

## **DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS**

### **REASONS FOR DECISION**

<b>In the matter of:</b>	<b>Mr Alexander James Anderson</b>
<b>Heard on:</b>	<b>Tuesday, 16 February 2021</b>
<b>Location:</b>	<b>Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU</b>
<b>Committee:</b>	<b>Mr Michael Cann (Chair) Ms Wanda Rossiter (Accountant) Mr Damian Kearney (Lay)</b>
<b>Legal Adviser:</b>	<b>Mr David Marshall</b>
<b>Persons present and capacity:</b>	<b>Mr Benjamin Jowett (ACCA Case Presenter) Mr Jonathan Lionel (Hearings Officer)</b>
<b>Observers:</b>	<b>One member of the public attended</b>
<b>Summary:</b>	<b>Excluded from membership with immediate effect</b>
<b>Costs:</b>	<b>£8,223</b>

1. The Committee heard an allegation of misconduct against Mr Anderson. Mr Jowett appeared for ACCA. Mr Anderson was not present and not represented. The Committee had a bundle of documents containing 172 pages, a service bundle containing 14 pages and a bundle of additional documents containing 3 pages.

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## **SERVICE OF PAPERS**

2. The Committee was satisfied that Mr Anderson had been served with the documents required by Regulation 10(7) of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 in accordance with Regulation 22. The required documents were contained in the papers before the Committee. There was evidence that they were sent by email on 19 January 2021 to an email address notified by Mr Anderson to ACCA as an address for all correspondence. That was 28 days ago.

## **PROCEEDING IN ABSENCE**

3. Mr Anderson was legally represented. He and his legal adviser had informed ACCA on several occasions that neither of them would be attending the hearing today. This was confirmed most recently on 20 January 2021. Mr Anderson had also completed a Case Management form on 18 May 2020 in which he formally consented to the Committee proceeding with the case in his absence. It was in the public interest to hear the case without unnecessary delay and in these circumstances, the Committee was satisfied that no injustice would be caused to Mr Anderson by proceeding in his absence. It determined to do so.

## **ALLEGATION(S)/BRIEF BACKGROUND**

4. Mr Anderson has been a member of ACCA since 05 November 1992 and a fellow of ACCA since 05 November 1997. From 07 July 2008 to 08 November 2017, he was employed by Company A in an accounting role, reporting to Director A and responsible for producing management accounts. At the time when his employment ceased, the directors of Company A formed the view that Mr Anderson had been preparing deliberately inaccurate accounting documents over a long period. Director A made a formal complaint to ACCA which led to this hearing.
5. Mr Anderson faced the following Allegations:

## **Schedule of Allegations**

### *Allegation 1*

(a) *On an unspecified date in 2017, between 01 January 2017 and 10 July 2017, Mr Anderson:*

- i. Falsified a bank statement/account summary in the name of Company A for the year ended 31 December 2016;*
- ii. Included or caused or permitted to be included that bank statement/account summary in documents which were made available to the auditors of Company A in connection with the audit of Company A accounts for the year ended 31 December 2016*

(b) *Mr Anderson's conduct was:*

- i. Dishonest, in that he knew that he had falsified the 31 December 2016 bank statement/account summary in the name of Company A;*
- ii. Dishonest, in that he knew at the time he included (or caused or permitted to be included) the 31 December 2016 bank statement/account summary in documents which were made available to Company A's auditors that it was false/misleading;*
- iii. In the alternative, contrary to the Fundamental Principle of Integrity (as applicable in 2017).*

(c) *By reason of his conduct Mr Anderson is:*

- i. Guilty of misconduct pursuant to byelaw 8(a)(i) in respect of any or all of the matters set out at 1(a) to 1(b) above.*

### *Allegation 2*

(a) *On unspecified dates in 2016 and 2017, between 01 January 2016 and 10 July 2017, Mr Anderson:*

- i. Prepared misleading management accounts for Company A by overstating the stock values and understating creditors by approximately £1,484,000 thereby resulting in the profits and balance sheet being overstated;*
- ii. Included or caused or permitted to be included the misleading management accounts in documents which were made available to the auditors of Company A in connection with the audit of Company A accounts for the year ended 31 December 2016.*

(b) *Mr Anderson's conduct was:*

- i. Dishonest, in that Mr Anderson knew that he was preparing misleading management accounts for Company A for the year ended 31 December 2016;*
- ii. Dishonest, in that he knew at the time he included (or caused or permitted to be included) the misleading management accounts in documents made available to Company A's auditors that they were misleading;*
- iii. In the alternative, contrary to the Fundamental Principle of Integrity (as applicable in 2016 and 2017); or in the further alternative*
- iv. Contrary to the Fundamental Principle of Professional Competence and Due Care (as applicable in 2016 and 2017) in relation to 2(a).*

