

## HEARING

### DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

#### REASONS FOR DECISION

- In the matter of:** Mr Adrian John Sherwood
- Heard on:** Thursday, 18 April 2019
- Location:** The Adelphi, 1-11 John Adam Street, London WC2N  
6AU
- Committee:** HH Suzan Matthews QC (Chairman)  
Mr Trevor Salmon (Accountant)  
Mrs Suzanne McCarthy (Lay)
- Legal Adviser:** Mr Andrew Granville Stafford
- Persons present  
and capacity:** Ms Sarah Cawley-Wilkinson (ACCA Case Presenter)  
Mr Richard Lorkin (Hearings Officer)
- Observers:** Mr James Walker (Appointments Board)
- Outcome:** Allegations 1 and 2 proved. Misconduct proved.  
Excluded from membership  
Costs of £7,418.54

## **INTRODUCTION AND PRELIMINARY MATTERS**

1. The Disciplinary Committee of ACCA ('the Committee') convened to consider a report concerning Mr Adrian Sherwood.
2. The Committee had before it a bundle of documents (pages 1 to 174) and a service bundle (pages 1 to 24).

## **PROCEEDING IN ABSENCE**

3. Mr Sherwood did not attend the hearing and was not represented.
4. The Committee considered the service bundle which contained a notice of hearing which had been emailed to Mr Sherwood on 18 March 2019 and a print out of Mr Sherwood's registered email address. The service bundle contained delivery receipts showing that the email had been delivered and viewed.
5. The Committee was satisfied that notice of today's hearing was sent to Mr Sherwood registered email address on 18 March 2019, and that the requirements of regulations 10 and 22 of the Chartered Certified Accountants' Complaints and Disciplinary Regulations ('CDR') as to service had been complied with.
6. Having satisfied itself that service had been effected in accordance with the rules, the Committee went on consider whether to proceed in the absence of Mr Sherwood. The Committee bore in mind that the discretion to do so must be exercised with the utmost care and caution.
7. There had been no response to the notice of hearing from Mr Sherwood. The last communication ACCA has had from Mr Sherwood was a letter dated 11 May 2018, in which he sought to resign his membership.
8. On 15 April 2019, the Hearings Officer attempted on three occasions to contact Mr Sherwood by telephone on the number held for him in ACCA's records. The number was either engaged or unavailable.
9. In the circumstances the Committee considered that no useful purpose would be served by an adjournment. Mr Sherwood was clearly not engaging with the disciplinary process, and there was no reason to think he will do in the future. There was a clear public interest in serious allegations of this

nature being deal with expeditiously. The Committee was satisfied the appropriate course was to proceed in Mr Sherwood's absence.

## **ALLEGATIONS AND BRIEF BACKGROUND**

10. The allegations faced by Mr Sherwood were as follows.

### Allegation 1

(a) Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, Mr Adrian Sherwood has failed to co-operate fully with the investigation of a complaint in that he failed to respond fully or at all to any or all of ACCA's correspondence dated:

(i) 5 June 2018;

(ii) 3 July 2018; or

(iii) 19 July 2018.

(b) By reason of his conduct at 1(a) above, Mr Sherwood is:

(i) Guilty of misconduct, pursuant to bye-law 8(a)(i); or

(ii) Liable to disciplinary action, pursuant to bye-law 8(a)(iii).

### Allegation 2

It is alleged that Mr Adrian Sherwood breached Global Practising Regulations (as applicable in 2009 to 2018) by virtue of not holding a valid practising certificate with regards to any or all of the following:

(a) He was a director of the following companies, which held out to be in public practice contrary to Paragraph 3(2)(a) of the Global Practising Regulations (as applicable in 2009 to 2018):

i. Company B between 30 November 2015 and 16 October 2018;

ii. Company C between 10 March 2010 and 10 March 2016 and again from 1 April 2016 to 16 October 2018;

(b) He held rights as set out below, which in effect put him in the position of a principal, in the following companies which were holding out to be in public practice, contrary to Paragraph 3(2)(b) of the Global Practice Regulations (as applicable in 2009 to 2018):

i. Between 50 and 100 per cent shareholding in Company B between 30 November 2015 and 16 October 2018;

ii. Between 25 and 50 per cent shareholding in Company C between 10 March 2010 and 16 October 2018;

(c) By reason of his conduct in respect of any or all of the matters set out at 2(a) to 2(b) above, Mr Sherwood is:

(i) Guilty of misconduct pursuant to bye-law 8(a)(i); or

(ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii).

