

APPLICATION ON PAPERS

CONSENT ORDER CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Noshad Varma
Considered on:	Wednesday 14, September 2022
Chair:	Mrs Carolyn Tetlow
Legal Adviser:	Mr Andrew Granville Stafford
Outcome:	Consent Order Approved Member Severely Reprimanded Costs imposed of £750 Fine imposed of £2000

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 337 pages which included a Consent Order Draft Agreement.

CONSENT ORDER DRAFT AGREEMENT

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3. The Consent Order Draft Agreement was signed by Mr Varma on 10 August 2022 and by a representative of ACCA on 15 August 2022. It reads as follows.

1. *Mr Noshad Varma, an ACCA member and the Money Laundering Reporting Officer and principal of NV Associates Limited (the "Firm"), admits the following:*

Allegation 1

Mr Noshad Varma failed on behalf of the Firm to comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("MLRs 2017") in that:

- a) *From 1 July 2019 to 25 July 2021, he did not conduct a firm-wide risk assessment in full to identify and assess the risks of money laundering and terrorist financing to which the Firm was subject, contrary to Regulation 18 of the MLRs 2017.*
- b) *From 1 July 2019 to 15 August 2021, he did not fully establish and maintain complete policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing in the Firm, contrary to Regulation 19 of the MLRs 2017.*
- c) *From 1 July 2019 to 15 August 2021, he did not take appropriate measures to ensure that the Firm's employees were regularly given training in how to recognise and deal with transactions and other activities or situations which may be related to money laundering or terrorist financing, contrary to Regulation 24 of the MLRs 2017.*

Allegation 2

By reason of the conduct set out in Allegation 1, Mr Noshad Varma failed to comply with Section B2 of ACCA's Code of Ethics and Conduct (Anti-Money Laundering) 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, Mr Noshad Varma is guilty of misconduct pursuant to bye-law 8(a)(i).

2. *That Mr Noshad Varma shall:*
 - (a) *Be severely reprimanded;*
 - (b) *Pay a fine to ACCA of £2,000; and*
 - (c) *Pay costs to ACCA of £750.*

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.

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 his investigation into the allegations against Mr Noshad Varma in accordance with Regulation 8(1)(a) of the Complaints and Disciplinary Regulations (“the CDR”) and is satisfied that:*
 - (a) *He has conducted the appropriate level of investigation, as evidenced by the enclosed evidence bundle and determined that there is a case to answer against Mr Noshad Varma 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:**

- 5.1 *On 21 May 1992, Mr Varma became a Member of ACCA.*
- 5.2 *Mr Varma holds an ACCA practicing certificate.*
- 5.3 *On 26 June 2017, MLRs 2017 came into force. Firms are supervised by ACCA for Anti-Money Laundering (“AML”) purposes and there is a mandatory requirement for such firms to be monitored by ACCA to assess their compliance with the MLRs 2017.*
- 5.4 *Mr Varma is the Money Laundering Reporting Officer (“the MLRO”) and principal of the Firm (page 222) in which he is the sole director.*
- 5.5 *On 13 April 2021, ACCA’s AML team emailed Mr Varma to inform him that Firm A had been selected for an AML review which would involve a desk based review for assessing the Firm’s AML controls, and which would be completed by a telephone interview with Mr Varma, as the MLRO.*
- 5.6 *On 21 April 2021, Mr Varma informed ACCA that Firm A had ceased trading and that he had been operating through the Firm NV Associates Limited since 1 July 2019.*
- 5.7 *On 21 April 2021, ACCA confirmed that the AML review for Firm A would be cancelled and replaced by a review of NV Associates Limited.*
- 5.8 *On 28 June 2021 the AML review was conducted and following the telephone interview, Mr Varma was asked to provide various documents discussed during the interview.*
- 5.9 *On 30 June 2021, Mr Varma provided the documents requested by ACCA.*
- 5.10 *On 5 July 2021, ACCA asked Mr Varma to provide a copy of the Firm’s most up-to-date AML Policies and Procedures, even if the documents were not completed, which Mr Varma said in the interview had only recently been created and were in the process of being finalised.*
- 5.11 *On 6 July 2021, Mr Varma provided a copy of the Firm’s AML Policies and AML Procedures.*

