

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Andrew Michael Littlewood

Heard on: Thursday, 15 October 2020

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

Committee: Mrs Carolyn Tetlow (Chair)
Mr Martin Davis (Accountant)
Mr Gerry McClay (Lay)

Legal Adviser: Mrs Fiona Barnett

**Persons present
and capacity:** Mr Phillip Law (ACCA Case Presenter)
Ms Anna Packowska (ACCA Hearings Officer)

OUTCOME:

Allegation 1 – Found proved
Allegation 2(a) – Found proved
Allegation 2(b)(i) – Found proved
Allegation 2(b)(ii) – Not considered
Allegation 3(a)(i) – Found proved
Allegation 3(a)(ii) – Found proved
Allegation 3(b)(i) – Found proved

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Allegation 3(b)(ii) – Not considered

Allegation 4(a) – Liable to disciplinary action

Allegation 4(b) – Guilty of misconduct

Allegation 4(c) – Not considered

Allegation 4(d) – Guilty of misconduct

Excluded from ACCA membership

Costs order £7, 713.50

Order to take effect at end of appeal period.

SERVICE OF PAPERS

1. Mr Littlewood did not attend the hearing.
2. The Committee was provided with a service bundle numbering pages 1 to 17.
3. The documents in the service bundle showed that the notice of hearing dated 15 September 2020 and a link to access the accompanying documentation were sent by email to Mr Littlewood's registered email address on that date. The Committee was also provided with a delivery receipt.
4. The Committee was satisfied that the hearing notice has been served in accordance with Regulations 10 and 22 of the Complaints and Disciplinary Regulations 2014 ("CDR"), amended 01 January 2020.

PROCEEDING IN ABSENCE

5. Mr Law submitted that the Committee should proceed in Mr Littlewood's absence. He said that Mr Littlewood was aware of the hearing, has voluntarily absented himself and not sought an adjournment. Mr Law submitted that there was no evidence to suggest that an adjournment would result in Mr Littlewood's attendance, and that it appeared, from correspondence sent by Mr Littlewood, that he anticipated that the hearing would proceed.
6. In deciding whether to proceed in the absence of Mr Littlewood, the Committee accepted the advice of the Legal Adviser. It bore in mind that whilst it has a

discretion to commence and conduct proceedings in the absence of the member, it should exercise that discretion with the utmost care and caution. The Committee had regard to the factors set out by Lord Bingham in the case of *R v Jones 2002 UKHL 5* and the case of *General Medical Council v Adeogba and Visvardis 2016 EWCA Civ 162*.

7. The Committee considered an email from Mr Littlewood, dated 13 October 2020, in which he stated, *"I can confirm that I will not be attending the disciplinary hearing on 15th October 2020. I will fully accept the decision of the disciplinary committee"*.
8. The Committee concluded from the content of this email that Mr Littlewood was aware of the hearing, has waived his right to attend and that he anticipated that it would go ahead today. He also said in his email that he had been ill for several weeks; however, he did not advance this as the reason for his non-attendance, nor did he seek an adjournment for health or any other reason.
9. The Committee was mindful that there may be some disadvantage to Mr Littlewood if it proceeded in his absence. However, he had provided written responses during ACCA's investigation.
10. Having taken these factors into account and borne in mind the public interest in concluding regulatory matters expeditiously, the Committee decided that there was no good reason to adjourn, and that it was fair and appropriate in all the circumstances to proceed in Mr Littlewood's absence.

ACCA'S APPLICATION TO AMEND THE ALLEGATIONS.

11. Mr Law invited the Committee to amend the allegations. He asked for all references to Mr Littlewood's name to be changed to *Andrew Michael Littlewood*, (as opposed to *Andrew Mark Littlewood*).
12. Mr Law also invited the Committee to amend Allegations 4(b) and 4(d) by removing the references to sub paragraph (a). He submitted that the proposed amendments reflected the accurate position, ensured that the allegations of

misconduct encompassed Allegations 2 and 3 in full, and did not prejudice Mr Littlewood.

