

HEARING DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

- In the matter of:** Mr Mojeed Ajibola Lemo
- Heard on:** Tuesday, 23 April 2019
- Location:** ACCA, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU
- Committee:** Mrs Kathryn Douglas (Chairman)
Mr Jonathan Beckerlegge (Accountant)
Mr John Walsh (Lay)
- Legal Adviser:** Mr Richard Ferry-Swainson (Legal Adviser)
- Persons present
and capacity:** Mr Benjamin Jowett (ACCA Case Presenter)
Mr Christopher Badoo (Hearings Officer)
- Summary:** All facts and misconduct found proved, severe reprimand and costs of £7,500

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PRELIMINARY APPLICATIONS/SERVICE OF PAPERS

1. The Disciplinary Committee (“the Committee”) convened to consider an Allegation against Mr Lemo, who was in attendance and represented by Mr Christopher Cope.
2. The papers before the Committee were in a bundle lettered A-S and numbered 1-87, plus additional bundles numbered 88-92, 97-104 and 105-106 and a costs schedule numbered 93-96. The Committee was also provided with a Service Bundle numbered 1-9.

APPLICATION TO AMEND

3. At the outset of the hearing the Committee pointed out that the word “Professional” was omitted from Allegation 1(d)(ii). Both parties acknowledged that this was an omission, and neither party objected to its inclusion.
4. The Committee accepted the advice of the Legal Adviser and allowed the Allegation to be amended to include the missing word “Professional” in Allegation 1(d)(ii). It was clear that it was simply an omission, and its insertion did not in any way prejudice Mr Lemo.

ALLEGATION/BRIEF BACKGROUND

5. Mr Lemo faced the following Allegation:

Allegation 1

- (a) In respect of any or all tax years, 2010/2011, 2011/2012, 2012/2013 and 2013/2014 Mr Mojeed Ajibola Lemo, a practising ACCA member, submitted understatements of his liability to tax to HMRC.
- (b) In respect of any or all tax years 2010/2011, 2011/2012, 2012/2013, 2013/2014, 2014/2015 and 2015/2016 Mr Mojeed Ajibola Lemo, a practising ACCA member, submitted understatements of his employer’s liability to PAYE and NIC to HMRC.

(c) Mr Mojeed Ajibola Lemo, a practising ACCA member, failed to bring promptly to the attention of ACCA that he may have become liable to disciplinary action by reason of having agreed with HMRC on or about 1 July 2017 that he had understated liability to tax, PAYE and NIC to HMRC, as referred to in paragraphs 1 (a) and 1 (b) above contrary to bye-law 10(b).

(d) Mr Mojeed Ajibola Lemo's conduct in respect of 1(a) and/or 1(b) was:

(i) Contrary to Section 130.1(b) of the Fundamental Principle of Professional Competence and Due Care (as applicable from 2011 to 2017);

(ii) Contrary to Section 150.1 of the Fundamental Principle of Professional Behaviour (as applicable from 2011 to 2017)

(e) By reason of his conduct Mr Mojeed Ajibola Lemo is:

(i) Guilty of misconduct in respect of any or all of the matters set out at 1(a), 1(b), 1(c) and/or 1(d), pursuant to bye-law 8(a)(i); or

(ii) Liable to disciplinary action in respect of any or all of the matters set out at 1(a), 1(b), 1(c) and/or 1(d)(i) and/or 1(d)(ii), pursuant to bye-law 8(a)(iii).

6. Mr Lemo became a member of ACCA on 16 January 1997, and a fellow on 16 January 2002. He is a sole practitioner at Lemo Corporate.

7. On 31 July 2015, HMRC initiated a compliance check in relation to Mr Lemo's Self-Assessment tax return (ITSA) for the year ended 5 April 2014.

