

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Mark Livermore

Heard on: Tuesday, 11 June 2019

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

Committee: Mr Ian Ridd (Chairman)
Mr Peter Douglas (Accountant)
Mr Paul Moulder (Lay)

Legal Adviser: Mr Robin Havard (Legal Adviser)

Persons present

and capacity: Mr Barnaby Hone (ACCA Case Presenter)
Miss Rachael Davis (Hearings Officer)

Outcome: **Exclusion from Membership and costs of £7,750.**

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PRELIMINARY APPLICATIONS

SERVICE OF PAPERS

1. The Committee had considered the following documents when reaching its decisions in these proceedings: ACCA's bundle (pages 1 – 73), Tabled Additional (1) (pages 1-5), and a Service bundle (pages 1 – 14).
2. On 9 May 2019, a letter was sent by email to Mr Livermore using the email address contained on ACCA's register. The letter, and the enclosures to which it referred, included the information necessary to comply with Regulation 10(1)(a) and (b) of the Complaints and Disciplinary Procedures 2014 as amended ("CDR"). On the same day, delivery of the email was confirmed. In the circumstances, in accordance with CDR22(1)(6), there was no requirement to serve Mr Livermore by any other means, even though the letter of 9 May 2019 was sent, by special delivery, to Mr Livermore's current address at HMP Wandsworth.
3. Consequently, the Committee was satisfied that, in accordance with CDR22(5)(c) and (7), Mr Livermore had been effectively served with notice of the proceedings.

PROCEEDING IN ABSENCE

4. Having decided that Mr Livermore had been properly served, the Committee went on to consider whether it was appropriate for the hearing to proceed in the absence of Mr Livermore.
5. Mr Livermore had not responded to the email, sent to him by ACCA on 9 May 2019, containing details of the proceedings and the nature of the allegations being made against him.

6. However, the Committee also noted that, when ACCA wrote to him at the outset of the investigation asking him to provide an account for his actions, he replied by asking for more time to respond. It was then discovered that he had enquired about whether it was possible to resign his membership. He then failed to respond to any further correspondence from ACCA.
7. There had been no request for an adjournment. The Committee was satisfied that, if it adjourned the hearing, there was no real prospect that Mr Livermore would engage in the proceedings in the future.
8. The Committee was satisfied that it was able to reach findings of fact in respect of the allegations, taking account of the availability of the Certificate of Conviction and the sentencing remarks of the Judge.
9. The Committee concluded that Mr Livermore was aware of the hearing, but had decided not to engage with it.
10. Taking account of all the circumstances, the Committee decided that it was in the public interest to proceed.

ALLEGATIONS/BRIEF BACKGROUND

- 1) On 18 December 2018 Mr Mark Livermore, an ACCA Fellow, was convicted of fraud by abuse of position contrary to section 4 of the Fraud Act 2006 at the Central London Magistrates' Court, which is discreditable to ACCA and the accountancy profession.
- 2) By reason of his conduct at 1(a) above, Mr Livermore is liable to disciplinary action pursuant to bye-law 8(a)(ix).

DECISION ON FACTS, ALLEGATIONS AND REASONS

11. On 31 March 2007, Mr Livermore became a member of ACCA. On 31 March 2012, he became a Fellow.
12. The Committee relied on the Certificate of Conviction dated 1 February 2019, and found that, on 18 December 2018, Mr Livermore was convicted of an offence of fraud by abuse of position. The Certificate also confirmed that, on 24 January 2019, Mr Livermore was sentenced to 4 years imprisonment.
13. The Committee found the following facts proved regarding the circumstances leading to the prosecution, and conviction, of Mr Livermore. In reaching its findings, the Committee relied upon a statement Person B provided to the Metropolitan Police in the course of its investigation, which he had also supplied to ACCA. Its content had not been disputed by Mr Livermore.
14. Further, the officer in charge of the case, Person C, had confirmed that, in the course of his investigation, Mr Livermore was interviewed under caution and made a full admission.
15. In 2007, Mr Livermore became an employee of the accountancy Firm, Firm A.
16. Mr Livermore looked after the accountancy affairs of a well-known singer and performance artist, Person A, who had three businesses.
17. Mr Livermore's role was to safeguard the financial interests of Person A and his companies. In a letter from Person A dated 12 March 2015, Mr Livermore was authorised to make personal, and business, payments on

behalf of Person A. Firm A had Letters of Engagement with Person A and his two companies.

