

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Guy Austin Wiltcher
Heard on:	Wednesday, 03 March 2021 (and Committee in private Thursday 04 March 2021)
Location:	Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU
Committee:	Mrs Helen Carter Shaw (Chair), Mr Edward Weiss (Accountant) and Mr Damian Kearney (Lay)
Legal Adviser:	Mr Alastair McFarlane
Persons present and capacity:	Mr Phillip Law (ACCA Case Presenter) Ms Anna Packowska (Hearings Officer) Ms Geraldine Murray (Hearings Officer) Mr Guy Antony Wiltcher (in person)
Outcome:	Reprimand
Costs:	£8094

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1. ACCA was represented by Mr Law. Mr Wiltcher attended but was unrepresented. The Committee had before it a bundle of papers, numbered pages 1-407, and a service bundle numbered pages 1-14

ALLEGATIONS

Mr Guy Austin Wiltcher, ACCA member and principal of Greystone LLC:

1. Between accepting the instructions on or about 17 July 2016 to prepare an expert report (the 'Report') for and on behalf of Appellant T, for proceedings before a First Tier Tribunal Tax Chamber (the 'FTTTC') and the completion of that Report, Mr Wiltcher did not:
 - a. Obtain full, clear and/or written instructions; and/or
 - b. Obtain a copy of the Respondent's expert report and/or clarify the details of the Respondent's case; and/or
 - c. Did not inform those instructing him that the instructions received were insufficient and/or unacceptable.
2. That on or about 22 July 2016 Mr Guy Austin Wiltcher produced the Report, which fell below the standards expected, in that the Report did not comply with one or more of the requirements expressed in the Civil Procedures Rules ('CPR') or its Practice Direction ('PD'), in that Mr Wiltcher:
 - a. Did not adequately set out his instructions, contrary to CPR Part 35.10(3);
 - b. Did not adequately set out the substance of all facts which were material to the opinion expressed in the Report, contrary to PD 35 3.2(2) and/or (3), in that he did not list the material and/or documents he had viewed in coming to his expert opinion;

- c. Did not provide the details of any literature or other material which had been relied on in making the Report, contrary to PD 35 3.2(3), in that he did not make specific reference to relevant and/or any provisions of UK Generally Accepted Accounting Practice, ('UKGAAP');
 - d. Did not, adequately or at all, provide the reasons for his opinion, contrary to PD 35 3.2(6).
- 3. On 27 March 2017 Mr Guy Austin Wiltcher gave expert evidence to the FTTTC which fell below the standards expected, in that he was unable, when questioned, to adequately identify and/or refer to documents he had used to form his opinions.
- 4. That his conduct in relation to Allegations 1, 2 and / or 3 above was contrary to the Fundamental Principle of Competence and Due Care as applicable in 2016 and 2017.
- 5. In light of any or all of the facts set out above, Mr Wiltcher is:
 - a. Guilty of misconduct pursuant to byelaw 8(a)(i); or in the alternative,
 - b. Liable to disciplinary action pursuant to byelaw 8(a)(iii)

PRELIMINARY APPLICATION

- 3. At the outset of the hearing Mr Law made an application under Regulation 9(6) and under Regulation 10(5) of the Complaints and Disciplinary Regulations ('the Regulations') to withdraw Allegations 1, 3 and 5(a) and to amend Allegation 4 to delete reference to Allegations 1 and 3.
- 4. Mr Law indicated that as a result of discussions with Mr Wiltcher and further documentation that Mr Wiltcher had shown to ACCA, he had instructions to seek to withdraw Allegations 1, 3 and 5(a). His submissions included the following. ACCA's primary position that Allegation 2 was the central mischief in

