

## HEARING

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

#### REASONS FOR DECISION

**In the matter of:** Mr Nicholas Brett Groves

**Heard on:** Tuesday, 20 August 2019

**Location:** ACCA, The Adelphi, 1-11 John Adam Street, London, WC2N  
6AU

**Committee:** Mr Michael Cann (Chairman)  
Mr Trevor Faulkner (Accountant)  
Mr Grahame Owen (Lay)

**Legal Adviser:** Mr Richard Ferry-Swainson (Legal Adviser)

#### Persons present

**and capacity:** Mr Christopher Geering (ACCA Case Presenter)  
Mr Richard Lorkin (Hearings Officer)

**Observers:** None

**Summary** **Exclusion from membership, with immediate effect**

**Costs:** **£6,000.**

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## **INTRODUCTION/SERVICE OF PAPERS**

1. The Disciplinary Committee (“the Committee”) convened to consider allegations against Mr Groves, who did not attend and was not represented.
2. The papers before the Committee were in a bundle numbered 1 to 74, plus Tabled Additional 1, numbered 1 to 3, and Tabled Additional 2, numbered 1 to 6. There was a service bundle numbered 1 to 18.
3. Mr Geering made an application to proceed in the absence of Mr Groves.

## **PROCEEDING IN ABSENCE**

4. The Committee first considered whether the appropriate documents had been served in accordance with the Complaints and Disciplinary Regulations (“the Regulations”). The Committee took into account the submissions made by Mr Geering on behalf of ACCA, and also took into account the advice of the Legal Adviser.
5. Included within the service bundle was the Notice of Hearing dated 16 July 2019, thereby satisfying the 28 day notice requirement, and emailed to Mr Groves at his email address as it appears in the ACCA register. Mr Groves had consented to being served documentation by email. The Notice included details about the time, date and venue for the hearing, and also Mr Groves’ right to attend the hearing, in person or on the phone, and to be represented, if he so wished. In addition, the Notice provided details about applying for an adjournment, and the Committee’s power to proceed in Mr Groves’ absence, if considered appropriate.
6. The Committee was satisfied that the Notice had been served in accordance with the Regulations. Having so determined, the Committee then considered whether to proceed in Mr Groves’ absence. The Committee bore in mind that, although it had a discretion to proceed in the absence of Mr Groves, it

should exercise that discretion with the utmost care and caution, particularly as Mr Groves was unrepresented.

7. The Committee noted that Mr Groves faced serious allegations, which included an element of dishonesty, and that there was a clear public interest in the matter being dealt with expeditiously. Mr Groves did not respond to the Notice of Hearing. However, in the ACCA Case Management Form, completed and signed by Mr Groves on 12 May 2019, he indicated that he would not be attending the hearing, nor would he be represented. He also consented to the Disciplinary Committee proceeding with the case in his absence. He had not requested an adjournment. In all the circumstances the Committee concluded that he had waived his right to be present and to be represented at the hearing.
8. Accordingly, the Committee decided that it was in the interests of justice that the matter should proceed, notwithstanding the absence of Mr Groves. In proceeding in his absence, the Committee would take into account any material within the papers provided that supported his case.

#### **APPLICATION TO AMEND**

9. Mr Geering made an application to amend the allegations. He submitted that the amendments were minor in nature and only consisted of moving the sentence *"In the alternative Mr Nicholas Groves is liable to disciplinary action by virtue of the following:"* from the end of Allegation 1 to the beginning of Allegation 2 and also correcting Allegation 2(f)(i) which made reference to 2(a) to 2(f), when it should be 2(a) to 2(e). Mr Groves was notified about the proposed amendments in advance of the hearing, and said he had no objection to them.
10. The Committee heard and accepted the Legal Adviser's advice, and was content to allow the proposed amendments. They were minor in nature, did not change the gravamen of the matters alleged, and were not opposed by Mr Groves. The Committee was therefore satisfied that allowing the amendments would not cause any injustice.

## **ALLEGATIONS/BRIEF BACKGROUND**

11. It is alleged that Mr Groves is liable to disciplinary action on the basis of the following Allegations (as amended):

### **Allegation 1**

Pursuant to bye-law 8(a)(vi), Mr Nicholas Groves is liable to disciplinary action by virtue of having been disciplined by the Solicitors Regulation Authority (“SRA”) on 11 January 2019.

