

## APPLICATION ON PAPERS

**CONSENT ORDERS CHAIR OF THE ASSOCIATION OF  
CHARTERED CERTIFIED ACCOUNTANTS****REASONS FOR DECISION**

<b>In the matter of:</b>	<b>Mr Alistair Gerald Nicklin</b>
<b>Considered on:</b>	<b>Thursday, 16 May 2024</b>
<b>Chair:</b>	<b>Ms Wendy Yeadon</b>
<b>Legal Adviser:</b>	<b>Ms Jane Kilgannon</b>
<b>Outcome:</b>	<b>Consent Order approved</b>
<b>Summary:</b>	<b>Severe reprimand Costs payable to ACCA - £2,900</b>

**INTRODUCTION**

1. This matter was referred to a Chair of the Disciplinary Committee of the Association of Chartered Certified Accountants (ACCA) pursuant to Regulation 8(8) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 (the Regulations) to determine, on the basis of the evidence before them, whether it is appropriate to deal with the complaint by way of a consent order and whether to approve or reject a proposed draft Consent Order.
2. Under Regulation 8(8) of the Regulations, consideration of the draft Consent order is made by a Chair in the absence of the parties and without a hearing.

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## **DOCUMENTATION**

3. The Chair had been provided with and read the following documentation:
  - a. A bundle of documents (pages 1 to 77), including a draft Consent Order, signed by Mr Alistair Gerald Nicklin (Mr Nicklin) on 08 May 2024, and signed on behalf of ACCA on 08 May 2024;
  - b. A detailed costs schedule;
  - c. ACCA document 'Consent orders guidance' (January 2021); and
  - d. ACCA document 'Consent orders – Frequently asked questions' (January 2021).
4. The Chair also had reference to:
  - a. ACCA document 'Guidance for disciplinary sanctions' (February 2024); and
  - b. ACCA document 'Guidance on costs orders' (September 2023).

## **DRAFT CONSENT ORDER**

5. The Chair noted the content of the draft Consent Order, which was set out in the following terms:

*“The Association of Chartered Certified Accountants (ACCA) and Mr Alistair Gerald Nicklin (the Parties), agree as follows:*

1. *Mr Alistair Gerald Nicklin, an ACCA member, admits the following:*

### ***Allegation 1***

*On 11 July 2023 he signed an audit report for the accounting year ended 31 October 2022 in relation to Company A in which he had a direct financial interest*

### ***Allegation 2***

*His conduct in respect of allegation 1 was contrary to Global Practising Regulation 13(1) (Annex 1 Appendix 1) in that he failed to comply with the following standards relating to independence*

*i) International Standard on Auditing (UK) 220*

*ii) Ethical Standard 2019*

### ***Allegation 3***

*His conduct in respect of the matters described above at a) was contrary to section 120.15A1 of ACCA's Code of Ethics and Conduct*

### ***Allegation 4***

*By reason of his conduct set out in Allegations 1 to 3 above Mr Nicklin is guilty of misconduct pursuant to bye-law 8(a)(i)*

- 2. That Mr Nicklin shall be severely reprimanded and shall pay costs to ACCA in the sum of £2,900.*

*[Signatures of the parties, each dated 8 May 2024]*

*If the Consent Orders Chair is satisfied it is appropriate to deal with the complaint by way of a consent order and the signed draft consent order is approved, it constitutes a formal finding and order. The Consent Orders Chair has the power to recommend amendments to the signed draft consent order and to subsequently approve any amended order agreed by the Parties.*

### **Publicity**

*All findings and orders of the Consent Orders Chair shall be published naming the relevant person, as soon as practicable, and in such manner as ACCA thinks fit.*

### **Relevant Facts, Failings and/or Breaches**

3. *The investigating officer has conducted their investigation into the allegations against Mr Nicklin in accordance with Regulation 8(1)(a) of the Complaints and Disciplinary Regulations (CDR) (2019) and is satisfied that:*
  - (a) *they have conducted the appropriate level of investigation as evidenced by the enclosed evidence bundle [...], and determined that there is a case to answer against Mr Nicklin 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.*
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 and costs.*
5. *A summary of key facts is set out below:*
  - *Mr Nicklin has been a member of ACCA since 15 March 1999 [...]*
  - *Mr Nicklin held an ACCA practising certificate and audit qualification at the material time [...]*
  - *On 11 July 2023 Mr Nicklin signed an audit report in respect of (Company A) [...]*
  - *As of 11 July 2023, Company A had a loan due from Company B [...]*
  - *As of 11 July 2023, Company B had a loan due from Company C [...]*
  - *As of 11 July 2023, Mr Nicklin was a director in Company C [...]*
  - *As of 11 July 2023, Mr Nicklin was a shareholder in Company D which was a shareholder in Company C [...]*

- *On 28 November 2023 Mr Nicklin informed an ACCA monitoring officer that as his interest in Company C had been established a number of years ago, he had forgotten this and had, therefore, not considered the threat to auditor independence as part of audit planning and had not identified that the firm was precluded from acting as auditor for this entity [...]*
- *Following the monitoring officer's findings Mr Nicklin relinquished his ACCA practising certificate and audit qualification [...].*

### **Sanction**

6. *The appropriate sanction is **severe reprimand**.*
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:*
  - *Failure to considered [sic] the threat to auditor independence as part of audit planning and failure to identify that he was precluded from acting as auditor for Company A*
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 Nicklin has been a member of ACCA in good standing since 1999*
  - *Mr Nicklin has no previous complaint or disciplinary history*