11. Mr Sherwood was admitted as a member of ACCA in 2001, and as a fellow in 2005. He has never held a practising certificate.
12. Company B was incorporated on 26 October 2015, and Companies House records show that Mr Sherwood became a director of the company on incorporation. Its SIC (Standard Industrial Classification) code describes of the company's business as accounting and auditing activities, bookkeeping and tax consultancy. Mr Sherwood was the sole shareholder of Company B until 25 October 2016, when he became a 50% shareholder.
13. Company B was dissolved on 16 October 2018.
14. No ACCA member is allowed to be a director or principal in a firm which carries out public practice unless he holds a practising certificate (Regulation 3 of the Global Practising Regulations ('GPR')). ACCA regards anyone with a 5% or more shareholding in a company as being a principal.

15. Public practice is defined by GPR 4 which states:

‘(1) Activities

Subject to regulations 4(2) and 4(4), public practice, which may be carried on by an individual or a firm (the “practitioner”), means:

- (a) accepting an appointment as an auditor; and/or
- (b) signing or producing any accounts or report or certificate or tax return concerning any person’s financial affairs, whether an individual sole-trader, an unincorporated body or a firm, in circumstances where reliance is likely to be placed on such accounts or report or certificate or tax return by any other person (the “third party”), or doing any other thing which may lead the third party to believe that the accounts or report or certificate or tax return concerning the financial affairs of such a person have been prepared, approved or reviewed by the practitioner; and/or
- (c) holding oneself or itself out, or allowing oneself or itself to be held out, as being available to undertake the activities referred to in (a) and (b) above (and allowing oneself to be known as a, or a firm of “Chartered Certified Accountant(s)”, “Certified Accountant(s)”, “Chartered Accountant(s)”, “Accountant(s)” or “Auditor(s)” or any similar description or designation standing for any such description in the context of the practitioner’s business shall be regarded as an example of such a holding out); and/or
- (d) holding oneself out, or allowing oneself to be held out, as a sole proprietor, partner or director of a firm, or designated member or member of a limited liability partnership, where public practice is carried on.’

16. ACCA’s case was that Company B engaged in public practice as defined by GPR 4. ACCA relied on the information at Companies House about the nature of the company’s business which included ‘Accounting and auditing activities’ and ‘Tax consultancy’.

17. Companies House records show that Mr Sherwood was a director of Company C from 1 April 2009 to 10 March 2016, and again from 1 April 2016 until the Company C’s dissolution on 16 October 2018. He held 50% of

the shareholding from 2 April 2009 to 10 March 2016, and 25% of its shares from then onwards until it was also dissolved on 16 October 2016.

