

## HEARING

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

#### REASONS FOR DECISION

<b>In the matter of:</b>	<b>Mrs Samantha Taylor</b>
<b>Heard on:</b>	<b>Tuesday, 05 April 2022</b>
<b>Location:</b>	<b>Remotely via Microsoft Teams</b>
<b>Committee:</b>	<b>Mr Martin Winter (Chair) Mr Martin Davis (Accountant) Mr Damian Kearney (Lay)</b>
<b>Legal Adviser:</b>	<b>Mr Robin Havard (Legal Adviser)</b>
<b>Persons present and capacity:</b>	<b>Ms Michelle Terry (ACCA Case Presenter) Ms Nkechi Onwuachi (Hearings Officer) Mrs Samantha Taylor (Member)</b>
<b>Summary</b>	<b>Admonishment</b>
<b>Costs:</b>	<b>£375</b>

#### ACCA



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## **PRELIMINARY APPLICATIONS**

### **APPLICATION BY ACCA FOR AMENDMENTS TO ALLEGATION 1**

1. In an email dated 17 March 2022, ACCA wrote to Mrs Taylor indicating its intention to apply at this hearing to amend the allegations.
2. The proposed amendments were as follows:

#### **Allegation 1(c)**

3. In the first line, replace "her" with "Mrs Taylor's" and delete the word "was" at the end of the line.

#### **Allegation 1(c)(i)**

4. Add the word, "Was" at the beginning of the allegation and add "or in the alternative" at the end.

#### **Allegation 1(c)(ii)**

5. Delete the words at the beginning "In the alternative, any or all of the conduct referred to in paragraph a) above" and add " or in the further alternative" at the end.

#### **The addition of an allegation at paragraph 1(c)(iii) as follows:**

6. "Was reckless in that she did not ensure that the declaration was accurate."

#### **Allegation 1(d)**

7. The deletion of "(the 2007/2017 Regulations)".

#### **Allegation 1(f)(ii)**

8. The deletion of (c) so that the allegation was in relation to Mrs Taylor's liability to disciplinary action in respect of allegations 1(a) and (e).
9. Mrs Taylor did not resist the application.
10. The Committee was satisfied that, other than the addition of allegation 1(c)(iii), the remainder were effectively grammatical and made the allegations more clear.
11. As for allegation 1(c)(iii), which amounted to an additional allegation of recklessness, the Committee concluded that the allegation was based on the same evidence and that Mrs Taylor would not be prejudiced in presenting her defence if the amendment was allowed.
12. The application for the amendments as set out above was therefore granted by the Committee.

#### **ALLEGATIONS as amended**

1. Mrs Samantha Taylor, a Fellow of the Association of Chartered Certified Accountants ('ACCA'):
  - a) Between 11 September 2015 and 27 September 2019, carried on public practice by signing off Independent Examiner reports on behalf of Charity A, contrary to Regulation 3(1)(a) of the Global Practising Regulations (2015- 2019).
  - b) Inaccurately declared to ACCA that she had not engaged in public practice activities without holding an ACCA practising certificate on:
    - (i) 26/01/15; and/or
    - (ii) 21/01/16; and/or
    - (iii) 19/01/17; and/or

- (iv) 17/01/18; and/or
- (v) 16/01/19; and/or
- (vi) 15/01/20.

c) Mrs Taylor's conduct at Allegation 1b):

- (i) Was dishonest, in that she knew she had engaged in public practice activities and/or that the declaration was inaccurate, or in the alternative,
- (ii) Demonstrated a failure to act with Integrity, or in the further alternative,
- (iii) Was reckless in that she did not ensure that the declaration was accurate.

d) Between 11 September 2015 and 27 September 2019, being a 'relevant person' within the terms of the Money Laundering Regulations 2007 and Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 failed to obtain registration for monitoring of her compliance with the Regulations.

e) Between 11 September 2015 and 27 September 2019 failed to comply with section 150 of the Code of Ethics and Conduct (2015 – 2018) and subsection 115 of the Code of Ethics and Conduct (2019) (Professional Behaviour) by reason of the matters referred to in allegation 1d) above.

f) By reason of her conduct above, Mrs Samantha Taylor is:

- (i) Guilty of misconduct pursuant to byelaw 8(a)(i) (2015 - 2019) in respect of any or all of the matters set out at Allegations 1(a) to 1(e); or in the alternative

- (ii) Liable to disciplinary action pursuant to byelaw 8(a)(iii) (2015 - 2019) in respect of Allegations 1(a) to 1(c).