### **Allegation 2**

In the alternative Mr Nicholas Groves is liable to disciplinary action by virtue of the following:

- (i) Between May 2013 and November 2013 Mr Nicholas Groves made a series of incorrect postings to the client side of a suspense ledger for the solicitors firm he worked for to make it appear as though the solicitors firm owed £9 million more to its clients than was in fact the case, contrary to Rule 29.25 of the SRA Accounts Rules 2011;
- (ii) Between June 2013 and February 2015 Mr Nicholas Groves transferred £96,850 from the client account of the solicitors firm he worked for to the firm’s office account to remedy a bank error in paying £37,618 in interest into the solicitors firm’s client account, contrary to Principle 10 of the SRA Principles 2011 and Rule 20.1 of the SRA Accounts Rules 2011;
- (iii) Between 2 April and 15 April 2015 Mr Nicholas Groves made three payments from the client account of the solicitors firm he worked for totalling £121,275 to meet the solicitors firm’s own expenses to avoid the firm breaching its overdraft limit, contrary to Principles 2, 6 and 10 of the SRA Principles 2011 and Rule 20.1 of the SRA Accounts Rules 2011;

(iv) Between May 2013 and April 2015 Mr Nicholas Groves amended the books of account, reconciliation statements and cashflow statements of the solicitors firm he worked for to conceal any or all of the above, contrary to Principles 2, 6, 8 and 10 of the SRA Principles 2011;

(v) In the period of February 2015 to June 2017 as the Compliance Officer for Finance and Administration in the solicitors firm where he worked Mr Nicholas Groves failed to report material breaches of the SRA Accounts Rules 2011, contrary to Rule 8.5(e)(iii) of the SRA Authorisation Rules 2011.

(vi) Mr Nicholas Brett Groves conduct in respect of allegation 2 was:

- i. Dishonest in that he knowingly engaged in wrongful and misleading behaviour as particularised in allegations 2(a) to 2(e);
- ii. Contrary to the Fundamental Principle of Integrity (as applicable from 2013 to 2018);
- iii. Contrary to the Fundamental Principle of Behaviour (as applicable from 2013 to 2018).

(vii) By reason of his conduct in respect of allegation 2 Mr Nicholas Groves is guilty of misconduct in respect of any or all of the matters set out above at 2(a) to 2(f) pursuant to bye-law 8(a)(i).

12. Mr Groves is a member and fellow of ACCA.

### **Allegation 1**

13. On 11 January 2019, Mr Groves entered into a Regulatory Settlement Agreement (RSA) with the Solicitors Regulation Authority ("SRA"), under which he made formal admissions, and consented to the making of a Section 43 Solicitors Act 1974 order in respect of himself.

14. Section 43(1) of the Solicitors Act 1974 stipulates that:

*Where a person who is or was involved in a legal practice but is not a solicitor—*

*(b) has, in the opinion of the Society, occasioned or been a party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on his part of such a nature that in the opinion of the Society it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in subsection (1A), the Society may either make, or make an application to the Tribunal for it to make, an order under subsection (2) with respect to that person.*