8. On 8 August 2015, Mr Lemo submitted revised ITSAs for the tax years 2012/2013, 2013/2014 and 2014/2015.

9. On 13 January 2016, HMRC visited Mr Lemo to investigate why he had submitted incorrect ITSAs, and determine whether further HMRC investigation should be carried out.
10. On 18 February 2016, HMRC visited Mr Lemo to investigate his operation of PAYE. HMRC found that some of Mr Lemo's employees were not included on Mr Lemo's payroll. Mr Lemo had an arrangement with an employee ("Person 1") who was paid only a certain amount through PAYE, and the balance without deduction of tax (as an incentive to work for the business), even though Mr Lemo was aware that payments to Person 1 should have been made through his payroll.
11. On 29 September 2016, Mr Lemo wrote to HMRC saying that Person 1 was not an employee but an Associate who had equal or near equal status in Lemo Corporate as himself. On 22 November 2016, Mr Lemo wrote to HMRC saying that he and Person 1 "*were both self-employed and... carried on the business together...*".
12. As a result of its investigation into Mr Lemo's employer returns, HMRC determined that Mr Lemo had deliberately omitted to pay PAYE and Class 1 NIC amounting to £15,822 in respect of fifteen employees, not including Person 1, over tax years 2010/2011, 2011/2012, 2012/2013, 2013/2014, 2014/2015 and 2015/2016. Mr Lemo was therefore liable to a penalty charge of £5,537.70, pursuant to Schedule 24 Finance Act 2007.
13. On 24 April 2017, Mr Lemo agreed to pay HMRC £22,957.00 in relation to his employer PAYE and NIC, and the penalty charge.
14. As a result of the investigation into Mr Lemo's ITSA, HMRC determined that Mr Lemo had deliberately omitted to pay tax amounting to £6,543.92 over tax years 2010/2011, 2011/2012, 2012/2013 and 2013/2014. Mr Lemo was therefore liable to a further penalty charge of 35%.
15. On 1 July 2017, Mr Lemo agreed to pay HMRC £5,035.60 additional income tax and Class 4 NIC, and a penalty charge of £2,026.41.

16. Schedule 24 of the Finance Act 2007 provides that a penalty is payable where a person gives HMRC a document where the document contains an inaccuracy which amounts to, or leads to:
- (a) an understatement of a liability to tax;
 - (b) a false or inflated statement of a loss; or
 - (c) a false or inflated claim to repayment of tax and the inaccuracy was careless or deliberate.

For the purposes of a penalty, inaccuracy in a document given to HMRC is:

- (a) “careless” if the inaccuracy is due to failure to take reasonable care;
 - (b) “deliberate but not concealed” if the inaccuracy is deliberate but the person does not make arrangements to conceal it; and
 - (c) “deliberate and concealed” if the inaccuracy is deliberate and the person makes arrangements to conceal it (for example, by submitting false evidence in support of an inaccurate figure).
17. On 30 July 2018, HMRC wrote to ACCA alerting them to the fact of their investigation into Mr Lemo and its outcome.
18. On 24 September 2018, in response to an enquiry from ACCA, Mr Lemo wrote to ACCA confirming that he had settled the outstanding amounts and penalties due to HMRC. He said that he did not dispute that an error had occurred in respect of his tax returns, but that this was never deliberate or dishonest, and he could have appealed against HMRC decisions, but did not do so because of his health. In relation to his

employer returns, Mr Lemo said that the issue resulted from the payments made to “part time freelance employees” who were full time students studying for ACCA qualification, and because the person in charge of PAYE only made a printout for payment available to him. Mr Lemo said that HMRC had taken a “blanket view” that these were all employees because they could not be traced.

19. Mr Lemo did accept, however, that his actions, though not intentional nor materially false, were likely to bring discredit to him and the accountancy profession, but said that corrective action had been implemented to forestall such happening again. He also confirmed that he had not informed ACCA about either the compliance checks or their respective outcomes.
20. Mr Lemo wrote to ACCA again on 9 October 2018. He said that he had paid the tax on the profit of the business and all other income, including the PAYE. He said the freelancers were not employees per se. He added that the returns were not prepared “recklessly” nor “furnished with false intent” but was rather “an error on my part in good faith and not a reckless nor false inclination to evade paying my tax liability.”
21. Mr Lemo continued, *“In the preparation of my tax returns for the year (s) 2009/10 to 2013/14, I exercise [sic] competent and due professional care, diligent and good professional knowledge. I complied with the relevant law and legislation that imposes on me the need to declare my earnings for tax purposes. This I did with the mindset of complying with the law, though errors were made without fraudulent intent. These errors have now been corrected voluntarily without the need for HMRC carrying out any compliance check apart from notification for administrative purposes only. In operating PAYE, clients received good and competent professional advise [sic] from me and I acted diligently with sound technical competence. In my own case, the perceived employees were freelancer who submitted their tax returns themselves. With their absence, their tax payment could not be determined thus I was at a disadvantage to proof [sic] otherwise. In this case they were all put through the PAYE even those whose income were below the threshold for tax purposes. no compliance*

work was carried out as I voluntarily supplied them with the names, addresses and other details of the freelancers. From the information supplied all the tax and National Insurance contribution(s) were calculated and payment made accordingly.”

