

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Jason Dermot Cullen

Heard on: Thursday, 13 May 2021

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

Committee: Mr Maurice Cohen (Chair)
Ms Beth Picton (Accountant)
Mrs Diane Meikle (Lay)

Legal Adviser: Miss Juliet Gibbon (Legal Adviser)

**Persons present
and capacity:** Mr Phillip Law (ACCA Case Presenter)
Ms Nkechi Onwuachi (Hearings Officer)
Mr Jason Dermot Cullen (Member)

Observers: None

Summary Exclusion from membership with immediate effect

Costs: £5,000

ACCA



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PRELIMINARY

1. The Disciplinary Committee (*“the Committee”*) convened to consider allegations made against Mr Jason Dermot Cullen.
2. The Committee had a bundle of papers, numbered pages 1-82 and a service bundle, numbered page 1-19.
3. ACCA was represented by Mr Phillip Law. Mr Cullen attended the hearing by telephone link from Australia, but he was not represented.

ALLEGATIONS

Allegation 1

Jason Dermot Cullen, a member of the Association of Chartered Certified Accountants:

- a. On 05 March 2020 was convicted of two offences contrary to section 1308(2) of the Corporations Act 2001 (Australia).
 - b. By reason of his conduct at 1a above, Mr Cullen is liable to disciplinary action pursuant to byelaw 8(a)(ix).
4. In relation to Allegation 1a, Mr Cullen admitted that he had been convicted of the two offences and the Chair, in accordance with Regulation 12(c) of The Chartered Certified Accountants’ Complaints and Disciplinary Regulations 2014, as amended (*“the Regulations”*), announced the facts of Allegation 1a proved.

BACKGROUND

5. Mr Cullen was admitted as a member of ACCA on 02 October 1997 and he became a fellow of the association on 02 October 2002.
6. On 26 July 2019, ACCA received an anonymous referral that according to two newspaper articles, dated 20 December 2017 and 24 September 2018, Mr Cullen had been charged with two counts of *'breaching the Corporations Act'*. On 05 March 2020, a further newspaper article confirmed that Mr Cullen had been fined \$7500 after pleading guilty to two charges.
7. ACCA wrote to Mr Cullen on 15 May 2020 requesting information about his criminal convictions. He responded in a letter to ACCA, dated 17 July 2020. The letter stated that Mr Cullen had been employed by Company A since January 2003. Mr A, his co-defendant, had been a client of the company since the early 1990's. Mr A was CEO of Company B, a public listed company. He was a high-profile individual who was well known in the media and widely respected in the business community, having associations with a former Australian Prime Minister and State Government Ministers. On two separate occasions in 2012 Mr A had asked Mr Cullen to prepare an invoice from Company A. Mr C, the CFO of Company B, provided him with the wording of the invoices in conjunction with Mr A. Mr Cullen had been given assurances that the raising of the two invoices had been approved by the board of Company B and members of the board were fully aware that the invoices were being raised. Mr A assured Mr Cullen that the invoices would be treated in Company B's accounts as bonuses to Mr A. Mr C assured Mr Cullen that the invoices would be correctly accounted for in Company B's accounts and that the payment of the invoices had been approved by Company B's board and its CFO. Mr Cullen stated that the invoices were raised on the basis of the information and assurances that had been given to him. Upon receipt of payment of these invoices by Company A, the funds were transferred to Company C.

