

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr David Michael Lacey

Considered on: Monday, 31 July 2023

Location: Remotely via MS Teams remote video conference

Chair: Ms Valerie Paterson

Legal Adviser: Miss Judith Chrystie

Summary Consent Order approved

1. A Consent Order is made on the order of the Chair under Regulation 8 of the Complaints and Disciplinary Regulations 2014 (as amended) ('the Regulations').

ALLEGATIONS

2. The Chair accepted the advice of the Legal Adviser and considered a Consent Order bundle (pages numbered 1-84) containing a draft Consent Order, which was signed by Mr Lacey on 12 July 2023 and on behalf of ACCA the same day.
3. Within the draft Consent Order, Mr Lacey admitted the following:

Allegation 1

ACCA



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Contrary to Regulation 14(2) of ACCA's Global Practising Regulations, he failed to provide the information between 20 October 2021 and 21 November 2022 which was necessary for ACCA to complete the monitoring process of his firm efficiently.

Allegation 2

Contrary to Complaints and Disciplinary Regulations 3(1) 2014 (amended 01 January 2020), he failed to co-operate with the investigation of a complaint in that he did not respond to the correspondence from ACCA's investigations dated 11 August 2022 until 26 October 2022.

Allegation 3

By reason of the conduct set out at Allegation 1 and 2 above, Mr David Lacey is guilty of misconduct pursuant to byelaw 8(a)(i).

4. The Consent Order set out that Mr Lacey and ACCA had agreed that Mr Lacey should, subject to approval through the Complaints and Disciplinary Regulations 2014, be:
 - a. severely reprimanded, and
 - b. shall pay costs to ACCA in the sum of £2,800 (two thousand eight hundred pounds).

BRIEF BACKGROUND

5. Mr Lacey became an ACCA member on 04 November 1993 and an ACCA Fellow on 04 November 1998.
6. Mr Lacey held an ACCA practising certificate with audit (PCA) and his firm, David Lacey & Co ('the Firm') holds an ACCA Audit Certificate (FAC).
7. The Firm was due a routine monitoring visit by 12 October 2021. The purpose of the visit was to:
 - a. Confirm the Firm's eligibility for registered auditor status

- b. Monitor compliance with the Chartered Certified Accountants' Global Practising Regulations 2003 (GPRs)
 - c. Monitor the standard of the Firm's audit work.
8. Following a telephone call with ACCA's Lead Senior Compliance on 27 September 2021, it was agreed that the Firm's audit files would be provided by 20 October 2021 with a closure meeting to be held remotely on 10 November 2021. An email to confirm the arrangements was sent on 28 September 2021 together with a questionnaire requiring completion and to return to ACCA.
9. On various dates after 20 October 2021, the Lead Senior Compliance Officer left voicemails for Mr Lacey after no information was received and then:
 - a. 02 November 2021 - the Lead Senior Compliance Officer emailed Mr Lacey to chase for the information requested and to advise the closing meeting on 10 November would need to be rearranged
 - b. 04 November 2021 – Mr Lacey responded to say that he regretted the delay and to apologise for the inconvenience. He said that he had a problem with his systems and had consulted repair firms
 - c. 09 November 2021 – the Lead Senior Compliance Officer emailed Mr Lacey to ask for a courier to collect the audit file and other information
 - d. 02 December 2021 - the Lead Senior Compliance Officer emailed Mr Lacey
 - e. 18 January 2022 - the Lead Senior Compliance Officer sent a further reminder email to Mr Lacey and sent a letter by recorded delivery, which was signed for on 20 January 2022
 - f. 05 February 2022 – Mr Lacey renewed his practising certificate and audit qualification and advised that he had one audit client
 - g. 10 February 2022 – further attempts were made to contact the Firm by telephone and an email by ACCA's Senior Compliance Officer
 - h. 02 March 2022 – a further reminder email and a recorded delivery letter was sent to Mr Lacey. The letter was signed for on 16 March 2022