## **FINDINGS OF FACT/ALLEGATIONS AND REASONS**

13. The Committee had considered the following documents: a hearing bundle (pages 1 to 378); an additional bundle (pages 1 to 4); a statement of defence (pages 1 and 2), and a service bundle (pages 1 to 15). It had listened carefully to Mrs Taylor when she made submissions. The Committee had also been provided with legal advice which it accepted.

### **Allegation 1(a)**

14. Once Mrs Taylor became a member of ACCA, Regulation 3(1)(a) of the Global Practising Regulations ("GPR") prohibited her from being in public practice or holding herself out to be in public practice without a practising certificate ("PC") issued by ACCA, unless she held a PC which authorised the carrying on of the activity in question.

15. GPR4 sets out the meaning of "public practice".

#### *"(1) Activities*

*Subject to regulations 4(2), 4(3) and 4(5), public practice, which may be carried on by an individual or a firm (the "practitioner"), means:*

*(a) accepting an appointment as an auditor; and/or*

*(b) signing or producing any accounts or report or certificate or tax return concerning any person's financial affairs, whether an individual sole-trader, an unincorporated body or a firm, in circumstances where reliance is likely to be placed on such accounts or report or certificate or tax return by any other person (the "third party"), or doing any other thing which may lead the third party to believe that the accounts or report or certificate or tax return concerning the*

*financial affairs of such a person have been prepared, approved or reviewed by the practitioner; and/or*

*(c) holding oneself or itself out, or allowing oneself or itself to be held out, as being available to undertake the activities referred to in (a) and (b) above (and allowing oneself to be known as a, or a firm of "Chartered Certified Accountant(s)", "Certified Accountant(s)", "Chartered Accountant(s)", "Accountant(s)" or "Auditor(s)" or any similar description or designation standing for any such description in the context of the practitioner's business shall be regarded as an example of such a holding out); and/or*

*(d) holding oneself out, or allowing oneself to be held out, as a sole proprietor, partner or director of a firm, or designated member or member of a limited liability partnership, where public practice is carried on."*

16. For the reasons set out below, the Committee also considered the provisions relating to "Honorary reports" or "Honorary work" to be of relevance, even though ACCA had not made any reference to these provisions in its report which formed the basis on which the case was presented to the Committee.
17. The period to which allegations 1(a) and (b) related was from 2015 to 2020.
18. Up until an amendment which took effect on 01 January 2019, the provisions of GPR4(4) were as follows:

*"(4) Honorary reports*

*The activities set out in Regulation 4(1)(b) shall not constitute public practice where all of the following conditions are satisfied:*

*(a) the accounts are of an entity which does not require the appointment of an auditor; and*

*(b) no fee is payable or other material benefit receivable in respect of the work performed; and*

*(c) the gross income of the entity for the year prior to the year in question does not exceed £100,000; and*

*(d) the aggregate of such gross income with such gross income of any other entity in respect of which the member has relied upon this regulation 4(4) in the calendar year in question does not exceed £200,000; and*

*(e) any third parties are made aware that the activity has been carried out by an Honorary Reporting Accountant; and*

*(f) the member does not hold himself out, or allow himself to be held out, as a sole proprietor, partner or director of a firm, or designated member or member of a limited liability partnership, where public practice is carried on."*

19. With effect from 01 January 2019, GPR4 was amended. For the purposes of this decision, the relevant provision became GPR4(5) which provided as follows:

*"(5) Honorary work*

*The activities set out in regulation 4(1)(b) shall not constitute public practice where all of the following conditions are satisfied:*

*(a) no fee or other benefit is receivable in consideration for the work performed; and*

*(b) the gross income of the entity for the year prior to the year in question does not exceed £250,000; and*

*(c) the member does not hold himself out, or allow himself to be held out, as being in public practice."*

20. Mrs Taylor became an ACCA member on 15 February 2001 and a Fellow on 15 February 2006.
21. In or around November 2020, ACCA received an anonymous complaint that Mrs Taylor had signed off Independent Examiner Reports (IERs) for Charity A, a registered charity.
22. Mrs Taylor's reports were included within Charity A's annual financial statements and filed with the Charities Commission.
23. Mrs Taylor had never held an ACCA Practising Certificate (PC). Consequently, in accordance with GPR4, the Committee found that she was not authorised to hold herself out as being available to undertake public practice activities, or carry out public practice work, including signing off reports, where reliance was likely to be placed on them by any other third party.
24. The Committee relied upon Charity Commission's Guidance (the Guidance) and found that charities are required to produce an annual report under law which is independently examined. This report presented the examiner's conclusions on their examination of the charity's accounting records for the year and is relied on by the Charity's trustees and, potentially, the wider public. The examiner also has a duty to report to the Charity Commission circumstances such as where the Examiner considered that proper accounting records have not been kept or where the accounts did not accord with the accounting records. Any matter which was of significant concern or of material significance had to be reported by the Examiner to the Charities Commission.
25. Mrs Taylor signed off the following IERs for Charity A, which would have been relied on by the trustees:
  - a) Year-ending 31/03/15
  - b) Year-ending 31/03/16
  - c) Year-ending 31/03/17
  - d) Year-ending 31/03/18



- e) Year-ending 31/03/19
26. Mrs Taylor used her designation 'ACCA' in signing off each IER, holding herself out as an ACCA member in the context of her role as Charity A's independent examiner.
27. The Committee had read the written accounts provided by Mrs Taylor in the course of ACCA's investigation. It had also listened carefully to her submissions made to the Committee during the course of this hearing. Although Mrs Taylor had decided to make submissions as opposed to giving evidence, her submissions were consistent with her written accounts and the Committee concluded that her outline of events was credible.
28. Mrs Taylor stated that she was employed as a Financial Controller at an engineering company. She did not act as an accountant in private practice.
29. In 2015, a person who worked at Charity A had approached her to provide support to the charity by signing off the IERs once a year. The person knew that Mrs Taylor was a qualified accountant but would not have known whether Mrs Taylor was a member of any accountancy organisation. Mrs Taylor agreed to do so. There was no formal written agreement and Mrs Taylor had no intention or desire to be compensated or paid for undertaking the work involved in reviewing the IER. Indeed, at the outset, there was no discussion about payment. She wished to provide this service to the charity as she considered that, *"it did a good job and I wanted to help them"*.
30. It was only after Mrs Taylor had signed the IER for 2015 that any mention was made of money. It was the person who had asked for her help who offered her the sum of £75. Initially, Mrs Taylor refused but subsequently, the Chair of the charity insisted that she should receive what Mrs Taylor described as a "donation". The sum of £75 did not in any way reflect the time she invested in reviewing the IER each year which she estimated to be as much as ten hours. Furthermore, at no stage did Mrs Taylor submit an account or invoice for the service she provided.

