

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

- In the matter of:** Mr Neil Matthew Jones
- Heard on:** Monday, 02 November 2020
- Location:** Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU
- Committee:** Mr Mike Cann (Chair)
Mr Constantin Lemonides (Accountant)
Mr Garrett O'Reilly (Lay)
- Legal Adviser:** Ms Judith Chrystie (Legal Adviser)
- Persons present
and capacity:** Mr Benjamin Jowett (ACCA Case Presenter)
Mr Jonathan Lionel (Hearings Officer)
- Observers:** None
- Summary:** Allegation 1(a) admitted, found proved and judged to amount to misconduct;
Allegation 1(b) denied, found proved and judged not to amount to misconduct but liability to disciplinary action;
Exclusion from membership with immediate effect;
Costs order in the sum of £7,054.50

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ALLEGATIONS

1. The Committee considered the following allegations.
 1. It is alleged that Mr Neil Matthew Jones, a member of ACCA,
 - a. From 12 May 2016 to 08 August 2019 has been a director of Bennett Verby Limited a firm where public practice is carried on in the name of the firm contrary to paragraph 3(2)(a) of the Global Practising Regulations (as applicable in 2016-2019), without holding a valid practising certificate; and/or
 - b. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2019, Mr Neil Matthew Jones has failed to co-operate fully with the investigation of a complaint in that he failed to respond fully or at all to any or all of ACCA's correspondence dated:
 - i. 01 April 2019;
 - ii. 08 April 2019;
 - iii. 23 April 2019;
 - iv. 13 May 2019.
 2. By reason of his conduct in 1(a) and/or 1(b) above, Mr Neil Matthew Jones is:
 - i. Guilty of misconduct pursuant to byelaw 8(a)(i); or
 - ii. Liable to disciplinary action in respect of 1(a) and/or 1(b) above, pursuant to byelaw 8(a)(iii).
2. The Committee considered the following papers:
 - a. Main bundle with pages numbered 1 to 81,
 - b. Decision by the Committee to adjourn the hearing on 23 September 2020 with pages numbered 1 to 5,
 - c. Tabled additional bundle with pages numbered 1 to 2,

3. Following its decision on the allegations, the Committee received a further bundle, Additional bundle 1 with pages numbered 1 to 13, which contained the cost order and decision of a Disciplinary Committee in September 2016.

BRIEF BACKGROUND AND SUBMISSIONS

4. Mr Jones attended the hearing via telephone but was not represented.
5. The Committee noted that the hearing had been adjourned on 23 January 2020 (on application by ACCA) and 23 September 2020 (on application by Mr Jones).
6. Mr Jones became a student of ACCA on 14 August 2004, a member of ACCA on 31 August 2008 and a Fellow of ACCA on 31 August 2013.
7. Mr Jones does not hold a practising certificate or an insolvency licence.
8. According to Companies House records dated 15 January 2019:
 - a. Bennett Verby Limited ('the Company') was incorporated on 12 May 2011;
 - b. Mr Jones was appointed as director on 01 October 2013;
 - c. The Company's nature of business was stated as, 'Accounting and auditing services'.
9. On 29 January 2019, ACCA wrote the first of a number of letters to Mr Jones advising that he appeared to be undertaking public practice without a valid practising certificate ('PC'), asking him a number of questions and stating that he needed to take immediate steps to regularise his position.
10. Mr Jones responded to ACCA's communications as follows:

- a. On the 31 January 2019, he advised that he was waiting for one of the partners to sign off his PCTR and that he would submit the application for a practising certificate (PC);
 - b. On 19 February 2019, he stated that he did not sign off any documents and would regularise his position regarding the shares;
 - c. On 15 March 2019, he stated that he had posted his PC application;
 - d. On 18 March 2019, he stated he would email a scanned copy of his submitted PC application;
 - e. On 23 April 2019, having been reminded of his duty to cooperate on 08 and 22 April 2019, he apologised for not being in touch and claimed the last emails had gone to the junk folder. He promised to respond to the questions and send a copy of his PC application that week.
11. No PC application was received by ACCA. Mr Jones did not respond to the questions raised by ACCA.
12. On 13 May 2019, ACCA wrote to Mr Jones to express concern over his non engagement and his failure to submit his PC application and to advise that a case would be prepared for disciplinary action. On the 24 May 2019, ACCA wrote to Mr Jones to notify him that a report of disciplinary allegations was being drafted.
13. ACCA submitted that Mr Jones was holding himself out to be in public practice. It relied on the following information:
- a. Mr Jones is described as a “*chartered accountant*” on his LinkedIn profile and the Company’s website;
 - b. The Company’s website states that it provides services that include those deemed to be public practice under Regulation 4 of the

Global Practising Regulations 2003 (as amended) ('the GPR') such as accepting an appointment as an auditor and signing or producing any accounts or report or certificate or tax return.

