

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Aina Vivian Solomon Bell

Heard on: Thursday, 22 October 2020

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

Committee: Mr James Kellock (Chair)
Mr George Wood (Accountant)
Mr Geoffrey Baines (Lay)

Legal adviser: Mr Alastair McFarlane

**Persons present
and capacity:** Mr Phillip Law (ACCA Case presenter)
Mr Jonathan Lionel (Hearing Officer)

Outcome: Excluded from Register
Costs awarded to ACCA of £6,500.00

1. ACCA was represented by Mr Law. Mr Bell did not attend and was not represented. The Committee had before it a bundle of papers, numbered pages 1 –172, a service bundle numbered pages 1-14 and a skeleton argument.

SERVICE/ PROCEEDING IN ABSENCE

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

2. Having considered the service bundle, the Committee was satisfied that notice of the hearing, dated 24 September 2020, was served on Mr Bell in accordance with the Complaints and Disciplinary Regulations 2014 (“CDR”).
3. The Committee next considered whether it was in the interests of justice to proceed in the absence of Mr Bell. The Committee accepted the advice of the Legal Adviser. The Committee was mindful that Mr Bell had a right to attend the hearing and to participate and that the discretion to proceed in his absence must be exercised with the utmost care and caution.
4. The Committee noted that ACCA’s notice dated 24 September 2020 to Mr Bell’s registered email address, offered him the opportunity of attending via video or telephone link. Mr Bell had not availed himself of this opportunity or made any communication with ACCA about attending the hearing. It noted a further chase up e-mail was sent to his registered email address on 13 October 2020 – again to which there was no reply. The Committee noted that there had been no engagement at all from Mr Bell since 15 May 2019. The Committee was satisfied that reasonable attempts have been made to secure Mr Bell’s attendance/participation at the hearing. The Committee was satisfied that Mr Bell had voluntarily disengaged from the process and was not persuaded that any adjournment would increase the chance of Mr Bell attending or participating further in the case. On the information before it and bearing in mind its duty to ensure the expeditious conduct of its business and the wider public interest, the Committee was satisfied that it was in the interests of justice to proceed in the absence of Mr Bell. The Committee reminded itself that his absence added nothing to ACCA’s case and was not indicative of guilt.

APPLICATION TO AMEND ALLEGATION

5. Mr Law made an application under Regulation 10(5) to amend Allegation 1(a) and 1 (b) to correct “Associated” to “Associates” – which is the correct name of

his firm as revealed in the documents. He also sought to amend Allegation 3 to include “2(d)” as it had been omitted in error.

6. The Committee accepted the advice of the Legal Adviser. It noted that Mr Bell was obviously unaware of this application but was satisfied that the amendments to Allegation 1(a) and 1 (b) were simple typographical errors and could not prejudice Mr Bell in the conduct of his defence. In relation to the proposed amendment to Allegation 3, this widens the alleged misconduct to include 2(d), but was, in the Committee’s judgment, simply rectifying a mistake that would have been apparent to any reader of the papers, and Mr Bell. Accordingly, the Committee granted both amendments.

BACKGROUND

7. Mr Aina Vivian Solomon Bell FCCA became an ACCA member on 31 July 2006 and became an ACCA fellow on 31 July 2011.
8. From 27 October 2009 to 31 December 2017, Mr Bell held a general ACCA practicing certificate (UK) and from 27 October 2009 to 30 June 2017, he also held general ACCA practising certificate (Sierra Leone). These allowed Mr Bell to engage in public practice in UK and Sierra Leone. As of 29 October 2019, Mr Bell is not on ACCA’s register of practitioners for ACCA members in public practice outside of designated territories.
9. When Mr Bell did not renew his practising certificates, ACCA contacted him on 27 December 2018, 31 January 2019 and 11 March 2019 to remind him to renew his practising certificates. Mr Bell did not respond to ACCA Authorisation team, accordingly Mr Bell was referred to ACCA Investigations on 10 April 2019.
10. The ACCA Investigations Officer reviewed the Companies House (UK) records of Vivian Bell & Associates Limited of which Mr Bell is the sole director and sole shareholder since its incorporation on 02 September 2009. The annual returns confirmed that Mr Bell remained the sole director and shareholder of this firm.

