

## APPLICATION ON PAPERS

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

<b>In the matter of:</b>	<b>Mr Simon James Smith</b>
<b>Considered on:</b>	<b>Monday, 13 January 2025</b>
<b>Location:</b>	<b>Remotely via Microsoft Teams</b>
<b>Chair:</b>	<b>Ms Carolyn Tetlow</b>
<b>Legal Adviser:</b>	<b>Ms Melissa Coutino</b>
<b>Outcome:</b>	<b>Consent Order approved. Fine of £1,436.00.</b>
<b>Costs:</b>	<b>£200.00</b>

**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 her, 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.

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2. The Chair had before her papers which included a Consent Order Draft Agreement.

### **CONSENT ORDER DRAFT AGREEMENT**

3. The Consent Order Draft Agreement was signed by Mr Smith on 27 December 2024 and by a representative of ACCA on 30 December 2024. It reads as follows:

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

Mr Simon James Smith, an ACCA member, admits the following:

#### **ALLEGATION 1**

Between January 2022-January 2024, Mr Smith, a Fellow of ACCA, carried on public practice by virtue of offering accounting services involving the preparation of statutory accounts and tax returns, contrary to Regulation 3(1)(a) of the Global Practising Regulations (amended 1 January 2022) (as applicable between 2022-2024).

#### **ALLEGATION 2**

Between January 2022-January 2024, Mr Smith, a Fellow of ACCA, provided accountancy services within the terms of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, without having registered with a supervisory body for Anti-Money Laundering supervision purposes, contrary to Regulation 3(2) of Annex 1 of the Global Practising Regulations (amended 1 January 2022) (as applicable between 2022-2024).

#### **ALLEGATION 3**

On the dates outlined in Schedule 1, Mr Smith, a Fellow of ACCA, caused to be submitted to ACCA annual CPD declarations in which he confirmed that he was

not carrying on public practice as defined by Regulation 4 of ACCA's Global Practising Regulations when that was not the case.

#### **ALLEGATION 4**

Mr Smith's conduct in respect of complaint 3 was reckless in that he failed to have sufficient regard to the declaration he gave when he wrongly confirmed that he had not been carrying on public practice activities without holding a practising certificate (as per Global Practising Regulations 3 and 4).

#### **SCHEDULE 1**

16 February 2022 (2021)

29 February 2024 (2022)

29 February 2024 (2023)

By reason of his conduct in respect of all the matters set out at Allegations 1 to 4, Mr Smith is guilty of misconduct pursuant to byelaw 8(a)(i)

That Mr Smith shall be reprimanded and shall pay a fine in the sum of £1,436. Mr Smith shall also pay costs to ACCA in the sum of £200.'

4. The relevant background and facts are set out in an appendix to the agreement which reads as follows:

#### **RELEVANT FACTS, FAILINGS AND/OR BREACHES**

5. The Investigating Officer has conducted their investigation into the allegations against Mr Smith 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 (pages 1-91), and determined that there is a case to answer against Mr Smith 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.
6. 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.
7. A summary of key facts is set out below:
- a On 07 March 2024, a complaint referral was made to ACCA. It became apparent from this complaint that Mr Smith was carrying on and/or holding out to be in public practice by virtue of offering accounting services via Business A without a valid practising certificate.
  - b On 05 August 2024, ACCA formally notified Mr Smith of the complaint. ACCA requested further information and asked for a response by 12 August 2024.
  - c On 11 August 2024, Mr Smith provided a substantial response to ACCA via email. Mr Smith accepted that he had assisted friends with account preparation and tax returns via Business A. He explained that this occurred during a period of time in which he was considering operating Business A as an entity which he ultimately deciding against. Mr Smith explained that he was only paid expenses. He accepted that he did not have an Anti-Money Laundering supervisor nor professional indemnity insurance during this period.
  - d With regard to the signing of annual CPD declarations, Mr Smith reiterated that he did not see himself as trading at the time and therefore he was under the impression that he had accurately completed the declaration at the time.
  - e On 16 September 2024, ACCA requested further information from Mr Smith including whether, despite the circumstances surrounding the venture, he accepted that he was nevertheless carrying on public practice during the period concerned and provided accountancy services without

registered with a supervisory body for Anti-Money Laundering supervision purposes.