15. The Law Society was replaced by the SRA in 2007 as a consequence of the Legal Services Act 2007.

16. Rule 7.1 of the SRA's Disciplinary Procedure Rules 2011 provides that:

*An SRA finding may be made by:*

*(a) agreement between the person under investigation and the SRA; ...*

17. Rule 7.2 of the SRA's Disciplinary Procedure Rules 2011 provides that:

*A disciplinary decision may be made by:*

*(a) agreement between the person under investigation and the SRA; ...*

18. ACCA bye-law 8(a) stipulates that a member shall be liable to disciplinary action if:

*(vi) he... has been disciplined by another professional or regulatory body;*

## **Allegation 2**

19. In the agreement with the SRA, Mr Groves accepted that:
- i. He joined the solicitors firm in May 2008 as its Finance Manager as a qualified accountant regulated by the ACCA.*
  - ii. Between May and November 2013 he made a series of incorrect postings to the client side of a suspense ledger making it appear as though the firm owed [Private] more to its clients than was actually the case.*
  - iii. Between June 2013 and February 2015, when the firm earned [Private] in interest on the monies held in its client bank account, which was in error paid into the firm's client account instead of the firm's office account, he transferred [Private] from the firm's client account to its office account, purportedly to remedy the bank's error in paying the interest into the client account.*
  - iv. On 29 January 2015 Mr Groves was appointed the solicitors firm's Compliance Officer for Finance and Administration (COFA).*
  - v. Between 2 April and 15 April 2015, he made three payments from the firm's client account [Private] to meet the firm's own expenses at a time when they would have caused the firm to breach its overdraft limit if paid from the firm's office account.*
  - vi. He amended the books of account, reconciliation statements and cashflow statements to conceal:*
    - (a) the [Private] overstatement of the firm's client liabilities to clients;*
    - (b) the over-transfer of interest from the firm's client account to its office account;*

*(c) the payments from client account to meet the firm's own expenses;*

*(d) a shortage of [Private] on the firm's client account, the cause of which has not been possible to trace.*

*vii. After he had left the firm in June 2017 external accountants identified issues with the firm's accounts and records.*

*viii. The firm rectified the errors on its books of account and in November 2017 paid [Private] into its client account to replace the shortage which Mr Groves had concealed.*

20. In the agreement with the SRA, Mr Groves admitted that by virtue of the above, he had breached the relevant provisions of the SRA Principles 2011, the SRA Accounts Rules 2011, and the Solicitors Authorisation Rules 2011.

21. The relevant provisions of the SRA Principles 2011, the SRA Accounts Rules 2011 and the Solicitors Authorisation Rules 2011 are as follows:

*Principle 2 SRA Principles 2011*

*Act with integrity*

*Principle 6 SRA Principles 2011*

*Behave in a way that maintains the trust the public places in you and in the provision of legal services*

*Principle 8 SRA Principles 2011*

*Run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles*



Principle 10 SRA Principles 2011

*Protect client money and assets*

Rule 20.1 of the SRA Accounts Rules 2011

*Client money may only be withdrawn from a client account when it is:*

- (a) properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held);*
- (b) properly required for a payment in the execution of a particular trust, including the purchase of an investment (other than money) in accordance with the trustee's powers;*
- (c) properly required for payment of a disbursement on behalf of the client or trust;*
- (d) properly required in full or partial reimbursement of money spent by you on behalf of the client or trust;*
- (e) transferred to another client account;*
- (f) withdrawn on the client's instructions, provided the instructions are for the client's convenience and are given in writing, or are given by other means and confirmed by you to the client in writing;*
- (g) transferred to an account other than a client account (such as an account outside England and Wales), or retained in cash, by a trustee in the proper performance of his or her duties;*
- (h) a refund to you of an advance no longer required to fund a payment on behalf of a client or trust (see rule 14.2(b));*

- (i) Money which has been paid into the account in breach of the rules (for example, money paid into the wrong separate designated client account) - see rule 20.5 below;*
- (j) money not covered by (a) to (i) above, where you comply with the conditions set out in rule 20.2; or*
- (k) money not covered by (a) to (i) above, withdrawn from the account on the written authorisation of the SRA. The SRA may impose a condition that you pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received.*

*Rule 29.25 of the SRA Accounts Rules 2011*

*Suspense client ledger accounts may be used only when you can justify their use; for instance, for temporary use on receipt of an unidentified payment, if time is needed to establish the nature of the payment or the identity of the client.*

*Rule 8.5(e)(iii) SRA Authorisation Rules 2011*

*The COFA of an authorised body must:  
in the case of a recognised body or recognised sole practice, as soon as reasonably practicable, report to the SRA any material failure so to comply (a failure may be material either taken on its own or as part of a pattern of failure so to comply).*

22. In a letter to ACCA dated 12 February 2019, Mr Groves:

- confirmed he had entered into the agreement with the SRA;
- confirmed he had agreed the facts referred to in the agreement with the SRA;
- confirmed he made the admissions referred to in the agreement with the SRA, and continues to make those admissions;

- agreed that he had breached the SRA Accounts Rules 2011, and is thereby guilty of misconduct in the course of carrying out his professional duties as the Finance Manager of a firm of solicitors;
  - agreed that his actions bring discredit to him, ACCA and the accountancy profession.
23. Mr Groves also said that he had been a qualified accountant for almost 30 years, of which 20 years had been spent in the legal sector. He said that up until this point, he had always carried out his duties as an accountant with the utmost diligence and honesty, and that his actions at the Firm and been totally out of character. He made reference to work pressures and a lack of support from his line manager, and that his actions did not, and were never intended to bring financial benefit to himself.