11. The website of Vivian Bell & Associates (UK) indicates that it holds itself out as “Certified Chartered Accountants” and offers services such as taxation advice, income tax advice and VAT.
12. The website of Vivian Bell & Associates (Sierra Leone) indicates that it offers services such as accountancy, taxation, audit and assurance and it asserts the firm is regulated by ACCA. Mr Bell holds himself out as the managing director of the firm and uses the letters FCCA. The website describes the firm as *Vivian Bell & Associates Ltd, A firm of Chartered Certified Accountants in the UK.*
13. The Investigations Officer contacted Mr Bell on 10 May 2019 for his comments and observations and Mr Bell responded by two e-mails dated 15 May 2019. In his first e-mail, Mr Bell explained he is in Sierra Leone and left the UK in December 2018 and that he does not anticipate he will return to the UK until November 2019. In his second e-mail dated 15 May 2019, Mr Bell stated:

“I was engaged in part-time practice in the UK up to December 2017. From January 2018 to date, I am engaged in full time practice in Sierra Leone. [SEP] therefore did not apply to renew my UK practicing certificate from 2018 since I am no longer practicing in the UK.

With regards my ACCA Sierra Leone Practicing Certificate, I did not apply for one from ACCA since it was indicated in one ACCA mail in 2017 that ACCA will only maintain a register as Authorization and Regulation are being done by the National Body. It was therefore my opinion that the transfer to the register was automatic.

However, in the circumstances, I shall be grateful if you could please advise me how to regularise the situation.”
14. Two chasing emails were sent to Mr Bell as he had not answered the Investigations Officer fully. The first chaser was sent on 01 July 2019, with a response date of 15 July 2019. A second chasing email was sent on 16 July 2019, with a response date of 30 July 2019.

15. The Investigations Officer contacted Mr Bell on 07 August 2019 for further information with a view to assisting him to regularise his position. Mr Bell was asked to respond by 21 August 2019. This correspondence was sent to Mr Bell's registered e-mail and postal addresses as they appeared in ACCA's member's database on 07 August 2019. A final chasing email was sent on 27 August 2019 warning Mr Bell that if he did not cooperate, it would be treated as non-engagement on his part. Mr Bell was asked to respond by 10 September 2019.
16. At 17 September 2019, the Investigations Officer had not received any response from Mr Bell. ACCA's database records that the e-mail sent to Mr Bell on 07 August 2019 was first opened on 08 August 2019 at 10:39 (BST) and that the 27 August 2019 email was first opened on 27 August 2019 at 18:24 (BST).
17. Reviews carried out by the Investigations Officer on 27 August 2019 and 17 September 2019 of the websites of Vivian Bell & Associates (UK) and Vivian Bell & Associates (Sierra Leone) and the Companies House records of Vivian Bell & Associates Ltd (UK) showed that the breaches to the Global Practice Regulation identified above remained. Further, between the first review of the Companies House records of Vivian Bell & Associates Ltd (UK) on 26 April 2019 and the second review on 27 August 2019, the micro-entity accounts of the firm as at 30 September 2018 was filed at Companies House on 26 June 2019.

ACCA'S SUBMISSIONS

Allegations 1a, 1b and 1c

18. ACCA submitted that the Companies House record of Vivian Bell Associates Ltd, webpages of Vivian Bell and Associates (UK), Vivian Bell and Associates (Sierra Leone) and <http://www.arvspartners.com> shows Mr Bell to be in public practice in the UK and Sierra Leone after his UK ACCA practicing certificate had lapsed on 31 December 2017.

19. ACCA contended that Mr Bell is required under the Global Practising Regulations to hold an ACCA practicing certificate and/or add himself to the register of practitioners, and that there is sufficient evidence to show that Mr Bell is in public practice without an ACCA practising certificate and/or has failed to include himself on the register of practitioners.

Allegation 2

20. ACCA relied upon the sending of e-mail correspondence to Mr Bell's registered e-mail address and the records showing they were opened. ACCA submitted that it had given Mr Bell ample opportunities to engage and regularise his position, but he has not acknowledged or responded to the correspondences ACCA sent to him.

