

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Eric Chan Yuk Shing FCCA

Considered on: Friday, 24 March 2023

Location: Remotely via Microsoft Teams

Chair: Mrs Helen Carter-Shaw

Legal Adviser: Mr Robin Havard

Summary Severe Reprimand
Fine - £3,000
Costs payable to ACCA - £1,250

CONSTITUTION OF THE COMMITTEE

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 by Mr Chan and a signatory on behalf of ACCA on 05 and 06 March 2023, included in a bundle numbering pages 1 to 187.
3. When reaching their decision, the Chair had been referred by the Legal Adviser to the requirements of Regulation 8 of the Complaints and Disciplinary Regulations 2014 (as amended) ("CDR8") and had accepted his advice. The

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



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

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 Chan was aware of the terms of the draft Consent Order and that it was being considered today.
5. The Chair also understood that Mr Chan 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

- (i) On 15 December 2020, Mr Chan provided to ACCA's Anti-Money Laundering ("AML") Supervision Officer, in his capacity as the MLRO of the Firm, the following documents:
 - a. a Firm-Wide Risk Assessment, which indicated that the assessment had been completed and in force at the Firm since 01 February 2019, when ACCA's template for the document had not been in circulation until February 2020; and
 - b. an AML Policy and Procedures document which indicated that the policies and procedures had been created and in force at the Firm since 01 October 2018, when ACCA's template for the document had not been in circulation until February 2020; and
- (ii) On 25 January 2021, he informed the AML Supervision Officer that he had used the data held by the Firm prior to February 2020 to populate the templates published by ACCA, contrary to what the submitted documents indicated, when asked for an explanation.

Allegation 2

By reason of the matters referred to in Allegation 1 above, Mr Chan is guilty of misconduct and liable to disciplinary action pursuant to byelaw 8(a)(i).

DECISION ON FACTS

6. The Chair noted from the report provided by ACCA that the following summary of the facts was not in dispute and therefore adopted them as their findings of fact.
7. Mr Chan has been a Fellow of ACCA since 15 August 2003 and has held a general practising certificate continuously since 15 January 2004.
8. On 26 June 2017, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations ("MLRs") 2017 came into force. Firms are supervised by ACCA for Anti-Money Laundering ("AML") purposes and there is a mandatory requirement for such firms to be monitored by ACCA to assess their compliance with the MLRs.
9. Mr Chan was the Money Laundering Regulations Officer ("MLRO") of the Firm at the time of the allegations and therefore had the responsibility to ensure that the Firm complied with the MLRs at all times since they came into force. ACCA also relies on the firm's MLRO to provide the information required in discharging its AML supervisory functions.
10. On 30 November 2020, the Anti-Money Laundering Supervision Officer ("AMLSO") notified Mr Chan that the Firm had been selected for an AML Review (the "Review") and explained that the purpose of the Review was to assess the Firm's compliance with MLRs.
11. Following the telephone interview on 14 December 2020, the AMLSO asked Mr Chan to provide a number of documents that had been discussed, including the most recent Firm-Wide Risk Assessment ("FWRA") and versions from previous years; as well as the firm's AML Policy and Procedures.
12. On 15 December 2020, Mr Chan provided the following documents, amongst others:

Title

Firm ID 1031353 firm wide risk assessment Oct 18.pdf

What the documents showed

Firm Wide Risk Assessment conducted by: Mr Yuk Shing Chan Shared with: Mr Yuk Shing Chan, Director Completed on 1.2.2019 Next review date: 14.2.2020

Title

Firm ID 1031353 - Top Tax Partners Limited P&P version 1.1 updated Oct 20.pdf

What the document showed

Version Control section: Created on 01/10/2018 by Yuk Shing Chan (MLRO) Reviewed on 01/10/2019 by Yuk Shing Chan (MLRO) Updated on 11/01/2020 by Yuk Shing Chan (MLRO)

13. On 21 January 2021, the AMLSO asked Mr Chan if he had any earlier or alternative versions of the FWRA and AML P&Ps in addition to the ones he had provided as follows:

“Please could you confirm the following;

- I can see that your FWRA in its present format was first completed on 01/02/2019. Can you please confirm whether any other versions or templates have been used to conduct a FWRA at your firm please? If yes, then I would appreciate if you could provide to me any alternative/previous versions you may have.*
- I can see that your AML P&Ps in their present format were created on 01/10/2018 (according to the version control). Can you please confirm whether any other version of AML P&Ps have previously been in place at your firm please? If yes, I would appreciate if you could provide to me any alternative/previous versions you may...”*

14. On 21 January 2021, Mr Chan replied as follows and attached a document titled “*Chan and Co P&P version 1.0 old AML P&P.pdf*”:

“I confirm I do not have FWRA prior to the one I sent you.