8. Mr Cullen stated in his letter that Company B had its own accounting and external audit team. He stated *'there was never any scheme or elaborate plan to raise these invoices'*. He had been instructed by Mr A to raise the invoices and this had been *'transparent and open for all at Companies A and B to see'*. In 2013, there had been an independent report on Company B's corporate governance (the Rudd Report). The report had highlighted approximately 20 points on Company B governance shortfalls. This included the raising of three invoices. The Australian Securities and Investments Commission (ASIC) were made aware of the Rudd Report. In 2014, Mr Cullen had been asked to attend an interview at ASIC's offices in relation to matters involving Mr A and Company B. Mr Cullen stated that he fully cooperated with ASIC and explained the nature of two of the three invoices in full. He had voluntarily attended a second interview with ASIC in relation to the invoices.
9. In December 2017, Mr Cullen was charged with authorising two invoices and breaching section 1308(2) of the Corporations Act 2001 (Australia) that provides that *'A person who, in a document required by or for the purpose of this Act or lodged with or submitted to ASIC, makes or authorises the making of a statement that to the person's knowledge is false or misleading in a material particular, or omits or authorises the omission of any matter or thing without which the document is to the person's knowledge misleading in a material respect, is guilty of an offence'*. Shortly thereafter, Mr A was also charged under the same section for authorising three invoices. Mr Cullen stated that he had not been involved in the raising of the third invoice. Mr Cullen said that the matter was reported and *'sensationalised'* in the media due to Mr A's high profile in the business world.
10. Mr Cullen stated that he was encouraged by his legal team to defend the charges against him. That, however, would have involved a five-day court hearing and between Australian \$120,000-150,000 in legal fees. He stated that he could not afford such costs and, therefore, he decided to plead guilty in order to bring the matter to an end so that he could get on with his life. He stated that he thought that the judge would see that he had been a *'scapegoat'* and would dismiss the charges. Mr Cullen stated that the judge agreed that he had not benefitted financially from the raising of the invoices and that his involvement

had been less than that of Mr A. He was convicted of the two charges and fined Australian \$7,500 for his involvement in the offences. Mr Cullen stated that he was *'devastated by the final judgement'* and could not believe that he had been charged. He was also, however, relieved that it was all finally over. He stated, *'I will be forever remorseful for my involvement in this matter'* and that his *'reputation as a professional has been damaged'*.

11. Mr Cullen provided ACCA with a number of documents relating to the criminal proceedings, including a summary of the prosecution opening. He stated that in around July 2019 he decided to plead guilty and the reason for this: *'was the toll this had taken on me, my family and my working life. It had been over 4 years since I was initially interviewed by ASIC. I had spent the previous year and a half in and out of court costing me in excess of \$100k in legal fees. I needed to get on with my life and not have this drag my family and myself down even further'*. Mr Cullen further stated:

'The personal effect this episode has had on me is very difficult to describe and quantify. I have a strong regard for the law and the Christian faith. To be branded as a criminal and convicted of a crime is extremely difficult for me to live with and to explain to my loved ones and friends. The emotional consequences cannot be overstated or quantified and the internal stress that I feel, is a daily occurrence that I have to deal with. The legal cost to date has had a huge financial impact on me and my family as had the personal toll on me and my family. I am fortunate that I have managed to retain my employment with Company A. The firm was established in 1995 and employing a team of 8. It is not a sophisticated accounting firm; it is a relationship-based accounting practice and the staff have been longstanding loyal employees ranging from 15-21 years of service ... This matter has placed an incredibly heavy strain on my marriage and further punishment would cause further stress and complications in our relationship and may hinder my ability to provide the appropriate education of our 3 children ... It is really through naivety and lack of judgement that these invoices were processed. These transactions, the subject of the ASIC prosecution, did not provide me with any financial benefit whatsoever (as attested by ASIC) ... I have been an active member of ACCA for over 25 years now and have never had any previous legal dealings or

issues. I consider myself to be a good accountant that has clients' best interests at heart ... I am looking to rebuild my life, my professional career and repay the faith that my family, friends and colleagues have had in me ... I, like all ACCA members, worked and studied hard to achieve my ACCA qualification and am privileged to be a member. The possibility of losing my membership would be further devastating to my professional career and any recognition for my years of study and achievements would devastatingly be lost ... I am prepared to undertake an ethical course should that be required and would be prepared to share my experiences with recent graduates or accountants entering public practice so that I can reinforce that "ethically, you cannot act on trust when following client's instructions".