13. The Committee accepted the advice of the Legal Adviser, who reminded the Committee that it has power to amend the allegations in accordance with Regulation 10(5) CDR, provided that Mr Littlewood is not prejudiced in the conduct of his defence.
14. The Committee decided that the proposed amendments would not prejudice Mr Littlewood in the conduct of his defence. It also had regard to the Additional Bundle, numbering pages 1 to 5, from which it could be seen that ACCA wrote to Mr Littlewood on 09 October 2020 to make him aware that this application would be made, and to invite any comments from him. The Committee was not aware of any objection having been raised by Mr Littlewood. It granted Mr Law's application to amend the allegations as proposed.

ALLEGATIONS (AS AMENDED)

Allegation 1

On 05 September 2019, Mr Andrew Michael Littlewood accepted a caution at Bedfordshire Police station (the 'Caution') in relation to an offence contrary to the Fraud Act 2006, namely fraud by abuse of position, which is discreditable to the Association and/or the accountancy profession.

Allegation 2

- (a) Mr Andrew Michael Littlewood failed to inform ACCA promptly that he may have become liable to disciplinary action by reason of accepting the Caution, pursuant to byelaw 10(b) (2019 – 2020)
- (b) His conduct at Allegation 2(a) was:

- (i) Dishonest, in that he knew he was required to inform ACCA that he may have become liable to disciplinary action by reason of receiving the Caution and did not do so; or in the alternative
- (ii) Contrary to the Fundamental Principle of Integrity (2019 - 2020) in that such conduct demonstrates a failure to be straightforward and honest.

Allegation 3

- (a) On or about 30 December 2019, Mr Andrew Michael Littlewood submitted a CPD Declaration in which he declared:
 - (i) He had not received a Caution, when in fact he accepted the Caution on 05 September 2019; and/or
 - (ii) The information in the Declaration was true and accurate to the best of his knowledge and belief, when in fact he knew it omitted details regarding the Caution
- (b) His conduct at Allegation 3(a)(i) and/or (ii) was:
 - (i) Dishonest, in that he knew that the Declaration contained inaccurate information when he submitted it; or in the alternative
 - (ii) Contrary to the Fundamental Principle of Integrity (2019) in that such conduct demonstrates a failure to be straightforward and honest

Allegation 4

- (a) By reason of his conduct at Allegation 1, Mr Andrew Michael Littlewood is liable to disciplinary action pursuant to byelaw 8(a)(ix)

- (b) By reason of his conduct at Allegation 2, Mr Andrew Michael Littlewood is guilty of misconduct pursuant to byelaw 8(a)(i); or in the alternative;
- (c) By reason of his conduct at Allegation 2(a), Mr Andrew Michael Littlewood is liable to disciplinary action pursuant to byelaw 8(a)(iii)
- (d) By reason of his conduct at Allegation 3, Mr Andrew Michael Littlewood is guilty of misconduct pursuant to byelaw 8(a)(i)

BRIEF BACKGROUND

15. Mr Littlewood acted as Head of Finance/Treasurer for a volunteer run Community Interest Corporation, (“the Corporation”), from October 2011 to September 2018.
16. On 01 December 2018, the Chairman of the Corporation, Mr A, made a complaint to ACCA about Mr Littlewood. He alleged that a new Head of Finance had noticed irregularities in the accounts for the year ending 30 September 2018. Mr A said that Mr Littlewood was interviewed about these irregularities and admitted that he had taken monies for personal use and falsely accounted for the removed funds.
17. Mr A reported the matter to Bedfordshire Police, and on 05 September 2019, Mr Littlewood accepted a Simple Caution for Fraud by Abuse of Position, which related to the removal of £6,597.95 from the Corporation.
18. It is alleged that Mr Littlewood failed to promptly notify ACCA about the Caution, and that he omitted to declare it in his CPD declaration which was allegedly completed in December 2019.
19. In its consideration of this matter, the Committee had before it a bundle of papers numbering pages 1 to 163.