#### **DECISION ON FACTS/ALLEGATIONS AND REASONS**

24. The Committee considered with care, all the evidence presented, and the submissions made by Mr Geering. The Committee accepted the advice of the Legal Adviser.
25. Mr Groves had made a clear and unequivocal admission to Allegation 1.
26. The Committee accepted the unchallenged and admitted evidence that Mr Groves entered into an agreement with the SRA, under which he made formal admissions, and consented to the making of a Section 43 Solicitors Act 1974 Order in respect of himself, and that this amounted to his being disciplined by a professional body. Accordingly, the Committee was satisfied that Mr Groves was, by virtue thereof, liable to disciplinary action, pursuant to Bye-law 8(a)(vi). The Committee therefore found Allegation 1 proved.
27. Having found Allegation 1 proved, it was not necessary to consider Allegation 2, which was in the alternative.

## **SANCTION AND REASONS**

28. In reaching its decision on sanction, the Committee took into account the submissions made by Mr Geering and all matters of personal mitigation. 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 Groves, 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.

29. In an email dated 14 May 2019, Mr Groves said to ACCA:

*“I admit to you, as I did to the Solicitors Regulation Authority (SRA) my wrong doing for which I am truly sorry. Up until this time, I have been utterly professional and conscientious in my various roles throughout my career, which will be coming to an end shortly [Private].*

*My sole (and misguided) objective for this was to prevent the firm from breaching the bank overdraft, and I made no personal gain from my actions (and as you have see(n), the SRA fully accept this). I would offer up work pressures and an overall feeling of vulnerability from the actions of my line manager in defence of my actions, but despite a number of inaccuracies in her statement to the SRA (which were brought to their attention), I am not prepared to argue that here, as I do not want to prolong your process any more than necessary and want to put this behind me.*

*I have reimbursed my former employer for their loan interests costs, and no client was detrimented [sic] by my actions. I have also been fined by the SRA, and am barred from working in any legal practice.”*

30. The Committee noted the terms of the Regulatory Settlement Agreement, which was that Mr Groves agreed to the following outcome to the investigation of his conduct by the SRA:

- (a) To the SRA making an order under section 43 of the solicitors Act 1974 (a Section 43 Order) in relation to him that, from the date of this agreement:
  - (i) no solicitor shall employ or remunerate him in connection with his practice as a solicitor;
  - (ii) no employee of a solicitor shall employ or remunerate him in connection with the solicitor's practice;
  - (iii) no recognised body shall employ or remunerate him;
  - (iv) no manager or employee of a recognised body shall employ or remunerate him in connection with the business of that body;
  - (v) no recognised body or manager or employee of such body shall permit him to be manager of the body;
  - (vi) no recognised body or manager or employee of such body shall permit him to have an interest in the body; except in accordance with the SRA's prior permission.
  
- (b) He is rebuked;
  
- (c) He is fined £2,000;
  
- (d) To the publication of this agreement;
  
- (e) He will pay the costs of the investigation of £300.

31. Mr Groves made the following admissions, which the SRA accepted:

- (a) that by incorrectly posting [Private] to a suspense ledger he breached Rule 29.25 of the SRA Accounts Rules 2011 (the Accounts Rules);
  
- (b) that by transferring from the Firm's client account more interest than had been earned, he breached:
  - (i) Principle 10 of the SRA Principles 2011 (the Principles), and

- (ii) Rule 201.1 of the Accounts Rules.
- (c) that by paying money out of the Firm's client account to pay the Firm's own expenses, he breached:
  - (i) Principles 2, 6 and 10 of the Principles, and
  - (ii) Rule 20.1 of the Accounts Rules.
- (d) that by amending the Firm's accounting records to conceal the issues with the Firm's accounts and his own misconduct, he breached Principles 2, 6, 8 and 10 of the Principles;
- (e) that his conduct in relation to (b), (c) and (d) above was dishonest;
- (f) that, for the period of February 2015 to June 2017 when he was the Firm's COFA, by failing to report material breaches of the Accounts Rules to the SRA he breached Rule 8.5(e)(iii) of the SRA Authorisation Rules 2011.

