

## HEARING

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

#### REASONS FOR DECISION

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| <b>In the matter of:</b>                 | <b>Ms Louisa Eyinwa U Mbadugha</b>  |
| <b>Heard on:</b>                         | <b>Tuesday, 09 March 2021</b>   |
| <b>Location:</b>                         | <b>Remotely via ACCA Offices, The Adelphi, 1-11 John<br/>Adam Street, London WC2N 6AU</b>     |
| <b>Committee:</b>                        | <b>Mr Martin Winter (Chair)<br/>Mr Edward Weiss (Accountant)<br/>Ms Catherine Brown (Lay)</b> |
| <b>Legal Adviser:</b>                    | <b>Mrs Fiona Barnett (Legal Adviser)</b>  |
| <b>Persons present<br/>and capacity:</b> | <b>Mr Phillip Law (ACCA Case Presenter)<br/>Ms Nkechi Onwuachi (Hearings Officer)</b>         |
| <b>Observers:</b>                        | <b>None</b>   |
| <b>Summary</b>                           | <b>Exclusion from membership<br/>Allegation 1(a) and 1(b) found proved</b>                    |
| <b>Costs:</b>                            | <b>£6,037.00.</b>   |

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## **SERVICE OF PAPERS**

1. Ms Mbadugha did not attend the hearing and was not represented in her absence.
2. The Committee had before it a service bundle numbering pages 1 to 32.
3. The documents in the service bundle showed that notice of this hearing, dated 09 February 2021, was sent to Ms Mbadugha by email on that date to the email address held by ACCA in their register. The Committee was also provided with the delivery receipt.
4. The Committee was satisfied that service has been effected in accordance with Regulations 10 and 22 of the Complaints and Disciplinary Regulations 2014, amended 01 January 2020, (“CDR”).

## **PROCEEDING IN ABSENCE**

5. The Committee was aware that Ms Mbadugha made an application for an adjournment in writing in advance of the hearing. This was opposed by ACCA, considered by the Committee Chair on 02 March 2021, and refused.
6. In essence, Ms Mbadugha sought an adjournment to await the outcome of her application to the Criminal Cases Review Commission, (“CCRC”). It was submitted in her application that her conviction is unsafe and that the route for exoneration was not yet exhausted. Further, it was submitted that she is not currently practising as an accountant and is suspended by ACCA in any event.
7. Mr Law submitted that it was fair and appropriate to proceed in Ms Mbadugha’s absence. He said that Ms Mbadugha’s application to adjourn, on the basis that she was awaiting the outcome of her application to the Criminal Cases Review Commission, was not a compelling reason to adjourn and that it was in the public interest to proceed.

8. The Committee first determined whether to proceed in the absence of Ms Mbadugha. It 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*.
9. Ms Mbadugha sent an email to ACCA today in which she stated,  
  
*"I will not attend any hearing until the CCRC statutory route is exhausted."*
10. Ms Mbadugha attached a letter dated 04 March 2021 from the CCRC, in which the CCRC reviewer said that the CCRC cannot say how much longer their review will take but that they will write to Ms Mbadugha again before the end of May 2021.
11. The Committee was satisfied, in the light of the email from Ms Mbadugha, that she has waived her right to attend. She made it clear in her email that she will not attend any ACCA hearing until the outcome of her application to the CCRC is known. In the light of this, the Committee was not satisfied that adjourning for a finite period would result in her attendance, or serve any useful purpose given Ms Mbadugha's intention to await the outcome of the CCRC, which outcome does not have a known date.
12. The Committee bore in mind that these proceedings have been ongoing for a considerable period of time and have already been deferred to await the outcome of Ms Mbadugha's appeal to the Court of Appeal, (which appeal was unsuccessful). The Committee had regard to the public interest in concluding regulatory matters expeditiously. Having heard from Ms Mbadugha that she will not attend any hearing until the outcome of her application to the CCRC is known, the Committee concluded that the public interest in proceeding outweighed Ms Mbadugha's interests. It could not justify adjourning to give her another opportunity to attend, in the light of her stated intention to await the outcome of the CCRC review.

