

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Peter McDonnell
Heard on:	Thursday, 29 July 2021
Location:	Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU using Microsoft Teams
Committee:	Mr Andrew Popat CBE (Chair) Mr Trevor Faulkner (Accountant) Ms Catherine Brown (Lay)
Legal Adviser:	Mr Robin Havard
Persons present and capacity:	Ms Michelle Terry (ACCA Case Presenter) Mr Jonathan Lionel (Hearings Officer) Mr Peter McDonnell (Member)
Observers:	None
Summary	Exclusion from membership
Costs:	£6,753.50

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PRELIMINARY APPLICATIONS

APPLICATION BY ACCA FOR AN AMENDMENT TO ALLEGATION 1

1. Ms Terry requested the deletion of the word, "*company*" from the third line of Allegation 1. The word had been included in error. Mr McDonnell did not resist the application and it was granted by the Committee.

ALLEGATIONS as amended

1. Mr Peter McDonnell, a Fellow of the Association of Chartered Certified Accountants (ACCA), signed documents titled 'Auditors' Report' on behalf of Firm B which stated that the financial statements of Client A had been audited when they had not, on:
 - a. 13 March 2012; and/or
 - b. 07 March 2013; and/or
 - c. 05 March 2014; and/or
 - d. 04 March 2015.
2. Mr McDonnell's conduct in respect of any or all of Allegation 1 was:
 - a. Dishonest in that when he signed the reports on behalf of Firm B, he knew an audit of the financial statements had not been carried out; or in the alternative
 - b. Contrary to the fundamental principle of integrity, in that such conduct demonstrates a failure to be straightforward and honest (applicable 2012 -2015); and
 - c. Contrary to S130 of the Code of Ethics and Conduct (professional competence and due care applicable 2012 and 2015).

3. Mr McDonnell, as the responsible individual of Firm B, between 2012 and 2015 (dates as at Allegation 1) did not ensure that an engagement letter was signed by Client A in accordance with paragraph 5 of sB9 of the ACCA's Rulebook (applicable 2012-2015).
4. By virtue of any or all of his conduct set out in Allegations 1 and/or 2 and/or 3, Mr McDonnell is:
 - a. Guilty of misconduct pursuant to byelaw 8(a)(i); and/or
 - b. Liable to disciplinary action pursuant to byelaw 8(a)(iii) in respect of Allegations 2(c) and/or 3.

BRIEF BACKGROUND

2. The Committee had considered the following documents: a hearing bundle (pages 1 to 190), and a service bundle (pages 1 to 15).
3. Mr McDonnell has been a member of ACCA since 21 November 1985 and a Fellow since 21 November 1990. He is currently the sole proprietor of Peter McDonnell & Co. At the time of the conduct referred to in the Schedule of allegations, Mr McDonnell was a partner of Firm B, a member firm of Chartered Accountants Ireland.
4. Mr McDonnell holds a Practising Certificate and Audit Qualification - Ireland with ACCA and Peter McDonnell & Co holds a Firm's Auditing Certificate – Ireland with ACCA.
5. On 10 January 2020, ACCA received a referral from Chartered Accountants Ireland (CAI) about Mr McDonnell which, following an investigation, has led to these proceedings.

DECISION ON FACTS, ALLEGATIONS AND REASONS

Allegations 1(a)-(d)

6. Mr McDonnell admitted the facts of Allegation 1 and the Committee found them proved.
7. Mr McDonnell was the partner at Firm B who was responsible for the 'Auditors Reports' issued in the firm's name in respect of financial statements of a client, Client A.
8. On 13 March 2012, Mr McDonnell signed an, "Auditors' Report on the Accounts of Client A" for the year ending 31 December 2011 which stated:

"In accordance with your instructions, we have audited the financial statements...from the accounting records of the company and on the basis of information and explanations given by you."

9. On 07 March 2013, 05 March 2014 and 04 March 2015, Mr McDonnell signed the Auditors' Reports on the Accounts of Client A for the years ending 31 December 2012, 31 December 2013 and 31 December 2014 respectively. In each Report, the same declaration was given as in the Report for the year ending 31 December 2011.
10. In an email to ACCA dated 13 May 2020, Mr McDonnell confirmed that he had signed documents entitled 'Auditors' Report' on behalf of Firm B which stated that the financial statements of Client A had been audited when they had not for the years ending 2011 to 2014 inclusive.

