

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Warren Philip Jones

Heard on: Tuesday, 16 July 2019 to Thursday 18 July 2019, Monday 2 September 2019 (in Camera) and Thursday, 23 January 2020.

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

Committee: Mr Ian Ridd (Chair)
Mrs Wanda Rossiter (Accountant)
Mr George Tranter (Lay)

Legal Adviser: Mr Iain Ross

Persons present

and capacity: Ms Sarah Cawley-Wilkinson ACCA Case Presenter (16-18 July 2019); Mr Benjamin Jowett (23 January 2020)
Miss Rachael Davis (Hearings Officer)
Mr Warren Philip Jones (Member)

Outcome: Member excluded from ACCA membership

Costs: £16,000

ACCA



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PRELIMINARY APPLICATIONS/SERVICE OF PAPERS

1. ACCA was represented by Ms Sarah Cawley-Wilkinson (ACCA case presenter). Mr Jones was present and was not represented.
2. The Committee had a main bundle of papers, numbers A-CC and pages 1-487, and a service bundle, numbered 1-17.

ALLEGATIONS

It is alleged that Warren Jones, an ACCA Fellow, whilst working as Chief Financial Officer for Company A:

- 1) *On any date or dates between 14 April 2016 and 4 September 2017 retained any or all of the monies transferred from Company A's bank or Moneycorp accounts to a Moneycorp account in his name as set out in Schedule 1 to which he was not entitled;*
- 2) *On any date or dates between 8 November 2016 and 4 September 2017 retained £9,500 transferred from Company A's bank account to a Halifax bank account in his name to which he was not entitled;*
- 3) *On any date or dates between 5 May 2016 and 19 March 2017 caused or permitted any or all of the payments set out in Schedule 2 to be paid to one or more of the Companies listed in Schedule 2 for his benefit when he was not entitled to do so;*
- 4) *On any date or dates between 13 September 2016 and 15 June 2017 caused or permitted any or all of the payments set out in Schedule 3 to be made from Company A's credit card for his benefit when he was not entitled to do so;*

5) *His conduct was:*

- a) *In relation to Allegation 1 and/or 2, dishonest in that he knew he was not entitled to retain the money or monies concerned; and/or*
- b) *In relation to Allegation 3 and/or 4, dishonest in that he knew he was not entitled to the benefit of the payment or payments made; and/or*
- c) *Contrary to the Fundamental Principle of Integrity in respect of any or all of the matters set out at Allegation 5(a) and/or 5(b) above.*

6) *In light of any or all of the matters set out at Allegations 1 to 5 above Warren Jones is guilty of misconduct pursuant to bye-law 8(a)(i).*

Brief Background

- 3. Mr Jones became an ACCA member on 23 November 1995, and a Fellow on 23 November 2000. He has never held a practising certificate. Mr Jones was placed on the register of retired members on 16 May 2017.
- 4. Mr Jones worked for Company A as Chief Financial Officer between September 2015 and 27 July 2017. "Company A" refers to a number of companies in the ownership of the family of Witness A. There was no written agreement. Mr Jones invoiced Company A at the end of each month for the days he worked, based on an agreed daily rate of £475, although from about March 2017 it was agreed he would be paid £6,000 per month based on 12 days' work per month. Between 25 October 2015 and 22 March 2017 Witness A stated that Mr Jones was paid £158,030. For the four months from 25 April 2017, until his dismissal on 27 July 2017, he was paid by standing order at the rate of £6,000 per month. In total he was therefore paid £182,030.

