

CONSENT ORDERS HEARING

CONSENT ORDERS COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Stephen Gary Potter FCCA
Heard on:	Monday, 19 August 2024
Location:	Remotely via MS Teams
Chair:	Mr Andrew Gell
Legal Adviser:	Ms Tope Adeyemi
Summary:	Consent order approved. Member severely reprimanded.
Costs:	£2,600.00

INTRODUCTION

1. This matter has been referred to a Chair of the Disciplinary Committee of ACCA ('the Chair') pursuant to Regulation 8(8) of the Complaints and Disciplinary Regulations ('CDR') to determine on the basis of the evidence before them whether to approve the draft Consent Order. Under CDR 8(8), a Consent Order is made by a Chair of the Disciplinary Committee in the absence of the parties and without a hearing.
2. The Chair had before them a bundle of 142 pages ('the bundle') which included the Consent Order draft agreement. They were also provided with a Statement of Financial position (1 page), a simple costs schedule (1 page), a detailed costs schedule (2 pages) and 3 payslips (1 page each).

CONSENT ORDER DRAFT AGREEMENT

3. The Consent Order draft was signed by Mr Potter on 01 August 2024 and signed by a signatory on behalf of ACCA on 02 August 2024. It reads as follows:

1. *Mr Stephen Gary Potter FCCA ("Mr Potter"), an ACCA member and a director of the Firm (the "Firm") between 01 July 2019 and 31 January 2024, admits the following:*

Allegation 1

a) *Between 30 June 2018 and 30 June 2019, Mr Potter, as Senior Statutory Auditor, audited the financial statements of Company A, a company in which two of its directors and shareholders were also directors in the Firm.*

b) *Mr Potter's conduct as referred to in Allegation (1)(a) was in breach of:*

(i) *Subsection 112–Objectivity of the ACCA's Fundamental Principles; and/or*

(ii) *Section 1214 of Companies Act 2006.*

Allegation 2

a) *By reason of his conduct in Allegations (1), Mr Potter is:*

(i) *Guilty of misconduct in respect of any or all the matters set out at Allegations (1), pursuant to bye-law 8(a)(i).*

2. *That Mr Potter shall be severely reprimanded and pay costs to ACCA in the sum of £2,600.*

BACKGROUND

4. The relevant background and facts are set out in the bundle and read as follows:
 1. *The investigating officer has conducted his investigation into the allegations against Mr Potter in accordance with Regulation 8(1)(a) of the Complaints and Disciplinary Regulations (CDR) and is satisfied that:*
 - 1.1. *He has conducted the appropriate level of investigation as evidenced by the enclosed evidence bundle and determined that there is a case to answer against Mr Potter, and there is a real prospect of a reasonable tribunal finding the allegations proved; and*
 - 1.2. *The proposed allegations would be unlikely to result in exclusion from membership.*
 2. *The investigating officer did not find Mr Potter's conduct to be dishonest for the following reasons:*
 - 2.1. *Mr Potter's role as the Senior Statutory Auditor, and the Firm as the auditors, of Company A were matters of public record as the information formed part of the Companies House filings by Company A for the financial year ended 30 June 2019 ("FYE 2019").*
 - 2.2. *There was no evidence of concealment in that Mr Potter was not involved in, or contacted by ACCA in relation to, the disclosure of information requested by ACCA for the Monitoring Review of the Firm between 08 June 2021 and 12 July 2021. He was also not present in the opening or closing meeting of the Monitoring Review; and was not contacted by ACCA after the Monitoring Review was concluded for explanation of the breaches identified until he was approached by Investigations on 21 June 2022.*

3. *Mr Potter and the Firm have relinquished their roles as the statutory auditor, and auditors, of Company A respectively since the financial year ended 31 March 2021.*
4. *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, fine and costs.*
5. **A summary of key facts is set out below:**
 - 5.1. *On 31 December 2003, Mr Potter became a Member of ACCA.*
 - 5.2. *On 31 December 2008, Mr Potter became a Fellow of ACCA.*
 - 5.3. *Between 23 February 2007 and 03 February 2022, Mr Potter held a Practising Certificate with Audit Qualification.*
 - 5.4. *Since 03 February 2022, Mr Potter has held a Practising Certificate only after he and the Firm voluntarily withdrew from the audit qualification and certificate.*
 - 5.5. *Between 01 July 2019 and 31 January 2024, Mr Potter was a director of the Firm.*
 - 5.6. *The Firm's contact with ACCA was Person A ("Person A"), another director.*
 - 5.7. *For Company A's financial year ended 30 June 2019 ("FYE 2019"):*
 - *The Firm was Company A's auditors; and*
 - *Mr Potter was the Senior Statutory Auditor who provided an unqualified opinion in the Report of the Auditors.*
 - 5.8. *In the same financial year, Person A and another person (who is not an accountant), both directors of the Firm, were also directors and shareholders of Company A.*