12. The founding partner and sole director of Company A wrote a letter to ACCA, dated 15 July 2020. In it, he stated that:

'Jason Cullen joined Company A on 13 January 2003 as a Manager of Business Services ... In 2008 he was promoted to Associate Director and his role was officially recognised as a partner. Jason is well liked and respected by his clients and colleagues. In his 17 plus years of service I have never had any issues from clients or colleagues regarding his professional behaviour. I am fully aware of the matter with ASIC ... and knowing the background of the situation and Jason's character, I and the Company A team have remained and continue to remain supportive of Jason ... Jason has voluntarily explained the ASIC situation to clients and they have remained in strong support of him and are in complete disbelief on how he has been treated by ASIC, the media and the courts ... I am 61 years old and retirement is looming and therefore there is an opportunity for Jason at Company A to further advance his role. His ACCA Professional Membership is therefore a prerequisite and imperative for any future role ... It is my strong belief that Jason complies with the fundamental principles outlined in the ACCA Code of Ethic and Conduct'.

13. Mr Cullen has also provided ACCA with a number of references from colleagues, clients and friends that positively attest to his good character, integrity and professionalism.

14. Mr Cullen made similar representations in a letter to ACCA, dated 06 November 2020.

15. ACCA has obtained the sentencing remarks of Her Honour Judge Dawes at the hearing on 05 March 2020. The two invoices were raised by Mr Cullen in January and August 2012, at the request of Mr A, for Australian \$110,000 and \$150,000 respectively. HHJ Dawes said:

“In 2014 an audit of Company B was undertaken. In the course of an extensive investigation, the three invoices were identified and investigated. The offences here were committed when the false statements were made or authorised to be made. It is not alleged by the prosecution that the money obtained was theft or obtained dishonestly by deception. Any entitlement you had to amounts of money, by way of bonuses, is not determinative of culpability for these offences. The actual gain made by the recipient is not an element of this offence. The purpose of the provision is to protect creditors, investors, shareholders and the public generally from the effects of misleading information being provided to ASIC. Accuracy in the information provided is fundamental to ensuring public confidence. Both of you held positions of trust with respect to Company B. Your duty was to protect the interests of Company B and not to engage in conduct in conflict with that duty. The misleading records were directly related to money paid by Company B to Company C, a company in which you both had a direct interest. The offending behaviour was knowingly dishonest. The work described in the relevant records had not been done. This was known to both of you”.

16. Mr A had admitted that the invoices falsely described that they were for advisory services when they were, in fact, effectively loan payments made to him to be offset against his future bonuses. He had also admitted that the invoices had been raised at his request.

17. In sentencing Mr Cullen, HHJ Dawes referred to the bundle of references tendered on his behalf and the submission that his guilty plea was consistent with remorse. She stated

“It is difficult to reconcile that submission with some of the references, where it is suggested that you followed your clients’ instructions or that you have paid a high price for naively believing your clients’ claims. When interviewed by ASIC, you did however, make full admissions to your knowledge that the description on the invoices were false”. The learned judge referred to the fact that Mr Cullen had no previous convictions and had not re-offended since the date of the offences in 2012. She found Mr Cullen’s prospects of rehabilitation to be good. HHJ Dawes said that at the time Mr Cullen was a practising accountant who had a professional relationship with his co-accused, Mr A, as well as having a friendship with him, which played a role in Mr Cullen’s offending. The prosecution had conceded that the benefit received by Mr Cullen was limited to him having a direct interest in Company C, in that he was a director of Company C and managed its finances. HHJ Dawes said *“Your conduct was not careless or negligent. The gravity of the offending is as a result of your knowingly creating invoices and having them paid when the invoices were false. The acts demonstrate intentional dishonesty. I accept that any loss to a company or gain to an offender is not an element of these offences”.* She went on to say: *“This type of offending has the capacity to erode public confidence in the integrity of the stock market, particularly if the records of corporations are not accurate. It is essential that those who provide regulated information are accountable for providing misleading information”.* HHJ Dawes sentenced Mr Cullen to a fine of \$7,500.