5.12 On 7 July 2021, ACCA sent a report titled "Report to NV Associates Limited on the findings of an Anti-Money Laundering (AML) Review" to Mr Varma. The report presented the findings of the AML review of the Firm including setting out why the Firm's AML controls were not compliant with the MLRs 2017 in particular regarding:

- conducting and documenting a firm-wide risk assessment;
- having in place AML policy and procedures; and
- providing formal AML training to relevant staff on a regular basis.

Mr Varma was asked to complete various actions by 6 August 2021.

5.13 On 5 August 2021, Mr Varma provided ACCA with: the Firm-wide Risk Assessment completed on 26 July 2017; the Firm's AML Policies and Procedures; and three Certificates of Completion showing he and two other members of staff had completed the Basic Anti-Money Laundering Course. He also confirmed that the remaining staff member was expected to finish the AML training by that weekend.

5.14 On 11 August 2021, having reviewed the documents provided, ACCA was satisfied that the Firm had undertaken a firm-wide risk assessment. However, Mr Varma was informed that the Firm's AML Policies and Procedures needed to be tailored to address the findings outlined in the AML report and to provide evidence that the remaining member of staff had completed AML training.

5.15 On 17 August 2021, Mr Varma provided ACCA with a copy of the Firm's AML Policy and Procedures; as well as the training certificate showing the member of staff had completed AML training.

5.16 On 24 August 2021, ACCA confirmed to Mr Varma that the AML review was closed and the Firm was no longer non-compliant. However, it set out a list of additional actions to complete which ACCA would check had been implemented at the next AML review.

5.17 On 24 August 2021, the AML team referred a complaint to Professional Conduct Department (pages 288 to 290) highlighting that the Firm was non-compliant in respect of the following MLRs 2017:

- Regulation 18 - Risk assessment by relevant persons: Firm-wide risk assessment
- Regulation 19 - Policies, controls and procedures: AML policy and procedures
- Regulation 24 - Training.

5.18 On 10 February 2022 Professional Conduct Department put the complaint to Mr Varma.

5.19 On 26 May 2022 ACCA proposed that the non-compliant breaches of the MLRs 2017 be disposed of via a consent order and Mr Varma agreed.

5.20 As the Firm was not compliant with various MLRs 2017, Mr Varma acted contrary to the Fundamental Principle of Professional Behaviour, which requires members to comply with relevant laws and regulations and avoid any conduct that the professional accountant knows or should know may discredit the profession. In addition, the conduct amounts to misconduct and is contrary to the requirements in Section B2 of ACCA's Code of Ethics and Conduct (Anti-Money Laundering) sections 5 and 7.

5.21 The relevant sections of the MLRs 2017.

5.22 The relevant sections of the ACCA's Code of Ethics and Conduct (Anti- Money Laundering).

Sanction

6. The appropriate sanction is **severe reprimand** and a **fine** of £ 2,000 (which takes account of Mr Varma's income and expenditure).
7. In considering this to be the most appropriate sanction, ACCA's Guidance for Disciplinary Sanctions ("the GDS") 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 of the case have been considered.*

9. *The **aggravating factors** are considered to be as follows:*

- *Compliance with the MLRs 2017 is a legal requirement and mandatory;*
- *Mr Varma was the MLRO of the Firm;*
- *The length of time that Mr Varma, as the MLRO, failed to comply with the MLRs 2017 which came into force in June 2017.*
- *The potential risks arising from: a failure to document and undertake a firm- wide risk assessment on the Firm; not having a documented AML policy and procedures in place; and not providing formal AML training to relevant staff on a periodic basis.*
- *Mr Varma's conduct fell below the standards expected of a qualified ACCA member and brought discredit upon himself, ACCA and the accountancy profession.*