22. Mr Lemo said that he had not informed ACCA of this compliance issue because he had never been in this sort of situation before. He said he realised with hindsight that he should have done so.
23. Mr Cope referred to Mr Lemo’s health issues. He was offered the opportunity to go into private session to discuss them, but he declined this saying he only wanted to refer to them in general terms.

DECISION ON FACTS/ALLEGATION AND REASONS

24. The Committee considered with care, all the evidence presented and the submissions made by Mr Jowett and Mr Cope. The Committee accepted the advice of the Legal Adviser and bore in mind that it was for ACCA to prove its case, and to do so on the balance of probabilities.
25. Mr Lemo admitted all the facts alleged in Allegations 1(a) 1(b), 1(c) and 1(d)(i) and (ii). The Committee therefore found these facts proved.
26. Mr Lemo also admitted that his conduct, as referred to in Allegations 1(a) 1(b), 1(c) and 1(d)(i) and (ii), amounted to misconduct. However this remained a matter to be determined by the Committee.
27. Having found the facts proved in Allegation 1(a), 1(b), 1(c) and 1(d)(i) and (ii), the Committee then considered whether they amounted to misconduct. Mr Lemo had failed to provide accurate returns for a period of six years, resulting in under payments to HMRC. The cumulative effect of such conduct was very serious. The Committee was in no doubt that such behaviour represented a serious falling short of professional standards. Providing accurate documents, such as tax returns, is an absolute bedrock of the profession. In addition, the Committee considered that for a professional accountant to have made these serious errors year on year for

such a long time, would be considered deplorable by fellow members of the profession. It brought discredit upon Mr Lemo, to the Association and to the accountancy profession. This conduct was compounded by his failure to notify ACCA that he may have become liable to disciplinary action.

28. The Committee therefore decided that Mr Lemo's behaviour amounted to misconduct and that Allegation 1(e)(i) was proved in relation to Allegation 1(a), 1(b), 1(c) and 1(d)(i) and (ii).
29. Having found Allegation 1(e)(i) proved it was not necessary for the Committee to consider Allegation 1(e)(ii), which was in the alternative.

SANCTION AND REASONS

30. In reaching its decision on sanction, the Committee took into account the submissions made by Mr Cope. The Committee referred to the Guidance for Disciplinary Sanctions issued by ACCA, and had in mind the fact that the purpose of sanctions was not to punish Mr Lemo, but to protect the public, maintain public confidence in the profession and maintain proper standards of conduct, and that any sanction must be proportionate. The Committee accepted the advice of the Legal Adviser.
31. Mr Cope, on behalf of Mr Lemo, said that some of the errors arose as a result of a number of issues, including poor training of staff by Mr Lemo, and a lack of supervision by Mr Lemo of the people he employed to do the wages. He said that in addition a number of the people involved were students from Nigeria who came for brief periods while studying for ACCA qualifications, and Mr Lemo made a wrong assumption that they were freelancers and paying their own tax. Mr Cope said that there was no such thing as a 'freelancer'; individuals were either sub-contractors or employees, and this was a fundamental error made by Mr Lemo. Mr Cope said that Mr Lemo did not accept the HMRC's conclusion that he had acted deliberately, but he was *"not prepared to fight the HMRC because of his health issues."*
32. With reference to his own tax liabilities, Mr Lemo was told by HMRC to "add back" his salaries over the years because he was not meant to place himself

on salaries. Mr Cope said Mr Lemo position was that this was a genuine error, and not done to circumvent tax law.

33. Mr Cope highlighted the fact that HMRC made no complaints about Mr Lemo's handling of his clients' affairs. The complaints were about the way in which he conducted his own tax affairs, and those of his staff. Mr Cope said that Mr Lemo has now put his house in order and fully complies with PAYE and NIC regulations.
34. Mr Cope said that it simply never occurred to Mr Lemo to report the matter to ACCA and he did not seek any advice, but it was not his intention to withhold matters from ACCA.
35. When deciding on the appropriate sanction, the Committee carefully considered the aggravating and mitigating features in this case.
36. The Committee considered the following aggravating features: Mr Lemo made basic, fundamental errors that should not be made by a professional accountant, which led to the under declaring and under paying of tax due; tax compliance is the very area in which Mr Lemo practises; the errors were repeated year-on-year over a period of six years for the PAYE and NIC, and four years for his own tax affairs.
37. The Committee considered the following mitigating factors: no previous disciplinary record spanning a career of over 22 years; insight; full admissions to the facts alleged; outstanding tax, together with penalties has been paid to HMRC; action taken to ensure no repetition; expressions of remorse.
38. The Committee did not think it appropriate to take no further action in a case where it had found proved breaches of the fundamental ethical principles which underpin the profession, namely the Fundamental Principle of Professional Competence and Due Care and the Fundamental Principle of Professional Behaviour. The Committee considered it would not be in the public interest to take no further action in a case where an accountant had acted contrary to such principles.