DECISION ON ALLEGATIONS AND REASONS

20. The Committee accepted the advice of the Legal Adviser. In reaching its decisions, it reminded itself that the burden of proof rests with ACCA, and that the standard of proof is the civil standard, which is the balance of probabilities. The Committee was also advised that when deciding any allegation of dishonesty, it should apply the test set out by Lord Hughes at paragraph 74 of *Ivey v Genting Casinos 2017 UKSC 67*. The test states that the Committee must first ascertain, subjectively, the actual state of the individual's knowledge or belief as to the facts, and whether that belief is genuinely held. Then, once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people

Allegation 1 - Found Proved

21. The Committee was provided with a copy of the Caution for fraud by abuse of position signed by Mr Littlewood, which demonstrated that Mr Littlewood accepted the Caution on 05 September 2019 as alleged. Mr Littlewood also accepted in correspondence with ACCA that he accepted the Caution at Bedford Police Station on 05 September 2019.
22. The Committee was satisfied that the Caution was discreditable to the Association and the accountancy profession. Mr Littlewood was, at the time when the fraud was committed, in a position of trust as the Head of Finance at the Corporation, which was a voluntary organisation. The Committee, therefore, found Allegation 1 proved.

Allegation 2(a) – Found Proved

23. Byelaw 10(b) places an obligation upon every ACCA member to promptly inform ACCA of any matter indicating that he/she may have become liable to disciplinary action.

24. Mr Littlewood accepted in correspondence with ACCA that he did not bring the Caution to their attention. He said during a telephone conversation with an ACCA representative on 21 January 2020 that it was his responsibility to disclose it. Mr Littlewood had not disclosed the Caution until ACCA made enquiries of him in January 2020, even though he accepted the Caution in September 2019. The Committee, therefore, found that Mr Littlewood had not complied with the obligation placed upon him by Byelaw 10(b) to promptly inform ACCA about a matter which might render him liable to disciplinary action, and it found Allegation 2(a) proved.

Allegation 2(b)(i) – Found Proved

25. The Committee considered whether Mr Littlewood's failure to promptly inform ACCA about the Caution was dishonest, as alleged. It bore in mind that in accordance with test set out in *Ivey v Genting Casinos*, (above), it must consider the actual state of his knowledge or belief as to the facts.
26. In email correspondence with ACCA on 31 January 2020, Mr Littlewood stated,
- "Whilst it's not excusable, I didn't inform the ACCA of the caution as I wasn't fully aware of what I should do - though in hindsight it is pretty obvious that I should have contacted the ACCA. To be totally honest, I have been so embarrassed and ashamed of what happened that I had tended to shy away from talking about it and just wanted to move forward with my life."*
27. The Committee did not accept Mr Littlewood's explanation for why he had not disclosed the Caution. It noted in particular his use of the words, "...I wasn't fully aware of what I should do", which suggests that he had some level of awareness of what he should do. Mr Littlewood also made reference to his shame and embarrassment and the fact that he tended to "shy away" from talking about his Caution. The Committee inferred from this that Mr Littlewood may have been hiding the Caution for this reason. In the Committee's view, the Caution was for an offence which was of such significance for an accountant, that it was inconceivable that he did not know that he was obliged to disclose

it. The Committee was not satisfied that the explanation given by Mr Littlewood was his genuinely held belief.

28. The Committee's view was that failing to disclose a Caution in these circumstances would be regarded as dishonest by the standards of ordinary decent people. The Committee, therefore, found that Mr Littlewood's failure to promptly disclose the Caution was dishonest, and it found Allegation 2(a)(i) proved.