10. *In deciding that a reprimand is the most suitable sanction, the following mitigating factors have been noted:*

- *Mr Varma has been an ACCA member in continuous good standing since 1992 and has no previous complaint or disciplinary history*
- *Mr Varma has demonstrated insight in agreeing to dispose of the matter by consent and has worked towards regularising his position;*

- *Mr Varma ultimately co-operated with the investigation;*
 - *The investigation found no evidence that Mr Varma's conduct was in deliberate disregard of his professional obligations or dishonest;*
 - *There is no evidence of actual enabling of money laundering;*
 - *There is no evidence of harm; and*
 - *There does not appear to be any continuing risk to the public as the breaches of MLRs2017 identified in the AML review have been remedied.*
11. *ACCA has considered the other available sanctions and is of the view that they are not appropriate. ACCA considers that a **severe reprimand** and a **fine** proportionately reflects Mr Varma'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*
12. *In addition, Section H of the GDS (Additional guidance in relation to AML allegations) has been consulted to help determine:*
- *The appropriate sanction*
 - *The appropriateness of a fine; and*
 - *The amount of that fine.*

DECISION

4. 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 the Chair may 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 wishes the terms of the draft Order to be amended (CDR 8(13)).
5. The Chair was satisfied it was appropriate to make a Consent Order in the terms agreed between the parties.
 6. The Chair noted that, whilst Mr Varma had shown some initial reluctance to accept his failings, he had by signing the draft Consent Order made full admissions to the matters alleged against him. Further, the Chair was satisfied, on the basis of the evidence before them, that those admissions had been properly made.
 7. 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.
 8. The Chair noted the contents of paragraphs 9 and 10 of the agreed facts which set out the aggravating and mitigating features in this matter. Whilst the Chair did not disagree that the matters referred to were relevant, they noted that Mr Varma put forward some additional matters of personal mitigation in his email to ACCA on 30 May 2022. Those included the strains placed upon him by the dissolution of his business partnership and the disruptions to his business caused by the coronavirus pandemic. This included the need to move to temporary premises and to run the operation from home. Whilst he accepted that his firm's AML procedures were not properly documented, he said that he and his staff were aware of their responsibilities and he personally knew his clients and the nature of their businesses.
 9. The Chair had regard to Section H in ACCA's Guidance for Disciplinary Sanctions, which gives guidance to the Disciplinary Committee on appropriate sanctions for breach of the Money Laundering Regulations. The Chair was satisfied, in light of that guidance and the mitigating and aggravating factors referred to above, that exclusion would not be an appropriate sanction if the matter proceeded to a hearing before the Disciplinary Committee. The Chair considered that the proposed sanction of a severe reprimand and a fine was appropriate and proportionate in the circumstances of the case. Having considered the details submitted by Mr Varma of his income, expenditure and savings, the Chair was satisfied that a fine of £2,000 was appropriate and reflected both the seriousness of the allegations found proved by admission,

and Mr Varma's financial circumstances.

10. The Chair noted that, in paragraph 10 of the agreed background, the sanction referred to a 'reprimand' rather than 'severe reprimand'. However, severe reprimand is referred to in paragraphs 6 and 11 and is the sanction set out in the draft Consent Order, which has been signed by both parties. The Chair was therefore satisfied that the reference in paragraph 10 to a 'reprimand' was a typographical error.
11. For the reasons above, the Chair approved the draft consent order.

ORDER

12. The Chair made the following order:
 - i. The draft Consent Order is approved.
 - ii. Allegations 1, 2 and 3 are proved by admission.
 - iii. Mr Varma is severely reprimanded and fined £2,000.
 - iv. Mr Varma is ordered to pay costs to ACCA in the sum of £750.
13. Under CDR 8(17) there is no right of appeal against this order. Therefore, this order comes into effect immediately.

Mrs Carolyn Tetlow
Chair
14 September 2022