

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Leung Wah
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 Leung Wah's case comes before the Chair by virtue of a draft Consent Order that has been reached in this case between ACCA and Mr Leung Wah. The Agreement sets out his 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 Severe Reprimand.
3. The draft Consent Order was signed by Mr Leung Wah on 15 March 2023 and signed on 18 March 2023 on behalf of ACCA. Neither ACCA nor Mr Leung Wah have subsequently withdrawn their agreement to the draft Consent Order.
4. The Agreement between ACCA and Mr Leung Wah, 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 Wah Leung

-and-

THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

Referral to Consent Orders Chair

**Consent Order:
Draft Agreement**

The Association of Chartered Certified Accountant (ACCA) and Mr Wah Leung (the Parties), agree as follows:

1. Mr Wah Leung admits the following:

Allegation 1:

Pursuant to byelaw 8(a)(vi), Mr Leung is liable to disciplinary action by virtue of action taken against him on 30 July 2021 by the Hong Kong Institute of Certified Public Accountants (HKICPA).

Allegation 2:

- a. Mr Leung failed to promptly bring to the attention of ACCA that he may have become liable to disciplinary action by reason of the action taken against him by HKICPA in breach of byelaw 10(b);
- b. By reason of the conduct at 2a above, Mr Leung is guilty of misconduct pursuant to byelaw 8(a)(i).

That Mr Leung shall be severely reprimanded and shall pay costs to ACCA in the sum of £1,243.50.

Signed *Leung Wah (signature)*

Dated 15 March 2023

Mr Wah Leung

Signed *(Investigations officer) (signature)*

Dated 18 March 2023

(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 Leung 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, and determined that there is a case to answer against Mr Leung 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:

- Disciplinary action was taken against Mr Leung by HKICPA on 30 July 2021 (pages 10 - 25)
- Mr Leung failed to notify ACCA of the same (pages 30 - 33)

Sanction

6. The appropriate sanction is **severe 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.

SEVERE REPRIMAND

9. The **aggravating factors** are considered to be as follows:
 - By being publicly sanctioned by another professional body HKICPA has brought discredit upon himself, ACCA and the accountancy profession
 - The conduct which led to Mr Leung being the subject of action by the HKICPA fell below the standards expected of a qualified ACCA member
 - The severity of the HKICPA's decision in ordering financial penalties against Mr Leung and suspending his practising certificate for a period of 10 months
 - Mr Leung was not previously on the ACCA Register of Practitioners

10. In deciding that a **severe reprimand** is the most suitable sanction paragraphs C4.1 to C4.5 of ACCA's Guidance have been considered and the following **mitigating factors** have been noted:

- Mr Leung has been a member of ACCA since 08 October 1992 and has a previous good record with no previous complaint or disciplinary history
- Mr Leung has fully co-operated with the investigation and regulatory process
- Mr Leung has ultimately admitted his conduct
- Mr Leung has apologised for the conduct which led to the complaints raised against him
- Mr Leung advised he did not notify ACCA of the complaint as he was advised by HKICPA that they would notify ACCA
- HKICPA confirmed that they do advise members that they will provide notification to ACCA
- There is no continuing risk to the public as Mr Leung has been placed on the Register of Practitioners and has since been issued another practising certificate by the HKICPA
- Mr Leung advised he was not aware of his obligation to be placed on the Register of Practitioners
- As a result of the action taken by HKICPA, Mr Leung has taken remedial action to address his conduct
- It is noted that HKICPA considered the complaint and has chosen not to exclude Mr Leung for his conduct
- Mr Leung has expressed genuine remorse

11. ACCA has considered the other available sanctions and is of the view that they are not appropriate. ACCA considers that a **severe reprimand** proportionately reflects Leung'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.

- 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 143 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 Leung Wah 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 Leung Wah admits the allegations. Further, I agree that his actions, in the way in which he failed to bring to the attention of ACCA that he may have become liable to disciplinary action by reason of action taken against him by the Hong Kong Institute of Certified Public Accountants, 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 Severe Reprimand is an appropriate and proportionate sanction to uphold the public interest. I am satisfied that taking no action or imposing an Admonishment or Reprimand 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 Leung Wah should pay £1,243.50 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