5.9. On 30 April 2021, ACCA's Senior Compliance Officer ("SCO") emailed Person A, as the Firm's contact with ACCA, to request that the following information in relation to the Firm's audit clients be provided in preparation of the Monitoring Review:

"Further to our telephone confirmation, could you please let me have a list of audit clients with the following details:

Client name

Principal activities

Latest signed off year end Turnover

Net assets Audit fee

Director responsible"

5.10. On 07 May 2021, Person A provided a list of five audit clients in response. The list did not include Company A.

5.11. The list also showed Person A as the engagement partner for all five audit clients.

5.12. On 04 June 2021, ACCA confirmed the arrangements for the Monitoring Review to the Firm.

5.13. The Firm was reminded that:

".....in relation to audit work you will need to supply all evidence and documentation that you intend to place reliance on for the review. Additional documentation submitted after the review may not be taken into consideration..."

5.14. On 08 June 2021, the SCO held the opening meeting for the Monitoring Review with the Firm, represented by Person A. Mr Potter did not attend.

5.15. In the meeting, Person A confirmed to the SCO that that he did not have any shareholdings in, and was not a director of, any audit

client which the SCO subsequently found not to be true. The SCO's notes of the meeting were as follows:

"At the opening meeting, at which Mr Potter was not present, Person A stated that he did not have any shareholdings in and was not a director in an audit client.

On further investigation, it was found that Person A and [REDACTED] were both shareholders and directors in one of the undisclosed audit clients, Company A, the audit report of which for the year ended 30 June 2019 was signed by Mr Potter, [REDACTED]...."

5.16. Between 08 and 21 June 2021, the SCO corresponded with Person B, the audit manager of the Firm, for accessing the audit files to review and questions on the information provided. Mr Potter was not copied on these emails or replied to the SCO directly.

5.17. On 01 July 2021, the SCO held the Closing Meeting with the Firm represented by Person A and Person B. The SCO's note of the meeting included their repose to the questions in relation to the Firm's audit clients and Person A's interest outside of the Firm as follows.

a. Directors' business interest

"1) List of the directors' other business interests – Person B maintained that he had send an excel spreadsheet to me with Person A & [REDACTED] other business interests. I have not received this, so Person B said that he would resend it...."

b. Audit clients

"2) I asked why 3 audits which are on Fame were not included on the list of clients sent to me on 7/5/21. I was informed that that was a mistake. I then asked why he had told Professional Development on 12/4/21 that he had 8 audits and 2 charities. He did not recall having sent an email to PD with that information."

...

c. Company A

“3) Company A’s Company Accounts for the year ended 30/6/19 – [REDACTED], directors of Firm, are directors and 20% shareholders (10% each) in this company. The accounts have been audited by Firm with S Potter, also a director of Firm, signing the audit report.

Point 2 Response

[REDACTED] was missed off out of error when reviewing client list

Company A was missed off out of error when reviewing the list

[REDACTED] was not included due to dispute in fees that have still not been paid Resolution; Maintain full Excel spreadsheet with Audit clients (see enclosed)”.

5.18. On 01 July 2021, and following the Closing Meeting, the SCO sent a list of outstanding information to Person A for the Firm including:

“Further to our confirmation this morning, please see below a list of outstanding information that I require:

1. Schedule of other business interests for the directors.....
2. An explanation of why the list of audit clients provided to ACCA on 07 May 2021 did not include the following audits:
[REDACTED] 28/12/19, Company A and [REDACTED]
[REDACTED].....

The booking email did say ‘Please note that in relation to audit work you will need to supply all evidence and documentation that you intend to place reliance on for the review. Additional documentation submitted after the review may not be taken into consideration.’

