

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr David Norman Mawhinney
Heard on:	Friday, 20 September 2024
Location:	Remotely via Microsoft Teams
Chair:	Mr Tom Hayhoe
Legal adviser:	Mr Alastair McFarlane
Outcome:	Consent Order approved

DOCUMENTS BEFORE THE CHAIR

1. The Chair received a bundle of papers, including a signed draft Consent order, numbered pages 1-228, as well as a detailed and simple breakdown of costs document.

ALLEGATIONS

Allegation 1

Mr David Norman Mawhinney, a Fellow of the Association of Chartered and Certified Accountants (“ACCA”) member and principal of DN Mawhinney (“the Firm”):

ACCA



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1. On dates between 21 September 2018 and 19 September 2019, did not respond adequately, or at all to Person C's queries as set out in a letter of 20 September 2018 contrary to
 - a. Sections 240.21 (2018) and/or 330.10 ACCA's Rulebook, and/or
 - b. The fundamental principle professional behaviour (2018 to 2019)
2. Contrary to the Complaints and Disciplinary Regulation 3(1) (2019–2020) failed to fully cooperate with an ACCA Investigation Officer in relation to the investigation of complaints on the date set out in Schedule A
3. By virtue of all or any of the facts, is:
 - a) Guilty of misconduct pursuant to bye-law 8(a)(i) or
 - b) Liable disciplinary action pursuant to bye-law 8 a) iii)

BACKGROUND

2. Mr Mawhinney has been a member of ACCA since 29 April 1974 and a Fellow since 17 May 1979. Mr Mawhinney is a sole practitioner, and his firm is D N Mawhinney & Co. Mr Mawhinney currently holds a general practising certificate with ACCA.

Allegation 1

3. On 20 September 2018 Person C wrote to Mr Mawhinney with queries regarding a letter and invoice he had received. Although Mr Mawhinney sent an email acknowledgement to Person C on 5 October 2018, he did not reply to Person C's queries until 19 September 2019. This was only after Person C had complained to ACCA and ACCA had written to Mr Mawhinney about that complaint.

Allegation 2

4. On 16 July 2019 an ACCA's Investigating Officer wrote to Mr Mawhinney with questions regarding the complaint by Person C and asked Mr Mawhinney to reply to this letter by 6 August 2019. Mr Mawhinney indicated that he would not be able to meet that deadline but would respond with full comments. ACCA granted an extension until 3 September 2019. On that day Mr Mawhinney informed ACCA's Investigating Officer that he had been 'medically incapacitated for the last week' and this had delayed meeting the extension. Mr Mawhinney advised that he was actively working on the response which would be provided as soon as was practically possible. A new deadline was given of 20 September 2019. On that day Mr Mawhinney advised ACCA's Investigating Officer of some medical matters but stated that his response would be provided in the very near future and certainly before 27 September 2019. There was further communication between ACCA and Mr Mawhinney and in a telephone call on 16 October 2019. Mr Mawhinney stated that his responses were nearly complete but may take a couple of weeks to finalise. ACCA's Investigating Officer indicated that Mr Mawhinney should send the responses that he had by 21 October 2019 and outline what remained outstanding and that this should be provided within the following two weeks.
5. On 23 October 2019 in a telephone call with ACCA Mr Mawhinney apologised for the delay and confirmed that the full response should be with ACCA's Investigating Officer by 25 October 2019. ACCA's Investigating Officer confirmed that if no response was received, then on 28 October 2019 a formal notice chasing the response would be issued in accordance with ACCA's failure to co-operate procedure.
6. On 11 February 2020 ACCA's Investigating Officer and Mr Mawhinney spoke by telephone. Mr Mawhinney confirmed that he had not responded and explained reasons why. It was agreed that Mr Mawhinney would provide a response by 18 February 2020.
7. On 28 April 2020 a new Investigating Officer for ACCA advised that she had reviewed the case file and could not trace a response to the previous

Investigating Officer's questions of 16 July 2019. Mr Mawhinney was asked to provide a copy of his response if he had previously sent one or, if not, to provide his complete response by 5 May 2020.