39. The Committee next considered an admonishment. However, the Committee considered the breaches of the fundamental ethical principles to be too serious to be concluded with an admonishment. The Committee noted the conclusions drawn by HMRC when they investigated Mr Lemo's tax affairs. HMRC stated, *"We consider that the behaviour was 'deliberate'. This is explained below. You operated a PAYE scheme but failed to include all of your employees on your returns. As an accountant you were aware of your employer obligations and were aware that some employees had not been declared. I consider your behaviour to fall within the deliberate banding. The disclosure was prompted because you did not tell us about the inaccuracy before you had reason to believe we had discovered it, or were about to discover it."* Notwithstanding Mr Lemo's assertions that his actions were not deliberate, the Committee decided that an admonishment was not an appropriate or sufficient sanction in this case.
40. The Committee then considered whether to reprimand Mr Lemo. The guidance indicates that a reprimand would be appropriate in cases where the conduct is of a minor nature, there appears to be no continuing risk to the public, there has been sufficient evidence of an individual's understanding together with genuine insight into the conduct found proved. The guidance goes on to suggest a reprimand may be appropriate where certain factors are present and a number of these could be satisfied in this case. However, the Committee did not consider Mr Lemo's conduct to be of a minor nature, and this was recognised by Mr Lemo. As already stated above, submitting accurate tax returns forms the very bedrock of what is required from a professional accountant. Mr Lemo failed to do this for a number of years. He also failed to inform his Regulator that he might be liable to disciplinary action. Accordingly, despite the mitigation in this case, the Committee concluded that a reprimand would not adequately reflect the seriousness of the conduct.
41. The Committee then considered whether a severe reprimand would adequately reflect the seriousness of the case. The guidance indicates that such a sanction would usually be applied in situations where the conduct is of a serious nature, but where there are particular circumstances of the case

or mitigation advanced which satisfy the Committee that there is no continuing risk to the public, and there is evidence of the individual's understanding and appreciation of the conduct found proved. The Committee considered these criteria to be met. The guidance adds that this sanction may be appropriate where most of the following factors are present:

- the misconduct was not intentional and no longer continuing;
- evidence that the conduct would not have caused direct or indirect harm;
- insight into failings;
- genuine expression of regret/apologies;
- previous good record;
- no repetition of failure/conduct since the matters alleged;
- rehabilitative/corrective steps taken to cure the conduct and ensure future errors do not occur;
- relevant and appropriate references;
- co-operation during the investigation stage.

42. The Committee considered the majority of these factors to be present in this case, and that a severe reprimand was therefore a sufficient and proportionate sanction to mark the seriousness of Mr Lemo's conduct, and to uphold standards and maintain confidence in the profession. The public needs to know that it can rely on professional accountants to do the most basic and fundamental of tasks such as accurately completing tax returns.

43. The Committee considered that to exclude Mr Lemo from membership of ACCA would be disproportionate in light of the mitigation in this case, the fact that Mr Lemo had rectified his failings and understood the importance of abiding by the Codes that govern members' conduct.

44. The Committee therefore ordered that Mr Lemo be severely reprimanded.

COSTS AND REASONS

45. ACCA applied for costs in the sum of £9,126.69. The Committee was provided with a schedule of costs. Mr Jowett indicated that the figures for the Case Presenter and Hearings Officer were estimates based on a full day, and that in the event the hearing took less than that, the Committee may be minded to make an appropriate reduction. Mr Cope suggested that the time taken to prepare a report for the Independent Assessor of 20 hours in what was, he submitted, a relatively straightforward case, appeared excessive.
46. The Committee was satisfied that the costs claimed were appropriate and reasonable save, for an adjustment to reflect the fact that the hearing did not take a whole day, and to reflect the fact that ACCA withdrew two substantive parts of the allegations. The Committee was provided with limited information about Mr Lemo's means, and no submissions were made that he was not in a position to pay costs. Accordingly, the Committee did not reduce the figure on this ground.
47. The Committee therefore ordered costs in the sum of £7,500 to reflect the adjustments referred to above.

EFFECTIVE DATE OF ORDER

48. This order will have effect at the expiry of the appeal period, or at the conclusion of any appeal if one is made.

Mrs Kathryn Douglas

Chairman

23 April 2019