- 5.19. On 09 July 2021, Person B replied to the SCO with a schedule of business interest and access to the audit file of Company A.
- 5.20. On 10 July 2021, the SCO asked Person B to explain why Person A's business interest in Company A was still not on the list he had provided.
- 5.21. On 12 July 2021, Person B replied as follows but did not clarify why Person A's directorship and shareholding in Company A had not been provided:
- "I have reattached to this email..." (i.e. a compressed file titled "5. Audit Records zip".*
- 5.22. On 18 August 2021, the SCO sent the Monitoring Review report to the Firm, in which the Firm was informed that it would be referred to ACCA's Admissions and Licensing Committee ("A&LC").
- 5.23. The draft report for the A&LC was also attached to the Firm for comments.
- 5.24. Between 16 September and 30 September 2021, the Firm instructed [REDACTED] to respond to the Monitoring Review report, including a full response on 30 September 2021 which disagreed with the findings set out in the draft A&LC Report.
- 5.25. On 08 October 2021, the SCO replied to Person A and the Firm with the reasons why the recommendation to the A&LC Committee remained valid, notwithstanding the response from [REDACTED].
- 5.26. On 19 October 2021, the SCO referred the case of Mr Potter to ACCA's Professional Conduct Department for investigation (while the referral to Admission and Licensing Committee was ongoing).

5.27. *The referral included other issues arising from the Monitoring Review which have been investigated but are not being taken forward. Reference to such matters in the correspondence should therefore be disregarded.*

5.28. *On 28 October 2021, following discussions between [REDACTED], the Firm's newly instructed solicitors, and the SCO, [REDACTED] emailed as follows to confirm what had been agreed:*

"I write to confirm the plan as suggested by you.

You have agreed that you will contact the Hearings Team to cancel the hearing on 11 November, as long as the following conditions are met. The conditions are that, by the close of business on Monday, the Firm provides a letter to you which confirms:

- 1. That Firm formally relinquishes its auditing certificate;*
- 2. That Person A and Steve Potter formally relinquish the auditing qualification attached to their practising certificate (but retain a general practising certificate);*
- 3. That Firm, Person A and Steve have resigned all audit appointments and have confirmed this in writing to all audit clients (with copies of those letters to be provided to you); and*
- 4. That all references to the Firm, Person A and Steve being authorised/registered or otherwise able to carry out audit work on any website or any other platform have been removed.....*

If these conditions are met, you will:

- 1. Write to the hearings team to ask that they cancel the hearing on 11 November (although this will be a 'request' you have been told by the Case Presenter, who would appear on behalf of ACCA on 11/11, that the hearings team will agree to this);*

2. *Re-submit your report to the Regulatory Assessor in order that conditions can be placed on any future re-application for an auditing certificate/qualification.*

A copy of Firm's letter will be sent to the Authorisation Team, who on the basis that it (and its directors) have relinquished their certificates, will issue a general practising certificate for the remainder of the year.

You will also seek confirmation as to whether or not any of the allegations of regulatory breaches or fitness and propriety made against the Firm, Person A and Steve need to be included in your report to the RA.

I would be grateful if you could please confirm that my understanding is correct."

5.29. *On 01 November 2021, another director of the Firm provided the evidence to the SCO that Mr Potter and the Firm had resigned from the ACCA Audit registration as agreed.*

5.30. *On 08 March 2022, the Regulatory Assessor made the following decision:*

".....

Basis and reasons for the decision

Mr Potter has had two audit quality monitoring visits (one at his previous firm). Both have had unsatisfactory outcomes. At the first visit in 2012, Mr Potter was a director in the firm visited and was responsible for the majority of the files on the failed visit. That firm was then referred to the Regulatory Assessor who imposed a "Hot File Review' order."

.....

I note that Person A and Mr Potter have relinquished their practising certificates with audit qualification and the firm's auditing certificate.

On the basis of the above I have decided pursuant to Authorisation Regulations 7(3)(b) and 7(4) that any future reapplication for audit registration by Person A and Mr Potter, or by a firm in which either of them is a principal, must be referred to the Admissions and Licensing Committee, which will not consider the application until they have:

- i) provided an action plan, which ACCA regards as satisfactory, setting out how they intend to prevent a recurrence of the previous deficiencies and;*
- ii) attended a practical audit course, approved by ACCA and;*
- iii) following the date of this decision resat and passed paper P7 (or the equivalent advanced level audit paper) of ACCA's professional qualification....”.*

5.31. On 21 June 2022, Investigations put the allegations in the referral to Mr Potter, including the following:

- a. The Firm did not fully disclose its directors' business association to the SCO for the Monitoring Review; and*
- b. The Firm did not disclose its full list of audit clients to the SCO for the Monitoring Review.*

5.32. On 09 July 2022, Mr Potter replied to Investigations as follows:

“...I was aware that Person A and [REDACTED] were directors and shareholders in Company A but I was not involved in the detail of the disclosure of business interests provided to the SCO at the time of the initial request.

I was aware that a disclosure of business interest had been made but at the time I was unaware as to the exact content of the disclosure. Having been provided with details of the disclosure subsequent to the SCO's review it was obvious the Company A directorships and shareholdings had not been disclosed.

