

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr James Michael McQuaid

Considered on: Friday 12 April 2024

Location: Remotely via telephone

Chair: Ms Kate Douglas

Legal adviser: Mr Alastair McFarlane

Hearings Officer: Miss Nicole Boateng

Outcome: Consent Order approved

DOCUMENTS BEFORE THE COMMITTEE AND SERVICE

1. The Committee, which consisted of a Chair sitting alone with a Legal Adviser, considered the matter on the papers in the absence of the parties in accordance with the relevant regulation. The Committee considered a draft Consent Order, signed by a signatory on behalf of ACCA and by Mr McQuaid, dated 5 April 2024, numbering pages 1 to 9, together with supporting documents in an Evidence Bundle, numbering pages 1 to 141, a 1-page Committee Referral Form and Simple and Detailed Costs Schedules. The Committee also received an email from the Hearings Officer on 11 April 2024

2. The Hearings Officer's email informed the Committee that Mr McQuaid was aware that his Consent Order is being decided today. Mr McQuaid had not submitted any further information. The matter may therefore be considered today.

ALLEGATIONS

Allegation 1

Mr James Michael McQuaid (Mr McQuaid) being at all material times an ACCA member and fellow breached the Global Practising Regulations (as applicable between 1 January 2018 to 22 February 2021 and 6 January 2021 to 19 April 2023 by virtue of the following:

- a) Between 1 January 2018 to 22 February 2021 – held out and carried on public practice without a practising certificate, contrary to Regulation 3(1)(a) of the Global Practising Regulations 2003 (as applicable between 2018 – 2021 and 2021 –2023).
- b) Between 1 January 2018 to 22 February 2021 was a director of Company A (a company which carried on public practice) contrary to regulation 3(2)(a) of the Global Practising Regulations 2023 (as applicable between 2018- 2021) without holding a practising certificate.
- c) Between 6 January 2021 to 19 April 2023 was a director of Company B (a company which carried on public practice) contrary to regulations 3(2)(a) of the Global Practising Regulations 2023 (as applicable between 2021- 2023) without holding a practising certificate.
- d) Between 6 January 2021 to 19 April 2023 held 50 per cent of the shares in Company B, which put him in the position of being in effect a principal in the company, contrary to Global Practising Regulation 3(2)(b) (as applicable between 2021- 2023) without holding a practising certificate.

Allegation 2

- a) Between 2 December 2019 to 11 January 2023 Mr McQuaid submitted

annual CPD returns to ACCA in which he declared or otherwise confirmed that he had not engaged in public practice or words to that effect without holding an ACCA practising certificate.

- b) Mr McQuaid's conduct in respect of allegation 2 a) was reckless in that Mr McQuaid failed to have any or sufficient regard to the declaration he gave when he wrongly confirmed that he had not carried on public practice activities without holding a practising certificate (as per Global Practising Regulations 3 and 4).

Allegation 3

In the light of any or all of the facts set out at allegations 1 to 2 above, Mr McQuaid is:-

- a) Guilty of misconduct pursuant to bye-law 8(a)(i) or
- b) In respect of Allegation 1 only, liable to disciplinary action pursuant to bye-law 8(a)(iii).

BACKGROUND

3. Mr McQuaid became a member of ACCA in 1986 and was subsequently made a Fellow.
4. In October 2021, following an anonymous complaint regarding Mr McQuaid, ACCA began an investigation into allegations that he had carried out public practice without holding an ACCA practising certificate.
5. ACCA's investigation revealed that Mr McQuaid was a director of Company A from 2017 to February 2021 without holding a practising certificate between 1 January 2018 and 22 February 2021 and that he held out to be in public practice as a director of Company B without a practising certificate between 6 January 2021 and 19 April 2023. Mr McQuaid admitted this.

6. ACCA also examined Mr McQuaid's annual CPD returns and the declarations that he was not engaging in public practice. Noted that Mr McQuaid's response was to the effect that he thought that he *"could do 8 to 10 hours per week without breaking any rules"*. He added that he had thought that he was automatically placed on ACCA's register of members in retirement.
7. ACCA noted and accepted Mr McQuaid's repeated and consistent representations that *"in view of his working and personal circumstances around the time he ceased to hold an ACCA practising certificate that he may have held a genuine (although incorrect) belief that he could undertake 8-10 hours of public practice work a week without the requirement to hold an ACCA practising certificate."* It also noted that in relation to Allegation 1c) it was not alleged that Mr McQuaid carried on public practice, but that he was a director of a company that held out to do so and that this was *"a technical breach of ACCA's regulations"*. ACCA further noted that in relation to the incorrect CPD declarations by Mr McQuaid, three of them (those for the years 2018, 2019 and 2020) were actually submitted over a period of one year and that the fourth incorrect CPD declaration was submitted a year later and related to a two-month period when Mr McQuaid breached the regulations regarding actually carrying on public practice rather than holding out to do so. In those circumstances ACCA accepted that Mr McQuaid had been reckless as opposed to dishonest in his conduct.

CHAIR'S DECISION

8. When reaching my decision, I was referred by the Legal Adviser to the requirements of Regulation 8 of the Complaints and Disciplinary Regulations 2014 (as amended) and I accepted his advice. I also took account of the ACCA's documents entitled Consent Orders Guidance and Consent Orders Guidance FAQs.
9. Under Regulation 8(8), I must determine whether, based on the evidence before me, the draft consent order should be approved or rejected. I noted that under Regulation 8(12) I shall only reject the signed Consent Order if I am of the view that the admitted breaches would, more likely than not, result in exclusion from membership.
10. I agree that an investigation of an appropriate level was conducted by ACCA.

11. I note that Mr McQuaid has admitted all allegations including misconduct. I have attached at the end of this determination the Schedule of Anonymisation, which was not initially sent to the Committee with the draft Consent Order, but which I understand from the Hearings Officer's email had been sent to Mr McQuaid.
12. I agree that there is a case to answer and that there is a real prospect that a reasonable tribunal would find the allegations proved.
13. I considered the seriousness of the breaches as set out and the public interest, which includes the protection of the public, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and performance. I balanced this against Mr McQuaid's interests, and [Private]. I note that Mr McQuaid has no disciplinary history and has been a Member of ACCA since 1986 – approaching 40 years.
14. [Private] I considered that the behaviour was unlikely to be repeated and that there was no likely continuing risk to the public.
15. I had regard to ACCA's Guidance for Disciplinary Sanctions. I was satisfied that there had been early and genuine acceptance of the conduct and that the risk to the public and profession from Mr McQuaid continuing as a member was low.
16. For the reasons set out above, I was satisfied that the admitted breaches would be unlikely to result in exclusion from membership, and therefore there was no basis for me to reject the consent order under Regulation 8 (12). I noted the proposed consent order, and considering all the information before it, was satisfied that a severe reprimand accompanied by a fine was an appropriate and proportionate disposal of this case.
17. I am further satisfied to award ACCA's costs in the sum of £1815 which I find to be a reasonable and proportionate amount for the work done.

ORDER

18. The Committee, pursuant to its powers under Regulation 8, made an Order in terms of the draft Consent Order, namely that Mr McQuaid be severely

reprimanded, with a fine of £3,819. In addition, Mr McQuaid is to pay ACCA's costs of £1815.

Ms Kate Douglas
Chair
12 April 2024