18. Person B confirmed that Person A also gave authority to his bank, Bank A, London, media division, to give a security device to Mr Livermore for online banking.
19. The authority that was given to Mr Livermore and Firm A was typical in the music industry, where artists are often touring worldwide, and may not have internet access to their bank accounts to make payments.
20. From 2007, Mr Livermore was also the sole director of Company A. This is a separate Company from Firm A, and had no employees. Company A conducts royalty accounting and payroll work, on behalf of Firm A's clients.
21. Mr Livermore was the only person, as far as Person B knew, who was recorded as having access to online banking for Company A, which banked with Bank B Piccadilly branch. Mr Livermore was the primary, and only, online user in charge of the security device. The bank mandate for Company A had three signatories, Person B, Person D, who was the Managing Director of Firm A, and Mr Livermore.
22. Person B started a compliance review of Firm A and Company A in the first week of March 2018, as he was concerned at the lack of detailed financial information given to him by Person D and Mr Livermore for the last 5 accounting years, from 30 June 2013 to 30 June 2017.
23. As Person B did not have on line access to the bank accounts of Firm A and Company A, he visited Bank B, Covent Garden branch, to get copies of bank statements for himself on 9 March 2018, and they printed out for him duplicate statements of account for Firm A for the last six months, from 4 October 2017 up to 4 March 2018. Person B also requested from

the bank a screenshot of Company A, limited to the last month's statement of the account for February 2018, which included transactions from 11 January 2018 to 11 February 2018, and a Temporary Statement from 12 February 2018 to 9 March 2018.

24. Person B was surprised, on looking at the duplicate bank statement of Company A, that there were four payments of £10,000 paid into Company A from Person A, and then paid out again to Mr Livermore on the same day. This occurred on 16, 17 and 24 January 2018, and 2 February 2018.
25. The printout for Company A, given to Person B on the 21 March 2018, did not include the four transactions of £10,000 each that Person B had seen on the February statement, which he had received from the bank on 9 March 2018.
26. On 11 April 2018, Person B collected the duplicate bank statements from Bank B, Covent Garden branch. They gave him the statements for Firm A from sheet 1, on opening the account on 2 October 2015, up to 4 October 2017. Person B had already had the transactions up to 4 March 2018, printed out for him on 9 March 2018, and had the temporary statement for Firm A for the period 5 March 2018 to 29 March 2018.
27. The bank gave to Person B all of the Company A statements from opening on 23 August 2016 to 11 March 2018. Person B already had the temporary statement for Company A, from 12 March 2018 to 29 March 2018, from his visit to the bank on 29 March 2018.
28. On examining the statements, Person B started with the most important account, Firm A, and then looked at the Company A statements.
29. Person B was concerned to see many payments on a near weekly basis from Person A to Company A, and then to Mr Livermore in round sums,

usually of £10,000. These round sum transfers started on 27 April 2017, and finished on 2 February 2018.

30. All of these payments appeared to be made using online banking. The security fob for Person A's bank account, and the fob for the Company A bank account, required to complete these transfers were both in the possession of Mr Livermore.

31. On 25 April 2018, Person B sent an email to Mr Livermore asking him why such large amounts of Person A's funds were being paid into his own account.

32. Mr Livermore replied late on the afternoon of the 26 April 2018 by email and stated:

"The payments to FIRM A BS from Person A and then onto me were made for various purposes mainly due to things Person A wanted to do with the money that his [•] card wouldn't allow. Among these includes gambling and other bits and pieces. The majority of the money is now safely back with Person A or in various gambling accounts he holds. The sums look large/repetitive as often they were going in a circle this lends them a disproportionate look. The money was treated as disbursements to [•] in [•]'s Accounts, and conversely as repayments. What evidence would you like to support this?"

33. On Friday 4 May 2018, Person B had listed the payments made from Person A, bank statements which Mr Livermore had sent to Person B, and found another two payments from Person A, leading to a total of £535,000 which needed to be accounted for. Person B asked Mr Livermore on WhatsApp, 'you must reassure me you haven't taken money for yourself?'

34. Mr Livermore replied *"Absolutely, I would be in Vegas not Birmingham"*.

35. On 21 May 2018, Person B took his next formal step and met with solicitors, where it was agreed that the best way to try to get to the truth was to contact the client, Person A, via his solicitors, Firm C.
36. On 31 May 2018, Firm C called to ask if Firm A had PI cover, and they sent a reply, by letter and email, that evening dated 31 May, that stated their client, Person A, had no knowledge of these transactions.
37. On 1 June 2018, Person B went to Bank B and requested the most recent statements. The cashier identified a further 'petty cash' account for Firm A, and printed off duplicate statements, from opening on 14 April 2015 to 12 May 2018, and a temporary statement from 13 May 2018 to 1 June 2018.
38. Person B discovered, on examining these statements over that weekend, that there were four separate payments from Person A of £10,000 into the petty cash account, and transfers out again to Mr Livermore totalling £40,000, from 5 April 2018 to 23 April 2018.
39. On 4 June 2018, Person B contacted Firm C to inform them of the further £40,000, which also appeared to have been misappropriated. At around midday, Person B phoned Mr Livermore who said that he had taken the monies and spent it all on the IG Index, spread betting. Person B asked how much was left, and Mr Livermore appeared unsure.
40. The accounts involved had been analysed and verified. The total that was transferred from Person A, through BUS and the petty cash account, and then onto the bank account of Mr Livermore, was £581,000. There was a further £18,000 transferred, from Person A, directly to the account of Mr Livermore.

