such an accident could or should have occurred. Furthermore, we have now taken steps in our 'Accounts Review' working paper by adding a further check to ensure the accounts generated to be submitted to Companies House and HMRC have been agreed back to the printed signed set on the file and associated Lead Schedules.'*

Allegation 1(c)

16. The company received income from sales invoices which the company issued to customers, and from self-billing customers who prepared their own invoices. However, the successor accountant found that Eagle had not included the customers' self-billing invoices when calculating VAT payable in VAT returns of the company which Eagle produced for the period from March 2017 to May 2019. The successor accountant prepared a calculation

setting out what VAT had been paid by the company based on VAT returns produced by Eagle versus what VAT the company should have been paid in those VAT returns when taking customers' self-billing invoices into account. It is noted that the company was on a flat rate VAT scheme, meaning that it paid VAT based on a fixed percentage of gross sales invoices, rather than the difference between VAT charged on sales invoices and VAT on expense invoices.

17. As a consequence, the successor accountant identified additional output VAT which had not been declared and paid by the company to HMRC in VAT returns produced by Eagle which led to an additional VAT liability of £14,539.93 and the company made a notification of errors to HMRC in this respect.
18. When the successor accountant's concerns were put to Mr Jeremy by the company's directors, he stated *'...your bookkeeper supplied a spreadsheet which has x1 summary of sales invoices and purchased invoices (which your bookkeeper advised us reflected the bank transactions) and we have prepared the VAT from this. The self-billing invoices were omitted because your bookkeeper advised us that the "tab" we used for preparing the vat was inclusive of all bank transactions. As such we reasonably presumed the self-billing invoices were included in the sales invoices summary and we do not consider we are responsible for any understatement.'*
19. However, having reviewed the successor accountant's workings, Mr Jeremy accepted that the VAT liability was erroneous. In this regard, Mr Jeremy informed ACCA *'In preparing the VAT returns the client spreadsheet included a tab showing and narrated "List of Invoices From June to August 2018" this clearly is what we thought were the full invoices raised for the quarter in question and would have no reason to question this. It appears that this assumption whilst reasonable was therefore not the case. We had no reason to think that the self-billing amounts were not included in the full list of sales invoices it would appear ...Whilst accepting that it was our firm who was responsible for the accounts, I am surprised that Mr A (a director of the company) had not himself picked up on the fact that sales and as a result Output VAT was being under declared especially given his familiarity of the business. His bookkeeper, unfortunately,*

frequently did not supply what we need on a timely basis and on occasion it was almost impossible to get hold of her. It would seem with poor communications with the bookkeeper, coupled with different timings of spreadsheets, coupled with different methods of supplying us with the VAT records clearly lead to confusion, despite our best efforts."

Allegation 1(d)

20. The company's successor accountant raised a concern that Eagle had not undertaken a reconciliation of the sales figure in the accounts to the VAT returns. A reconciliation of the sales figure in annual accounts to net outputs in VAT returns (covering the same period) represents a safeguard by which it is possible to confirm that the amount of total sales (which are recorded net of VAT) in annual accounts are consistent with the total sales (net outputs) declared in VAT returns. There is no mandatory requirement for an accountant to perform such a reconciliation when producing accounts for their clients and, rather, it is a matter of professional judgment for an accountant to decide whether such a verification of the sales figure in the accounts is performed.
21. The company's successor accountant explained the differences between the VAT payments made based on VAT returns produced by Eagle and turnover in the accounts produced by Eagle. Had Eagle reconciled these differences, the omission of customer self-billing invoices from the company's VAT returns should have been identified. According to the VAT returns produced by Eagle for year ended 31 July 2017, total VAT paid was £10,052.40. On the assumption that Eagle arrived at this as being a flat rate of ten percent on gross sales, then gross sales for the year were £100,524.00 (being $£10,152.40/10 \times 100$).
22. It was expected that accounts of a business using the flat rate VAT scheme will be prepared using gross receipts, less the flat rate percentage, for turnover. Therefore, expected turnover in the accounts for year ended 31 July 2017 based on the above would have been £90,471.60 (being £100,524.00 less £10,052.40).