13. The Committee, therefore, decided that it was fair and reasonable to proceed in her absence.

### **MS MBADUGHA'S APPLICATION FOR AN ADJOURNMENT**

14. Having decided that it should proceed in the absence of Ms Mbadugha, the Committee was required to reconsider Ms Mbadugha's application to adjourn, (pursuant to Regulation 10(8)(b)(i) CDR). It carefully considered Ms Mbadugha's written application for an adjournment and bore in mind Mr Law's submission opposing it.
15. The Committee's view was that Ms Mbadugha's application to the CCRC is not an ongoing appeal which is awaiting a resolution. She has previously appealed unsuccessfully to the Court of Appeal. This means that she has exhausted the appeals process.
16. Ms Mbadugha's application to the CCRC is a request to an independent body to review her conviction. There is no certainty as to:
  - When the CCRC will complete its review; in the most recent letter from the CCRC to Ms Mbadugha, dated 04 March 2021, the CCRC reviewer states,  
  
*"...I cannot say how much longer the review will take but I will update you as the review continues. Each case is different and how long it takes depends on what work needs to be done.....I will write to you again before the end of May 2021"*
  - Whether the CCRC will refer Ms Mbadugha's conviction to the Court of Appeal for a fresh appeal;
  - If the CCRC does refer the conviction to the Court of Appeal, when that appeal might be heard, and whether it would be successful.

17. Given that Ms Mbadugha has exhausted the appeals process, and that there is considerable uncertainty about the outcome of her application to the CCRC, the Committee was not persuaded that she has advanced a good reason to adjourn the hearing. It also had regard to the lengthy delay that has occurred to date, and the public interest in the expeditious disposal of regulatory cases. The Committee was not satisfied that an adjournment was justified in all the circumstances, and it refused Ms Mbadugha's application to adjourn.
18. The Committee will ensure that it draws no adverse inference from Ms Mbadugha's absence.

#### **ALLEGATION 1**

Miss Louisa Mbadugha, who is an ACCA Fellow:

- a. On 08 June 2017, was convicted of fraudulently evading excise duty and being knowingly concerned in the fraudulent evasion of VAT, at the Central Criminal Court, which is discreditable to the Association and/or the accountancy profession.
- b. By reason of her conduct at 1(a) above, Miss Mbadugha is liable to disciplinary action pursuant to byelaw 8(a)(ix).

#### **BRIEF BACKGROUND**

19. Ms A was employed as the Financial Controller of Company A.
20. Company A was a Registered Consignee - a business approved by HM Revenue and Customs (HMRC) to receive goods from another EU Member State under Duty Suspension arrangements. The business must notify HMRC of each consignment and account for the UK duty before goods are dispatched from the warehouse on to the market.

21. ACCA was informed by HMRC that, on 08 June 2017, Miss Mbadugha was convicted at the Central Criminal Court of the offences set out in Allegation 1 above in relation to her role at Company A. On 14 July 2017, she was sentenced to 42 months imprisonment.
22. In its consideration of this matter, the Committee had before it a bundle of papers numbering pages 1 to 131.

### **DECISION ON ALLEGATIONS AND REASONS**

23. 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.

#### **Allegation 1(a) – found proved**

24. The Committee was satisfied, in the light of the register extract provided to it, that Ms Mbadugha is an ACCA fellow and is, therefore, bound by its Regulations and Byelaws.
25. The Committee was provided with a certificate of conviction which showed that on 08 June 2017, Ms Mbadugha was convicted of fraudulently evading excise duty and being knowingly concerned in the fraudulent evasion of VAT at the Central Criminal Court, as alleged in Allegation 1(a). It, therefore, found the fact of her conviction proved. The Committee acknowledged that Ms Mbadugha's view is that her conviction is unsafe; however, it reminded itself that her application for leave to appeal to the Court of Appeal was refused, and, therefore, her conviction still stands. It was not open to the Committee to look behind the conviction.
26. The Committee considered whether the conviction was discreditable to the Association and/or the accountancy profession. It had regard to the sentencing remarks of His Honour Judge Katz QC, in which he set out the nature of the fraud and the nature of Ms Mbadugha's involvement in it. He said,

*“You played your part in allowing that company to operate and to fool the tax authorities, which as a result of your immaculate record keeping the total loss, as to look at it in a very global way, the whole fraud the jury was concerned with was well over £2 million loss to tax payers of this country, a staggering amount. The frauds are very simple in that they were effectively sending large industrial quantities of wine into this country and declaring a tiny fraction of that to the tax and customs and excise duties evaded and then it was sold on under the counter for cash for those willing to pay it, thus evading VAT. Simple and not particularly complicated, but sustained over years. This sham that you enabled, which you provided effectively, this sham enabled Company A to fool the authorities over the years. You had clear warnings at the time of interest being shown by one or other of the tax authorities at either end, and enabled Company A to get away with this for a very long time indeed.*