I attach the old version of AML P&Ps for your records” which was titled “Chan and Co P&P version 1.0 old ML P&Ps.pdf”.

15. On 25 January 2021, the AMLSO made clear there were inconsistencies on the documents provided by Mr Chan and asked for clarification as follows:

“The firm wide risk assessments (FWRA) provided were signed as completed on 01/02/2019 and 14/02/2020 respectively. However, the underlying template used by the firm to conduct these FWRA’s was not in circulation until March 2020. Can you please explain this irregularity? I would also appreciate it if [sic] you could provide to me the original Word documents for our records (at present only PDFs have been provided)

The firm has stated in the version control that its AML policies & procedures (AML P&Ps) were created in their current format on 01/10/2018. However, the underlying template used by the firm to inform it’s AML P&Ps was not in circulation until March 2020. Can you please explain this irregularity? I would also appreciate it if [sic] you could provide to me the original Word documents for our records (at present only PDFs have been provided)

I would appreciate it if you could clarify this information and provide the requested documents at your earliest convenience and by no later than 26 January 2021.”

16. On 25 January 2021, Mr Chan explained that the Firm had a ‘*bespoke database*’ which was close to what firms were expected to use by ACCA when dealing with AML and KYC:

“ As per our telcon interview on 14 December last year, I have been using a bespoke database to run the practice.

The practicing [sic] of KYC and AML has been built into the process of first engaging clients and ongoing monitoring. Diary and daily communication with our clients are kept digitally by all staff and myself. The way I have used to deal with such sensitive requirement may not be exactly the same as what the ACCA is requiring now, but my procedures evolve, it is getting very close to what ACCA’s requirement. For functional purpose, the software is more advanced.”

17. Mr Chan also explained that the inconsistencies were due to the following reasons:

(i) FWRA: the dates shown on the documents provided were, in his view, when the Firm’s FWRA complied with MLRs 2017, notwithstanding the different format:

“as I have got all the data kept in the format that can generate such reports at any time, I believe 01/02/2019 and 14/2/2020 are the dates that I achieved such conditions but such data would not be exactly in the ACCA FWRA format, hence I used the latest ACCA FWRA version, but used those dates.”

(ii) AML P&P: the Firm’s AML P&P were not compliant hence he used the format which was published at a later date. But he reminded the AMLSO that he had provided the Firm’s version on 21 January 2021 which, in his view, demonstrated he had no intention of lying to ACCA:

“ I refer to my last email which I sent you the previous version of AML P&P which I think is not up to the current standard hence I used your update version without the intention that I was lying to ACCA.”

18. On 26 January 2021, the AMLSO provided its AML Report of the Firm to Mr Chan. The AML Report pointed out that the AML team could not be certain the

Firm had conducted and documented a firm wide risk assessment prior to the Review which was a legal requirement. The AML Team therefore concluded that the Firm might have been in breach of MLRs prior to the Review.

19. On 08 February 2021, the AMLSO referred the matter to ACCA Professional Conduct Department for investigation into Mr Chan's conduct in relation to the inconsistencies in the documents provided (and not AML breaches).
20. On 08 June 2021, the Senior Investigating Officer ("SIO") asked Mr Chan for an explanation with regard to the dates of the FWRA and AML P&Ps documents due to concerns that the documents had been created and backdated for the Review as follows:

"1.2 The ACCA resource used by you to conduct the FWRA was not published until early 2020 (approximately February 2020.) and

1.3 The ACCA resource used by you as a template for your AML P&Ps was not published until early 2020 (also approximately February 2020.)"

21. Mr Chan was therefore asked to provide the following explanation:

"1.4(a) Please can you provide a detailed explanation as to why you had used the resources to complete the FWRA and the AML P&Ps, when they were not in circulation at the time they were both alleged to have been completed.