Prior to the SCO review, I was asked to confirm the firm's audit clients which was done verbally during a telephone call with Person A. Company A was confirmed as being a current audit client, I advised that I wasn't sure about [REDACTED] as this client is managed by him. Whether or not to include discussed and as we had previously begun the process of disengaging from this client due to a lack of communication (the last contact with the client had been June 2019) and unpaid fees, we decided not to include the client on the list.

I was unaware of exactly which clients had been included in the original disclosure at the time it was made and only became aware that it was not complete following the SCO's review and report....".

5.33. *On 03 August 2022, Investigations called Mr Potter to discuss the allegations, including his explanation and evidence of consideration in relation to his, and the Firm's, audit roles for Company A, given that the two entities had the same directors and shareholder.*

5.34. *On 04 August 2022, Mr Potter provided a reply as follows:*

"Further to our recent telephone conversation I have reviewed everything I can relating to the Company A's audit and have not been able to find anything other than the attached notes of the meeting held prior to accepting the appointment. I am unable to offer any explanation as to why the conditions agreed at the meeting were not followed in their entirety. I have not been able to find anything to indicate that Person A and/or [REDACTED] were involved in either the preparation or audit of the accounts however it is impossible to prove a negative.

I would also point out that the audit planning documentation made available to the reviewer clearly recorded the interest of Person A and [REDACTED] which only adds to my astonishment over the omissions from the initial information provided.

Another point I would like to make is that I was not involved with the remote review nor was I ever contacted directly by the reviewer with regards to any of the allegations made against me...”.

5.35. Mr Potter provided a note of a meeting on 01 November 2019 in which the “potential auditor independence issues arising from appointing Firm as the auditor” of Company A with Mr Potter as the Senior Statutory Auditor were discussed:

██
██
██

“.....The purpose of the meeting was to discuss potential auditor independence issues arising from appointing Firm as the auditor of Company A with SP as the Senior Statutory Auditor.

SP explained the threat to independence and integrity given that ██████ and JDM were directors and shareholders of both Firm and Company A and his concern over accepting the appointment in this situation.

█████ advised that the roles of Person A and ██████ were essentially those of non-executive directors and that he ██████ ran the company on his own and with his ██████ shareholding had complete control over the activities of the company.

Further discussion took place about why Person A & ██████ were directors during which ██████ explained that it was primarily for the benefit / comfort of the external investors.

Upon further consideration of the situation and potential threats, SP said he believed the appointment could be accepted only if the following conditions and safeguards were put in place and strictly adhered to:

1. *The accounts would be prepared by [REDACTED]. Was he has a good relationship with [REDACTED]. [REDACTED] would consult / work directly with [REDACTED] on the preparation of the accounts independently from Firm. Under no circumstances would Person A or [REDACTED] be involved in this work.*
2. *The audit would be planned and undertaken by [REDACTED] under the supervision of SP. SP to review and sign off at critical stages (planning and completion).*
3. *All audit enquiries to be directly solely to [REDACTED].*
4. *Person A & [REDACTED] to be excluded from all audit activity*
5. *[REDACTED] to approve accounts for filing*
6. *Audit report to be prepared or reviewed by SP prior to accounts being finalised and filed.*

At this point [REDACTED] and [REDACTED] joined the meeting. SP explained the above to them both. [REDACTED] were asked if they had any thoughts or suggestions on safeguards. Both confirmed they understood what was required of them and agreed that they thought the proposed conditions would support the independence issue.

[REDACTED] confirmed that he wouldn't involve Person A or [REDACTED] in the process and if he was in need of clarification on any technical points he would contact SP direct....”.

- 5.36. *On 17 July 2024, Investigations proposed to Mr Potter that the matter was suitable for disposal by way of a Consent Order, as there was no evidence of dishonesty.*
- 5.37. *On 22 July 2024, Mr Potter accepted the proposal for the matter to be disposed of a Consent Order.*

SANCTION

6. *The appropriate sanction is **severe reprimand** and for Mr Potter to pay ACCA **costs** in the sum of **£2,600**.*
7. *In considering this to be the most appropriate sanction, ACCA's Guidance for Disciplinary Sanctions (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.*
8. *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.*
9. *The **aggravating factors** are considered to be as follows:*
 - *Mr Potter's obligation to comply with ACCA's Fundamental Principle of Objectivity.*
 - *The potential risks arising from a failure to comply with the independence of an auditor, whose opinion is relied on by the public.*
 - *By holding the meeting on 01 November 2019 to discuss "potential auditor independence issues arising from appointing Firm as the auditor" of Company A, Mr Potter was clearly aware that there could be potential risks to his own, and the Firm's, independence.*

