

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Martyn Andrew Smith
Considered on:	Friday, 10 March 2023
Location:	Meeting conducted remotely
Chair:	Ms Valerie Paterson
Legal Adviser:	Ms Margaret Obi
Summary	Consent Order for Severe Reprimand and costs of £950.00 approved.

INTRODUCTION

1. This matter was referred to a Chair of the Disciplinary Committee of ACCA ('the Chair') pursuant to Regulation 8(8) of the Complaints and Disciplinary Regulations ('CDR') to determine, on the basis of the evidence, whether to approve the draft Consent Order. Under CDR 8(8), approval of a Consent Order is made by a Chair of the Disciplinary Committee in the absence of the parties and without a hearing.
2. The Chair and Legal Adviser were provided with a case bundle numbered pages 1-60 including a signed copy of the draft Consent Order.

AGREED FACTS AND PROVISIONAL AGREEMENT

3. Mr Smith became a member of ACCA on 16 May 2007 and a Fellow on 16 May 2012.
4. Mr Smith sent ACCA a letter on 03 February 2022. In that letter, he confirmed that he is employed by Company A and disclosed that he had been disciplined by his employer. He stated he was disciplined for producing a forged letter containing Auditor A's

letterhead and that it had been supplied to a prospective client/service provider. Mr Smith admitted it was an error on his part and he demonstrated insight and remorse.

5. ACCA treated Mr Smith's letter as a self-referral and opened an investigation file.
6. ACCA Investigations contacted Mr Smith on 07 September 2022 and requested the details of Company A's disciplinary hearing. Mr Smith subsequently provided a copy of the minutes of Company A's investigation and the disciplinary hearing which resulted in Mr Smith receiving a written warning. Mr Smith signed the warning letter.
7. Company A's investigation found Mr Smith was tasked to contact Auditor A (Company A's auditors) to produce a letter about the employer's company structure and supply it to a prospective client/service provider for their Know Your Customer checks. Due to delays caused by the COVID pandemic and in a mistaken belief it would expedite the matter, Mr Smith used a letter Auditor A had previously produced for a third-party regarding Company A's company structure. The letter was sent with Auditor A's letterhead, was addressed to the prospective client/service provider and was sent to the client/service provider. When Auditor A discovered the action that had been taken by Mr Smith, this was raised with Company A and Mr Smith immediately made a full admission. Following Company A's investigation and the subsequent disciplinary process, it was found that Mr Smith did not act maliciously and that his actions amounted to a mistake. Mr Smith was described as a good employee, and it was noted that no concerns about his conduct have been raised previously.
8. Company A's business deal with the prospective client/service provider did not progress. However, the letter Mr Smith produced did not influence the final decision; it was a business decision made by Company A.
9. On 05 October 2022, ACCA Investigations contacted Company A and requested:
 - (i) a copy of the letter Mr Smith had produced and;
 - (ii) their comments/observations on this matter.
10. Company A's Chief Executive provided a copy of the original letter from Auditor A, and the letter Mr Smith produced. The Chief Executive stated that he has no further concerns about Mr Smith and considers this matter to be a one-off incident.
11. At the request of ACCA and in order to provide context, Mr Smith supplied evidence of the exchange he had with the prospective client/service provider which had then led to producing the forged letter.

12. By a Consent Order, signed by Mr Smith on 26 February 2023, he admitted the following allegations:
 1. On 17 September 2019, Mr Smith submitted to third party a letter containing organisational information relating to the structure and ownership of Company A which he had created purporting to be from his employer's auditor's when it had not.
 2. By reason of the matters referred to in Allegation 1 above, Mr Smith acted contrary to the Fundamental Principle of Professional Behaviour and is guilty of misconduct and liable to disciplinary action pursuant to byelaw 8(a)(i).
13. The draft Consent Order confirmed that the parties had agreed that the appropriate sanction was a Severe Reprimand and payment of costs to ACCA in the sum of £950.00.
14. The aggravating features, as set out in the draft Consent Order, were as follows:
 - The conduct which led to Mr Smith being the subject of disciplinary action by his employer, fell below the standards expected of a qualified ACCA member;
 - Mr Smith acted contrary to ACCA's Fundamental Principle of Professional Behaviour.
15. The draft Consent Order also referred to mitigating factors, which can be summarised as follows:
 - Mr Smith has a good record with no previous complaint or disciplinary history;
 - Mr Smith has demonstrated insight, in that he self-referred, made full admissions and fully co-operated with the investigation and regulatory process;
 - Mr Smith has apologised and has expressed genuine remorse for his conduct;
 - There is no continuing risk to the public in that Mr Smith has provided assurance that the misconduct will not be repeated, and the local disciplinary action has adequately addressed the episode; and
 - ACCA has considered the complaint and has chosen not to exclude Mr Smith for his conduct.

DECISION

16. The powers available to the Chair are to:
- (a) approve the draft Consent Order, in which case the findings on the allegations and the orders contained in it become formal findings and orders (CDR 8(11) and 8(14));
 - (b) reject the draft Consent Order, which they may only do if they are of the view that the admitted breaches would more likely than not result in exclusion from membership (CDR 8(12));
 - (c) recommend amendments to the draft Consent Order, if satisfied it is appropriate to deal with the complaint by way of consent but wish the terms of the draft order to be amended (CDR 8(13)).
17. The Chair had regard to ACCA's Guidance for Consent Orders. Having carefully considered all of the material, the Chair was satisfied that the matter had properly been investigated by ACCA. The Chair was also satisfied that Mr Smith had properly and willingly admitted all of the allegations. The Chair did not consider that the admitted breaches would be likely to result in exclusion from membership if this matter was heard by the Disciplinary Committee.
18. In considering whether a Severe Reprimand was the appropriate sanction, the Chair noted ACCA's Guidance for Disciplinary Sanctions (Guidance) and the key principles which include:
- Protection of members of the public;
 - Maintenance of public confidence in the profession and ACCA; and
 - Declaring and upholding proper standards of conduct and performance.
19. The Chair noted that ACCA had considered all of the available sanctions and had concluded that a Severe Reprimand was the appropriate and proportionate sanction in this case.

20. The Chair took into account the aggravating and mitigating features and Mr Smith's own interests balanced against the public interest. Having considered all the circumstances of this case, the Chair agreed that a Severe Reprimand was a proportionate sanction which sufficiently addresses the need to protect the public and uphold the other public policy considerations. The Chair was satisfied that there was no need to make any amendments to the Consent Order.

ORDER

21. The Chair made the following order:
- i. Allegations 1 and 2 are proved by admission.
 - ii. The draft Consent Order is approved.
 - iii. Mr Smith is ordered to pay costs to ACCA in the sum of £950.00.

EFFECTIVE DATE OF ORDER

22. Under CDR 8(17) there is no right of appeal against this order. Therefore, this order comes into effect immediately.

Ms Valerie Paterson
Chair
10 March 2023