

CONSENT ORDERS HEARING

CONSENT ORDERS COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Kevin James Thomas Walmsley
Considered on:	Tuesday, 23 February 2021
Chair:	HH Suzan Matthews QC
Legal Adviser:	Mr Andrew Granville Stafford
Outcome	Consent Order approved

INTRODUCTION

1. This matter has been referred to the Consent Orders Committee of ACCA ('the Committee') pursuant to Regulation 8(8) of the Complaints and Disciplinary Regulations ('CDR') for the Committee to determine on the basis of the evidence before it whether to approve the draft Consent Order.
2. The Committee had before it a Consent Order Draft Agreement (pages 1 to 4), a bundle of documents (pages 5 to 64) and a service bundle.

CONSTITUTION OF THE COMMITTEE

3. Regulation 5(7) of The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014 states:

'(7) The Consent Orders Committee shall consist of either a Chairman and a Legal Adviser, or an Assessor and a Legal Adviser.'

4. For avoidance of doubt, the Legal Adviser is an independent barrister or solicitor. The role of a Legal Adviser, as set out in ACCA's Regulations, is

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advisory only. The Legal Adviser is not a voting member of the Committee as this would be a departure from their function. This is the determination of the Chair alone.

CONSENT ORDER DRAFT AGREEMENT

5. The Consent Order Draft Agreement was signed by Mr Walmsley on 18 December 2020 and by a representative of ACCA on 05 January 2021. It reads as follows.

'The Association of Chartered Certified Accountants (ACCA) and Mr Kevin James Thomas Walmsley (the Parties), agree as follows:

1. Mr Kevin James Thomas Walmsley admits the following:

Allegation 1

- a) Pursuant to byelaw 8(a)(vi), Mr Kevin James Thomas Walmsley is liable to disciplinary action by virtue of the disciplinary finding against him on 25 February 2020 by the Institute of Chartered Accountants in England and Wales ("ICAEW").
2. That Mr Kevin James Thomas Walmsley shall be reprimanded and shall pay costs to ACCA in the sum of £780.'

6. The disciplinary action taken against Mr Walmsley by ICAEW was in respect of the following two complaints, which Mr Walmsley admitted.

Complaint 1

Contrary to paragraph 100.4 of the Code, and his duty to comply with the fundamental principles of objectivity and/or professional competence and due care and or confidentiality, in or around September 2009. in relation to his role in the decision taken by 'A' to accept instructions to act for the 'B' Group, Kevin Walmsley failed to:

- (a) Evaluate adequately the significance of the threat to compliance with the fundamental principles of objectivity and confidentiality created by 'A's

Egham office accepting instructions to act for the 'S' Group at a time when its interests were, or had the potential to be, in conflict with those of 'C' and other 'C' Group companies for whom 'A' was already acting as financial adviser; and/or

- (b) Consider the threat to compliance with the fundamental principles of confidentiality and objectivity created by Mr 'E' being appointed as the engagement manager for the 'S' Group when he knew that Mr 'E' had been advising 'C' and other 'C' Group companies, and where it was intended that Mr 'E' would continue to advise the 'O' Group as well as the 'B' Group after September 2009; and/or
- (c) Ensure that informed consent had been obtained from 'C' or other companies in the 'O' Group or Mr 'F' to 'A' accepting instructions to act for the 'B' Group; and/or
- (d) Put in place suitable safeguards to reduce threats to compliance with the fundamental principles of confidentiality and objectivity to an acceptable level, including in relation to information barriers to stop 'C's confidential information being disclosed to the 'B' Group.

Complaint 2

Contrary to paragraphs 100.4 of the Code of Ethics and his duty to comply with the fundamental principles of objectivity and/or professional competence and due care and/or confidentiality, between September 2009 and June 2010, Kevin Walmsley failed to:

- (a) Monitor properly the effectiveness of the safeguards put in place to reduce the threat to compliance with the fundamental principles of objectivity and confidentiality created by 'A' acting for both the 'B' Group and the 'O' Group, including the effectiveness of the information barrier which had been put in place; and/or
- (b) Investigate properly suspicions raised by Mr 'H' of 'A' in February 2010 that the 'B' Group was misappropriating money paid by 'C' for the construction of the 'G' development.

7. The relevant background and facts are set out in an appendix to the Consent Order Draft Agreement which reads as follows.