(b) Please can you explain why you would use the above resources, when it appears that you had backdated the documents and that they were created for the purpose of the AML monitoring review.

(c) Please can you confirm that by backdating the FWRA and AML P&Ps, this would create a false and misleading impression to ACCA of your firm's compliance with the Money Laundering, Terrorist Financing and Transfer of Funds (Information on Payer) Regulations 2017, and that this

in turn would mean you are in breach of ACCA's Code of Ethics and Conduct and in particular, the Fundamental Principle of Integrity.”

22. On 28 June 2021, Mr Chan replied that, while he accepted the fact in relation to the events from the Review to his providing the documents, he denied any intention to mislead ACCA when providing the documents. He repeated his earlier admission i.e. that he had used the published FWRA and AML P&Ps as templates to report the data already held by the Firm.

“Ref: 1.4(a) I am not aware of the circulation time of FWRA and the AML P&Ps are issued at a later date. Due to the lockdown in March 2020, nearly everything routine staff training has come to a standstill. I have been working with one staff in the office from March 2020 until the present. The rest are working from home due to various reasons. As I remember my team did attend AML training in the year before, hence I used those FWRA and the AML P&Ps as “templates” to record such event without intending to mislead ACCA.”

“Ref: 1.4(b) I am of the view that my system of AML in my database is a matter of evolving rather than matching ACCA's requirement 100% at a particular point in time, I was converting my data into the ACCA format for reporting only.”

“Ref: 1.4(c) I have no intention to create a false and misleading impression.”

23. On 08 July 2021, the AMLSO informed Mr Chan that he accepted that the actions outlined in the AML Report had been completed by the Firm and therefore the AML Review of the Firm had also been completed. The Firm had therefore remediated their AML controls and was no longer non-complaint with the MLRs.

24. On 16 November 2021, while accepting that the Firm might have some form of AML measures in place before the Review, the SIO asked Mr Chan for a direct response to the question already raised i.e. an explanation with regard to his backdating the documents as follows:

“Your comments made on 28 June 2021 appear to be largely irrelevant to the basis on which a referral to the Investigations Department at ACCA was made. I note that you have had some AML controls in place going back a number of years, and that your processes do appear to have changed over time, as you have said. However, this doesn’t impact upon this referral’s basis directly and I still need your direct response to this investigation.

“Can you please explain clearly why the documents used for your FWRA and AML P&Ps appear as if they have been backdated (due to being published at a later date than you dated them for the AML review)?

Is there any other information or documentary evidence you wish to provide which may assist in my consideration and investigation of this complaint?”

25. On 30 November 2021, Mr Chan replied as follows:

“(a) I cannot easily explain why I backdated the documents then as I was under stress with my workload.I was of the opinion that I have been keeping a system in place to handle the AML procedures. The system has been there for a long time and it evolves with time. Then I just downloaded the FWRA form (from ACCA website) to use as a template.I have 1 staff working in the office for the full 9 months since the first lockdown March 2020. I was in a rush ..to move on to my other deadlines. I have no intention to mislead ACCA. I added one more year to it because during that year to December 2020 and because of the lockdown, my team and I did not have any AML training. I remembered we did some AML training in the year before.

(b) I can prove that my AML system was in place in my old laptop (Window XP version)....”

26. On 04 January 2022, the SIO asked Mr Chan the following:

- “1. You have stated in your response: “I cannot easily explain why I backdated the documents then as I was under stress with my workload.” Can you confirm whether you therefore accept that the documents had been backdated for the purposes of the AML review?
 2. You have also said: “I can prove that my AML system was in place in my old laptop.” Can you please provide documentary evidence of all your AML policies and procedures you had in place before the AML review that took place?”
27. On 10 January 2022, Mr Chan maintained the same position i.e. he used the ACCA resource as templates and replied as follows, attaching copies of AML documents, daily activities reports and contact reports from his “old laptop” in pdf format:
- “ I used those FWRA and the AML P&Ps as “templates” to report to ACCA, I do not accept that the document had been backdated for the purpose of this particular AML review.”*
28. On 31 May 2022, the SIO who took over the conduct of the investigation reminded Mr Chan of ACCA’s Health Regulations [Private] in his email of 07 December 2020; and also asked for the earliest version of both the FWRA and AML P&P which the Firm had.
29. On 17 June 2022, Mr Chan provided more details with regard to [Private]. He also provided evidence to support his claim of increased workload; as well as the original versions of the AML policy in Microsoft Word which confirmed what he always maintained and was accepted by ACCA i.e. the Firm did have some AML control prior to 2020 although not fully compliant with MLRs:
2. Microsoft Word versions:

I attach a copy of the previous version of my AML policy in Word. All FWRA are computerized in the database rather than in a Word format apart from the AML policy.

