

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr David Paul O'Donoghue

Considered on: Friday, 24 March 2023

Location: Remotely via Microsoft Teams

Chair: Mrs Helen Carter-Shaw

Legal Adviser: Mr Robin Havard

Summary Reprimand
Costs payable to ACCA - £807.50

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 O'Donoghue and a signatory on behalf of ACCA on 09 and 10 March 2023 respectively, together with supporting documents in a bundle numbering pages 1 to 46.
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 Chair had also taken account of the content of ACCA's documents entitled "Consent Orders Guidance" and "Consent Orders Guidance FAQs".

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4. The Chair understood that Mr O'Donoghue was aware of the terms of the draft Consent Order and that it was being considered today.
5. The Chair also understood that Mr O'Donoghue 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 or about 2 September 2021, Mr O'Donoghue created a fake LinkedIn profile under the name of 'John Murphy' under which he:

- a) incorrectly claimed that he was an Audit Senior at Binder Dijker Otte ('BDO'); and
- b) communicated with a third party stating that he had completed some Professional Accountancy Training ('PAT') subjects when he had not.

Allegation 2

By reason of the matters referred to in Allegation 1 above, Mr O'Donoghue 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).

DECISION ON FACTS

6. The Chair noted from the report provided by ACCA that the following summary of the facts were not in dispute and therefore adopted them as their findings of fact.
7. On 24 March 1994, Mr David Paul O'Donoghue became a Member of ACCA.

8. On or about 02 September 2021, Mr O'Donoghue created a LinkedIn profile under the name of 'John Murphy' which recorded him as an Audit Senior at BDO. He then used this profile to communicate with a third party stating that he had completed some PAT subjects.
9. Mr O'Donoghue has never been known as John Murphy, has never been an Audit Senior at BDO, and never completed a PAT course or been a PAT student.
10. On 10 September 2021 a complaint was referred to Professional Conduct in respect of the matter.
11. The complaint was put to Mr O'Donoghue by ACCA and he responded to the complaint.
12. On 24 November 2022, ACCA proposed that the matter be disposed of via Consent Order.
13. On 22 December 2022, Mr O'Donoghue provided a response confirming that he agreed to the matter being disposed of via consent.

DECISION ON ALLEGATIONS AND REASONS

14. 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.
15. 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.
16. The Chair considered the bundle of evidence and, on the basis of the admissions of the allegations by Mr O'Donoghue, found the facts of the allegations proved. On the basis of such facts, the Chair found that Mr O'Donoghue acted contrary to the Fundamental Principle of Behaviour. He was

guilty of misconduct as such conduct brought discredit to Mr O'Donoghue, ACCA, and the accountancy profession.

SANCTION AND REASONS

17. In deciding whether to approve the proposed sanction of a reprimand, and for Mr O'Donoghue to pay ACCA's costs in the sum of £807.50, 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.
18. In reaching their decision, the Chair had noted, and found, the following aggravating features, as identified by ACCA:
 - Mr O'Donoghue's conduct fell below the standards expected of a qualified ACCA member and brought discredit upon himself, ACCA and the accountancy profession.
19. In deciding that a reprimand was the most suitable sanction, paragraphs C3.1 to C3.5 of ACCA's Guidance had been considered and the following mitigating factors had been identified by ACCA:
 - Mr O'Donoghue has been an ACCA member in continuous good standing for a significant period of time since 1994;
 - Mr O'Donoghue has no previous complaint or disciplinary history;
 - ACCA does not consider that the conduct reaches the threshold for dishonesty and that Mr O'Donoghue's conduct was an error of judgement and was quickly rectified;

- ACCA considers that the conduct was an isolated incident and is unlikely to be repeated;
 - Part of Mr O'Donoghue's identity was visible through the email address connected to the LinkedIn account in question;
 - Mr O'Donoghue has apologised for his conduct and demonstrated insight;
 - Mr O'Donoghue has promptly and fully co-operated with the investigation;
 - Mr O'Donoghue made admissions early in the investigatory process and admitted his conduct;
 - There is no evidence of harm;
 - Mr O'Donoghue has provided ACCA with excellent testimonials.
 - [Private]
20. The Chair considered that both the aggravating and mitigating features identified by ACCA were supported by documentary evidence and were relevant. They noted that all three testimonials came from FCCAs, two of whom knew about the detail of the misconduct and described it as completely out of character.
21. The Chair placed little weight on the fact that part of Mr O'Donoghue's identity was visible through the email address connected to the 'fake' LinkedIn account as this might not be immediately apparent to people. They regarded Mr O'Donoghue's repeated reference to this to be a potential aggravating factor as it might be considered to downplay the seriousness of the conduct. Overall, however, they were satisfied that Mr O'Donoghue realised the seriousness of his actions, sincerely regretted them and would be unlikely to repeat them in future.

22. 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 adequately reflect the seriousness of Mr O'Donoghue's conduct.
23. When considering the criteria set out in the Guidance, the Chair concluded that it would be proportionate and sufficient to impose a reprimand to reflect the seriousness of the findings against Mr O'Donoghue.
24. In all the circumstances, the Chair was satisfied that the sanction of a reprimand was appropriate, proportionate, and sufficient.

COSTS AND REASONS

25. ACCA was entitled to its costs in bringing these proceedings. The claim for costs in the sum of £807.50, which had been agreed by Mr O'Donoghue, appeared appropriate.

ORDER

26. Accordingly, the Chair approved the terms of the attached Consent Order. In summary:
 - a. Mr O'Donoghue shall be reprimanded; and
 - b. Mr O'Donoghue shall pay costs of £807.50 to ACCA.

Mrs Helen Carter-Shaw
Chair
24 March 2023