this case and, in the light of the documentation supplied by Mr Wiltcher this morning, ACCA submitted that there was no real prospect of proving Allegation 1. Further, given that the gravamen of the case was met in Allegation 2, Mr Law submitted that it was not in the public interest to proceed with Allegation 1. In respect of Allegation 3, while ACCA was cognisant of public interest concerns, Mr Law submitted that the essence of ACCA's case was the deficient report reflected in Allegation 2 and maintained that the public interest was adequately protected by this charge. Further, he submitted that, in the circumstances, Allegation 3 did not add to the gravamen of the case and that it was not, therefore, in the public interest for it to be pursued. He indicated that ACCA were content to proceed on the basis of admission to Allegation 2, and that ACCA accepted that Mr Wiltcher had made his report in good faith, albeit that it was a materially deficient one. In those circumstances, as this indicated a single incident of want of care, ACCA submitted that there was no real prospect of a reasonable Committee concluding that the failures set out in Allegation 2 would reach the threshold of misconduct, and therefore, ACCA sought to proceed on the basis of liability to disciplinary action alone.

5. Mr Wiltcher did not oppose ACCA's application.
6. The Committee accepted the advice of the Legal Adviser.
7. The Committee was mindful of the wider public interest, its duty to ensure that allegations were fully and appropriately ventilated and also of the public interest in allegations not proceeding where there was no reasonable prospect of success and/or to ensure that the allegations adequately reflected the mischief of the case. The Committee accepted the rationale and merit of ACCA's application and was satisfied, for the reasons advanced by Mr Law, that it was fair and in the interests of justice overall to grant the application for withdrawal and amendment as asked. Accordingly, the Committee approved ACCA withdrawing Allegations 1, 3 and 5 a) and directed the consequent amendment to Allegation 4 to delete references to Allegations 1 and 3.

ADMISSIONS

8. Mr Wiltcher admitted Allegation 2 in its entirety (Allegation 2 a), 2 b), 2 c), 2 d)), Allegation 4 as amended, and that this rendered him liable to disciplinary action as he admitted Allegation 5(b).
9. The Committee noted Mr Wiltcher's admissions to the Allegation and found those facts proved by virtue of his admissions under Complaints and Disciplinary Regulations 12(3).

BACKGROUND

10. Mr Wiltcher has been an ACCA member since October 1993 and a Fellow since October 1998.
11. The case concerns inadequacies with an expert report Mr Wiltcher produced as an expert witness, on instructions of a client, for use in proceedings before the First Tier Tribunal Tax Chamber in 2017. Mr Wiltcher's report was dated 22 July 2016, and it fell below the standards expected of an expert report in that it did not comply with the requirements of Part 35 of the Civil Procedure Rules ('CPR') or its Practice Direction ('PD').

ACCA SUBMISSIONS

12. Mr Law referred to the deficiencies in Mr Wiltcher's report as particularised in Allegation 2. He submitted that the formalities required by the CPR and its PD were designed to include making the process of expert evidence streamlined, reducing the need for oral evidence, ensuring that issues were identified early and allowing courts and tribunals to be able to identify and adjudicate upon matters of expert evidence. Mr Wiltcher was under an obligation to comply with the CPR.
13. Mr Law indicated that Mr Wiltcher's report failings were not the sole reasons for the problems encountered by the tribunal, as it had identified that there were problems with the opposing expert's report and that the tribunal itself could

have appointed a single expert. Nonetheless, ACCA submitted that had Mr Wiltcher's report been CPR compliant, it was likely that some of the difficulties experienced by the tribunal would have been avoided. He referred to the tribunal's opinion that the report fell short of the '*standard to be expected of expert evidence*'. Mr Law submitted that Mr Wiltcher's want of care posed a serious reputational risk to the profession and its regulator. The report was extremely short, it made no reference to Mr Wiltcher's instructions, and did not adequately set out the facts, which were material to his opinion, or list the material or literature that he had relied upon and did not adequately provide the reasons for his opinion. Mr Law submitted that compliance with the CPR and PD were important so that his decision-making process was transparent and that any opponent in litigation could know the expert's instructions and the documents he had relied upon, so that the opinion could be meaningfully challenged. Accordingly, ACCA submitted Mr Wiltcher failed to (i) justify his own opinion (ii) summarise the opposing position and (iii) explain why his opinion should be preferred.