5. Mr Jones was provided with a company credit card. In early July 2017, suspicions were raised about unauthorised credit card spending by Mr Jones. Following an internal investigation, it was discovered this amounted to about £12,800.
6. An internal disciplinary hearing was held, which Mr Jones did not attend resulting in his dismissal, effective from 27 July 2017.
7. Following his dismissal, a more detailed investigation was carried out, during which it was discovered that Mr Jones had received payments into his own bank account, for significant sums of money without authority and to which he was not entitled. He had also arranged payment by way of bank transfers for items which were for his own benefit. Finally, it was discovered that his invoice for the provision of accountancy services to Company A for October 2016 of £9,500 had been paid to him twice.
8. The total unauthorised amount, including the credit card payments, was £229,402.59.
9. Having sought legal advice, Company A was granted an Asset Preservation Order and Freezing Injunction against Mr Jones on 04 September 2017 by the High Court. Shortly thereafter, an agreement was signed by the parties, dated 12 October 2017, by which Mr Jones agreed to pay Company A £290,000 by 30 October 2017. This comprised the sum taken of £229,402.59 plus interest and all costs incurred by Company A in recovering the amount. An order for consent sealed by the High Court based on the agreement was subsequently obtained on 20 October 2017, and the sum was duly paid.

Preliminary Matter

- 10 At the outset of the hearing, Ms Cawley-Wilkinson informed the Committee that ACCA's only witness, Witness A, had arrived at the hearing with a CD full of emails that had been requested by Mr Jones. Ms Cawley-Wilkinson stated that the CD contained about 11,000 emails and covered a period of

some 22 months. Ms Cawley-Wilkinson also informed the Committee that the equipment needed for viewing the CD was not available. Ms Cawley-Wilkinson applied for the hearing to be adjourned so that the CD could be viewed.

11. Mr Jones objected to the application for an adjournment. He submitted that whilst he had requested this material many months ago, he did not want the case to be delayed any longer and he wanted the case to be finished this week.
12. Having carefully considered the interests of both parties, the Committee refused the adjournment application. The Committee took the view that the evidence which had arrived on the morning of the hearing did not form any part of ACCA's case and that ACCA was under no obligation to look at it. The Committee also bore in mind (i) that Mr Jones believed that the evidence which arrived with Witness A was not the evidence which he had asked for; and (ii) that Mr Jones did not wish to look at it or to have the hearing adjourned. In the view of the Committee, Mr Jones had made an informed decision on these points.

Decision on the Allegations and Reasons

13. The Committee heard oral evidence from ACCA's only witness, Witness A and from Mr Jones over the course of 3 days, between 16 – 18 July 2019. In relation to Witness A, the Committee considered that he presented as somebody who conducted his businesses in an informal way. With the agreement of both parties, the Committee, having heard all of the evidence, retired to consider its findings on an adjourned date, fixed for 02 September 2019.

Allegation 1

14. The Committee first considered Allegation 1 and Allegations 5(a), (b) and (c), and Allegation 6, as it relates to Allegation 1. It was not disputed that Mr Jones was initially engaged by Company A at a rate of £475 per day in

September 2015. In March or April 2017, it was agreed that Mr Jones would be paid £6,000 per month for 12 days work per month.

15. The Committee noted that there was a fundamental difference between the evidence of Mr Jones and Witness A. Mr Jones's evidence was that Witness A had also agreed for Mr Jones to carry out "project work" for which he was to invoice separately. Mr Jones stated that in December 2015 he had presented Witness A with a detailed written report/proposal/schedule of work which he would do in relation to the various different Companies associated with Witness A.
16. Witness A's evidence was, however, that the report given to him by Mr Jones was a very short document consisting of one or two pages, and that he had not agreed to Mr Jones carrying out project work at higher rates than had been agreed. The Committee was not presented with a copy of the proposal document which had been prepared by Mr Jones for Witness A.
17. In his oral evidence, Mr Jones produced figures which he stated would have been comparable figures which a Finance Director doing the work he was doing, would have been paid on a project basis and suggested that a figure of £700 per day was appropriate. However, it was never put to Witness A that he had agreed to pay Mr Jones £700 per day, and Witness A had no recollection of agreeing any daily rate other than first £475, rising to £500 and then the agreed payment of £6000 for 12 days work per month.
18. The Committee had regard to the disputed invoices, which Mr Jones accepted he had submitted for payment and which had been paid. These amounted in total to £187,105.85 between April 2016 and March 2017. Even at the rate suggested by Mr Jones of £700 per day, that would equate to 267 days of work over the periods covered by the invoices. This sum was in addition to the amount of £158,000 that had been legitimately invoiced and paid to Mr Jones for work done over the same period. There was no doubt that the sum of £187,106.85 had been retained by Mr Jones.

