

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr David McIlwrath

Heard on: Monday, 18 February 2019

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

Committee: Mrs Helen Carter-Shaw (Chairman),
Mr William Hay (Accountant)
Mrs Eileen Skinner (Lay)

Legal Adviser: Mr Robin Havard

Persons present

and capacity: Mr Benjamin Jowett (ACCA Case Presenter)
Mr Richard Lorkin (Hearings Officer)

Observers: None

Outcome: Removal from the student register, with immediate effect.
No readmission for 5 years
Costs to be paid to ACCA in the sum of £7,500.00

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PRELIMINARY APPLICATIONS

SERVICE OF PAPERS

1. The Committee had considered the following documents: a hearing bundle (pages A to W and 1 to 197), tabled additional 1 (pages 198-201), a service bundle (pages 1 to 17) and a service bundle (2) (pages 18-21).
2. Having considered the letter dated 15 January 2019 from ACCA to Mr McIlwrath, the Committee was satisfied that it had been sent to his registered email address in accordance with regulation 22 of the Complaints and Disciplinary Regulations 2014 as amended ("CDR"). It also contained the necessary information in accordance with CDR10. Consequently, the Committee decided that Mr McIlwrath had been properly served with the proceedings.

PROCEEDING IN ABSENCE

3. On 15 January 2019, ACCA had received electronic confirmation that the email to which notice of proceedings was attached, together with accompanying documentation, was sent successfully. The second email informing Mr McIlwrath of the password to gain access to the attachments had also been sent successfully.
4. Mr McIlwrath had submitted the proforma response form duly completed on 9 December 2018. This means that he had received notice of the proceedings and he confirmed that he did not intend to attend. Indeed, he confirmed that he consented to the Committee proceeding in his absence.
5. The Committee was satisfied that ACCA had done everything possible to engage Mr McIlwrath in the hearing but he clearly had no intention of attending.
6. The Committee decided that Mr McIlwrath had received notice, and was aware, of today's hearing. He had voluntarily absented himself from the hearing which he could have joined by telephone or video link if it was not

possible for him to attend in person. He had, therefore, waived his right to attend.

7. The Committee was also satisfied that, taking account of the seriousness of the allegations, it was in the public interest to proceed. It was of concern that the conduct giving rise to the allegations against Mr McIlwrath dated back a number of years albeit the convictions recorded against him were dated 11 May 2018. The Committee did not consider that any benefit would be derived in adjourning the hearing and no such application had been made.
8. The Committee considered that it was in a position to reach proper findings of fact on the evidence presented to it. The Committee reminded itself that the allegations related, in part, to convictions recorded against Mr McIlwrath. Furthermore, a letter from Mr McIlwrath dated 14 November 2015 contained a number of admissions to the remaining allegations. Finally, the proforma response he had sent to ACCA confirmed that he admitted the allegations to be considered by the Committee.
9. The Committee ordered that the hearing should proceed in the absence of Mr McIlwrath.

APPLICATION FOR THE HEARING TO BE HELD IN PRIVATE

10. Mr McIlwrath had requested the hearing to be held in private. He based his application on the basis that a public hearing, "... will help no one". ACCA wrote to Mr McIlwrath on 18 December 2018 informing him that he was entitled to do so by sending submissions with supporting documents which would be considered by the Chair in advance of the hearing. No application was made and the Committee was not satisfied that any proper grounds had been put forward to suggest that it should deviate from the normal course, namely that it is in the public interest for hearings of this nature to be heard in public.
11. Consequently, Mr McIlwrath's application was refused.

ALLEGATIONS/BRIEF BACKGROUND

Allegations

Allegation 1

- (a) On 11 May 2018, David McIlwrath was convicted of:
- (i) Stealing monies to the value of £7,836.92 or thereabouts from Organisation B between 26 October 2011 and 8 March 2013, contrary to Section 1 of the Theft Act (Northern Ireland) 1969, which is discreditable to the Association or the accountancy profession; and
 - (ii) Between 26 October 2011 and 8 March 2013 whilst occupying a position in which he was expected to safeguard, or not to act against, the financial interests of Organisation B dishonestly abused that position in that he wrote cheques made payable to himself and another, with the intention, by means of the abuse of that position to make a gain for himself or another or to cause loss to Organisation B or to expose Organisation B to a risk of a loss, in breach of section 4 of the Fraud Act 2006, contrary to Section 1 of the Fraud Act 2006, which is discreditable to the Association or the accountancy profession.
- (b) By reason of his conduct at 1(a)(i) and (ii) above, David McIlwrath is liable to disciplinary action pursuant to bye-law 8(a)(ix).