SUBMISSIONS ON BEHALF OF ACCA

18. Mr Law submitted that Allegation 1b is proved on the balance of probabilities. Mr Cullen is a registered member and fellow of ACCA and is bound by the by-laws and Regulations. Mr Cullen was convicted before a court of competent jurisdiction in Australia of the offences. Those convictions are discreditable to the Association and the wider profession. The conviction is proved, as per the terms of byelaw 8(e), by the copy of the convictions certificate. Mr Cullen protests his innocence of the crimes but accepts the convictions. He has not sought to challenge the charges or the convictions. The convictions are discreditable to all involved: they involved dishonesty and they involved Mr Cullen’s role as an accountant - in particular, the creation of a false paper trail

that was only picked up in an audit. Mr Law reminded the Committee that *'public policy requires that, save in exceptional circumstances, a challenge to a criminal conviction should not be entertained by a disciplinary tribunal. In the absence of some significant fresh evidence or other exceptional circumstances, such an outcome could not be in the public interest.'*

SUBMISSIONS ON BEHALF OF MR CULLEN

19. Mr Cullen referred the Committee to the representations made by him in his correspondence with ACCA. He told the Committee that following the initial charges his barrister had advised him that he could argue a technical point, but the point had been argued in front of a magistrate who had referred the case to the County Court. He did not continue to argue the point because he could not afford the legal fees. He said it would have cost him Australian \$120-150,000 to have defended himself and his reputation. He told the Committee that he *'had to plead guilty'*. He didn't want to, but he felt that he had no other option. He said he would have fought it if he could, but the financial burden was too great.
20. Mr Cullen told the Committee that he had never denied the fact that he had been asked by Mr A to raise the invoices. He said that it was transparent and had been sanctioned by the board of Company B. He said at the end of the year the sums would have been offset against Mr A's bonus or loan. He said it was wrong and he should never have raised the invoices, but he had done so under a client's instructions in full view of the board of the company. He said there was absolutely no benefit to himself.
21. In answering questions from the Committee and Mr Law, Mr Cullen said that the invoices had gone through as an accountancy fee which Company A had showed as a director's loan to Company C. He said it did not appear as income in Company A's accounts. He was asked how he could raise an invoice and not account for it and he said, *'that's why I'm in this situation'*. He said that he had not advised Mr A not to undertake the process. He said it hadn't been his intention to mislead anyone. It was put to him that the raising of the invoices

with false information was calculated to mislead someone and was dishonest and Mr Cullen agreed but said he didn't look at it that way. He accepted that it was a misleading document because the services were never carried out but, as the board was aware, he didn't know who had been misled. Mr Cullen said that his understanding had been that Mr A was accessing his director's bonus, but he accepted that Mr A had not been entitled to it at that time. He said if that phrase had been put on the invoice, he wouldn't have been subject to these proceedings.

DECISION AND REASONS

22. The Committee carefully considered the documentary evidence before it, the submissions made by Mr Law, on behalf of ACCA, the written representations provided by Mr Cullen in his correspondence with ACCA and in his oral evidence. It accepted the advice of the legal adviser.

ALLEGATION 1a - PROVED BY ADMISSION ALLEGATION 1b - PROVED BY ADMISSION

23. Mr Cullen has admitted that he had been convicted of the two offences on 05 March 2020 and that he is liable to disciplinary action. It is for the Committee, however, to determine if the convictions are *'discreditable to the Association or to the accountancy profession'*.
24. Bye-law 8(a)(ix) provides that a member is liable to disciplinary action if: *"before a court of competent jurisdiction in the United Kingdom or elsewhere, he or it has pleaded guilty to, been found guilty of, or has accepted a caution in relation to, any offence discreditable to the Association or the accountancy profession"*.
25. The Committee has had sight of the certificate of conviction and noted that, as provided for in byelaw 8(e), the certificate is conclusive proof of the convictions and of any facts and matters found by the criminal court.
26. In his correspondence with ACCA, in the Case Management Form ("CMF"), dated 12 February 2021, and in his oral representations today, Mr Cullen

appeared to be seeking to go behind the facts of his convictions, as set out in the sentencing remarks of HHJ Dawes. In the CMF, Mr Cullen stated *“At the time of the alleged offence / transactions, I was acting in good faith and under instructions of the client who had assured me that these transactions had been approved by the board and remuneration Committee of Company B”*. Further, in answering questions today Mr Cullen clearly found it difficult to accept that he had acted dishonestly, as found by HHJ Dawes.