Allegation 2(b)(ii)

29. Given the Committee's findings in relation to Allegation 2(a)(i), it was not required to consider this allegation.

Allegation 3(a)(i) – Found Proved

30. ACCA provided evidence to confirm that Mr Littlewood completed a CPD declaration on 30 December 2019, (although the completed form was not provided).

31. In addition to this, during ACCA's investigations, Mr Littlewood responded to ACCA on 31 January 2020. In relation to this allegation, he stated,

"Failure to disclose the caution in my CPD submission - unfortunately this was due to a stupid mistake of not appropriately and fully reading the declaration at the end. It wasn't due to any deliberate attempt to hide the fact from the ACCA, but I fully appreciate the implication it gives and accept, with sincere regret, both this error and my actions whilst treasurer of [the Corporation]"

32. In a subsequent email to ACCA on 12 February 2020, Mr Littlewood stated,

"I accept the point that I had made an inaccurate CPD declaration on 30 December 2019. Whilst I should have been aware of the point in reference to the disclosure of any police cautions received I have no defence in this matter other than at the time I was rushing to submit the CPD declaration and did so

without any due consideration of the declaration being made. A stupid oversight but not with any deliberate intention to deceive though I fully accept that in itself that is not an acceptable excuse.”

33. In the light of the evidence above, the Committee found Allegation 3(a)(i) proved. It was more likely than not that Mr Littlewood declared in his CPD form that he had not received a Caution, even though he accepted the Caution on 05 September 2019, several months before.

Allegation 3(a)(ii)

34. This allegation required ACCA to prove that Mr Littlewood knew that the CPD declaration, signed by him as being true and accurate, omitted details regarding the Caution.
35. Mr Littlewood explained, (above), that he rushed to submit the CPD declaration and did so, “... *without any due consideration of the declaration being made. A stupid oversight but not with any deliberate intention to deceive though I fully accept that in itself that is not an acceptable excuse”*.”
36. In deciding whether the Committee accepted this explanation, it bore in mind the following factors:
- Mr Littlewood gave no explanation as to why he was in a rush when he completed the CPD declaration.
 - The form itself is a simple, short document, which is clear and gives instructions in bold type.
 - There is very little information for any member to complete.
 - The declaration, which states, “*The information given in this form is true and accurate to the best of my knowledge and belief*” appears on the first page of the form at the top right hand side and would have been clearly visible to Mr Littlewood as soon as he began the process

of reading/completing it. Mr Littlewood said he did not read the declaration “at the end”, but the declaration is in fact at the beginning of the form.

- The declaration relating to criminal convictions/cautions was also on the front page of the form.
- It was reasonable to infer that as a member of ACCA, Mr Littlewood had completed CPD declarations previously. The Committee was provided with the blank CPD declaration forms used by ACCA from 2014 to 2019. These forms all asked questions about convictions/cautions and required the member to confirm that the information given was true and accurate to the best of his/her knowledge and belief. Mr Littlewood would, therefore, have known, from his prior experience of completing these declarations, that the CPD declaration raised the issue of convictions and cautions and required him to disclose these.
- The Committee found, in Allegation 2, that Mr Littlewood acted dishonestly when he failed to promptly disclose his Caution to ACCA. Bearing in mind this finding, it was more likely than not, that having already hidden his Caution from ACCA, he was not now willing to disclose it on the CPD declaration form. The Committee concluded that the non-disclosure of the Caution on the CPD form was a continuation by Mr Littlewood of his attempt to withhold its existence from ACCA.

37. For all of the reasons set out in paragraph 36 above, the Committee decided that it did not accept Mr Littlewood’s explanation. It did not accept that he did not properly consider the form, and that he did not intend to deceive ACCA. It concluded that he knew the CPD form omitted details regarding his Caution and it found Allegation 3(a)(ii) proved.