(c) *By reason of his conduct Mr Anderson is:*

- i. Guilty of misconduct pursuant to byelaw 8(a)(i) in respect of any or all of the matters set out at Allegation 2(a) above;*

- ii. *Liabile to disciplinary action pursuant to byelaw 8(a)(iii) in respect of 2(b)(iv) only.*

## **DECISION ON FACTS/ALLEGATION(S) AND REASONS**

6. The Committee did not hear any oral evidence, but the documents included witness statements from Director A and from an investigator employed by the Company. Mr Anderson did not ask for these witnesses to be produced for cross-examination. Mr Anderson made a number of comments in writing on the allegations. His overall position was summarised by his representative in a letter dated 15 January 2021 like this:

*Mr Anderson accepts the narrative of events but does not consider that they necessarily amount to professional misconduct. ...*

*... we are not insisting on the attendance of the witnesses although we believe that their evidence should be treated with caution ...*

7. Mr Anderson's precise status within Company A was not clear to the Committee. He was described by Director A as the Company Accountant. However, the duties described seemed to be those of a management accountant. Director A is also a qualified accountant.
8. The allegations in this case centred on a document which can be referred to as *'the bank account summary'*. It was headed *'Funds transactions'* for the period 30 December 2016 to 31 December 2016 and purported to show a negative balance as at 31 December 2016 of £3,717,833.32. The Committee was told that this related to the company's bank account. Director A produced what he said was a true bank statement showing a negative closing balance on 31 December 2016 of £4,717,833.32: exactly one million pounds more overdrawn. He said that the document headed *'Funds Transactions'* had been accepted by the auditors performing the audit for the year 2016 as a result of which the accounts of Company A were seriously misstated. The Company appointed new auditors for the following year who produced restated figures for 2016.

9. Mr Anderson accepted in his submissions to ACCA that he had prepared the bank account summary. He said:

*The document in question is a download from the online portal of the Invoice discounting facility with Lloyds Bank, this document has been amended to balance with the bank reconciliation.*

10. And later:

*I amended the pdf document from the online invoice discounting platform ... so that it agreed with the bank reconciliation which supported the balance in the Trial Balance.*

...

*I produced amended Management accounts initially to achieve targets that I felt under extreme pressure to achieve, initially I thought the adjustments could be reversed over a short period, but as time passed the variances became bigger and the value of the adjustments grew ever larger.*

11. In the Case Management form, he stated:

*I admit to preparing the Management accounts which did not reflect the accurate position.*

12. The investigator appointed by Company A reported that Mr Anderson made a number of admissions to him when questioned. The Committee approached this evidence with caution since Mr Anderson said that he was not given prior notice that he would be interviewed. Mr Anderson had not signed them to vouch for their accuracy and he submitted that they should not be relied on. However, the reported admissions were broadly consistent with what Mr Anderson told ACCA directly. He is said to have admitted that:

*... the manipulation of the accounts began in 2009 when he had under accrued an over rider and felt that he had to manipulate the figures to hide this error or fear losing his job.*

*[Mr Anderson] advised that the reason he had falsified the management accounts was through fear. He stated that there was a blame culture in the organisation, and he felt that his job would have been terminated if he brought this issue to light.*

*Once he had started manipulating the accounts he continued to do so and the whole situation spiralled out of control.*

*He initially anticipated that he would be able to rectify his accounting error within a few months with good financial results*

*He did not feel it was possible to approach the Directors regarding this Issue.*

13. The Committee did not consider that there were significant differences between the evidence of these sources, and it did not find it necessary to reject any evidence.
14. The Committee then considered each allegation in turn.
15. Allegation 1(a)(i) was proved by the evidence of ACCA's witnesses and admitted by Mr Anderson. **The Committee found Allegation 1(a)(i) proved.**
16. Allegation 1(a)(ii) was proved by the fact that the figures were used by the auditors and Mr Anderson also admitted that the auditors would have had access to the document. **The Committee found Allegation 1(a)(ii) proved.**
17. With regard to Allegation 1(b)(i) and (ii), the Committee had no doubt that Mr Anderson's actions should be regarded as dishonest. He was employed to prepare management accounts showing, as best he could, the true financial position of the company, both for the benefit of the directors and to assist the auditors. He deliberately chose to falsify the figures on a large scale. He knowingly included those false figures with the documents that the auditors would inspect. His intention seems to have been to cover up an historic mistake – whether his or someone else's is not clear – rather than to defraud his employer. That does not alter the dishonesty of his actions. **The Committee**