19. The Committee was satisfied that, although there may have been an agreement for Mr Jones to do other project work, there was no agreement that Mr Jones was entitled to charge at a higher rate than the rate of £475 (which rose to an agreed £500) per day. Accordingly, the Committee was satisfied that some of the money retained by Mr Jones, the excess charge over the agreed daily rate was money to which he was not entitled. The Committee accordingly found Allegation 1 proved on that basis.

20. The Committee concluded that whilst Mr Jones was entitled to be paid at the rates agreed between him and Witness A, he had essentially overcharged Company A either by charging for work which he could not have possibly done, or by charging at an inflated daily rate which had not been agreed by Witness A. The Committee considered that in doing so, Mr Jones was dishonest. These actions are also contrary to the Fundamental Principle of Integrity and amount to misconduct as alleged in Allegations 5(b) and (c), and Allegation 6.

Allegation 2

21. The Committee next considered Allegation 2. It noted that it was not disputed by Mr Jones that, in respect of work done in November 2016, he invoiced Company A £9,500 which sum, in error, had been paid to him twice. Mr Jones never disputed that he received that payment twice and made clear in his solicitor's letter to Company A that £9,500 would have to be repaid.

22. The Committee was satisfied, that as a matter of fact, Mr Jones had retained £9,500 to which he was not entitled. However, the Committee did not consider that in doing so, Mr Jones had acted dishonestly. The Committee took into account that the £9,500 had been paid in error, and that Mr Jones had acknowledged that he would have to repay that amount. The Committee also considered that in the context of Mr Jones's banking arrangements, which involved frequent deposits and transfers of large amounts of money, the sum of £9,500 was relatively minor and it was

plausible, as Mr Jones asserted, that he had not noticed that the payment had been made to him twice.

23. Accordingly, the Committee found Allegation 2 proved on the facts but found Allegations 5 (a), (b) and (c) and Allegation 6 in relation to Allegation 2 not proved.

Allegation 3

24. The Committee next considered Allegation 3. ACCA did not present evidence of any link between Mr Jones and the payment made to Company B. Even Witness A in his evidence, had no recollection of Company B. Mr Jones accepted that invoices from Company C in respect of plumbing materials for his own buy to let properties were paid from Company A's funds to Company C. However, no evidence was presented that Mr Jones caused or permitted these two invoices to be paid. In his oral evidence, Mr Jones asserted that the payment of these invoices were nothing to do with him and that they could have been inadvertently submitted by Company C to Company A. Accordingly, the Committee found Allegation 3 not proved.

Allegation 4

25. The Committee next considered Allegation 4. This allegation asserted that Mr Jones had wrongly received £12,841.51 worth of goods and services using Company A's credit card. Mr Jones accepted in his oral evidence and during the investigation, that he had used Company A's credit card for his own personal expenditure to the amount of £9,013.89. This was for Amazon purchases, plumbing material for his properties and the payment of a court fine. He asserted that the balance of some £3,800 had been legitimately spent by him on behalf of Company A. In his evidence, Witness A had accepted that some part of the balance may have been properly incurred by Mr Jones.
26. The Committee accepted that expenditure on Company A's credit card was subject to very loose controls and supervision. However, on his own

admission, Mr Jones used Company A's credit card for his own benefit when he was not entitled to do so. Accordingly, the committee found Allegation 4 proved but only in respect of the sum of £9,013.89.

27. In respect of Allegation 5(a), (b) and (c) and Allegation 6 in relation to Allegation 4, the Committee was satisfied that use of an employer's credit card for personal benefit without authorisation was dishonest, breached the Fundamental Principle of Integrity and amounted to misconduct.