Allegation 3(b)(i) – Found Proved

38. In considering dishonesty, the Committee considered, as required, the actual state of Mr Littlewood's knowledge or belief as to the facts. The Committee had found, as set out above, that Mr Littlewood knew that the CPD form he completed on 30 December 2019 contained inaccurate information. His state of mind and intention was to deliberately omit details of his Caution so that ACCA did not become aware of its existence.
39. The Committee was satisfied that deliberately hiding important information from his regulatory body would be regarded as dishonest by the standards of ordinary decent people. It concluded that Mr Littlewood's conduct in Allegations 3(a)(i) and (ii) was dishonest, and it found Allegation 3(b)(i) proved.

Allegation 3(b)(ii)

40. Given the Committee's findings in Allegation 3(b)(i), the Committee was not required to consider this allegation.

Allegation 4(a)

41. Mr Littlewood accepted a Caution for an offence which the Committee found was discreditable to the Association. He is, therefore, liable to disciplinary action pursuant to byelaw 8(a)(ix).

Allegation 4(b) – Guilty of Misconduct in Relation to Allegation 2.

42. Mr Littlewood failed to inform ACCA promptly about his Caution, only doing so when they made enquiries about it. The Committee found that his failure to disclose it was dishonest, and that he knew, as an accountant, that a caution for such a serious matter should be disclosed to his regulatory body. His dishonest actions, in failing to promptly inform ACCA of the Caution, fell seriously short of the standards expected of an ACCA member, and bring discredit to him, the profession, and to ACCA. The Committee, therefore, concluded that his conduct in Allegation 2 amounted to misconduct.

Allegation 4(c).

43. Having found that Mr Littlewood was guilty of misconduct in relation to Allegation 2, the Committee was not required to consider Allegation 4(c).

Allegation 4(d) – Guilty of Misconduct in Relation to Allegation 3.

44. The Committee considered whether Mr Littlewood was guilty of misconduct in relation to Allegation 3. Having failed to promptly disclose his Caution to ACCA, Mr Littlewood then completed a CPD declaration in December 2019 in which he again failed to disclose it; the Committee found that he did so knowingly and dishonestly. It was satisfied that his actions in this respect again fell seriously short of the standards expected of an ACCA member, and that they brought discredit to him, the profession and to ACCA. The Committee was satisfied that his actions were sufficiently serious so as to amount to misconduct.

SANCTIONS AND REASONS

45. The Committee accepted the advice of the Legal Adviser who referred the Committee to ACCA's current Guidance on Disciplinary Sanctions, ("the Guidance"). It bore in mind that it must act proportionately at this stage, balancing the member's interests against the public interest, and that any sanction imposed must be no more than necessary to meet the purpose of a disciplinary sanction.
46. The Committee identified the following aggravating factors:
- In relation to the conduct which gave rise to the Caution, this was prolonged over a period of months and involved a number of transactions.
 -
 - The fraud was carried out for Mr Littlewood's personal gain, to assist him at a time when he had personal financial difficulties.

- The Caution for Fraud by Abuse of Position had the potential to undermine public trust in the accountancy profession.
- The fraud was committed within a volunteer run Community Interest Corporation; loss was caused to the Corporation and its members made a number of loans so that the Corporation could continue its activities.
- Mr Littlewood lacked insight into his dishonesty in Allegation 3. He said he that he did not intend to deceive ACCA when he failed to disclose his Caution on the CPD form. He did not accept that what he did was dishonest and sought to excuse his failure to disclose the Caution on the CPD form as an “oversight”.

47. The Committee identified the following mitigating factors:

- Mr Littlewood had no previous disciplinary findings against him.
- He has responded to ACCA and co-operated with their investigation.
- Mr Littlewood repaid the majority of the monies which were the subject of the police Caution.
- Mr Littlewood provided a letter from a subsequent Employer, dated 10 January 2020, from whom he had gained employment outside of the accountancy profession. The Employer confirmed that Mr Littlewood declared the Caution during his second interview and confirmed that he had become a valued member of the team and was, “trustworthy”.