Allegation 2(a)

11. Mr McDonnell denied that, in signing documents entitled "Auditors' Report" on behalf of Firm B in respect of financial statements relating to Client A in the years 2012 to 2015, he did so dishonestly.

ACCA's CASE

12. ACCA accepted that it had no evidence that Client A was required by law to have its financial statements audited by a Registered Auditor in accordance with International Standards on Auditing or examined in any other way (for example, an independent examination to confirm the figures in the accounts agreed with the underlying accounting records).
13. ACCA also accepted it was not able to establish what work Firm B was appointed by Client A to perform as there was no engagement letter and that the financial statements were not publicly available.
14. Nonetheless, ACCA maintained that Mr McDonnell, an accountant and auditor of many years' experience, allowed documents described as, 'Auditors Reports' to be issued by Firm B which stated that the firm had audited financial statements of Client A for four consecutive years. This was despite the fact that the firm had only prepared the financial statements from Client A's accounting records and had carried out no audit work.
15. ACCA acknowledged that the 'Auditors Reports' were clearly not statutory audit reports and Firm B had not expressed an opinion about whether the financial statements gave a true and fair view of Client A's state of affairs and results (as would be the case in a statutory audit).
16. However, ACCA alleged that the issue by Mr McDonnell, on behalf of Firm B, of 'Auditors Reports' stating that Firm B had audited the financial statements, when it had not, was misleading and untrue. Indeed, it had been admitted by Mr McDonnell in the course of his evidence that the reports that he signed were false.
17. ACCA maintained that the use of the term 'Auditors Reports' and statements that the firm had 'audited the financial statements' indicated to readers of those documents that the firm did more than simply prepare the financial statements, when this was not the case. ACCA alleged that it was not relevant that an audit

may not have been required or whether or not any work which had been undertaken was accurate.

18. ACCA referred the Committee to the document provided by the accountants who had previously acted for Client A which was entitled "Accountants' Report on the Unaudited Accounts to Client A."
19. Miss Terry also stated that, although Mr McDonnell said that the issue of 'Auditors' Reports' was an error and Firm B did not consider that it was engaged to perform audits, his letter to Client A of 06 January 2016 gave the impression, at the least, that Firm B had been retained by Client A as its auditor.
20. It was also difficult to understand how such an error could go unnoticed in four consecutive years of financial statements when the document on each occasion was the same, was headed "Auditors Report" and made the positive statement, *"In accordance with your instructions, we have audited the financial statements"*
21. On this basis, ACCA invited the Committee to conclude that Mr McDonnell had acted dishonestly.

Mr McDonnell's case

22. Mr McDonnell stated that Firm B took on the work of Client A in 2003.
23. Mr McDonnell confirmed that the scope of work to be undertaken by Firm B in respect of Client A was agreed verbally and no engagement letter was sent to Client A for agreement, signature and return for any of the accounting years when Firm B acted for Client A.
24. Mr McDonnell accepted that the financial statements for Client A did have documents attached to them which were described as Auditors' Reports. However, this was an error as a result of the dataset not being cross-referenced.

25. The Auditors' Reports in the financial statements did not include any opinion expressed by Firm B on the financial statements of Client A. Therefore, Mr McDonnell maintained that what were mistakenly described as Auditors' Reports were not, in fact, Auditors' Reports. In support of that submission, Mr McDonnell stated that they did not include: a title indicating that it was the report of an independent auditor; an address to the members of the relevant body; an opinion, and any work justifying any such opinion in relation to the financial framework for the preparation of the accounts.
26. Firm B did prepare the financial statements of Client A based on Client A's accounting records and information and explanations provided by the officers of Client A.
27. Mr McDonnell maintained that the role of an auditor was to make a judgement as to whether the financial report taken as a whole presented a true and fair view of the financial results and position of the organisation and its cash flows, was in compliance with financial reporting standards and, if applicable, reporting guidelines.
28. Based on the risks and controls identified, auditors consider what Client A's management had done to ensure the financial report was accurate and an auditor would have to examine supporting evidence. Finally, auditors prepare an audit report setting out their opinion for the organisation's shareholders or members.
29. In contrast to the expectation when conducting an audit, Firm B did not express any opinion whether the financial statements of Client A for the financial years 2011 to 2014 gave a true and fair view of the assets, liabilities and financial position of Client A and the income, expenditure and surplus or deficit of Client A. At no stage was Firm B ever asked by Client A to do so.