- *That Mr Potter then did not ensure the agreed steps and safeguards were followed strictly and at all times renders the meeting as no more than a formality, leaving the potential risks to the auditor's independence unmitigated.*
 - *Mr Potter's conduct clearly fell below the standards expected of ACCA members and has brought discredit upon himself, ACCA and the accountancy profession.*
10. *In deciding that a severe reprimand is the most suitable sanction, paragraphs C4.1 to C4.5 of ACCA's Guidance have been considered and the following **mitigating factors** have been noted:*
- *Mr Potter co-operated fully during the investigations.*
 - *He has admitted and apologised for not ensuring the steps and safeguards agreed in the meeting on 01 November 2019, which were the conditions for his acceptance to be Company A's auditors, were followed.*
 - *The audit process took place during COVID when the Firm had to deal with unprecedented interruptions to standard work practices and furloughing staff.*
 - *Mr Potter is no longer a director of the Firm since his resignation from the role on 31 January 2024.*
 - *There does not appear to be any continuing risk to the public in that Mr Potter has not held an ACCA's audit qualification; and the Firm has not held an ACCA's audit certificate, since 03 February 2022. They therefore cannot undertake any audit assignment unless they reapply for admission to be on ACCA's audit register.*
 - *If they reapply for admission to be on ACCA's audit register, both Mr Potter and the Firm would have to first meet the conditions set out in the decision by ACCA's Regulatory Assessor on 08 March*

2022; and the applications would then be referred to ACCA's Admissions and Licensing Committee for decisions.

- *Mr Potter's explanation that Person A's role as a director of the Firm and also that of Company A did not have any impact on his own independence as the auditor of Company A for the following reasons:*

"... Discussions with Company A's main director and majority shareholder (██████████) prior to accepting the appointment had revealed that Person A's position in the company was perfunctory and merely to provide the main external investor (a Dubai based real estate investment company) with the comfort of having a qualified professional accountant on the Board of Directors. As Person A was known to both ██████████ and the external investor it was agreed between all parties that Person A would be the obvious candidate. Person A plays no part in the day to day operations of Company A nor does he have any involvement in the making of business decisions, ██████████ controls and runs the company by himself. In view of the above I did, and still do not, consider Person A's position in Company A and Firm to have any impact on my independence; and "...As Person A is not involved in the day to day operations and activities of Company A, he was not involved or consulted during the preparation of the accounts and as he was also a director of Company A and Firm he was not involved with the audit, all questions and queries were directed to ██████████.

Furthermore, as is standard practice here in respect of audit clients, the accounts will be prepared by one person / team and the audit will be undertaken by another person / team. It should have been recorded at the Audit Planning stage that the accounts had been prepared by Mr ██████████ and the Audit work was to be undertaken by Person B with myself reviewing and signing off the audit work and Report of the Auditors.....".

11. *ACCA has considered the other available sanctions and is of the view that they are not appropriate. A severe reprimand proportionately reflects Mr Potter'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 misconduct bringing discredit to ACCA and the profession; and it conveys a message of the importance of fundamental standards of professional conduct.*

DECISION

5. The powers available to the Chair 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 they may only do if they are 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 they are satisfied it is appropriate to deal with the complaint by way of consent but wish the terms of the draft order to be amended (CDR 8(13).
6. The Chair carefully considered the documents before them, the agreed background, the evidence relating to the allegations and the proposals in relation to sanction. The Chair agreed that the proposed sanction was appropriate and proportionate in the all the circumstances taking into account *ACCA's Guidance for Disciplinary Sanctions*.
7. The Chair considered that, as a senior member of the Association and of the profession, Mr Potter's actions fell seriously short of what would have been proper in the circumstances and demand a finding of misconduct. The costs award fairly reflects the costs legitimately incurred by ACCA in investigating and dealing with this matter. The Chair considered it to be right and proper for

Mr Potter to meet the costs associated with his misconduct, which would otherwise fall on the general membership of ACCA.

8. The Chair agreed that the proposed sanction was appropriate and proportionate in all the circumstances. The Chair was satisfied it was appropriate to make a Consent Order in the terms agreed between the parties.

ORDER

9. The Chair made the following order:
 - i. The draft Consent Order is approved:
 - ii. Allegations 1 and 2 are proved by admission;
 - iii. Mr Potter is severely reprimanded.
 - iv. Mr Potter is ordered to pay costs to ACCA in the sum of £2,600.
 - v. Under CDR 8(17) there is no right of appeal against this order. Therefore, this order comes into effect immediately.

Mr Andrew Gell
Chair
19 August 2024