Misconduct

21. ACCA submitted that Mr Bell's failure to comply with ACCA's regulations and being in public practice without a practising certificate and/or without adding himself to the register of practitioners demonstrated a disregard for ACCA's public practice certification process and qualifications. It submitted that such a failure undermined the regulation of public practice. It submitted that it reached the threshold for misconduct.
22. ACCA further submitted that Mr Bell's failure to co-operate with ACCA's investigation into his conduct demonstrates a lack of professionalism and a disregard for ACCA's regulatory process. Although Mr Bell's failure to respond to ACCA did not prevent it from fully investigating this matter, as evidence was obtained through third party sources as detailed above, it submitted that it was nevertheless a serious matter for organisations, such as ACCA, that self-regulate their members as there is reliance on a member's co-operation in order to fully investigate complaints.
23. ACCA submitted that in the alternative, the breaches and non-cooperation amounted to liability to disciplinary action.

MR BELL'S SUBMISSIONS

24. Mr Bell's only submissions were contained in his emails of 15 May 2019, set out at paragraph 13 above.

DECISION ON ALLEGATION AND REASONS

25. The Committee accepted the advice of the Legal Adviser. The Committee reminded itself that the burden of proving the allegations was on ACCA alone and that Mr Bell's absence added nothing to ACCA's case.

DECISION ON FACTS

26. The Committee carefully considered all the documentary evidence it had received, as well as the submissions of Mr Law on behalf of ACCA and the two e-mails it received from Mr Bell. It reminded itself to exercise caution as it was working from documents alone. It put Mr Bell's good character into the balance in his favour.

Allegations 1a, 1b and 1c

27. The Committee was satisfied on the documentary evidence before it, including the witness statement of Ms McNeil, ACCA Authorisation Officer, Companies House Documentation and the website material which it found to be credible and reliable, that Mr Bell did not hold a valid practising certificate at the material times. It noted that Mr Bell had held a valid practising certificate for many years until the end of 2017 and there was nothing in the documentation to indicate his practice changed after that date. Further, he admitted in his May 2019 email that he was seeking to "*regularize*" the position. The Committee inferred he

accepted he was not in compliance. It was satisfied on the documentation, including that from Companies House, that he was sole director of Vivian Bell and Associates Limited (UK) (“the firm”) at the material dates. The Committee was mindful that there was no direct evidence, for example, from clients, that the firm carried out public practice. However, there was documentary evidence, for example, Companies House documentation to the effect that the nature of the business was “*Accounting and auditing activities*”. The Committee was satisfied from the documentation that it was reasonable to infer that the firm/Mr Bell was holding itself/himself out as carrying out public practice at the material times. It was satisfied that that this was contrary to Paragraph 3(2)(a) of the Global Practice Regulations (as applicable in 2018 and 2019) as Mr Bell did not hold a valid practising certificate. Accordingly, Allegation 1 (a) is proved.

28. The Committee also found on the documentation that from 01 January 2018 to 17 September 2019, Mr Bell held rights, which in effect put him in the position of a principal, namely 100% of shares, in Vivian Bell and Associates Limited (UK), which carried out public practice. It noted the “*Persons with Significant Control*” document referred to Mr Bell holding “75% of more” of the shares but determined that this was not inconsistent with him owning 100% of the firm at the material times, as indicated by other Companies House documentation. As it was satisfied that Mr Bell did not hold a valid practising certificate, this meant he was in breach of Paragraph 3(2)(b) of the Global Practice Regulations (as applicable in 2018 and 2019). Accordingly, Allegation 1 (b) is proved.
29. The Committee noted that there was no documentation before it to indicate that Mr Bell did notify ACCA and that he stated in May 2019 that he needed to regularize the matter. The Committee found on the documentation that from 31 July 2017 to 14 November 2019, Mr Bell did not notify ACCA that he had complied with the local legislative and/or regulatory requirements of Sierra Leone and that he was eligible to carry on public practice requiring he be placed on ACCA’s register of practitioners, in breach of the duty set out in Paragraph 3(1)(d) of the Global Practice Regulations (as applicable in 2018 and 2019). It was satisfied that this amounted to a failure to comply with the duty and that accordingly Allegation 1 c is proved.