Allegation 2

- (a) On a date or dates unknown between January 2011 and June 2012, David McIlwrath took monies belonging to Organisation A totalling approximately £16,419.06 to which he was not entitled.

(b) David McIlwrath's conduct in respect of 2(a) was:

- (i) Dishonest, in that David McIlwrath knew that he was not entitled to such monies; and
- (ii) Contrary to the Fundamental Principle of Integrity (as applicable from 2011 to 2012).

Allegation 3

(a) In or around August 2013, David McIlwrath claimed:

- (i) that he had successfully completed his final ACCA exam when he had not; and/or
- (ii) that he was a fully qualified accountant when he was not.

(b) David McIlwrath's conduct in respect of 3(a) was:

- (i) Dishonest in relation to 3(a)(i) above in that he knew that he had not successfully completed his final ACCA exam; and/or
- (ii) Dishonest in relation to 3(a)(ii) above in that he knew that he was not a fully qualified accountant.
- (iii) Contrary to the Fundamental Principle of Integrity (as applicable in 2013).

Allegation 4

By reason of his conduct in respect of any or all of the matters set out at 2(a), 2(b), 3(a) and/or 3(b) above, David McIlwrath is guilty of misconduct pursuant to bye-law 8(a)(i).

BRIEF BACKGROUND

12. On 5 November 2003, Mr McIlwrath was registered with ACCA as a student.
13. He was employed by Organisation A. On 16 December 2015, ACCA received a complaint from Person A of Organisation A with regard to the conduct of Mr McIlwrath which led to an investigation. In turn, this led to the allegations being made against him which are the subject of these proceedings.

DECISION ON FACTS, ALLEGATIONS AND REASONS

Allegations 1(a)(i) & (ii)

14. The Committee relied on the Certificates of Conviction dated 14 September 2018, as conclusive proof of the conviction of Mr McIlwrath of the offences, set out in Allegations 1(a)(i) and (ii) above. Indeed, the Committee noted that, in respect of each conviction, Mr McIlwrath had pleaded guilty when he appeared at the Magistrates Court. In respect of both matters, he was sentenced to a period of imprisonment of seven months suspended for two years. In respect of the offence which constituted allegation 1(a)(i), a financial penalty of £4,336.92 was also imposed.
15. The Committee also relied upon the fact that McIlwrath had admitted, that he had been convicted of the offences, and had admitted the allegations.
16. Taking account of the nature of the offences, which includes dishonest conduct with the aim of gaining an improper financial advantage, the Committee was satisfied that the offences were discreditable to the Association and the accountancy profession.
17. On this basis, the Committee found the facts of Allegations 1(a)(i) and (ii) proved.

Allegation 1(b)

18. On the basis of its findings under Allegation 1(a) above, and on the basis of the admission from Mr McIlwrath, the Committee found that, by reason of such conduct, Mr McIlwrath was liable to disciplinary action pursuant to bye-law 8(a)(ix). For the reasons outlined above, the Committee was satisfied that the offences were discreditable to the Association, and the accountancy profession.
19. The Committee therefore found Allegation 1(b) proved.

Allegation 2(a)

20. Mr McIlwrath had admitted the allegation.
21. On 14 September 2015, a disciplinary hearing took place at Organisation A. At that hearing, Mr McIlwrath made admissions, in respect of the misappropriation of company monies belonging to Organisation A, abuse of his position, and office account protocols in relation to Organisation A.
22. The outcome of the meeting was confirmed in a letter of the same date from Person B of Organisation A to Mr McIlwrath. On that day, Mr McIlwrath was summarily dismissed from his employment.
23. Furthermore, in his proforma response to ACCA of 9 December 2018, he admitted the facts of the allegation, including the amount of monies stolen from his former employer.
24. On this basis, the Committee found the facts of Allegation 2(a) proved.

Allegation 2(b)(i)

25. As stated, Mr McIlwrath had admitted that he had misappropriated from his employers, Organisation A, funds in the sum of approximately £16,419.06.
26. The Committee was satisfied that, by the standards of ordinary decent people, such conduct was dishonest.