30. The fact that Firm B did not do so was supported by the covering letters from Firm B to Client A enclosing the financial statements each year; those letters did not refer to an audit being carried out by Firm B on Client A.
31. Finally, every invoice issued by Firm B to Client A described the service provided by Firm B as "*Preparation of accounts for the year ended...*". Firm B did not carry out an audit of Client A and did not charge a fee for the carrying out of an audit which was clear from the invoices.
32. Mr McDonnell accepted the deficiencies in the work carried out by Firm B. He stated they arose as a result of Firm B not being of the opinion that it was carrying out an audit. As Firm B did not consider that audits were being carried out, it should not have signed and issued the documents described as audit reports on the financial statements in the years ending 2011 to 2014. As Firm B did not carry out audits, it did not ensure that the proper audit quality control procedures were carried out. Mr McDonnell was the partner in charge of the assignment and was responsible for the way that the job was completed. Correspondence dictated by him was reviewed by the managing partner prior to despatch and the issues were not picked up at that stage either.
33. In his oral evidence, Mr McDonnell confirmed that Firm B at no stage attended Client A's AGM and there had been no concerns expressed by Client A with regard to the scope of work Firm B had carried out on its behalf.
34. Mr McDonnell accepted that he had been careless in signing the forms in 2012 to 2015. He said there was sometimes some confusion with regard to the various reports that were produced and that he did not read the documents that he was signing on four separate occasions. He just, "*signed on the dotted line.*"
35. With regard to the letter sent on 17 January 2016, Mr McDonnell confirmed that he would not have had any contact with Client A since June 2015. He just did not know how the wording on the four declarations he had signed had come into existence but that it was generated by an accounts package and may have

been created by someone else, but he had not looked into it because ultimate responsibility lay with him.

COMMITTEE'S DECISION IN RESPECT OF ALLEGATION 2 (a)

36. The Committee had considered carefully the wording of the allegation and listened to the advice from the Legal Adviser with regard to the test for dishonesty. It was necessary for the Committee to determine whether, when he signed the reports on behalf of Firm B and which formed the substance of Allegation 1, Mr McDonnell knew an audit of the financial statements had not been carried out by Firm B.
37. The Committee had taken fully into account the evidence provided by Mr McDonnell. It acknowledged that, on the evidence, no audit work was undertaken. There was no indication that an audit was required. Mr McDonnell, and thereby Firm B, had not expressed an opinion whether the financial statements represented a true and fair view of the financial status of Client A.
38. However, the Committee had taken account of the fact that Mr McDonnell was an accountant and auditor of very considerable experience. He had become a member of ACCA some 35 years ago and a Fellow approximately 30 years ago. He had accepted that the documents he had signed every March for a period of four years were false. He knew that no audit work had been undertaken.
39. The Committee simply did not find it plausible that, on four separate occasions, over a period of four years, Mr McDonnell signed an identical document and that it was simply a mistake and as a result of carelessness. Each document referred very clearly in the heading and in the body of the document to the fact that it related to audit work having been undertaken and Mr McDonnell signed it on behalf of Firm B as registered auditors and accountants.
40. Even though no opinion was expressed, Mr McDonnell would know that to sign such a document described as an Auditors' Report infers a detailed check of

the underlying financial information. Consequently, the Committee did not find the explanation provided by Mr McDonnell to be credible.

41. The Committee found, on the balance of probabilities, that, when he signed the Auditors' Reports on behalf of Firm B in the years 2012 to 2015, Mr McDonnell knew that an audit of the financial statements of Client A had not been carried out.
42. The Committee was satisfied that, by the standards of ordinary decent people, such conduct was dishonest.
43. On this basis, the Committee found Allegation 2 (a) proved.

Allegation 2 (b)

44. Even though Mr McDonnell had admitted this allegation, it was pleaded in the alternative to Allegation 2(a). The Committee, therefore, made no finding in respect of it.

Allegation 2(c)

45. Mr McDonnell had admitted this allegation but, taking account of the finding in respect of Allegation 2(a), the Committee made no finding in respect of it.

Allegation 3

46. Mr McDonnell had admitted the facts of this allegation and the Committee found it proved.
47. As stated, Mr McDonnell confirmed that there was no letter of engagement between Firm B and Client A despite Firm B acting for Client A for many years. It was stated by Mr McDonnell that the nature and scope of the work undertaken was agreed verbally.