**found Allegations 1(b)(i) and (ii) proved.** As 1(b)(iii) was in the alternative, it falls away.

18. With regard to Allegation 1(c)(i), Mr Anderson's actions in dishonestly falsifying accounts he was employed to produce struck at the core of his duty as a professional accountant. The Committee had no doubt that he was guilty of misconduct. No other conclusion is possible. **The Committee found Allegation 1(c)(i) proved.**
19. Allegation 2(a) was proved by the evidence of ACCA's witnesses and admitted by Mr Anderson. He both produced the false accounts and included them among the records that would be provided to the auditors. **The Committee found Allegations 2(a)(i) and (ii) proved.**
20. For the same reasons as in relation to Allegation 1(b)(i) and (ii), the Committee found that Mr Anderson's actions were dishonest. **The Committee found Allegations 2(b)(i) and (ii) proved.** As 2(b)(iii) and (iv) were in the alternative, they fall away.
21. For the same reasons as in relation to Allegation 1(c)(i), the Committee found that Mr Anderson's actions amounted to misconduct. **The Committee found Allegation 2(c)(i) proved.** Allegation 2(c)(ii) falls away.

## **SANCTIONS AND REASONS**

22. Having found misconduct, the Committee went on to consider what sanction, if any, to impose. The Committee took into account ACCA's Guidance for Disciplinary Sanctions.
23. The Committee first considered whether there were any mitigating or aggravating factors.
24. Mitigating factors included the fact that Mr Anderson had been a member of ACCA for nearly 30 years with no previous findings against him. His dishonesty was not motivated by direct financial gain, although it may have been motivated



by a desire to retain his job. He was reasonably cooperative with ACCA's investigation and made some admissions, although he maintained that his actions did not amount to professional misconduct.

25. Findings of dishonesty are always very serious, but were aggravated in this case by the following factors:

- There was a breach of trust;
- With such a substantial misstatement of the company's finances, it was likely that some harm was done to his employer;
- The dishonesty went on for a long time;
- Mr Anderson had displayed very little insight or remorse. He did not accept that he was dishonest, or even that he had committed professional misconduct.

26. In view of the findings of dishonesty, the Committee was quite satisfied that a sanction was required. It went through the available sanctions in order of seriousness.

27. It was clear from the guidance that the sanctions of admonishment and reprimand were not sufficient to mark the seriousness of the misconduct in this case. The guidance for reprimand says that the '*sanction would usually be applied in situations where the conduct is of a minor nature*'. The factors listed were not present. The misconduct was in deliberate disregard of professional obligations and continued for a substantial time.

28. The Committee next considered the sanction of severe reprimand, possibly combined with a fine. The Guidance says that '*This sanction would usually be applied in situations where the conduct is of a serious nature but there are particular circumstances of the case or mitigation advanced which satisfy the Committee that there is no continuing risk to the public*'. Apart from his previous good record, none of the factors mentioned in the guidance were present. The

misconduct was intentional and continued until discovered. It may well have caused direct harm. It was not an isolated incident. No references were submitted.

29. Furthermore, the Committee did not consider that this sanction, even if combined with a fine, would be sufficient to mark the seriousness of the sustained dishonesty in this case or to ensure that the public would be protected in future. The Committee considered that Mr Anderson's dishonest abuse of his position of trust, and his disregard of the system of regulation, were fundamentally incompatible with being a member of ACCA. The Committee therefore concluded that the minimum sanction it could impose was exclusion from membership.

#### **COSTS AND REASONS**

30. Mr Jowett applied for costs of £8,233. Mr Anderson had not opposed costs in principle.
31. The Committee was satisfied that, in principle, ACCA was entitled to an order for costs. These proceedings were properly brought. The Committee considered that the sum claimed was reasonable.
32. In May 2020, Mr Anderson stated that he was unemployed but beyond that did not provide any information about his means. The Committee, therefore, had no basis for reducing the amount of costs he should be ordered to contribute.

#### **EFFECTIVE DATE OF ORDER**

33. The Committee considered whether it should exercise its power to direct that the order for exclusion should have immediate effect. Such a power can only be exercised in the interests of the public. In this case, Mr Anderson had been found to be dishonest over a prolonged period while registered with ACCA. The Committee had concluded that his actions were incompatible with continued registration. There was a risk to the public. The Committee determined that it

was necessary for the order to have immediate effect.

**ORDER**

34. The Committee ordered as follows:

- (a) Alexander James Anderson be excluded from membership of ACCA;
- (b) Mr Anderson shall make a contribution to ACCA's costs of £8,233;
- (c) This order shall have immediate effect.

**Mr Michael Cann**  
**Chair**  
**16 February 2021**

**Anonymisation schedule**

Company A	Thistle Seafoods Limited
Director A	Mr Ryan Scatterty
Investigator A	Mr Sean McAuley
Company B	A2+B LLP
Auditor A	Johnston Carmichael LLP