- f On 30 September 2024, Mr Smith responded to ACCA via email. Within his response, Mr Smith accepted that the work undertaken by him would be considered as carrying on public practice and that this work was undertaken between January 2022 to January 2024. Mr Smith expressed his regret for misunderstanding the regulations and wished to inform ACCA that it was a genuine error of judgement on his part.
  - g On 21 October 2024, ACCA requested further information and asked that Mr Smith sign an undertaking that he was no longer providing services via Business A and would not be offering services deemed public practice until such a time that he has been issued with a practising certificate.
  - h On 04 November 2024 Mr Smith provided an undertaking confirming the above. Mr Smith also confirmed that although the documentary evidence in ACCA's possession would suggest that he was paid for the work that he had undertaken, the references to fees in his letters of engagement *'were never relied upon on or used in any way to obtain payment of fees.'* Mr Smith explained that they were template letters that he had used in order to show an intention to act in *'the right way'*. Mr Smith explained that although some friends wanted to pay him as a sign of gratitude for helping them out as shown in email correspondence, he maintains that he was only paid expenses during the period of concern.
  - i On 06 November 2024, ACCA wrote to Mr Smith proposing that this matter be dealt with by a Consent Order. Following a telephone call between the Investigations Officer and Mr Smith on 12 November Mr Smith confirmed via email on 20 November 2024 that he is willing to agree to a Consent Order, and the associated costs, and provided further representations for consideration.
8. The Chair next considered the proposed Sanction as set out within the draft Consent Order.

## **SANCTION**

9. The appropriate sanction is a Reprimand and a fine of £1,436.
10. 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:
  - a Protection of members of the public;
  - b Maintenance of public confidence in the profession and in ACCA; and
  - c Declaring and upholding proper standards of conduct and performance.
11. Another key principle is that of proportionality, that is, balancing the member's own interests against the public interest.
12. Further, the aggravating and mitigating features of the case have been considered.
13. The aggravating factors are as follows:
  - a. The length of time over which the breaches have taken place, with Mr Smith providing accountancy services via Business A without a valid practising certificate.
  - b. The length of time that Mr Smith has been providing accountancy services via Business A without AML supervision, and the potential risks arising from such, and
  - c. Inaccurately signing and submitting annual CPD declarations to ACCA over a period of three years.
14. In deciding that a Reprimand is the most suitable sanction, following ACCA's Guidance, the following mitigating factors have been noted:

- a. Mr Smith has been a member of ACCA since 04 May 2011 and has a previous good record with no previous complaint or disciplinary history;
  - b. Mr Smith has fully co-operated with the investigation;
  - c. Mr Smith has admitted his conduct and apologised for his misunderstanding of ACCA regulations;
  - d. There is no continuing risk to the public given that Mr Smith has provided signed undertakings;
  - e. He has expressed genuine remorse.
15. 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 Smith'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**

16. 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)).

17. The Chair considered all the papers provided to her and ACCA's Consent Orders Guidance. She was satisfied, in light of the facts agreed by the parties and the information set out in the papers before her, that disciplinary action was justified in this case. The Chair considered that the investigating officer had conducted the appropriate level of investigation and that there is a case to answer, but that the allegation, if found proved, would be unlikely to result in exclusion from membership. She considered that Mr Smith's admissions to the allegations were properly made in all the circumstances and that the sanction of a Reprimand and a fine was appropriate and proportionate.
18. The Chair was therefore satisfied it was appropriate to make an order by consent in the terms agreed between the parties.

### **ORDER**

19. The Chair made the following order:
  - a. The draft Consent Order is approved.
  - b. Allegations 1-4 are proved by admission.
  - c. Mr Smith is Reprimanded and fined £1,436.
  - d. Mr Smith is ordered to pay costs to ACCA in the sum of £200.
20. Under CDR 8(17) there is no right of appeal against this order. Therefore, this order comes into effect immediately.

**Carolyn Tetlow**  
**Chair**  
**13 January 2025**