8. On 23 July 2020 ACCA's Investigating Officer wrote to Mr Mawhinney, noted he had not replied to the previous Investigating Officer's questions of 16 July 2019, gave him a new deadline of 10 August 2020 and advised that if Mr Mawhinney did not respond by then, ACCA would raise an allegation that he had failed to co-operate with the investigation in accordance with Complaints and Disciplinary Regulation 3(1).
9. On 20 August 2020 Mr Mawhinney advised ACCA's Investigating Officer as follows:

'...I thank you for your recent communication. Please accept my apologise [sic] for only being able to reply now. Regrettably, circumstances quite outside my control, have prevented me, as you are aware, from fully responding to the ongoing issues. Cautiously, carefully with much thought and planning I am endeavouring to exit shielding and this arresting and tortuous lockdown.

Life is still very perilous with hidden and unpredictable conditions appearing timed to disrupt, alter and destroy the structure of one's day. In this respect I write to acknowledge the delay in responding, for which I apologise, and advise of my proposal, to follow, with responses in these cases. Do understand I am not endeavouring to abrogate my responsibility to reply in these cases, in fact, I am looking forward to supplying information pertinent to the cases which, I believe, will influence your thinking and the outcome of the enquiries. Meantime I thank you for your past patience and continued support in this respect, I will be in touch again, shortly.'

10. On 24 August 2020, having not received a substantive response, ACCA's investigating officer provided Mr Mawhinney a final deadline to respond 01 September 2020, in the fault of which a failure to cooperate allegation would be raised. Mr Mawhinney did not reply.

11. A Disciplinary Committee hearing was scheduled to take place on 22 May 2024. This hearing was adjourned. On 27 June 2024 in a letter to Mr Mawhinney's representative, ACCA proposed disposal of this matter by way of a Consent Order. Mr Mawhinney's representative confirmed that Mr Mawhinney agreed to this disposal.

COMMITTEE'S DECISION

12. Under Regulation 8(8) of the Complaints and Disciplinary Regulations 2014, I must determine whether, based on the evidence before it, the draft consent order should be approved or rejected. I had regard to the Consent Orders Guidance.
13. I note 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.
14. I agree that an investigation of an appropriate level was conducted by ACCA.
15. I note that Mr Mawhinney has admitted all allegations including misconduct.
16. 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 Mawhinney's interests, and his mitigation and personal circumstances (which were also accepted by ACCA). I note that Mr Mawhinney has no disciplinary history and has been a member of ACCA since 1974 - 50 years - and a Fellow since 1979 and has been subject to no previous complaints.
17. I noted and accepted the list of aggravating and mitigating factors advanced at paragraphs 14 and 15 of the draft Consent Order bundle. Whilst cooperating with the regulator is a fundamental importance to maintain public confidence in the profession and the regulation of it, I noted and accepted ACCA's position that throughout the period of the breaches there were personal circumstances

and health matters, and that Mr Mawhinney has taken remedial action and made early admissions and expressed genuine remorse. There was no question of a deliberate disregard of professional obligations. I considered that the behaviour was unlikely to be repeated and that there was no likely continuing risk to the maintenance of public confidence in the profession.

18. I had regard to ACCA's Guidance for Disciplinary Sanctions. I was satisfied that there had been early and genuine acceptance of the misconduct and that the risk to the public and profession from Mr Mawhinney continuing as a member was very low.
19. 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 reprimand was an appropriate and proportionate disposal of this case.
20. I am further content to award ACCA's costs in the sum of £5,000 which I find to be a reasonable and proportionate amount for the work undertaken.

ORDER

21. The Chair, pursuant to its powers under Regulation 8, made an Order in terms of the draft Consent Order, namely that Mr Mawhinney be reprimanded. In addition, Mr Mawhinney is to pay ACCA's costs of £5,000.

Mr Tom Hayhoe
Chair
20 September 2024