Allegation 4(a)

48. Taking account of its findings in respect of Allegation 1, 2(a) and 3, and that Mr McDonnell had acted dishonestly, the Committee was satisfied that he was guilty of misconduct. In the Committee's judgement, it brought discredit to Mr McDonnell, the Association and the accountancy profession. Honesty is at the heart of the profession. The Committee also considered that the lack of an engagement letter, signed by Client A, which had existed over a number of years, amounted to misconduct. The relationship between Firm B and Client A, the scope of work, and the basis of remuneration, had never been properly formalised despite Firm B acting for Client A from 2003 to 2015.
49. On this basis, the Committee found Allegation 4(a) proved.

Allegation 4(b)

50. As this allegation was pleaded in the alternative to Allegation 4(a), the Committee made no finding in respect of it.

SANCTION AND REASONS

51. The Committee considered what sanction, if any, to impose taking into account all it had read in the bundle of documents, ACCA's Guidance for Disciplinary Sanctions, and the principle of proportionality. It had also listened to legal advice from the Legal Adviser which it accepted.
52. The Committee considered the available sanctions in increasing order of severity having decided that it was not appropriate to conclude the case with no order.
53. The Committee was mindful of the fact that its role was not to be punitive and that the purpose of any sanction was to protect members of the public, maintain public confidence in the profession and in ACCA, and to declare and uphold proper standards of conduct and performance.

54. The Committee considered whether any mitigating or aggravating factors featured in this case and considered the factors at section B8 of the Guidance.
55. In mitigation, Mr McDonnell stated that no one had suffered loss as a result of his conduct, and there was no evidence that Firm B had derived a gain. Since he had set up a firm in his own name as a sole practitioner in 2016, he had been subjected to a monitoring visit by ACCA in 2018 which he had passed with flying colours. Although Mr McDonnell had not produced any documentation to support his submission, the Committee accepted what he had to say. He stated that he would not have passed the monitoring visit, particularly with regard to audit work, which made up approximately 25-30% of his practice, unless letters of engagement had been sent to clients.
56. He confirmed that he had certainly learned from this process and had always made sure that he had kept up to date with his continuing professional development.
57. As for aggravating features, the Committee had been provided with details of a previous finding against Mr McDonnell and noticed that it related to a similar allegation to Allegation 3, namely a failure to provide a letter of engagement to clients. A Consent Orders Committee imposed a reprimand. The Committee noted that this sanction was imposed on 22 February 2021 although it was not clear from the terms of the order when the failure had taken place.
58. The Committee had found Mr McDonnell to be dishonest and that such conduct had extended, and been repeated, over a period of years; therefore, it could not be described as an isolated incident. The Committee was also not convinced that Mr McDonnell had shown an appropriate level of insight into the seriousness of his conduct.
59. The Committee was satisfied that his behaviour would undermine the reputation of ACCA and the profession.

60. The Committee concluded that neither an admonishment nor a reprimand would adequately reflect the seriousness of the Committee's findings.
61. The Committee then considered whether a severe reprimand would be an appropriate sanction. Again, taking account of the seriousness of its findings, the Committee did not consider that a severe reprimand would be sufficient or proportionate.
62. Mr McDonnell had been found to have acted dishonestly in his conduct and that, based on its findings, it was conduct which was fundamentally incompatible with being a member of ACCA.
63. Taking account of the finding of dishonest conduct, the Committee had considered whether there were any reasons that were so exceptional or remarkable that it would not be necessary to exclude Mr McDonnell from the register but could find none.
64. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Mr McDonnell shall be excluded from membership.

COSTS AND REASONS

65. The Committee had been provided with two documents relating to ACCA's claim for costs.
66. The Committee concluded that ACCA was entitled to be awarded costs against Mr McDonnell. All allegations, including dishonesty, had been found proved. The amount of costs for which ACCA applied was £6,753.50. Having examined the breakdown, the Committee did not consider that the claim was unreasonable, and the Case Presenter and Hearings Officer had been engaged effectively for a full day.

67. Mr McDonnell had not provided ACCA with any details of his means in advance of the hearing. In the correspondence sent to him prior to the hearing, Mr McDonnell would have been warned of the importance of providing details of his means. At the conclusion of the hearing when costs were being discussed, Mr McDonnell was asked if he wished to provide details of his means, but he declined to do so.
68. On that basis, and taking account of all the circumstances, the Committee approached its assessment on the basis that Mr McDonnell was in a position to pay an award of costs made against him.
69. In exercising its discretion, the Committee considered that it was reasonable and proportionate to award costs to ACCA in the sum claimed, namely £6,753.50.

EFFECTIVE DATE OF ORDER

70. The Committee decided that this order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

Mr Andrew Popat CBE
Chair
29 July 2021