SANCTIONS AND REASONS (23 January 2020)

28. The same Committee reconvened on 23 January 2020 to consider Sanction and Costs. The Committee reminded itself of its findings. It had found Allegation 1 proved on the basis that Mr Jones had overcharged Company A. The Committee was satisfied that this was dishonest conduct, was contrary to the Fundamental Principle of Integrity and amounted to misconduct. While it found Allegation 2 proved on the facts, it did not find these amounted to dishonesty or were contrary to the Fundamental Principle of Integrity and were not misconduct. Allegation 3 was not proved. The Committee found Allegation 4 proved in relation to £9,013.89. It found the conduct to be dishonest, in breach of the Fundamental Principle of Integrity and was satisfied that it amounted to misconduct.
29. The Committee noted its powers on sanction were those set out in Regulation 13(4). It had regard to ACCA's Guidance for Disciplinary Sanctions, in particular Section E2 dealing with dishonesty and bore in mind that sanctions are not designed to be punitive and that any sanction must be proportionate. It accepted the advice of the Legal Adviser.
30. The Committee considered that Mr Jones' dishonest overcharging of Company A, the firm for whom he worked, either by charging for work which he could not have possibly done or by charging at an inflated daily rate which had not been agreed by Witness A, to self-evidently be very

serious misconduct. The dishonest use of Company A's credit card by an employee was similarly serious.

31. The mitigating factors before the Committee were Mr Jones's previous good character and that he had fully engaged with ACCA and the hearing. Mr Jones also repaid all the monies wrongly received and settled the Civil proceedings fully and promptly.
32. The aggravating factors the Committee identified were that Mr Jones actions were deliberate, in breach of his position of trust, occurred over a significant period of time and that the monies involved were very large.
33. The Committee was satisfied, in view of the seriousness of Mr Jones's conduct which included dishonesty, that the sanctions of No Further Action, Admonishment, Reprimand and Severe Reprimand were insufficient to protect the public and maintain public confidence in the profession. Nor would they uphold proper standards of conduct.
34. The Committee determined that Mr Jones's misconduct in Allegations 1 and 4 was fundamentally incompatible with his remaining as an ACCA member. The Committee considered that the appropriate and proportionate sanction was that he be excluded from membership. It considered any lesser sanction would not preserve the integrity of ACCA and the reputation of, and the maintenance of public confidence in the accountancy profession.
35. The Committee very carefully considered whether additionally, to impose a fine. It had regard to the factors set out in the Sanctions Guidance at C.6.3. It noted that a fine may be appropriate if deterrence could not be effectively achieved by issuing another sanction alone.
36. The Committee considered that its sanction of exclusion was a sufficient deterrent. The Committee also took into account that Mr Jones had paid back all of the monies wrongly received and had not made any personal gain. In light of the reasoning of the Committee, set out in paragraph 19 above, Mr Jones may in fact have repaid more money than was due. For

these reasons, the Committee concluded that a fine in this case was not necessary or proportionate. Accordingly, the Committee did not impose any fine.

COSTS AND REASONS

37. The Committee received a costs schedule in which ACCA claimed costs of £19,494.05, which the Committee considered constituted a reasonable sum to have been incurred, given the complexity of the matters and the volume of material involved.
38. The Committee considered that it was appropriate to make an award of costs in this case in favour of ACCA. It considered that some reduction to reflect that not all of the allegations were found proved was appropriate. Mr Jones made no submissions that he was unable to pay costs due to limited means.
39. Taking account of all the circumstances, the Committee was satisfied that the sum of £16,000 was reasonable, appropriate and proportionate in this case. Accordingly, it ordered that Mr Jones pay ACCA's costs in the amount of £16,000.00.

EFFECTIVE DATE OF ORDER

40. The Committee did not consider it necessary to make an immediate order and its orders will come into effect at the end of the appeal period.

Mr Ian Ridd
Chair
23 January 2020