27. The Legal Adviser advised the Committee that a member could only seek to go behind the facts of a conviction in exceptional circumstances. She referred the Committee to the decision of Lane J in the recent case of *Achina v General Pharmaceutical Council [2021] EWHC 415 (Admin)*. In that case, Lane J dismissed the appellant’s appeal which had centred on his efforts to seek to go behind the facts of his convictions in the regulatory proceedings. Lane J reinstated the importance of policy considerations made by professional regulators in making special provisions for conviction cases, and that it is both *‘unnecessary and undesirable to retry a criminal case’*. Lane J referred to the specific regulation of the General Pharmaceutical Council that *‘a copy of the certificate of conviction ... is admissible as conclusive proof of that conviction and the findings of fact on which it was based’* and said this: *‘In framing those words, the legislature is, I find, treating as conclusive, not only the “bare” facts to be found in the Certificate of Conviction, but also the broader factual matrix on which the convicted person has been sentenced. One finds the factual matrix in the sentencing remarks of the judge’*. Lane J also found that had the Committee in that case permitted the appellant to have gone behind the finding it *“would have endangered public confidence in the regulatory regime under which the Committee was operating, and the proper relationship between that regime and the criminal jurisdiction. The Committee was, therefore, not wrong to adopt the approach it did. On the contrary, it would have been wrong had it done otherwise”*.
28. The Committee noted that Mr Cullen had pleaded guilty to the criminal offences and had not sought to challenge them by way of appeal. It was not satisfied that exceptional circumstances existed to allow Mr Cullen to go behind the facts of his convictions. These were offences in which Mr Cullen had raised

fraudulent invoices in an attempt to mislead. The Committee agreed with HHJ Dawes findings that: *“The offending behaviour was knowingly dishonest. The work described in the relevant records had not been done”* and that had been known to both Mr Cullen and Mr A.

29. The Committee took into account Mr Cullen’s admission that he is liable to disciplinary action and was itself satisfied that the two convictions are discreditable to the Association and the accountancy profession. Raising false and misleading invoices in a deliberate attempt to mislead would, in the Committee’s view, clearly undermine public confidence in the accountancy profession and ACCA as regulator. The Committee was, therefore, satisfied on the balance of probabilities that Mr Cullen is liable to disciplinary action as a result of his convictions.

SANCTION AND REASONS

30. Mr Law informed the Committee that there were no previous disciplinary findings against Mr Cullen.
31. Mr Law referred to the aggravating and mitigating features of the case. Mr Law said that the Committee may consider the following to be aggravating features: the nature of the dishonest offending; the offences were committed in Mr Cullen’s professional capacity as an accountant; there had been a breach of trust; there was reputational damage to the profession and ACCA as regulator; Mr Cullen had facilitated more culpable offending by Mr A and he lacked insight into his offending behaviour. In terms of mitigation, Mr Law referred to Mr Cullen’s admissions to the allegations and to him having no previous disciplinary findings against him. Mr Law referred the Committee to ACCA’s Guidance for Disciplinary Sanctions, and, in particular section E1, which provides specific guidance in relation to convictions.
32. The Committee took into consideration the contents of the letter to ACCA from the founding partner and sole director of Company A, dated 15 July 2020. It also took into consideration the references that had been written for the sentencing hearing that attested to Mr Cullen’s honesty and integrity. Like the

sentencing judge, the Committee had some difficulty in reconciling the fact of the convictions with the references, where it is suggested that Mr Cullen had followed his clients' instructions or that he had paid a high price for naively believing his clients' claims. It noted, however, that when he was interviewed by ASIC, he had made full admissions to his knowledge that the description on the invoices had been false.