- i. 10 May 2022 – Mr Lacey contacted ACCA’s Professional Development team regarding his continuous professional development
 - j. 06 July 2022 – a voicemail was left for Mr Lacey and an email sent requesting that he contact ACCA without delay and advising that a failure to engage would result in a referral to Professional Conduct and the Admissions and Licensing Committee
 - k. 11 August 2022 – Mr Lacey was emailed and given a strict deadline to engage with ACCA Compliance by 24 August 2022.
10. By the deadline of 24 August 2022, Mr Lacey had not responded to the ACCA. As a consequence, ACCA applied for an Interim Order. A hearing before the Interim Order Committee (‘IOC’) was listed to take place on 26 October 2022.
11. Mr Lacey attended the hearing before the IOC with his legal representative. An adjournment application, made by both parties, was accepted. Directions were made as follows:
 - a. The hearing scheduled for 26 October 2022 be adjourned to the first available date following 05 December 2022;
 - b. The Member, David Michael Lacey, will provide to ACCA the relevant files for audit by 21 November 2022 at the latest;
 - c. The Member, David Michael Lacey, will take part in an audit monitoring review meeting remotely on 05 December 2022;
 - d. If the directions at b and c are met, it is directed that no Interim Order will be made under reference UF8308432.
12. Mr Lacey provided the relevant audit files and participated in the review meeting as directed.
13. On 06 April 2023, Mr Lacey’s legal representative sent a letter to ACCA confirming that Mr Lacey was willing to dispose of the case through a Consent Order and provided reasons for his failure to provide the audit files. In summary, the letter noted that Mr Lacey was [Private], had been an ACCA member for nearly 30 years and a fellow for 25 years and had no past regulatory record and had never had a client complaint and no client had complained to ACCA.

14. The letter explained that Mr Lacey's clients were local businesses and individuals and that:
 - a He works both from home and in an office in building shared with other businesses.
 - b He has limited IT skills.
 - c He has had a difficult three years. The pandemic caused significant difficulties for his business owing to the lack of face-to-face contact and personally owing [Private].
 - d He was in [Private].
 - e He forgot about the ACCA audit. He was unaware of the reminders from ACCA. He does not rely on emails to work and only periodically checked them.
 - f He opened the emails clearly marked from ACCA Professional Development but the emails regarding the audit were not marked in the same way but sent from unknown individuals so he did not open them.
 - g The postal correspondence was never received - it was not his signature on the tracking from Royal Mail.
 - h Once ACCA correspondence was received by Mr Lacey, he immediately instructed solicitors to assist him and provided the audit material.

15. ACCA submitted the following were aggravating features:
 - a. ACCA's monitoring process is designed to promote and maintain proper standards of behaviour and compliance within the profession.
 - b. The monitoring process should not be delayed but conducted efficiently and with prompt co-operation but it took over a year for Mr Lacey to provide the information requested for the review.

- c. ACCA had to spend additional time and resource to obtain the material for the review, including having to refer the matter for investigation thus incurring further time and expense.
 - d. Mr Lacey's conduct fell below the standards expected of a qualified ACCA member and one holding a practicing certificate.
 - e. His conduct brought discredit upon himself, ACCA, and the accountancy profession.
16. ACCA identified the following mitigating factors:
- a. Mr Lacey has been an ACCA member since 1993 and has no previous complaint or disciplinary history;
 - b. There is no evidence that Mr Lacey's conduct caused direct or indirect harm to clients or the public;
 - c. Mr Lacey has demonstrated insight, admitted his failings and provided evidence of remediation to avoid future failings;
 - d. An explanation for the delay relating to a combination of factors: his way of working, the impact of the pandemic and family-related matters;
 - e. ACCA could not be certain that Mr Lacey signed for the letters sent by recorded delivery;
 - f. Mr Lacey eventually co-operated with the ACCA and the review process was able to be completed.