If you need to verify AML Old System 2004-2009, remote access to my old laptop is the easier version. I am sure there are other options.”

30. Following this extensive correspondence and explanations, on 31 January 2023, the SIO proposed to Mr Chan that the matter was suitable for disposal by way of a Consent Order, as there was no evidence of dishonesty. Additionally, the Firm had already regularised its AML breaches.
31. On 14 February 2023, Mr Chan accepted the proposal for the matter to be disposed of a Consent Order.

DECISION ON ALLEGATIONS AND REASONS

32. 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 they are of the view that the admitted breaches would more likely than not result in exclusion from membership.
33. 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.
34. The Chair considered the bundle of evidence and, on the basis of the admissions of the allegations by Mr Chan, found the facts of the allegations proved. They therefore justified disciplinary action under byelaw 8(a)(i).

SANCTION AND REASONS

35. In deciding whether to approve the proposed sanction of a severe reprimand, a fine of £3,000 and for Mr Chan to pay ACCA's costs in the sum of £1,250, 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. They also had regard to the Additional Guidance in relation to AML allegations. The Chair considered whether the proposed sanction was appropriate, proportionate and sufficient.

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

- As the MLRO of the Firm, Mr Chan was solely responsible for providing the correct information when requested by ACCA.
- ACCA relies on the MLRO of a firm, and the information they provide, to monitor the extent to which the firm complies with MLRs, thereby discharging its functions as the designated AML supervisory authority under the MLRs.
- Notwithstanding his explanation, Mr Chan should have been aware how the documents could be interpreted given the discrepancies. His failure to readily make clear the underlying reasons for the discrepancies in the documents meant ACCA could not carry out its monitoring obligations efficiently.
- Mr Chan's conduct fell below the standards expected of a qualified ACCA member and brought discredit upon himself, ACCA and the accountancy profession.

37. In deciding that a severe reprimand was the most suitable sanction, paragraphs C4.1 to C4.5 of ACCA's Guidance have been considered and the following mitigating factors had been identified by ACCA:

- Mr Chan has been an ACCA member in continuous good standing since 2003 and has no previous complaint or disciplinary history;

- Mr Chan has demonstrated insight and accepted the findings of the AML Compliance report. By taking the actions required in the report, he ensured the Firm's AML compliance;
 - The misconduct was not deliberate as he readily and consistently explained the reasons when asked;
 - Mr Chan co-operated with the investigation;
 - Mr Chan made admissions early in the investigatory process which was consistent with his explanation to the AMLSO;
 - There is no evidence of harm;
 - There is no evidence to suggest that Mr Chan's conduct was deliberate or dishonest;
 - There is no evidence of the actual enabling of any money-laundering;
 - His personal circumstances at the time of the breaches.
38. The Chair considered that both the aggravating and mitigating features identified by ACCA were supported by documentary evidence and were relevant.
39. In the Chair's judgement, the conduct was such that the public interest would not be served by making no order, neither would an admonishment or reprimand adequately reflect the seriousness of Mr Chan's conduct.
40. When considering the criteria set out in the Guidance, the Chair concluded that it would be appropriate, proportionate and sufficient to impose a severe reprimand and a fine of £3,000 to reflect the seriousness of the findings against Mr Chan.

COSTS AND REASONS

41. ACCA was entitled to its costs in bringing these proceedings. The claim for costs in the sum of £1,250, which had been agreed by Mr Chan, appeared appropriate.

ORDER

42. Accordingly, the Chair approved the terms of the attached Consent Order. In summary:
- a. Mr Chan shall be severely reprimanded;
 - b. Mr Chan shall pay a fine of £3,000 and
 - c. Mr Chan shall pay costs of £1,250 to ACCA.

Mrs Helen Carter-Shaw
Chair
24 March 2023