41. On 10 September 2018, ACCA contacted Mr Livermore for his initial comments. Mr Livermore was asked to respond by 21 September 2018. Mr Livermore requested more time to respond which was granted. However, despite reminders, Mr Livermore has not provided a substantive response. It was discovered that Mr Livermore made enquiries about resigning from ACCA's register, but was told that this was not possible pending the outcome of the investigation.
42. On 29 November 2018, a Metropolitan Police officer, Person C, notified ACCA of the date and location of Mr Livermore's first criminal proceedings hearing.
43. Mr Livermore's first hearing before Westminster Magistrates, on 18 December 2018 received media interest, and it was reported by the BBC that Mr Livermore pleaded guilty, and was granted unconditional bail for sentencing before Southwark Crown Court (page 46 to 47).
44. Mr Livermore's sentencing also attracted media interest where it was reported by the Accountancy Daily, on 25 January 2019, that Mr Livermore had been sentenced to four years in prison. Mr Livermore was identified as an ACCA qualified accountant in the Accountancy Daily report.
45. The Committee was satisfied that the conviction for fraud by abuse of position was discreditable to the Association, and the accountancy profession given the serious departure from the standards expected of an ACCA member. The offence committed by Mr Livermore involved a serious abuse of trust by Mr Livermore of his former employer, involving a large sum of money, and committed over a prolonged period. It was serious enough to warrant a substantial custodial sentence.
46. Further to this, the offence committed by Mr Livermore, undermines public confidence in ACCA and the accountancy profession, particularly as it

attracted considerable media coverage, and the Committee was satisfied that Mr Livermore was liable to disciplinary action under byelaw 8(a)(ix).

47. On this basis, the Committee found Allegations 1) and 2) 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. The only material with regard to mitigation was that which was contained in the sentencing remarks of the Judge, at the hearing at Southwark Crown Court on 24 January 2019. It was confirmed that Mr Livermore had no previous convictions. Indeed, Mr Hone confirmed that there were no previous findings against him by ACCA. The Judge said that, up until the commencement of his dishonest conduct, Mr Livermore had been, "*a hard-working and successful professional and a very good family man*".

53. The Judge also said, *"I have absolutely no doubt about your remorse, and it is remorse, not only at being caught, but remorse for what you have done to your Firm and your work colleagues and most importantly of what you have done to your wife and your children."*
54. The Committee considered that the following aggravating features applied. On the basis of the findings, it had been established that Mr Livermore's behaviour had been deliberate, repeated, and dishonest. He had committed fraud over a period of more than one year, and had abused his position of trust. His actions had, in the Judge's view, had a devastating effect on Firm A, and also Person B.
55. The Committee concluded that neither an admonishment nor a reprimand would adequately reflect the seriousness of the Committee's findings. The sums he had misappropriated, amounting cumulatively to just short of £600,000, were substantial.
56. The Committee then considered whether a severe reprimand would be an appropriate sanction. The Committee was prepared to accept that Mr Livermore had shown a level of insight and contrition in admitting his dishonest behaviour at an early stage and, once arrested, had not sought to blame anyone else. 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 substantial 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 and a member of ACCA.
57. The Committee had considered whether there were any exceptional reasons why the Committee should consider that it would not be necessary to exclude Mr Livermore from membership, but could find none.

58. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Mr Livermore shall be excluded from membership of ACCA.
59. Having made such an order, the Committee rescinded the Interim Order made previously in these proceedings.

COSTS AND REASONS

60. The Committee considered the documents containing details of ACCA's claim for costs (Tabled Additional (1) pages 1 - 5). It had also taken account of ACCA's Guidance on costs.
61. The Committee concluded that, in principle, ACCA was entitled to be awarded costs against Mr Livermore. The amount of costs for which ACCA applied was £8,562.64.
62. 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 respect of today's hearing. Otherwise, the Committee did not consider that the claim was unreasonable. The Committee therefore reduced the amount, such that the appropriate, and reasonable, claim for costs would be £7,750.00.
63. Whilst the Committee noted that Mr Livermore was currently serving a sentence of imprisonment, it had been provided with no information as to his financial status. Therefore, in the absence of such evidence, the Committee considered that ACCA was entitled to an award of costs in the sum of £7,750.00.

EFFECTIVE DATE OF ORDER

64. Taking account of the fact that Mr Livermore is currently serving his sentence of imprisonment, the Committee did not consider it was necessary for its order to take immediate effect.
65. The Committee therefore decided that this order shall take effect from the date of expiry of the appeal period referred to in the Appeal Regulations.

Mr Ian Ridd
Chairman
11 June 2019