18. ACCA relied on annual returns submitted by Company C to Companies House in support of its contention, that the company held itself out as engaging in public practice.
19. The first annual return for Company C, dated 10 March 2010, gave its SIC code as 7412, which covered accounting and auditing activities, book-keeping and tax consultancy. In 2012 the code changed to 69201, namely 'accounting and auditing activities'. From 2013 onwards the codes were 69201 and also 70299 which is 'management consultancy activities other than financial management'.
20. ACCA's case was as Company C described itself in a publicly available document as engaging in accounting and auditing activities it was holding itself out as engaging in public practice. As Mr Sherwood was director and in the position of a principal in the firm, it was alleged he had breached GPR 3.
21. As a result of a complaint from a client of Company B to ACCA on 3 May 2018, ACCA commenced an investigation into Mr Sherwood. Mr Sherwood submitted a letter of resignation on 11 May 2018 to ACCA, but that was not effective to terminate his membership given the on-going investigation.
22. An ACCA Investigations Officer wrote to Mr Sherwood on 5 June, 20 June, 3 July, 19 July and 31 July 2018 requesting information regarding its investigation. No reply has been received to any of those letters.
23. All the letters were sent to Mr Sherwood's registered address. The letters dated 3, 19 and 31 July 2018, were returned to ACCA marked 'return to sender'. However, the other letters have not been returned. ACCA also relied on the facts that (a) Mr Sherwood used the same address when he sent his letter of resignation on 11 May 2018; and (b) a Land Registry search shows that Mr Sherwood is one of the registered owners of this property.
24. Mr Sherwood is bound by Complaints and Disciplinary Regulation 3(1), which requires members to co-operate with an investigations Officer in relation to the consideration and investigation of any complaint, including providing promptly such information as the Investigation Officer requires.

ACCA's case was that Mr Sherwood had breached that duty by failing to reply to the Investigation Officer's letters.

## **DECISIONS ON ALLEGATIONS AND REASONS**

25. The Committee considered the documents before it, the submissions of Ms Cawley-Wilkinson on behalf of ACCA and the advice of the Legal Adviser. The Committee bore in mind that the burden of proving an allegation rests on ACCA and the standard to be applied is proof on the balance of probabilities.

### Allegation 1

26. The Committee first considered Allegation 1 which alleged that Mr Sherwood had failed to reply to letters from ACCA's investigations department dated 5 June 2018, 3 July 2018 and 19 July 2018.
27. The Committee noted that the second and third of these letters were returned to sender, though the first was not. The Committee was satisfied the address to which these letters were sent was Mr Sherwood's address. Not only was it his registered address, but it was also the address he sent his 'resignation' letter from on 11 May 2018. Further, he was recorded as an owner of that property at HM Land Registry.
28. It was of significance, in the Committee's view, that in early June 2018, at or around the time the first letter was sent, he had returned a box of documents to the client who had made the complaint to ACCA. Further, on 7 and 8 July 2018 respectively, he applied for Company B and Company C to be struck off the register of companies at Companies House. These factors clearly show, in the Committee's view, that he was aware of the investigation.
29. The Committee was satisfied that the three letters in question, dated 5 June 2018, 3 July 2018 and 19 July 2018, had been received by Mr Sherwood. He was therefore under a duty to reply to them promptly in order to assist the Investigation Officer in his investigation. Mr Sherwood had, however, not replied to any of those letters. The Committee was accordingly satisfied that Mr Sherwood had breached CDR 3(1), and that Allegation 1(a) was made out in full. The Committee went on to consider whether this amounted to misconduct.

30. The complaint which the ACCA was investigating, and on which it required his response, raised serious professional conduct issues. Any professional would appreciate the importance of complying with regulatory investigations. The failure of Mr Sherwood to respond to ACCA's enquiries was not a trivial failure.
31. Given the importance of co-operating with a professional regulatory investigation, the Committee was quite satisfied that the matters found proved in Allegation 1(a) amounted to misconduct on Mr Sherwood's behalf.
32. The Committee therefore found Allegation 1(b)(i) proved on the basis of misconduct.

#### Allegation 2(a)

33. The Committee was satisfied that Mr Sherwood had never held an ACCA practising certificate and nor, indeed, had he ever applied for one. It was clear from the Companies House documentation, that Mr Sherwood had been a director of Company A and of Company B during the periods specified Allegation 2(a). The issue for the Committee was whether ACCA had satisfied it that the companies had held themselves out as engaging in public practice during those periods.
34. ACCA did not allege that the evidence proved either company had actually carried out public practice. It relied on the information at Companies House about the nature of the company's business. Both companies were registered under SIC codes which included 'accounting and auditing activities'. ACCA's case was that, by representing itself to be a company engaging in such activities, the companies held themselves out as being engaged in public practice.
35. The Committee had regard to the definition of public practice in CDR 4. The Committee was satisfied that the evidence relied on by ACCA established that both companies were holding themselves out as being engaged in public practice. The Committee therefore found Allegation 2(a) proved in its entirety.