48. The Committee considered the seriousness of the conduct found proved before deciding upon any sanction (in accordance with paragraph E3 of the Guidance). It had regard to Section F of the Guidance and concluded that Mr Littlewood had deceived ACCA and had acted dishonestly in a number of respects. It found his conduct to be very serious.

49. The Committee first considered whether to conclude this case without taking further action. It concluded that to do so would not be sufficient to uphold the public interest.
50. The Committee next considered whether an Admonishment would be an appropriate and proportionate sanction in this case. It decided that given the serious nature of the matters which gave rise to the Caution, and its findings as a whole, an Admonishment would not be a sufficient and proportionate sanction.
51. The Committee next considered a Reprimand. The Guidance states that this sanction is usually applied, "*...where the conduct is of a minor nature.....*". Having concluded that the conduct was very serious, the Committee decided that a Reprimand would not be an appropriate and proportionate sanction.
52. The Committee next considered a Severe Reprimand and considered paragraph C4 of the Guidance. It found that Mr Littlewood's conduct was intentional and had caused harm to the Corporation in terms of loss and the need for the members to make loans to cover that loss. He had also not shown full insight into his dishonesty relating to the CPD declaration. These factors suggested that a Severe Reprimand was not appropriate.
53. However, there were a number of factors which militated in favour of a Severe Reprimand. These were: Mr Littlewood had co-operated with ACCA during the investigations stage, he had taken remedial steps by paying back the monies which related to the Caution for Fraud, he had no previous disciplinary findings and had provided a reference from an employer who found him to be trustworthy.
54. Overall, there were some factors which supported a Severe Reprimand and some factors which did not. The Committee, therefore, decided to consider Exclusion, and it had regard to paragraph C5 of the Guidance. The Guidance states that, "*This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a member*".

55. The Committee found that Mr Littlewood's actions overall constituted a serious departure from the standards expected of him. He had caused loss to the Corporation, acted dishonestly on a number of occasions and abused the trust placed in him by the Corporation. His fraud continued over a period of time and his Caution specifically related to an offence of "Fraud by Abuse of Position". Mr Littlewood has also not shown full insight into his failure to disclose the Caution when he made his CPD declaration in December 2019. Overall, there were a number of factors which supported the sanction of Exclusion.
56. The Committee also had regard to paragraph E2.2 of the Guidance, which states:
- "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."*
57. Mr Littlewood had faced "*difficult circumstances*" in his personal life. However, he had abused his position of trust and stolen money from a charity to assist him in dealing with the circumstances he faced. He then deliberately failed to disclose the police Caution to ACCA and submitted a false CPD declaration to ACCA, in order to further conceal the Caution. Whilst there were some mitigating factors, these attracted little weight when they were weighed against the aggravating factors and the fundamental purpose of a disciplinary sanction. The public could not have trust in an accountant who had acted in this way, and the Committee had no hesitation in concluding that Mr Littlewood's actions were fundamentally incompatible with continued ACCA membership.
58. Taking into account the seriousness of the case and balancing the interests of Mr Littlewood, the public interest and the interests of ACCA, the Committee concluded that Exclusion would be the proportionate sanction in the circumstances of this case. Any sanction less than Exclusion would be insufficient to protect the public, maintain public confidence in the accountancy

profession and uphold proper professional standards. The Committee, therefore, ordered that Mr Littlewood be excluded from ACCA membership.

COSTS AND REASONS

59. ACCA applied for costs in the sum of £7,713.50.
60. Mr Littlewood had not provided any information about his current means. The Committee had found all the allegations proved and could identify no justification for reducing the costs requested, which had been properly incurred.
61. The Committee, therefore, ordered that Mr Littlewood pay costs to ACCA in the amount of £7,713.50.

EFFECTIVE DATE OF ORDER

62. This Order shall take effect on the date of expiry of the appeal period referred to in the Appeal Regulations.

Mrs Carolyn Tetlow
Chair
15 October 2020