

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Mark John Heyburn

Considered on: Friday, 30 June 2023

Location: Remotely via Microsoft Teams

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 draft Consent Order which was signed by Mr Heyburn on 23 June 2023 and on behalf of ACCA the same day.
3. Within the Consent Order, Mr Heyburn admitted the following:

Allegation 1

ACCA



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Mr Mark Heyburn failed on behalf of the Firm to comply with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the MLR) in that:

- 1.1 Between 26 June 2017 and 28 November 2022, he did not conduct 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 of the MLR.
- 1.2 Between 26 June 2017 and 02 December 2022, he did not establish and maintain 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 MLR.
- 1.3 Between 26 June 2017 and 09 December 2022, he did not provide Anti-Money Laundering training to all the relevant employees, contrary to Regulation 24 of the MLR.

Allegation 2

By reason of the conduct set out in Allegation 1, Mr Mark Heyburn failed to comply with

- a) Section B2 of ACCA's Code of Ethics and Conduct (Anti-Money Laundering) (as applicable from 2017 to 2022); and
- b) The Fundamental Principle of Professional Behaviour (as applicable from 2017 to 2022).

Allegation 3

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

4. The Consent Order set out that Mr Heyburn and ACCA had agreed that Mr Heyburn should, subject to approval through the Complaints and Disciplinary Regulations 2014, be:
 - a. severely reprimanded;
 - b. pay a fine to ACCA of £5,000 (five thousand pounds); and
 - c. shall pay costs to ACCA in the sum of £2,100 (two thousand one hundred pounds).

BRIEF BACKGROUND

5. Mr Heyburn has been an ACCA member since 01 November 1990 and a Fellow since 01 November 1995. Since 13 October 1993, he has held a practising certificate for the UK.
6. Mr Heyburn is a director and Money Laundry Reporting Officer (MLRO) of the Firm, which was subject to mandatory anti-money laundry (AML) monitoring by ACCA to assess compliance with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR). The MLR came into force on 26 June 2017.
7. The Firm was selected for a desk-based AML review in November 2022. As the Firm's MLRO, Mr Heyburn was asked to complete an AML Compliance Review Assessment Form (Assessment Form) as a way of assessing AML controls. On 02 December 2022, he provided the following documents:
 - a. Firm wide risk assessment
 - b. AML policy and procedures
 - c. Schedule of amendments to policies and procedures
 - d. New client form 5
 - e. Internal suspicious activity report
 - f. Record of Firm's training
 - g. Memorandum of SAR reports

8. On 05 December 2022, ACCA called Mr Heyburn to discuss the Firm's AML controls. The discussion, which was confirmed in an email, identified:
 - a. The Firm wide risk assessment provided was created in the week commencing 28 November 2022. This was the Firm's first documented firmwide risk assessment.
 - b. The AML policy and procedures document was created on 22 December 2022. It was the Firm's first documented AML policy and procedures.
 - c. The formal AML training had not yet been provided to employees but was due to be completed in February 2023.
9. On 07 December 2022, Mr Heyburn confirmed the matters set out in (a)-(c) above and provided further documents in relation to the Firm's customer due diligence processes.
10. On 09 December 2022, ACCA sent Mr Heyburn a report detailing the findings from the AML review. It stated that the Firm's AML controls were not compliant and that the Firm was required to undertake specified remedial actions and provide supporting evidence of completion by 28 February 2023.
11. On 28 February 2023, ACCA confirmed, following a review of evidence and documents provided by Mr Heyburn, that the AML review was complete.
12. On 28 March 2023, ACCA Investigations sought an explanation from Mr Heyburn about the breaches specified in the Allegations as part of a professional conduct investigation. On 11 April 2023, Mr Heyburn responded. He:
 - a. accepted the breaches;
 - b. submitted that the Firm had always acted '*in an ethical manner over the years*'; and
 - c. stated he accepted personal responsibility as MLRO.

13. On 21 April 2023, Mr Heyburn accepted ACCA's proposal that the matter be disposed of by consent and submitted:

I accept the allegations made against me.... and sincerely regret my non-compliance with the AML practices that should have been in place prior to 9 December 2022.

I would like to emphasise that AML topics and individual cases were often discussed after hours between our Practice Manager and myself as MLRO. The result of such discussions in some instances leading to an external SAR being submitted. The failing being the lack of internal documentation which has now been corrected. The positive to take from this matter being that this firm's internal procedures have been significantly improved to meet expected professional standards and protect the public interest.