#### Allegation 2(b)

36. Having found that both Company B and Company C held themselves out as engaging in public practice during the relevant periods, the issue for the



Committee on Allegation 2(b) was whether Mr Sherwood was a principal of those companies.

37. There is no definition of 'principal' in ACCA's Rulebook. ACCA's approach is that a 5 per cent holding in a public practice firm in effect puts a person in a position of principal of the firm.
38. The Committee was quite satisfied that Mr Sherwood's shareholding in both companies, which was at least 25% and up to 100% at the relevant times, gave him a controlling interest in the companies. That put him in the position of a principal. It was of significance, in the Committee's view, that it was Mr Sherwood who made the application to Companies House on behalf of both companies for them to be struck off the register.
39. The Committee therefore found Allegation 2(b) proved in its entirety.

#### Allegation 2(c)

40. The Committee went on to consider whether Allegations 2(a) and/or 2(b) amounted to misconduct.
41. The Committee was satisfied that Mr Sherwood would have understood and appreciated the importance of not being involved in public practice without a practice certificate. To carry on public practice without the protections that a practising certificate affords the public is a serious matter. Mr Sherwood had carried on for a period of years and in association with at least two different companies in breach of these obligations.
42. These actions seriously undermine the confidence the public have in the profession and there was no doubt in the Committee's mind that Mr Sherwood's conduct amounted to misconduct. It therefore found Allegation 2(c)(i) proved on the basis of misconduct.

#### **SANCTION AND REASONS**

43. The Committee considered what sanction, if any, to impose taking into account ACCA's Guidance for Disciplinary Sanctions ('GDS') and the principle of proportionality. The Committee bore in mind that the purpose of sanctions was not punitive but to protect the public, maintain confidence in the profession, and declare and uphold proper standards of conduct and behaviour.

44. The Committee was informed that no previous disciplinary findings had been made against Mr Sherwood.
45. Having found that Mr Sherwood's actions amounted to misconduct in relation to both Allegation 1 and Allegation 2, taking no further action was clearly not appropriate. The Committee therefore considered the available sanctions in ascending order of seriousness.
46. The Committee considered that there were a number of aggravating factors. Mr Sherwood had not co-operated with ACCA either during the investigation or during the disciplinary process. He had demonstrated no insight into his misconduct. His actions had the potential to cause harm and he had persisted in them for a lengthy period in clear breach of his professional obligations.
47. The Committee considered that neither an admonishment nor a reprimand would be sufficient to mark the gravity of the misconduct. The Committee considered the guidance on severe reprimand in the GDS. In light in particular of the fact that the misconduct was intentional, that it was longstanding and that there had been a lack of insight and co-operation, the Committee considered that a severe reprimand would not be an appropriate sanction.
48. The Committee concluded that no lesser sanction than exclusion would be sufficient to protect the public. Mr Sherwood had been guilty of very serious departures from his professional duties, both in the way he conducted his practice and the way he dealt with his obligations to his regulator.
49. Therefore, pursuant to CDR 13.1(c), the Committee ordered that Mr Sherwood be excluded from membership of ACCA.

#### **COSTS AND REASONS**

50. ACCA applied for costs in the sum of £7,418.54. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing. Mr Sherwood had provided no information about his means.
51. The Committee was satisfied that, having found the allegations proved, the case was properly brought, and a costs order should be made in favour of ACCA. The Committee considered the breakdown provided by ACCA, and

was satisfied that the amount sought was appropriate and had been reasonably incurred.

52. The Committee ordered that Mr Sherwood pay ACCA's costs in the sum of £7,418.54.

**EFFECTIVE DATE OF ORDER**

53. This order will come into effect from the date of expiry of the appeal period, namely after 21 days from service of this written statement of the Committee's reasons for its decision, subject to the Appeal Regulations.

**HH Suzan Matthews QC**  
**Chairman**  
**18 April 2019**