32. The SRA and Mr Groves agreed that a Section 43 Order was appropriate because Mr Groves was not a solicitor, but that by virtue of his employment and remuneration at the Firm, he was involved in a legal practice. Both parties agreed that by:

- (i) transferring from the Firm's client account more interest than had been earned;
- (ii) using client money to pay the Firm's own expenses; and
- (iii) concealing the issues with the Firm's accounts and his own misconduct;

Mr Groves had occasioned or been party to an act or default in relation to a legal practice, and that Mr Groves' conduct in relation to that act or default made it undesirable for him to be involved in a legal practice, because it demonstrated that he may breach the trust placed in him as an employee of a solicitor's firm, and place clients' money and interests at risk.

33. The SRA considered that a rebuke and a fine were appropriate, because the conduct had been deliberate, it was neither trivial nor justifiably inadvertent, and it had the potential to cause loss to others.
34. When deciding on the appropriate sanction, the Committee carefully considered the aggravating and mitigating features in this case.
35. The Committee considered the following aggravating features: the conduct involved an element of dishonesty, as accepted by Mr Groves in the section 43 Agreement; the sums involved were significant; an abuse of trust as Mr Groves was the Compliance Officer; the conduct occurred over a significant period of time; persistent efforts over a significant period of time to conceal what he was doing; potential for significant risk to clients.
36. The Committee considered the following mitigating factors: previous long and unblemished career; admissions to the conduct alleged; expressions of remorse; no direct personal gain.
37. The Committee considered all the options available from the least serious upwards and concluded that the only appropriate and proportionate sanction was exclusion from membership. The Association provides specific guidance on the approach to be taken in cases of dishonesty, which is always said to be regarded as a particularly serious matter, even when it does not result in direct harm and/or loss, or is related to matters outside the professional sphere, because it undermines trust and confidence in the profession. The courts have consistently supported the approach to exclude members from their professions where there has been a lack of probity and honesty. Only in exceptional circumstances should a finding of dishonesty result in a sanction other than striking off. The public is entitled to expect a

high degree of probity from a professional who has undertaken to abide by a code of ethics. The reputation of ACCA and the accountancy profession is built upon the public being able to rely on a member to do the right thing in difficult circumstances. It is a cornerstone of the public value which an accountant brings.

38. The Committee bore in mind these factors when considering whether there was anything remarkable or exceptional in Mr Groves' case that warranted anything other than exclusion from membership. This was not an isolated incident, but rather a deliberate course of conduct, carried on over a significant period of time. He was the Compliance Officer, and so in a position of trust, and part of his role would have been to ensure that exactly this type of behaviour was not occurring. The Committee considered Mr Groves' behaviour, was fundamentally incompatible with continued membership of ACCA. He had demonstrated limited insight into his dishonest behaviour, and the Committee could not be satisfied that he would not repeat such behaviour. The Committee was of the view that there were no exceptional circumstances that would allow it to consider a lesser sanction.
39. The Committee also considered that a failure to exclude a member from the register who behaved in the way Mr Groves had behaved, would seriously undermine public confidence in the profession, and in ACCA as its regulator. In order to maintain public confidence and uphold proper standards in the profession, it was necessary to send out a clear message that this sort of behaviour would not be tolerated.
40. The Committee therefore ordered that Mr Groves be excluded from membership.

#### **COSTS AND REASONS**

41. ACCA applied for costs in the sum of £6,873.50. The Committee was provided with a schedule of costs. Mr Geering asked the Committee to



consider reducing the sum for the Case Presenter to reflect his fee, which was less than that indicated.

42. The Committee was satisfied that the costs claimed were appropriate and reasonable, except for the estimates for the Hearings Officer for today's hearing which, in the event, took half, rather than a full day, and the observation by Mr Geering that his costs were less than those indicated. Mr Groves did not provide any details of his means, or provide any representations about the costs requested by ACCA, there was therefore no evidential basis upon which the Committee could make any reduction on that ground.
43. In light of its observations above, the Committee reduced the amount requested and made an order in the sum of £6,000.

#### **EFFECTIVE DATE OF ORDER**

44. This order will have immediate effect in order to protect the public.

**Mr Michael Cann**  
**Chairman**  
**20 August 2019**