

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

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| In the matter of: | Mr Thomas Earl |
| Considered on: | Wednesday 05 April 2023 |
| Location: | Meeting conducted via Microsoft teams |
| Chair: | Ms Ilana Tessler |
| Legal Adviser: | Mrs Fiona Barnett |
| OUTCOME: | CONSENT ORDER APPROVED |

BACKGROUND

1. Mr Earl's case comes before the Chair by virtue of a draft Consent Order that has been reached in this case between ACCA and Mr Earl. The Agreement sets out Mr Earl's full admissions to the facts of the charges and his acceptance that he is thereby guilty of misconduct.
2. It is further stated in the draft Consent Order that an appropriate sanction in this case would be a Reprimand.
3. The draft Consent Order was signed by Mr Earl on 22 March 2023 and signed on the same date on behalf of ACCA. Neither ACCA nor Mr Earl have subsequently withdrawn their agreement to the draft Consent Order.
4. The Agreement between ACCA and Mr Earl, including ACCA's position on sanction, costs, and publicity, is set out in full below in the draft Consent Order, ending at paragraph 11.

Mr Thomas Earl

-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 Thomas Earl (the Parties), agree as follows:

1. Mr Thomas Earl admits the following:

Allegation 1:

- a) Mr Thomas Earl, FCCA, sent data belonging to Company A to his personal email address, contrary to subsection 114 of ACCA's Code of Ethics and Conduct ("the Fundamental Principle of Confidentiality") as applicable in 2021.
 - b) By virtue to the facts above, Mr Earl is guilty of misconduct pursuant to byelaw 8(a)(i).
2. That Mr Thomas Earl shall be reprimanded and shall pay costs to ACCA in the sum of £1,253.50

Signed *Thomas Earl signature*

Dated 22 March 2023

[Thomas Earl]

Signed *ACCA signature*

Dated 22.03.23

[For and on behalf of the Association]

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 their investigation into the allegations against Mr Thomas Earl in accordance with Regulation 8(1)(a) of the Complaints and Disciplinary Regulations (CDR) (2019) and is satisfied that:
 - (a) they have conducted the appropriate level of investigation as evidenced by the enclosed evidence bundle [pages 7 – 90], and determined that there is a case to answer against Mr Earl 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 Thomas Earl (“the Member”) worked at Company A (UK) Limited (“the Company”) from 06 May 2014 until 16 February 2022.

- On 13 December 2021, the Member sent a number of Company and Client data to his personal email address. A list of all that was sent can be found at pages 21 - 28 of the bundle.
- An investigation meeting was held on 25 January 2022 [pages 18 – 20] and a disciplinary hearing took place on 16 February 2022, in the absence of the Member, in which the decision was made to dismiss the Member from the Company [pages 39 – 40]. The Member appealed this decision on 01 March 2022 and an appeal hearing was held on 09 March 2022 [pages 44 – 45]. The decision of the disciplinary hearing (to dismiss the Member) was upheld [page 46].
- The matter was discussed fully at the disciplinary hearing, whereby the panel members considered all the evidence presented, which included the Member's explanations for what had happened. The Panel, on behalf of the Company, concluded that the Member had committed gross misconduct on the basis of:
 - A breach of the Company's Acceptable Use Policy
 - A breach of the SMCR (Senior Manager Certification Regime) rules
 - Breached confidentiality of Group property and clients
 - Theft of the Company's Intellectual Property
 - Misuse of equipment
- The Member's dismissal took effect as of the date of the initial hearing, 16 February 2022.
- The Member appealed the decision: *"I do not believe the mitigating circumstances provided, or my proposals for remedying my actions, which are the subject of the disciplinary, were given due consideration during the disciplinary hearing. I also wish to refute the findings that my actions represent theft of [Company A's] property."* [page 41/pages 72 - 73]

- It was concluded that the decision to issue notice of dismissal, due to gross misconduct, remained unchanged. This decision was taken because, even after taking into account the mitigating circumstances provided, the Panel felt that these mitigating facts did not justify the Member's actions.
- The Member has provided detailed responses to this investigation. In his first response on 31 January 2023 [pages 50 – 52], the Member says: *“The notion of losing my ACCA qualification, depriving me of my livelihood and therefore my ability to best provide for my family, has at times been insufferable.”*
- The Member then says: *“This sense of loss is felt even more acutely given the isolated nature of the incident in question, and the fact that [Company A] were unable to accept what I maintain represents the truth as to my intentions for sending data to my personal email, and provided reasonable mitigating factors for them to reach an alternative conclusion to their disciplinary procedure...I have become well versed in the provisions of ACCA's Rulebook and associated regulations/procedures. As FCCA, I understand the rules and obligations to which I must adhere, and have always conducted myself in accordance of the spirit of these, in all my endeavours. I have inevitably learnt more regarding the ACCA's complaints and disciplinary process, as a result of [Company A's] complaint against me. Had I been aware of any specific obligation to report the internal investigation by [Company A] to the ACCA, upon its conclusion, I would surely have done so. I have co-operated fully with the ACCA's investigation to date.”* (sic)
- The Member provides information as to his mitigating circumstances, which can be found in his appeal letter dated 01 March 2022, at pages 72 -73 of the bundle, and ought to be considered properly by the Panel. The Member says that this letter *“represents my best efforts to explain the circumstances that led to the events that are the subject of [Company A's] complaint against me.”*
- The Member confirms that: *“I have apologised unreservedly to [Company A] for the inconvenience caused and have subsequently done everything in my power to remedy the situation in good faith,*

including signing a letter of undertaking to provide them with the assurances they have sought.”