'Relevant Facts, Failings and/or Breaches

1. The Investigating Officer has conducted their investigation into the allegations against Mr Walmsley in accordance with Regulation 8(1)(a) of the Complaints and Disciplinary Regulations (CDR) (2020) and is satisfied that:
 - a) They have conducted the appropriate level of investigation as evidenced by the enclosed evidence bundle (see pages 5-64), and determined that there is a case to answer against Mr Walmsley and there is a real prospect of a reasonable tribunal finding the allegations proved; and
 - b) The proposed allegations would be unlikely to result in exclusion from membership.
2. The relevant facts, failings and/or breaches have been agreed between the parties and are set out in the detailed allegations above together with the proposed sanction and costs.
3. A summary of key facts is set out below:
 - Disciplinary action was taken against Mr Walmsley by the Institute of Chartered Accountants in England and Wales ("ICAEW") on 25 February 2020 (pages 22-23);

Sanction

4. The appropriate sanction is a reprimand.
5. In considering this to be the most appropriate sanction, ACCA's Guidance for Disciplinary Sanctions (the Guidance) has been considered and particularly the key principles. One of the key principles is that of the public interest, which includes the following:

- Protection of members of the public;
 - Maintenance of public confidence in the profession and in ACCA;
and
 - Declaring and upholding proper standards of conduct and performance
6. Another key principle is that of proportionality, that is, balancing the member's own interests against the public interest. Further, the aggravating and mitigating features of the case have been considered.

Reprimand

7. The aggravating factors are considered to be as follows:
- By being publicly sanctioned by another professional body, Mr Walmsley has brought discredit upon himself, to ACCA, and to the accountancy profession;
 - The conduct which led to Mr Walmsley being the subject of disciplinary action by the ICAEW fell below the standards expected of a qualified ACCA member;
 - The order by the ICAEW for Mr Walmsley to be severely reprimanded, fined £20,000 and pay costs of £22,500.
8. In deciding that a reprimand is the most suitable sanction, paragraphs C3.1 to C3.5 of ACCA's Guidance have been considered and the following mitigating factors have been noted:
- Mr Walmsley has been a member of ACCA since 1999 and has a previous good record with no previous complaint or disciplinary history;
 - Mr Walmsley has fully co-operated with the investigation and regulatory process;

- Mr Walmsley has apologised for the conduct which led to the complaints raised against him;
- Mr Walmsley has provided great references attesting to his exceptional character including one from the firm's compliance partner;
- There is no continuing risk to the public as Mr Walmsley has provided assurances and details of efforts put in place to address the complaint raised by the ICAEW to prevent any similar failings ever occurring again. He has therefore taken remedial action to address his conduct;
- It is noted that the ICAEW have considered the complaint and have chosen not to exclude Mr Walmsley for his conduct;
- Mr Walmsley has already been fined £20,000 and severely reprimanded by ICAEW;
- Mr Walmsley has expressed genuine remorse.

9. ACCA has considered the other available sanctions and is of the view that they are not appropriate. ACCA considers that a reprimand proportionately reflects Mr Walmsley's conduct and the public policy considerations which ACCA must consider in deciding on the appropriate sanction. This is a public interest sanction due to the conduct bringing discredit to ACCA and the profession and convey a message of the importance of fundamental standards of professional conduct.'

DECISION

8. The powers available to this Committee 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 it may only do if it is 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 it satisfied it is appropriate to deal with the complaint by way of consent but wishes the terms of the draft order to be amended (CDR 8(13)).
9. The Committee was satisfied it was appropriate to make a Consent Order in the terms agreed between the parties.
 10. The Committee noted that Mr Walmsley admitted the complaints brought by the ICAEW and the matter was dealt with by consent. Following the imposition of that order, Mr Walmsley self-reported to ACCA.
 11. The Committee accepted there was substantial mitigation in this case. It was satisfied that there was an element of institutionalised failing underlying the complaints which Mr Walmsley become embroiled in. He has been co-operative and apologetic for his actions and the Committee accepted his regret and remorse was genuine. He has a lengthy and otherwise distinguished career as an accountant and his qualities are attested to in a number of impressive references submitted on his behalf to ACCA. The fine and costs imposed by ICAEW have been paid in full.
 12. In all the circumstances, the Committee was satisfied that Mr Walmsley did not pose any ongoing risk to public which justified any more severe sanction than a reprimand. The Committee considered whether a fine might be an appropriate sanction but, given that Mr Walmsley has already had significant financial penalties imposed on him by ICAEW, it concluded that there was no merit in imposing a fine.
 13. Mr Walmsley has agreed to pay costs in the sum of £780 and it is right that costs incurred by ACCA in this matter are met by him rather than the membership as a whole.

ORDER

14. The Committee made the following order:
 - i. The draft Consent Order is approved;

- ii. Allegation 1 is proved by admission;
 - iii. Mr Walmsley is reprimanded;
 - iv. Mr Walmsley is ordered to pay costs to ACCA in the sum of £780.
15. Under CDR 8(17) there is no right of appeal against this order. Therefore, this order comes into effect immediately.

HH Suzan Matthews QC
Chair
23 February 2021