14. ACCA considered the following to be aggravating features:

- a. Compliance with the MLR is a legal requirement and mandatory;
- b. The length of time that Mr Heyburn, as the MLRO, failed to comply with the MLR which came into force in June 2017;
- c. 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; and
- d. Mr Heyburn's conduct fell below the standards expected of a qualified ACCA member and brought discredit upon himself, ACCA, and the accountancy profession.

15. ACCA identified the following mitigating factors:

- a. Mr Heyburn has been an ACCA member in continuous good standing since 1990 and has no previous complaint or disciplinary history;

- b. Mr Heyburn has demonstrated insight in agreeing to dispose of the matter by consent and has worked promptly towards regularising the Firm's breaches;
- c. Mr Heyburn also co-operated with the investigation fully;
- d. The investigation found no evidence that Mr Heyburn's conduct was in deliberate disregard of his professional obligations or dishonest;
- e. There is no evidence of actual enabling of money laundering;
- f. There does not appear to be any continuing risk to the public as the breaches of MLR identified in the AML review have been remedied; and
- g. That Mr Heyburn had to managing the practice single-handedly [Private]

DECISION AND REASONS

- 16. 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 Heyburn from membership.
- 17. The Chair acknowledged that they could only reject the draft Consent Order signed by ACCA and Mr Heyburn if they were of the view that the admitted breaches would more likely than not result in exclusion of Mr Heyburn. However, they could recommend amendments to the signed order and subsequently approve any agreed amended order.
- 18. In considering this matter, the Chair had regard to ACCA's Guidance for Disciplinary Sanctions. They specifically reviewed the guidance at Section H recognising its relevance to the allegations of misconduct admitted by Mr Heyburn.
- 19. Whilst the Chair considered that each of the breaches set out in the Allegations - individually as well as collectively - demonstrated a serious departure from the

expectations and responsibilities of Mr Heyburn as an accountant, an ACCA member and fellow and the Firm's MLRO, they were satisfied that Mr Heyburn's breaches were not incompatible with him remaining a member of ACCA.

20. In assessing the breaches as serious, the Chair took into account that the MLR formed a compulsory legal framework designed to protect the public and the profession from the laundry of funds obtained through criminal activity. In addition to the legal obligations of Mr Heyburn, the Chair took into account that there was an intrinsic responsibility on accountants in the regulation of financial affairs on behalf of the public.
21. Mr Heyburn's failures and breaches were long-standing; at no point between the MLR coming into force in June 2017 and the AML monitoring review in November/December 2022, did Mr Heyburn put in place the proper risk assessment, policies, controls and procedures or training required. It was only when prompted by the ACCA's review that he achieved compliance with obligations that were fundamental and basic under the MLR and met his responsibilities as MLRO. The Chair considered that, whilst there was no evidence that money laundry had been conducted through the Firm, the fact that no proper risk assessment, documents, controls, and training had ever been put in place by Mr Heyburn created a risk.
22. The Chair considered that Mr Heyburn's omissions and failures were not deliberate or dishonest but showed a long-term disregard for laws and regulations applicable to him as an accountant and member of ACCA.
23. The Chair recognised there was mitigation in this matter, which needed to be balanced with the serious nature of prolonged and multiple breaches by Mr Heyburn. The mitigation could be summarised as follows: Mr Heyburn's good standing with ACCA since 1990, no previous complaint or disciplinary history, his immediate and fully cooperation with ACCA's AML review and professional conduct investigation, the prompt remediation and correction of the breaches to avoid any continuing risk, the work pressures on him owing to [Private], and his insight and understanding of the failures.

24. Balancing the significance of the misconduct with the mitigation, the Chair considered that the combination of a severe reprimand and a fine of £5,000 sanction were proportionate. They regarded both elements were 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. They recognised there was an element of deterrence to the sanctions which they considered was reasonable and needed given the professional and public importance of complying with regulations such as those designed to mitigate and protect the public against money laundry and related criminal activity.
25. The Chair was satisfied that the cost order was appropriate and reflected the cost incurred in investigating this matter and the disciplinary process leading to their consideration of the agreed Consent Order. In approving the costs, the Chair recognised that Mr Heyburn had agreed to pay costs to ACCA in the sum of £2,100.00. The Chair determined that this sum was reasonable, had been reasonably incurred and that it was appropriate for Mr Heyburn 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.
26. In conclusion, the Chair was satisfied that the signed draft Consent Order should be approved in accordance with their power under Regulation 8 of the Regulations.

Ms Valerie Paterson
Chair
30 June 2023