*Your role, as somebody doing what you did, was critical, otherwise the fraud could not have happened. [MR W] did not speak much English; neither did the others, they were largely based in the Italian end of the business anyway. Your attitude was very efficient the channel of communication on your own account unlike your assertion in evidence during the trial, denying that you knew what was going on. Whether you actually put your head to consider the precise scale of this, I do not know. I am entirely satisfied, that you did not get the lion’s share of the profits. I think rather than an equity partner in this fraud your role could just be described as a salaried employee, but you were very important employee and your role, as I say, was to keep this rolling for years. It is clear that things were being done behind your back, which you were to some extent being kept in the dark as to the others. There are examples of you acting under instruction there is examples of you asking permission to do things. There are examples of you responding to queries from the tax authorities by trying to work out what tactics and what steps should be taken by Company A, and that was more by way of queries, suggestions and recommendations to the other fraudsters rather than you taking a directive role in relation to what was to be done.....*

*I am persuaded that your role in this although it did enable both frauds to carry on was the same role using your accounting skills to produce accurate records,*

*which enabled the whole show to carry on. It was that role, I do not think you took a more positive role, if that matters and it was to that extent one can find a criminal role, which you were engaged in over a very long period of time. I do not think you were, as I have said, a main organiser, but you were a salaried employee at a high level. It was a high role, it was the same thing over a period of years and it seems to me that in applying the totality principle, which I must do in order to achieve just sentence, I must not lose sight of your culpability, which I have to look at in that way.”*

27. The Committee was in no doubt that the conviction was discreditable to the Association and the accountancy profession. The conviction was directly related to Ms Mbadugha’s role as the financial controller of Company A, and her role in a VAT fraud carried out by her and other members of Company A. The Treasury was defrauded of a considerable amount of tax, and HHJ Katz summed up Ms Mbadugha’s role in the fraud as “critical”. She was sentenced to 42 months imprisonment, a sentence which she has now served.
28. Having found that Ms Mbadugha, an ACCA Fellow, was convicted as alleged, and that the conviction was discreditable to the Association and the accountancy profession, the Committee found Allegation 1(a) proved.

#### **Allegation 1(b) – liable to disciplinary action**

29. In the light of the Committee’s finding in Allegation 1(a), Ms Mbadugha is liable to disciplinary action pursuant to byelaw 8(a)(ix).

#### **SANCTIONS AND REASONS**

30. The Committee accepted the advice of the Legal Adviser, who referred the Committee to ACCA’s current Guidance on Disciplinary Sanctions, (GDS). 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.



31. The Committee first considered the seriousness of the conduct found proved, before deciding upon any sanction (in accordance with paragraph E3 of the Guidance). It found that there were a number of aggravating factors. These were that Ms Mbadugha was in a position of trust as the financial controller of Company A, and she breached that trust. She utilised her professional skills and competence to assist in a fraud on the Treasury with other members of the Company. The fraud was of a high value and continued over a period of time. The Committee was satisfied, from HHJ Katz's sentencing remarks that Ms Mbadugha played a "*critical*" role in it. Ms Mbadugha maintains her innocence, and consequently, continues to show no insight into her conviction and the seriousness of it. Further, her conviction has the potential to cause significant reputational damage to ACCA and to damage the trust the public places in the accountancy profession
32. The Committee found that there was some mitigation, albeit this was limited. Ms Mbadugha is a long-standing member of ACCA and has no previous regulatory matters recorded against her. She has co-operated with the ACCA's investigation.
33. Overall, the Committee was satisfied that Ms Mbadugha's conduct was very serious.
34. The Committee first considered whether to conclude this case without taking further action but decided that to do so was not in the public interest, given the seriousness of the conviction.
35. The Committee next considered whether an Admonishment would be an appropriate and proportionate sanction. It was satisfied that none of the factors set out in section C2 of the GDS were applicable. It concluded that an Admonishment was not sufficient to protect the public nor meet the wider public interest given the seriousness of the conviction.
36. The Committee also considered whether a Reprimand would be an appropriate and proportionate sanction. It had regard to section C3 of the GDS which states,

*“This sanction would usually be applied in situations where the conduct is of a minor nature.....”*

37. Given the Committee’s finding that the conviction was very serious, it decided that a Reprimand would not be a sufficient and proportionate sanction to uphold the public interest.

