

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Bryan A C Downs

Heard on: Friday, 27 January 2023

Location: Remotely via Microsoft Teams

Chair: HH Graham White

Legal Adviser: Mr Robin Havard

Summary: Severe Reprimand and fine of £3,000
Costs payable to ACCA £816.50

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 9 January 2023 by Mr Downs and on 9 January 2023 by a signatory on behalf of ACCA, together with supporting documents in a bundle numbering pages 1 to 110.
3. When reaching his decision, the Chair had been referred by the Legal Adviser to the requirements of Regulation 8 of the Complaints and Disciplinary

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



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

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 Downs was aware of the terms of the draft Consent Order and that it was being considered today.
5. The Chair also understood that Mr Downs 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 to 19 July 2022, Mr Bryan A C Downs, an ACCA Member and the Money Laundering Reporting Officer of B.D. Accountants Limited, failed on behalf of the firm to comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 in that he:

- 1.1 had not conducted and documented a firm-wide risk assessment to identify and assess the risks of money laundering and terrorist financing to which the Firm was subject, contrary to Regulation 18;
- 1.2 had not established and maintained policies, controls and procedures to mitigate and manage effectively the risks of money laundering and terrorist financing identified in any risk assessment, contrary to Regulation 19;
- 1.3 had not provided formal Anti-Money Laundering training to the Firm's relevant employees, contrary to Regulation 24.

Allegation 2

By reason of the conduct set out in Allegation 1, Mr Bryan A C Downs failed to comply with the Fundamental Principle of Professional Behaviour and Section B2 of ACCA's Code of Ethics and Conduct (Anti-money Laundering) (as applicable from 2017 to 2022.)

Allegation 3

By reason of the conduct set out at Allegations 1 and 2 above, Mr Downs 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 his findings of fact.
7. A desk-based monitoring review of B.D. Accountants Limited ("the firm") was carried out in May 2022 in order to monitor the firm's compliance with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("MLRs").
8. The firm was found to have had no Firm-wide risk assessment in place until 31 December 2021, no AML P&Ps prior to June 2021 and no AML training for the firm's staff.
9. This matter was referred to ACCA's Investigation Department on the basis of potential breaches of Regulations 18, 19 and 24 of the MLRs.
10. Mr Downs provided an initial response to ACCA on 17 November 2022, in which he says: "I would like to express my sincere and unconditional apologies for causing this position. I accept your concerns at the situation and understand why this position is unacceptable to ACCA ... I fully understand the seriousness of the allegations and why these are not in keeping with the ACCA's

professional standards. I am aware of how failing to adhere to these standards is to the detriment of the ACCA's reputation."

11. Mr Downs confirms that he has taken 'huge steps' to improve the firm's AML procedures; he says he has subscribed to training for AML compliance and he uses 'Croner-I for Continuing Professional Development.' He says he has attended 6 hours of webinars on the subject of AML 'red flags' with his staff and he will now attend regular training along with his two-remaining staff.
12. Mr Downs says: "I can reassure you I have learnt a valuable lesson. I understand the importance of adhering to these regulations at all times ... I continue to express my sincere and honest apologies."
13. Mr Downs provides a further response on 6 December 2022, in which he says: "The P&P I provided was based on the ACCA Factsheet, first made available in June 2021, that I obtained from the ACCA. Prior to this I held different versions, but I have not retained those versions as I did not know that I was required to do so. In the past I have wrongly approached AML as compliance task rather than the important process in preventing illegal activity. This incorrect approach has resulted in me not appreciating that the June 2021 factsheet obtained from ACCA was a significant update. I did not retain the previous version because I did not reflect on the changes. In good faith I believed that holding this factsheet on file and deleting out of date versions was sufficient to remain compliant ... I can now reflect from an informed position and recognise that I was not adhering the content of the factsheet and P&P. I was merely holding a copy on file without reviewing it."
14. In relation to the allegation of training, Mr Downs says that he has completed various CPD modules on money laundering regulations and has kept himself up to date with guidance obtained from various sources. He says: "I truly believed that the personal training that I was providing was sufficient. I now understand that it was not. I am now providing evidence of all training and will continue to do so going forward." Mr Downs confirms that on 4 November 2022, he attended the ACCA 'Red Flag' MLR webinar, as did his two remaining staff

and that "in future my team and I will routinely attend ACCA webinars and online training courses."

15. Finally, Mr Downs says: "Again, I would like to express my sincere apologies for a situation caused by my failure to proactively develop my AML knowledge, which has resulted in me failing to take necessary action to improve my firm's AML capabilities. I have now rectified this to the best of my ability, and I will continue to meet the professional standards expected of an ACCA member."
16. Mr Downs provided details of extenuating circumstances on 22 December 2022, which he would like to be taken into account for the purposes of this investigation and subsequent Consent Order.

DECISION ON ALLEGATIONS AND REASONS

17. 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 he is of the view that the admitted breaches would more likely than not result in exclusion from membership.
18. 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.
19. The Chair considered the bundle of evidence and, on the basis of the admissions of the allegations by Mr Downs, found the facts of the allegations proved. He considered that the admitted facts and Mr Downs'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

20. In deciding whether to approve the proposed sanction of a severe reprimand together with a fine of £3,000, and for Mr Downs to pay ACCA's costs in the sum of £816.50, 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. He paid particular regard to section H of the Guidance which deals with AML allegations.

21. In reaching his decision, the Chair had noted, and found, the following aggravating features, as identified by ACCA:

- Mr Down's conduct continued over a period of time as the breach of the MLRs appear to have remained in place since the MLRs came into existence.

22. 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:

- Mr Downs has been a member of ACCA since 2004 and has a previous good record with no previous complaint or disciplinary history;
- Mr Downs has fully co-operated with the investigation and regulatory process;
- Mr Downs has ultimately admitted his conduct;
- Mr Downs has sincerely apologised for the conduct which led to the complaint raised against him;
- There is no continuing risk to the public as Mr Downs has now rectified the breach of the MLRs;
- Mr Downs has expressed genuine remorse for his conduct and remedied the outstanding breaches of the MLRs.

23. [PRIVATE].
24. The Chair considered that both the aggravating and mitigating features identified by ACCA were supported by documentary evidence and were relevant.
25. 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 Downs'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.
26. Therefore, the Chair concluded that it would be proportionate and sufficient to impose a severe reprimand together with a financial penalty of £3,000 to reflect the seriousness of the findings against Mr Downs and that the exclusion of Mr Downs from the register would be a disproportionate outcome.

COSTS AND REASONS

27. ACCA was entitled to its costs in bringing these proceedings. The claim for costs in the sum of £816.50, which had been agreed by Mr Downs, appeared appropriate.

ORDER

28. Accordingly, the Chair approved the terms of the attached Consent Order. In summary:
- a. Mr Downs shall be severely reprimanded and ordered to pay a fine of £3,000;
 - b. Mr Downs shall pay costs of £816.50 to ACCA.

**HH Graham White
Chair
27 January 2023**