27. On this basis, the Committee found Allegation 2(b) proved.

Allegation 2(b)(ii)

28. For the same reasons, and based on the same findings of fact, the Committee was satisfied that such conduct was contrary to the Fundamental Principle of Integrity. Mr McIlwrath had failed to act in a straightforward and honest way.

29. Again, Mr McIlwrath had admitted the allegation.

30. The Committee therefore found Allegation 2(b)(ii) proved.

Allegation 3(a)

31. Mr McIlwrath had admitted the allegation.

32. The Committee was satisfied that, in or around August 2013, Mr McIlwrath claimed that he had successfully completed his final ACCA exam when he had not and he also claimed that he was a fully qualified accountant when he was not.

33. The Committee noted that, in an email sent by Person A on 8 August 2013, it stated that “*...David McIlwrath have both completed their ACCA qualification and are now fully-qualified accountants-well done to both guys!*”

34. In an internal memorandum of Organisation A dated 9 November 2015, it stated: “*When I arrived in the office on the Monday morning there was general excitement around David’s desk and I learned that David had been ‘successful’ in his final exam. Later on that day I took David out for lunch, at my own expense, to celebrate his exam success and we discussed his plans and options for the future now that he was qualified.*”

35. In Mr McIlwrath’s letter to ACCA of 14 November 2015, he stated that he did not disagree with the content of Organisation A’s internal memo of 9 November 2015.

36. In August 2013, he told people at Organisation A, including his fellow employees, that he had passed his final exam and was a fully qualified accountant. He therefore held himself out as being a fully qualified member of ACCA.
37. The Committee relied upon information provided by ACCA in an email of 8 April 2016, which confirmed that, as at August 2013, Mr McIlwrath had not completed his final ACCA exam, and therefore was not able to become a fully qualified member of ACCA.
38. On the basis of its findings of fact, the Committee found Allegations 3(a)(i) and (ii) proved.

Allegations 3(b)(i) & (ii)

39. On the basis of its findings of fact in respect of Allegation 3(a) above, the Committee had found that Mr McIlwrath knew that his claim that he had completed his final ACCA exam was false and he also knew that his claim to be a fully qualified accountant was false.
40. By the standards of ordinary decent people, making such false claims with the intention of misleading others, to include his employers and colleagues, was dishonest.
41. Consequently, the Committee found Allegations 3(b)(i) and (ii) proved.

Allegation 3(b)(iii)

42. On the same basis that the Committee had found Mr McIlwrath to have been dishonest, the Committee found that he had acted in a way which was contrary to the Fundamental Principle of Integrity. He had not behaved in a straightforward and truthful way.
43. Therefore, the Committee found Allegation 3(b)(iii) proved.

Allegation 4

44. It was alleged that Mr McIlwrath was guilty of misconduct in respect of his behaviour as alleged, and which the Committee had found proved, under Allegations 2 and 3 above.
45. Mr McIlwrath had admitted that his behaviour and actions amounted to misconduct but it was still a matter for the Committee's judgement.
46. The Committee was satisfied that Mr McIlwrath's conduct as outlined under Allegations 2 and 3 above amounted to misconduct, whether considered individually or together. It represented a concerted and sustained course of dishonest conduct, whether through the misappropriation of funds from his employer and from a charity in which he served as treasurer. He also misled his employer and colleagues into believing that he had achieved a status which he did not deserve. Such conduct was highly disreputable both to Mr McIlwrath, ACCA and the accountancy profession.
47. On this basis, the Committee found Allegation 4 proved.

SANCTION AND REASONS

48. The Committee considered what sanction, if any, to impose taking into account all it had read in the bundle of documents, ACCA's Guidance for Disciplinary Sanctions (January 2019), and the principle of proportionality. It had also listened to legal advice from the Legal Adviser which it accepted.
49. The Committee considered the available sanctions in increasing order of severity, having decided that it was not appropriate to conclude the case with no order.
50. The Committee was mindful of the fact that its role was not to be punitive, and that the purpose of any sanction was to protect members of the public, maintain public confidence in the profession, and in ACCA and to declare, and uphold proper standards of conduct and performance.

51. The Committee considered whether any mitigating or aggravating factors featured in this case.

52. In terms of mitigation, the Committee had taken the following into account:

- a. The Committee had been told that there were no previous regulatory findings against Mr McIlwrath;
- b. He had cooperated with the investigation, both by his employers and subsequently by ACCA;
- c. He had made early admissions as to his conduct, once discovered;
- d. He had shown a level of insight and remorse;
- e. Whilst there was no independent evidence to support it, Mr McIlwrath had indicated that a proportion of the funds he had misappropriated, had been repaid with the assistance of a loan, from his parents.