23. However, turnover according to the company's accounts for year ended 31 July 2017 produced by Eagle was £149,782, giving a difference of £59,310.40. It was noted that the company book-keeper's spreadsheet summary of bankings for year ended 31 July 2017 showed a gross self-billing total of £78,845.
24. According to the VAT returns produced by Eagle for year ended 31 July 2018, total VAT paid was £4,904.26. On the assumption that Eagle arrived at this figure as being a flat rate of eleven percent (a 1 percent reduction in the rate applies in the first year of first becoming VAT registered of gross sales), then gross sales for the year were £44,584 (being $£4,904.26/11 \times 100$), giving expected sales in the accounts of £39,680 (being £44,584 less £4,904.26).
25. However, turnover according to the company's accounts for year ended 31 July 2018 produced by Eagle were £112,712, giving a difference of £73,032. The company book-keeper's spreadsheet summary of takings for year ended 31 July 2018 showed a gross self-billing total of £70,343.27.
26. When the company's directors raised the successor accountant's concerns in this regard with Mr Jeremy, he advised that Eagle had not been instructed to carry out the reconciliation. However, Mr Jeremy had since informed ACCA *'...As part of our working papers schedules a Sales Reconciliation should have been done but, following investigation, this was however missed due to human error. A further update to our 'Accounts Review' working paper has now been added to ensure a second check is now in place for sales reconciliations.'*
27. The reason turnover would have been higher in the accounts than the sales figure calculated by reference to the VAT returns produced by Eagle was because the VAT returns did not include VAT on customer self-billing invoices, whilst the accounts included gross customer self-billing invoices received in the year. These would have been recognised in the accounts

gross, based on the amounts banked, with no deduction made by Eagle for VAT on them. Accordingly, the accounts produced by Eagle for years ended 31 July 2017 and 2018 were incorrect because it was expected that turnover was recorded as gross sales less the amount of flat rate VAT on those sales. Eagle did not include any flat rate VAT in respect of customer self-billing invoices, either in the VAT returns, or in the accounts, which it produced for the company.

28. In this regard, Mr Jeremy has informed ACCA '*...whilst I have not done a detailed review, I can accept that assuming all sales were banked that there were sales overstated as a result of the inclusion of the output VAT element, as [the company's successor accountant] states.*'

DECISION ON ALLEGATIONS AND REASONS

29. 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.
30. 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.
31. The Chair considered the bundle of evidence and, on the basis of the admissions of the allegations by Mr Jeremy, found the facts of the allegations proved. She considered that the admitted facts and Mr Jeremy'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

32. In deciding whether to approve the proposed sanction of a reprimand, and for Mr Jeremy to pay ACCA's costs in the sum of £4,000, the Chair had considered the Guidance for 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.
33. In reaching her decision, the Chair had noted, and found, the following aggravating features, as identified by ACCA:
 - a. The conduct which led to Mr Jeremy being the subject of these proceedings fell below the standards expected of a qualified ACCA member;
 - b. His initial lack of understanding and insight into the seriousness of the acts/omissions and the consequences thereof.
34. She also identified and took account of the following aggravating factors:
 - a. Mr Jeremy's action created additional liabilities for the company in terms of interest due to HRMC and the additional work needed by the successor accountant;
 - b. His initial reluctance to accept that any of the responsibility for the errors was his;
 - c. His lack of understanding of why, given he had taken remedial action, it was still in the public interest to proceed with the case.
35. In deciding that a reprimand was the most suitable sanction, paragraphs C4.1 to C4.5 of ACCA's Guidance have been considered and the following mitigating factors had been identified by ACCA:

- a. Mr Jeremy has been a member of ACCA since 2002 and has a previous good record with no previous complaint or disciplinary history;
- b. Mr Jeremy has ultimately admitted his conduct;
- c. Mr Jeremy ensured that the complainant's client was fully compensated through to the sum of £11,500 of which Mr Jeremy paid £900 under excess;
- d. The client in the long run therefore was not disadvantaged, is not out of pocket and has been fully compensated;
- e. Mr Jeremy has shown insight and apologised for the conduct which led to the complaint raised against him.

36. She also identified and took account of the following mitigating factors:

- a. The extent of the remedial action taken by Mr Jeremy to reduce the risk of such a breach of standards happening again;
- b. The willingness of Mr Jeremy to take ACCA's advice in this regard;
- c. That this appears to have been an isolated incident.

37. The Chair considered that both the aggravating and mitigating features identified by ACCA were supported by documentary evidence and were relevant.

38. 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 adequately reflect the seriousness of Mr Jeremy's conduct. When considering the criteria set out in the Guidance, the Chair took into consideration the fact that the errors identified could not be described as short-term. However, once detected, albeit by the successor practice, the failure was rectified immediately, and the necessary improvements were implemented promptly.

39. Therefore, the Chair concluded that it would be proportionate and sufficient to impose a reprimand to reflect the seriousness of the findings against Mr Jeremy.

40. In all the circumstances, the Chair was satisfied that the sanction of a reprimand was appropriate, proportionate, and sufficient, and that a severe reprimand would be a disproportionate outcome.

COSTS AND REASONS

41. ACCA was entitled to its costs in bringing these proceedings. The claim for costs in the sum of £4,000, which had been agreed by Mr Jeremy, appeared appropriate.

ORDER

42. Accordingly, the Chair approved the terms of the attached Consent Order. In summary:
- a. Mr Jeremy shall be reprimanded; and
 - b. Mr Jeremy shall pay costs of £4,000 to ACCA.

Mrs Helen Carter-Shaw
Chair
11 November 2022