DECISION AND REASONS

17. The Chair recognised their power under Regulation 8 of the Regulations to approve any signed draft Consent Order that a Disciplinary Committee would have the power to make under Regulations 13 and 15 of the Regulations - except a sanction of excluding Mr Lacey from membership. The Chair also acknowledged that they could recommend amendments to the signed order and subsequently approve any agreed amended order.
18. For the reasons set out below, the Chair was satisfied that they could approve the draft Consent Order signed by ACCA and Mr Lacey on 12 July 2023. In reaching their conclusion, the Chair had regard to ACCA's Guidance for

Disciplinary Sanctions ('Sanctions Guidance') as well as ACCA's Consent Order Guidance and Consent Order Guidance FAQs.

19. The Chair viewed failing to engage with ACCA's audit monitoring process and failing to co-operate with ACCA'S investigative procedure as very serious departures from the expectations and responsibilities of Mr Lacey as an accountant and an ACCA member. The Chair also noted that Mr Lacey was a fellow and the holder of an ACCA practising certificate with audit. The Chair identified that within the Sanctions Guidance, such conduct – being a breach of ACCA's Regulations – was described as very serious. Of particular concern was the significant period of time Mr Lacey had failed to engage with the audit monitoring process. It was only once he was referred into the disciplinary and complaints investigation process and subject to an Interim Order hearing that he produced the material. By this point the material had been outstanding for over a year and repeated requests through call, emails and letters had been made by ACCA. Mr Lacey's failure to engage and cooperate led ACCA to incur additional costs and unnecessarily prolonged the monitoring process thus reducing its efficiency. It also had the potential to damage public confidence in the profession and its regulation given the purpose of the monitoring process is to ensure standards of the audit process are being maintained and that the public, and those who place reliance on audit reports, are protected.
20. However, although the Chair considered that the admitted failings were very serious, they were satisfied that, in the context of this particular case, Mr Lacey's breaches were not incompatible with him remaining a member of ACCA and should not lead to exclusion from membership.
21. Whilst Mr Lacey's failures and breaches were long-standing and repeated, they occurred in the context of a global pandemic. The Chair noted the mitigation forwarded on Mr Lacey's behalf which identified that [Private] and he modified his behaviour to reduce his potential exposure to the virus. The Chair also took account of Mr Lacey's stated mitigation that the pandemic impacted on his business model, which was based heavily on local referrals and face to face engagement; Mr Lacey did not rely on electronic communication in running the Firm and his technology skills were limited. The Chair noted that these were factors that Mr Lacey stated had compromised his capacity to engage with ACCA's mode of operating, which was generally through email. Further, the Chair acknowledged that there was no evidence that Mr Lacey had signed for the letters sent by ACCA – had he done so Mr Lacey would have deliberately

- and actively ignored ACCA's correspondence, which would have been a significantly exacerbating factor.
22. Balancing the serious nature of his admitted failings with the mitigation, the Chair considered that an order for a severe reprimand was proportionate. They considered that imposing no sanction, an admonishment or a reprimand would not address the significant nature of the failing and the consequential misconduct. They noted that the Sanction Guidance identified that a reprimand was appropriate where the misconduct was minor, which was not the position in this case.
 23. The Chair considered that a severe reprimand was the minimum order necessary to uphold public confidence in the accountancy profession and its regulation as well as declaring and upholding of professional standards expected of the profession. A severe reprimand recognised that Mr Lacey had eventually cooperated with ACCA; had developed insight into his failings, which were not intentional; had remediated the issues, which were not continuing and unlikely to be repeated; and had been a member and a fellow at ACCA for 30 and 25 years respectively without any disciplinary history or complaint.
 24. The Chair considered that the cost order in the sum of £2,800 was appropriate to reflect the cost incurred in investigating this matter and the disciplinary process leading to her consideration of the agreed Consent Order. The Chair was satisfied that this sum was reasonable, had been reasonably incurred and that it was appropriate for Mr Lacey to pay to contribute to the cost of the proceedings against him for his admitted breaches and misconduct rather than for those costs to be borne by the wider ACCA membership.
 25. In summary, the Chair determined that the signed draft Consent Order should be approved in accordance with their power under Regulation 8 of the Regulations.

Mrs Valerie Paterson
Chair
31 July 2023