- It is also noted that the Member has also attached to his response: *“Complete email correspondence between [Company A] and myself from 25 January 2022 to 06 April 2022. The emails provide additional context regarding [Private] at the time of the incident, further explanation regarding what I consider the mitigating factors, my endeavours to assist [Company A] in their investigation and remedy the situation, my reasoning for not attending the disciplinary hearing in person, and [Company A’s] positioning/approach to their investigation.”* These emails can be found at pages 53 - 69 of the bundle.
- In a response on 21 February 2023 [pages 79 – 80], the Member has said: *“This letter represents my best efforts to explain the circumstances that led to the events that are the subject of [Company A’s] complaint against me. It provides a clear explanation as to my state of mind and intentions at the time of the incident and also details my considerable attempts at remediation, including co-operating with [Company A’s] disciplinary process, proposing and signing the letter of undertaking... and proposing a forensic investigation into my personal email account to confirm that the emails/documents in question, were irretrievably deleted without ever being opened or forwarded by any means whatsoever. I have also made clear my remorse for the inconvenience caused to [Company A] by my actions; however, I have been consistent in setting out what I consider to be the mitigating factors.”*
- The Member provides further details as to his circumstances in this response and this ought to also be taken into consideration by the Panel.

Sanction

6. The appropriate sanction is **reprimand**.
7. In considering this to be the most appropriate sanction, ACCA’s Guidance for Disciplinary Sanctions (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:
- The conduct which led to Mr Earl being disciplined by the Company, resulting in his dismissal, fell below the standards expected of a qualified ACCA member. As such his conduct has 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 Earl has been a Member of ACCA since 2010 and has a previous good record with no complaint or disciplinary history.
 - Mr Earl has fully cooperated with the investigation and regulatory process.
 - Mr Earl has admitted his conduct and sincerely apologised for the conduct which led to the complaints raised against him.
 - There is no continuing risk to the public as this was an isolated incident and is unlikely to be repeated.
 - Mr Earl has expressed genuine remorse and has shown insight into his actions.
 - The period over which Mr Earl's misconduct took place was very short.
 - Mr Earl has provided assurances to the Company, and to ACCA, that he had not opened any of the confidential emails, once they had been

forwarded to his personal email address and they were irretrievably deleted.

- Mr Earl provided a signed letter of undertaking to the Company confirming his intention to continue to fulfil his obligations: to the Company in respect of confidentiality and competition, to the FGCA regarding the SMCR, and to the ACCA in respect of its Code of Conduct.
 - The consequences of Mr Earl's conduct have not caused material distress, inconvenience or loss.
11. ACCA has considered the other available sanctions and is of the view that they are not appropriate. A **reprimand** proportionately reflects Mr Earl's conduct and the public policy considerations which ACCA must consider in deciding on the appropriate sanction.

- END OF DRAFT CONSENT ORDER -

CHAIR'S DECISION

5. In reaching my decision, I had regard to the bundle of documents provided, which numbered pages 1 to 90 and the draft Consent Order set out above. I also had regard to ACCA's Consent Orders Guidance, dated January 2021.
6. I accepted the advice of the Legal Adviser.
7. I bore in mind that, notwithstanding the parties having reached agreement on the above draft Consent Order, the final decision on whether the matter is appropriate to be dealt with by way of Consent Order is a matter for me to decide. I have the power to approve, reject or propose amendments to the draft Consent Order.
8. I first considered whether it is appropriate to deal with the case by way of a Consent Order in accordance with Regulation 8(1) of Complaints and Disciplinary Regulations 2014, (amended 01 January 2020). I was satisfied that it is appropriate to deal with this matter by way of Consent Order. The matter has been investigated by ACCA's Investigation Officer, who concluded that there was a case to answer and a real prospect of a reasonable tribunal

finding the matters alleged proved. The Investigation Officer was also satisfied, (and I agree), that the matters are unlikely to result in the exclusion of Mr Earl as a member of ACCA.

9. I next considered whether to approve the draft Consent Order. I considered the evidence and the facts of the case, as set out in the bundle of documents and the draft Consent Order. I am satisfied that Mr Earl admits the allegations. Further, I agree that his actions, in the way in which he sent data belonging to Company A to his personal email address, fell seriously below the standards expected of a member of ACCA. I agree that this is sufficiently serious to amount to misconduct.
10. I also had regard to ACCA's Guidance for Disciplinary Sanctions, (January 2020), and the aggravating and mitigating factors set out in the draft Consent Order. I considered the sanctions in order starting with the least serious. I agree with the aggravating and mitigating factors outlined in the draft order and agree that a Reprimand is an appropriate and proportionate sanction to uphold the public interest. I am satisfied that taking no action or imposing an Admonishment would be insufficient to uphold the public interest.
11. I therefore accept the content of the draft Consent Order in its entirety and approve the draft Consent Order.

COSTS

12. ACCA is entitled to claim costs. I agree with the proposal that Mr Earl should pay £1,253.50 to ACCA in costs.
13. Accordingly, I approve the draft Consent Order, including the ancillary orders in relation to costs and publicity.

Ms Ilana Tessler
Chair
05 April 2023