14. ACCA stated that Mr Jones:
 - a. Had been a director of the Company for over 3 years without holding a practising certificate in breach of Regulation 3(2) of the GPR;
 - b. The focus of Allegation 1(a) was not the role he was performing as director, but the fact that he was a director of a company conducting public practice work when he did not hold a practising certificate;
 - c. Had taken no steps to regularise his position until 31 October 2020;
 - d. Had been knowingly in breach of the GPR since January 2019;
 - e. Had compounded his failure in respect of the GPR by his failure to assist ACCA: he had been given a number of opportunities to respond to communications from ACCA from 01 April 2019 to 13 May 2019, but had not responded or explained how he was going to address the position during ACCA's investigation.
15. ACCA argued that Mr Jones fell significantly short of proper standards of conduct expected from a member of ACCA and the accountancy profession; his behaviour was very poor and amounted to misconduct.
16. At the hearing on 02 November 2020, Mr Jones admitted factual Allegation 1(a). Although he accepted that he had received some, but not all, of the communications from ACCA and that he knew there were issues that he needed to address. He denied Allegation 1(b) on the wider premise of non-cooperation with ACCA.

17. Mr Jones stated that he had resigned from his directorship with effect from 31 October 2020 to resolve the position set out in the allegations. (Mr Jowett advised that this position was confirmed from a search of Companies House).
18. Mr Jones stated
 - a. He had had constant difficulties with communications from ACCA;
 - b. Naivety and dumb stupidity were the reasons that he had not taken earlier action;
 - c. He had not paid enough attention to something that was important – this was a lapse;
 - d. He apologised for his failure and for the need for the hearing;
 - e. He had admitted his failings.

DECISION ON FACTS/ALLEGATIONS AND REASONS

19. At the hearing, Mr Jones admitted the factual allegations set out in Allegation 1(a). In accordance with Regulation 12(3)(c) of the Complaints and Disciplinary Regulations 2014 (as amended), the Chair announced that those facts were found proved.
20. The Committee considered Allegation 1(b). It was satisfied Allegation 1(b) was proved. Although Mr Jones had acknowledged receipt of ACCA's emails of 08 and 23 April 2019, the Committee considered that he had not responded substantively or fully enough to have fulfilled his duty to cooperate under paragraph 3(1) of the Complaints and Disciplinary Regulations. Further, there was no correspondence from Mr Jones even acknowledging the communications of 1 April or 13 May; it appears that he did not respond to these emails at all.

21. The Committee considered whether the allegations found proved amounted to misconduct. It was content that Allegation 1(a) amounted to misconduct. The Committee considered that, as a professional accountant and a member of ACCA, Mr Jones should have been aware of the provisions of the GPR and the obligations upon him. ACCA informed by Mr Jones of his breach of the GPR in January 2019 and how his transgression could be remedied. However, Mr Jones had knowingly continued to be a director at the Company without a practising certificate throughout the remaining period of the allegation. This was despite ACCA repeatedly providing him with opportunities and time extensions to allow him to remedy his position. On several occasions Mr Jones advised ACCA, his regulatory body, that he was in the process of completing or had completed and sent his application for a practising certificate; no practising certificate application had been received.
22. The Committee was satisfied this holding a directorship of a company engaging in public practice without a practising certificate over a prolonged period, and despite several opportunities and extensions of time, was conduct that fell seriously short of the standard expected of an accountant. The Committee regarded it as clearly discreditable conduct. The Committee, therefore, found Allegation 2(i) proved in respect of Allegation 1(a).
23. The Committee did not consider that Allegation 1(b) amounted to misconduct. It considered that failing to respond fully or at all to ACCA, as a membership and regulatory body, for a short period of time was poor practice and in breach of Mr Jones's responsibility and obligation as an ACCA member and fellow. However, given the short period of time over which the non-cooperation had continued, the Committee did not consider that it amounted to such deplorable conduct to be judged as misconduct.
24. Having not found misconduct in respect of Allegation 1(b), the Committee considered Allegation 2(ii), which was pleaded in the alternative. It recognised that, having found Mr Jones in breach of paragraph 3(1) of the Complaints and Disciplinary Regulations, it had found Mr Jones in breach of a regulation to which he was bound as a member of ACCA. As a consequence byelaw 8(a)(iii) was triggered and Mr Jones was liable to disciplinary action.