Allegation 2

30. The Committee was satisfied that under paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, there was an obligation on Mr Bell to cooperate fully with ACCA in the investigation of any complaint. It was satisfied that Mr Bell made no response to ACCA's correspondence requesting his cooperation on 01 July 2019, 16 July 2019, 07 August 2019 and 27 August 2019. It was further satisfied that these non-responses amounted to failures as Mr Bell had a duty to respond and that, therefore, he breached the obligation under the Regulations and that Allegation 2 was proved.

Misconduct

31. The Committee had regard to the definition of misconduct in byelaw 8(c) and the assistance provided by the case law on misconduct. It considered whether the breaches and failures amounted to misconduct individually and globally.
32. The Committee was satisfied that Mr Bell's breaches of Global Practising Regulations were serious as it prevented ACCA intervening to ensure an appropriate quality of service was being provided to the public. Holding out to offer such services beyond any authorisation presents a risk to the public. It was satisfied that such breaches brought discredit on him, the Association and the accountancy profession. For these reasons, the Committee was satisfied that Mr Bell's breaches were sufficiently serious to amount to misconduct.
33. The Committee was satisfied that Mr Bell's duty to cooperate with his regulator is an important one, both to enable the regulator to properly and fairly discharge its regulatory function and to uphold public confidence in the regulatory system. It was satisfied that Mr Bell's actions brought discredit on him, the Association and the accountancy profession. For these reasons, the Committee was satisfied that Mr Bell's failure to cooperate was sufficiently serious to amount to misconduct.
34. Given that the conduct amounted to misconduct the Committee did not need to consider the alternative of liability to disciplinary action.

SANCTIONS AND REASONS

35. The Committee noted its powers on sanction were those set out in Regulation 13(1). It had regard to ACCA's Guidance for Disciplinary Sanctions 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.
36. The Committee considered that both aspects of the conduct here were serious. Failing to comply with the public practice requirements can present a real risk to the public and undermine the reputation of the profession. In relation to the duty to engage, the Committee was mindful of the observations of Sir Brian Levenson in *Adeogba v General Medical Council [2016] EWCA Civ 162*:

“there is a burden on...all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession.”

The Committee had regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. Not engaging with your professional body can frustrate the regulator's central duty to regulate the profession and so undermines its reputation and public confidence in it.

37. The mitigating factors the Committee identified were:
- Mr Bell had no previous disciplinary record;
 - There was a partial admission.
38. The aggravating factors the Committee identified were:
- The failures were over a prolonged period;
 - There is a continuing risk to the public;
 - There was a deliberate disregard of his obligations;

- There was no evidence that Mr Bell had any insight into the significance of his failings or its impact on public confidence in the regulator and the profession;
 - There was no engagement after May 2019 and no evidence of any remediation.
39. Given the Committee's view of the seriousness of his conduct and its detrimental effect upon the reputation of the profession, and the absence of insight, apology, rehabilitative steps and co-operation, it was satisfied that the sanctions of No Further Action, Admonishment, Reprimand and Severe Reprimand and a Fine were insufficient to highlight to the profession and the public the gravity of the proven misconduct or to protect the public.
40. The Committee determined that Mr Bell's behaviour was fundamentally incompatible with him remaining a member of ACCA. The conduct was a serious departure from professional standards and it was repeated. The Committee was satisfied that the only appropriate and proportionate sanction was exclusion from membership. The Committee did not consider that it was necessary to combine this with an order that Mr Bell may not apply for readmission for a further period beyond the minimum period.

COSTS AND REASONS

41. ACCA claimed costs of £6,903.00 and supplied a detailed and simple breakdown of its costs. Mr Bell has not provided any statement of his means. The Committee decided that it was appropriate to award costs in this case, as it was properly brought, and was persuaded that the costs claimed by ACCA were justified. The Committee had no evidence of Mr Bell's means. It discounted a proportion of the sum claimed, as the Case Presenter was not engaged for the full period claimed in the schedule since the case concluded earlier than anticipated. It was satisfied, in these circumstances, that the sum of £6,500 was appropriate and proportionate. Accordingly, it ordered that Mr Bell pay ACCA's costs in the amount of £6,500.

EFFECTIVE DATE OF ORDER

42. The Committee received an application from Mr Law for an immediate order under Regulation 20(1)(b). It accepted the advice of the Legal Adviser. The Committee was satisfied that, in the interests of the public, its order should have immediate effect, given the potential continuing risk to the public.

Mr James Kellock
Chair
22 October 2020