14. Mr Law submitted (as Mr Wiltcher accepted) that Mr Wiltcher's failures amounted to a want of care by breaching the duty to act diligently in accordance with applicable professional standards when providing professional services under the Fundamental Principle of Competence and Due Care. Mr Law was clear that the case was not about whether or not Mr Wiltcher's opinion was correct and, therefore, there was no suggestion of a lack of competence.

MR WILTCHER'S SUBMISSIONS

15. Having made his admissions, Mr Wiltcher made submissions in mitigation. These included that he had made the report in good faith on the information he had, and that his report had been brief, as he was just dealing with a simple accounting issue and had prepared the report for lay people. In retrospect, he accepted he could have done more and complied with the CPR and PD. He indicated he had learned from this experience and referenced his long career and absence of any disciplinary record.

SANCTIONS AND REASONS

15. 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 (the "Guidance") 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.
16. The Committee noted the submissions of Mr Law and Mr Wiltcher.
17. The Committee had specific regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour and maintain of the reputation of the profession.
18. The Committee considered the following to be aggravating factors:
 - The impact on the reputation of the profession by a deficient expert report being presented before a tribunal;
 - Mr Wiltcher appeared to continue to believe that his approach to, and level of detail in, his report was justified.
19. The Committee considered the following to be mitigating factors:
 - Mr Wiltcher has no previous disciplinary findings and a long career with ACCA;
 - He has shown qualified understanding and partial insight into the seriousness of his failings and has learnt a salutary lesson;
 - He has fully engaged and co-operated with ACCA and the Committee;
 - The conduct was an isolated failing and there has been no repetition.

20. The Committee reminded itself that this was not a case where misconduct had been established, but that rather the route to sanction was through Mr Wiltcher being liable to disciplinary action.
21. Given the Committee's view of the seriousness of his want of care and the need to uphold the reputation of the profession, it was satisfied that it was not appropriate or sufficient to conclude this case with No Further Action.
22. The Committee gave full consideration to whether an Admonishment was a sufficient and proportionate sanction. While it noted that some of the factors listed in the Guidance for an Admonishment were present, it was not satisfied that an Admonishment, either on its own or in combination with a fine, was sufficient in all the circumstances. These included the fact that the tribunal had taken the unusual step of singling out and criticising Mr Wiltcher and his report in its written decision stating, among other things, *'Mr Wiltcher's opinion suffered from the very considerable defect that his expert report contained few, if indeed any, reasons or analysis.'*
23. The Committee next considered, therefore, the sanction of Reprimand. It considered that paragraph C3.1 of the Guidance was applicable in this case. It noted that a majority of the factors in favour of this sanction were present. Further, there has been no repetition of this behaviour and Mr Wiltcher had learned from the process. In all the circumstances, the Committee concluded that a Reprimand was a sufficient and proportionate sanction to mark the failings to Mr Wiltcher, and to the profession, and to uphold its reputation.

COSTS

24. ACCA submitted a cost schedule and Mr Wiltcher declined to submit a statement of means. ACCA claimed costs of £8,094 based on an assessment of what work this case had involved. The Committee noted that Mr Wiltcher accepted that this was a fair and reasonable amount for the work done, but submitted that as misconduct and some allegations had not been pursued, some further reduction should be made.

25. The Committee decided that it was appropriate to award costs. The Committee had regard to ACCA's Cost's Guidance and was satisfied that the amount sought by ACCA in the circumstances was reasonable and proportionate. It did not consider that a reduction was appropriate as the case had been reasonably prepared on all charges before developments today. Accordingly, it ordered that Mr Wiltcher pay ACCA's costs in the sum of £8,094.

EFFECTIVE DATE

26. The Committee noted that Mr Law did not seek an immediate order and it was satisfied that it was not necessary to exercise its power under Regulation 20 to make an immediate order in the interests of the public. Accordingly, the Committee's order will take effect from the expiry date of the appeal period or as described in the Appeal Regulations, if an appeal is made.

Mrs Helen Carter Shaw
Chair
03 and 04 March 2021