33. The Committee accepted the advice of the Legal Adviser, who referred it to Regulation 13(1) of the Regulations and to ACCA's Guidance for Disciplinary Sanctions. In considering what sanction, if any, to impose the Committee bore in mind the principle of proportionality and the need to balance the public interest against Mr Cullen's own interests. The purpose of any sanction was not to be punitive but to protect members of the public, maintain public confidence in the profession and ACCA and to declare and uphold proper standards of conduct and behaviour.
34. When considering the appropriate sanction, the Committee took into account the mitigating features of the case. It found the following matters to be relevant mitigation:
 - a. Mr Cullen had pleaded guilty to the two offences;
 - b. Nearly 9 years had passed since the time of the original offending and Mr Cullen had not re-offended during that time;
 - c. Mr Cullen had no previous disciplinary findings against him;
 - d. Mr Cullen had provided positive references, albeit the majority had clearly been provided prior to his guilty pleas in the criminal court;
 - e. Mr Cullen had fully cooperated with the ACCA's investigation and these proceedings.
35. The Committee found the following to be aggravating factors:
 - a. Mr Cullen's conduct was dishonest;
 - b. Mr Cullen's dishonest offending occurred in his professional capacity as an accountant and was in breach of trust;

- c. Mr Cullen had facilitated more culpable offending on the part of his client, Mr A;
 - d. The Committee was not satisfied that Mr Cullen had shown any insight into the serious consequences of his dishonest conduct;
 - e. Such conduct put at risk the reputation of the profession and ACCA as regulator.
36. Given Mr Cullen's two convictions for serious offences that involved dishonesty, the Committee was satisfied that a sanction was required and that it would not be appropriate to take no further action in this case.
37. The Committee considered the relevant factors set out in the Guidance for Disciplinary Sanctions in relation to admonishment and a reprimand. It concluded that neither sanction would adequately reflect the seriousness of the criminal convictions.
38. The Committee then considered whether a severe reprimand would be an appropriate sanction. Taking into account the fact that this was deliberate dishonest conduct on the part of Mr Cullen, the Committee did not consider that a severe reprimand would be sufficient or proportionate. Further, such a sanction would not protect the reputation of the profession.
39. The Committee concluded that Mr Cullen's convictions put the reputation of ACCA and the accountancy profession at risk. The Committee determined that the nature of Mr Cullen's criminal convictions was fundamentally incompatible with him being a member of ACCA.
40. The Committee had considered whether there were any exceptional reasons not to exclude Mr Cullen from membership of ACCA, but it could find none.
41. The Committee, therefore, concluded that the appropriate, proportionate and sufficient sanction to impose was to order that Mr Cullen be excluded from membership of ACCA. This was necessary to reflect the very serious nature of his conduct, to protect the public and the public interest and to maintain the reputation of the accountancy profession and ACCA as regulator.

42. The Committee considered it necessary to combine the order for exclusion with an order that no application for readmission may be considered until the expiry of a specified period after the effective date of the order. In accordance with Membership Regulation 14(2)(a), therefore, Mr Cullen is not able to apply for readmission until the expiry of twelve months after the effective date of this order.

ORDER

43. Mr Jason Dermot Cullen is excluded from membership of ACCA.

EFFECTIVE DATE OF ORDER

44. Given the nature of Mr Cullen's criminal offending, the Committee was satisfied that it was in the interests of the public for the order for exclusion from membership of ACCA to have immediate effect and it so directed.

COSTS

45. Mr Law, on behalf of ACCA, applied for costs amounting to £5,614.50. He submitted that it had been reasonable and appropriate to investigate the charges against Mr Cullen and that the costs were reasonable.
46. Mr Cullen had not provided the Committee with a schedule of his financial means, but he told the Committee that he was currently repaying the fine imposed in the criminal court in monthly instalments and that would be repaid by November 2021. He was also paying off a large loan. He did not dispute that the amount claimed by ACCA by way of costs was reasonable.
47. The Committee gave careful consideration as to what would be a reasonable sum to order Mr Cullen to pay by way of costs. It took into account that the hearing was likely to conclude sooner than estimated by ACCA.
48. In all the circumstances, the Committee determined that it would be fair and proportionate to order Mr Cullen to pay ACCA costs in the sum of £5,000.00

ORDER

49. Mr Jason Dermot Cullen shall pay ACCA costs in the sum of £5,000.00.

Mr Maurice Cohen
Chair
13 May 2021