- *Mr Nicklin has fully co-operated with ACCA and responded promptly*
  - *The consequences of Mr Nicklin's conduct have not caused loss or an adverse effect on the client/members of the public*
  - *The misconduct was an isolated incident which is unlikely to be repeated*
  - *The investigation has not found evidence suggesting Mr Nicklin's misconduct was deliberate*
11. *ACCA has considered the other available sanctions and is of the view that they are not appropriate. ACCA considers that a **severe reprimand** proportionately reflects Mr Nicklin'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 [mis]conduct bringing discredit to ACCA and the profession; and it conveys a message of the importance of fundamental standards of professional conduct."*

## **LEGAL ADVICE**

6. The Chair accepted the following advice of the Legal Adviser:
- a. The powers available to the Chair are to:
    - i. Approve the draft Consent Order, in which case the findings on the allegations and the orders contained within it become formal findings and orders (Regulation 8(11) and 8(14) of the Regulations);
    - ii. 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 or removal from the student register or affiliate register, as appropriate (Regulation 8(12) of the Regulations);
    - iii. Recommend amendments to the draft Consent Order, if satisfied that it is appropriate to deal with the complaint by way of consent

order but wish the terms of the draft Consent Order to be amended (Regulation 8(13) of the Regulations).

- b. The power of the Chair to approve a draft consent order is subject to the limitation that they may not approve a sanction of exclusion from membership or removal from the student register or affiliate register, as appropriate (Regulation 8(11) of the Regulations).
- c. In making their decision, the Chair must have regard to all of the evidence before them and the relevant ACCA guidance documents.
- d. The ACCA document 'Consent orders guidance' indicates that the essential requirements of a disposal by consent are:
  - i. The relevant person is willing to admit the allegation(s), facts and any failings and/or breaches in full;
  - ii. The investigating officer has conducted an appropriate level of investigation and/or enquiries;
  - iii. There is a case to answer against the relevant person;
  - iv. There is a real prospect of a reasonable tribunal finding the allegation(s) proved; and
  - v. The proposed allegation(s), if found proved, would be unlikely to result in exclusion from membership or removal from the student or affiliate register, as appropriate.
- e. The Chair must only dispose of the case by consent where it is in the public interest to do so, in order to:
  - i. ensure an appropriate level of public protection;
  - ii. maintain public confidence in the accountancy profession and its regulatory body; and

- iii. declare and uphold proper standards of conduct and behaviour for relevant persons.

## **DECISION**

7. In making their decision, the Chair had regard to all of the evidence before them, the legal advice and the relevant ACCA guidance documents.
8. Pursuant to Regulation 8(8)(a) of the Regulations, the Chair decided that it was appropriate to deal with this complaint by way of consent order for the following reasons:
  - a. The Chair was satisfied that there was a signed draft Consent Order setting out all of the required matters (the relevant facts, the relevant failings and breaches, the proposed sanction and costs), that Mr Nicklin had admitted the matters alleged in full and that Mr Nicklin understood that the proposed order would be considered by the Chair;
  - b. The Chair was satisfied that the Investigating Officer had carried out an appropriate and thorough investigation;
  - c. The Chair found the summary of facts set out in the draft Consent Order to be consistent with the evidence before them;
  - d. The Chair agreed that there was a case to answer and that there was a real prospect that a reasonable tribunal would find the allegations proved;
  - e. The Chair was satisfied that the admitted breach would not be likely to result in exclusion from membership. Taking into account the seriousness of the allegation, the aggravating and mitigating factors, and the risk to the public and the public interest, the Chair considered that the admissions made by Mr Nicklin and his acceptance of a sanction of reprimand would more likely than not lead a Disciplinary Committee to conclude that removal from membership was not required in this case; and



- f. The Chair was satisfied that disposal of the case by consent was in the public interest.
9. Pursuant to Regulation 8(8)(b) of the Regulations, the Chair decided to approve the draft Consent Order for the following reasons:
  - a. The Chair is satisfied that Mr Nicklin has admitted the matters alleged in full;
  - b. The Chair agreed that, as a result of the admissions, Mr Nicklin is liable to disciplinary action;
  - c. The Chair agreed that Mr Nicklin's conduct had brought discredit upon himself, ACCA and the accountancy profession. However, the Chair did not consider that it amounted to conduct that is fundamentally incompatible with continued membership of ACCA;
  - d. The Chair agreed that the sanction of severe reprimand was appropriate in this case. The Chair agreed with the aggravating and mitigating factors set out in the draft Consent Order. In addition, the Chair had regard to the fact that Mr Nicklin had relinquished his practising certificate and audit qualification. As such, the Chair assessed the risk of repetition to be low. Noting the seriousness of the matters admitted, the aggravating and mitigating factors, the low risk of repetition, and the relevant ACCA guidance, the Chair considered that the sanction of severe reprimand was sufficient to meet the public interest to ensure an appropriate level of public protection, maintain public confidence in the accountancy profession and its regulation, and to declare and uphold proper standards of conduct and behaviour. The Chair was likewise satisfied that the sanction of severe reprimand was proportionate, balancing the interests of Mr Nicklin with the interests of members of the profession, the ACCA and the wider public; and
  - e. The Chair considered ACCA to be entitled to its costs in principle, and found the amount claimed and agreed (£2,900) to be fair and reasonable.

## **ORDER**

10. Accordingly, the Chair approved the draft Consent Order.

**EFFECTIVE DATE OF ORDER**

11. Regulation 8(17) of the Regulations provides that there is no right of appeal against a consent order. Therefore, this Order comes into effect immediately.

**Ms Wendy Yeadon**  
**Chair**  
**16 May 2024**