38. The Committee next considered a Severe Reprimand and had regard to paragraph C4 of the GDS. Paragraph C4.1 states,

*“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, and there is evidence of the individual’s understanding and appreciation of the conduct found proved.”*

39. The Committee has already identified that Ms Mbadugha has a previously good record with ACCA and that she co-operated with ACCA during the investigations stage. These factors could support the imposition of a Severe Reprimand.

40. However, there were a number of factors set out in section C4 of the GDS which would suggest that a Severe Reprimand would not be an appropriate and proportionate sanction. These were as follows:

- The Committee was satisfied from the sentencing remarks of HHJ Katz QC, that the conduct which gave rise to the conviction was intentional;
- Ms Mbadugha’s conduct caused direct harm, in that the fraud caused a loss of £2 million to the Treasury;
- Ms Mbadugha maintains her innocence, and, therefore, has not shown any insight into the seriousness of the conduct which led to the conviction, and the conviction itself;

- Given that Ms Mbadugha maintains her innocence, she has not apologised or shown remorse for her conduct/conviction;
  - Ms Mbadugha's conduct was not "*isolated*". The fraud continued over a period of years;
  - Ms Mbadugha has taken no corrective steps to ensure that the conduct will not reoccur, as she does not accept any wrongdoing. Her continued denials, (albeit she has exhausted the appeal process), raise concerns for the Committee that there is a risk she might repeat conduct of a similar nature in future.
41. Overall, although there was some mitigation, this was limited when weighed against the aggravating factors and the seriousness of the conduct which gave rise to the conviction. The Committee could identify no mitigation which would justify imposing a Severe Reprimand. It concluded that this sanction would not be sufficient to meet the public interest.
42. The Committee next considered Exclusion and had regard to paragraph C5 of the GDS. Paragraph C5.1 states that,
- "This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a member."*
43. The Committee was satisfied that the conviction for fraud, which was inextricably linked to Ms Mbadugha's work as an accountant, amounted to a serious departure from the standards expected of her as a Fellow of ACCA. Her actions caused significant loss to the Treasury, and were an abuse of her position as the Financial Controller in Company A. She acted dishonestly over a sustained period of time, and given that she continues to maintain her innocence, she has not shown any insight into the seriousness of her actions and her conviction. Her actions had the potential to significantly damage the

reputation of the accountancy profession and damage public confidence in the profession.

44. The Committee had regard to paragraph E2.1 of the GDS, which states,

*“Dishonesty, even when it does not result in direct harm and/or loss or is related to matters outside the professional sphere undermines trust and confidence in the profession. The Committee should consider all possible sanctions and/or combinations of sanctions available to it in every case, nevertheless the courts have supported the approach to exclude members from their professions where there has been a lack of probity and honesty”.*

45. The Committee concluded, having carefully considered paragraph C5 of the GDS, that Ms Mbadugha’s conviction is fundamentally incompatible with continued membership of ACCA. The mitigation was very limited, particularly when weighed against the aggravating factors identified by the Committee. The Committee’s view was any sanction short of Exclusion was insufficient to protect the public, maintain public confidence in the profession, and uphold proper standards of conduct.

46. Taking into account the seriousness of the case and balancing the interests of Ms Mbadugha, the interests of ACCA and the public interest, the Committee concluded that Exclusion would be the proportionate sanction in the circumstances of this case.

#### **COSTS AND REASONS**

47. Mr Law applied for costs in the sum of £6,547.
48. The Committee had received no information from Ms Mbadugha about her means.
49. It was satisfied that the proceedings were properly brought and had found the charges proved.

50. The Committee bore in mind that costs were sought for a full day hearing; however, the hearing has taken less than a full day. Its view was that this justified reducing the costs; it decided to reduce the costs by deducting the costs of the Case Presenter by two hours and the Hearings Officer by three hours. This resulted in costs of £6,037 which the Committee decided was an appropriate sum in all the circumstances. The Committee could not find any justification for reducing the costs further in the absence of any information from Ms Mbadugha about her means.
51. The Committee directed that Ms Mbadugha pay the sum of £6,037 to ACCA in costs.

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

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

**Mr Martin Winter**  
**Chair**  
**09 March 2021**