53. In terms of aggravating features, the Committee had identified the following as being present in this case:

- a. The acts of dishonesty were sustained and deliberate, were varied in nature, and extended over a period of time;
- b. The dishonest conduct could not, therefore, be described as isolated;
- c. The acts of dishonesty included theft of money from a charity;
- d. This meant that the charity was deprived of directing those funds towards its charitable causes;
- e. Mr McIlwrath had also misappropriated funds from his own employer;
- f. Both the theft from the firm and the charity represented a gross breach of trust;

- g. It would appear that not all, if any, of the sums stolen, had been repaid;
 - h. The Court had taken a very serious view of the gravity of the offences by imposing a custodial sentence, even though it felt able to suspend that sentence for a period of two years from May 2018;
 - i. Mr McIlwrath had set out to deceive his employer and his professional colleagues into believing that he had qualified as a professional accountant;
 - j. He had benefited financially from his dishonest conduct, both in terms of theft of money, and also by dishonestly creating an opportunity for promotion, and an increase in income from his employment;
 - k. His conduct struck at the very heart of the profession and its reputation.
54. The Committee concluded that neither an admonishment, nor a reprimand, would adequately reflect the seriousness of the Committee's findings.
55. The Committee then considered whether a severe reprimand would be an appropriate sanction. The Committee was prepared to accept that Mr McIlwrath had shown a level of insight and contrition in admitting his dishonest behaviour at an early stage. He had also expressed his remorse to ACCA for his actions. However, taking account of the seriousness of its findings, and the imposition of a suspended custodial sentence, the Committee did not consider that a severe reprimand would be sufficient or proportionate. Such behaviour, in the Committee's judgement, was fundamentally incompatible with that expected of an accountant, a member, or student member, of ACCA.
56. The Committee had considered whether there were any exceptional reasons why the Committee should consider that it would not be necessary to remove Mr McIlwrath from the student register but could find none.

57. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Mr McIlwrath shall be removed from the student register.
58. The Committee also considered that, taking account of the seriousness of its findings and the nature of Mr McIlwrath's dishonest conduct, it was appropriate, proportionate and necessary to order that Mr McIlwrath should not be permitted to apply for readmission until the expiry of a period of five years after the effective date of this order. The Committee acknowledged that it was imposing the maximum period before which Mr McIlwrath can reapply. However, his dishonest behaviour, in the multiplicity of ways in which it had manifested itself, was deliberate and sustained. Furthermore, the Committee had not been provided with any reassurance that there was no risk of repetition of such behaviour.

COSTS AND REASONS

59. The Committee considered the documents containing details of ACCA's claim for costs (Tabled Additionals (1) pages 198 - 201). It had also taken account of ACCA's Guidance on costs.
60. The Committee concluded that, in principle, ACCA was entitled to be awarded costs against Mr McIlwrath. The amount of costs for which ACCA originally applied was £9,640.72. The allegation had been found proved on the basis of the certificates of conviction and Mr McIlwrath's own admission.
61. The Committee noted that it was appropriate to discount the claim in respect of the Case Presenter and Hearings Officer to reflect the fact that the hearing had been shorter than the estimated time. In fairness to Mr Jowett, he volunteered that it was appropriate to reduce the claim to £9,048.22 to reflect the fact that the hearing had not taken as long as had been estimated.
62. Nevertheless, the Committee also considered that the amount claimed needed to reflect the early admissions of Mr McIlwrath, and so considered that a reasonable amount to award to ACCA in terms of its costs was £7,500.00.
63. There was some reference in the main bundle to Mr McIlwrath's financial circumstances, and the Committee had noted that Mr McIlwrath had

suggested that his conduct was driven by his parlous financial situation. However, there was no further information in relation to this issue and, even though he had the ability to do so, Mr McIlwrath had not provided a statement of means in advance of the hearing. The Committee therefore approached its assessment on the basis that Mr McIlwrath was able to pay any sum it deemed to be reasonable.

64. The Committee therefore ordered Mr McIlwrath to pay to ACCA costs in the sum of £7,500.00.

EFFECTIVE DATE OF ORDER

65. The Committee decided that, taking account of its findings, it was in the interests of the public for the order to take immediate effect.

**Mrs Helen Carter-Shaw
Chairman
18 February 2019**