SANCTION AND REASONS

25. The Committee had regard to the Guidance for Disciplinary Sanctions ('the Guidance').
26. The Committee considered the mitigation and aggravated features in the case. It was advised that there was a disciplinary history; Mr Jones had been severely reprimanded, fined and ordered to pay ACCA's costs by a differently constituted Disciplinary Committee sitting in September 2016. The allegations in that earlier case were that Mr Jones had been a director of a company carrying out public practice from 01 October 2013 to 11 May 2016 whilst not holding a practising certificate. In essence the case before the Committee in 2020 was a continuation of the misconduct found against Mr Jones over four years ago.
27. The Committee noted the specific warning issued by the Committee in 2016 that:

...if after this hearing [Mr Jones] continues to practise without a practising certificate, he can expect further disciplinary proceedings which may well lead to exclusion from the register.
28. The Committee acknowledged that Mr Jones had engaged and cooperated in the hearing process and had partially admitted the allegations before the Committee. He had been profusely apologetic about the fact that further disciplinary proceedings had been necessary. The Committee recognised that Mr Jones had admitted the central issue, had resigned as a director and had been frank in describing his behaviour as "*dumb stupidity*" and "*naïve*".
29. However, the Committee questioned whether Mr Jones had developed any proper insight into his conduct. Mr Jones had been specifically warned by a previous Disciplinary Committee in 2016 that he was guilty of misconduct by holding the directorship. Further, he received communication from ACCA about his continuing breach of the GPR in January 2019. It was not until 31 October 2020 that Mr Jones took the straightforward step of resolving the issues by

resigning as a director. The Committee was both bewildered and significantly concerned by the delay and lack of action. Mr Jones's behaviour towards the allegation led the Committee to conclude that it would be wholly insufficient to conclude the case with an order for no further action, an admonishment or a reprimand. The continuation of the wrongdoing demanded the imposition of a sanction to maintain public confidence and declare and uphold proper standards of conduct of an accountant and ACCA member.

30. The Committee considered whether it should order another severe reprimand. It recognised that the imposition of a severe reprimand (and a fine) had not resolved the issue. The misconduct continued; Mr Jones had not taken corrective action. The Committee recognised that Mr Jones had claimed that he was a good accountant and had not received complaints from clients. However, given his lack of actions to correct professional breaches, the Committee considered that there was considerable potential for the public to be harmed by Mr Jones. Moreover, the Committee considered that Mr Jones had an utter lack of professional judgement, had complete disregard for the previous disciplinary findings and had flagrantly ignored his regulatory obligations. The Committee was deeply concerned that Mr Jones had allowed his wrongdoing to have persisted from October 2013 until October 2020. This was despite being made fully aware of his breach of the GPR within that period and expressly advised by another independent panel of the consequences for him in allowing it to continue. As a consequence, the Committee was not satisfied that a severe reprimand was sufficient to conclude the matter.
31. The Committee considered that the extent of Mr Jones's inability to comply with the system of regulation over a number of years suggested a paucity of both professional acumen and responsibility and regarded the conduct revealed by the circumstances of this case and the previous matter to be fundamentally incompatible with remaining a member of ACCA. The Committee determined that the only acceptable and proportionate order in the public interest was to exclude Mr Jones from ACCA's membership. It did not consider it was necessary for the period over which no application for readmission could to be extended beyond the minimum period of 12 months.

32. It did not consider that, on this occasion, it would be appropriate to combine the order for exclusion with a fine. The Committee considered that the impact of such an order would be disproportionately punitive, particularly given that it was unclear whether Mr Jones would have been granted a practising certificate if he had applied.

COSTS AND REASONS

33. ACCA claimed costs in the sum of £7,053.50. Having considered the schedule submitted by ACCA, the Committee was satisfied that the costs were reasonable and had been reasonably incurred. It noted that ACCA had not claimed costs for the hearing in January 2020 or September 2020 as these had not been adjourned through any fault of Mr Jones.
34. Mr Jones did not provide a statement of financial position setting out his income, expenditure and his assets nor did he advance any argument that he was unable to pay the costs claimed. Mr Jones accepted that the wider ACCA membership should not be responsible for the costs incurred because of his behaviour and offered to pay the costs.
35. Recognising that Mr Jones had not disputed the costs or argued that he could not pay the sums claimed by ACCA, the Committee ordered that Mr Jones pay costs to ACCA in the sum of £7,053.50.

EFFECTIVE DATE OF ORDER

36. The Committee considered whether the order should be made with immediate effect. It determined that it was in the interest of the public for Mr Jones's name to be excluded as swiftly as possible.
37. Mr Jones's professional judgement was significantly in question and, although he had extremely belatedly resigned as a director, the Committee considered that it would be against the public interest for Mr Jones to continue to rely on his membership of ACCA to assure the public. The interests of the public should be protected with immediate effect.

**Mr Mike Cann
Chair
02 November 2020**