31. Payment of the sum of £75 was made by way of cheque. On the first occasion, Mrs Taylor did not cash the cheque and had to be encouraged to do so. Having cashed the cheque, she then used the money to pay for such items as raffle tickets at an event organised by the charity or at other fund-raising events in the village in which she lived. Indeed, she stated in her written response, *"I was uncomfortable with receiving the money and made sure that I, in turn, donated it to other local charities, especially ones that dealt with Senior Citizens."*
32. Mrs Taylor did look at the Charity Commission's website to find out what was involved. She also looked at the previous IERs to assess the work that was needed. On the basis of what she had learned, Mrs Taylor decided that she was able to undertake the work. However, she accepted that she did not carry out a similar check of the ACCA website.
33. The last IER signed by Mrs Taylor was in 2019. Following that year, she was not asked to do so again and assumed that, as her friend was no longer involved with the charity, someone else had been asked to do so.
34. Mrs Taylor accepted that, during the period in question, she was not familiar with the provisions of GPR3 and 4.
35. The Committee noted that, for the work undertaken by Mrs Taylor to fall outside the definition of public practice, all of the conditions set out in GPR4(4), and latterly GPR4(5), had to be met.
36. Taking account of the circumstances relating to the payment of £75, the Committee found that this could not be described as a fee or a benefit, whether material or otherwise.
37. However, in relation to the years 2015 to 2018, one of the conditions stipulated that it would not amount to public practice if the gross income for the year prior to the year in question was less than £100,000. On an analysis of the charity's

Report and Financial Statements, it was clear that the income of the charity was in excess of £100,000 in the years 2014 to 2017.

38. For this reason, the Committee found that, between 11 September 2015 and 27 September 2019, Mrs Taylor carried on public practice by signing off Independent Examiner reports on behalf of Charity A, contrary to GPR 3(1)(a) save that it had not found them proved for the IER signed in 2019, by which time GPR4(5) had come into effect.
39. On this basis, the Committee found allegation 1(a) proved.

#### **Allegation 1(b)**

40. The Committee had considered the documents contained within the bundle and found that Mrs Taylor submitted annual declarations to ACCA for the years 2014 to 2019. It had also found that at no stage had she held a PC issued by ACCA.

41. The Declarations for 2014 to 2016 stated:

*“I further understand that if I engage in public practice activities, I will need to hold an ACCA practising certificate”*

42. While a copy of the Declaration for 2015 was not retained by ACCA, the Declarations for 2014 and 2016 used identical wording. The Committee found, on the balance of probabilities, that the wording of the 2015 Declaration would have been unchanged.

43. The Declarations for 2017 to 2019 stated:

*“I have not engaged in public practice activities (as defined by the Chartered Certified Accountants’ Global Practising Regulations 3 and 4), without holding an ACCA practising certificate; I have read and understand the guidance overleaf before signing”.*

44. The accompanying guidance notes for the declarations across the years 2014 to 2019 gave the following information:

*“Engaging in public practice activities.*

*If you engage in public practice activities, as defined by the Chartered Certified Accountants’ Global Practising Regulations 3 and 4, you are required to hold an ACCA practising certificate.”*

45. The guidance also advised that members should refer to a factsheet entitled, ‘Do I need a practising certificate’ which was available online.

46. The declarations signed by Mrs Taylor attested:

*“I confirm that the information given in this form is true and accurate to the best of my knowledge and belief”*

47. From 2017, the Declaration included the submission: *“I have read and understand the instructions and guidance”*

48. Based on a screenshot from ACCA’s database, the Committee found that, in January of each year, ACCA had received Mrs Taylor’s CPD declarations for the years 2015 to 2020.

49. The Committee relied on its findings of fact in relation to allegation 1(a).

50. Based on such findings, the Committee found that the declarations submitted by Mrs Taylor in January in the years 2015 to 2019 were inaccurate but, on the basis that the last IER was signed on 27 September 2019, not in respect of 2020.

51. On this basis, the Committee found the facts of allegations 1(b)(i) to (v) proved but allegation 1(b)(vi) not proved.

**Allegation 1(c)(i)**

52. The Committee relied on its findings of fact in relation to allegations 1(a) and (b) above.
53. On the basis of its findings, the Committee was not satisfied that ACCA had proved, on the balance of probabilities, that when Mrs Taylor submitted the declarations which formed the basis of allegation 1(b), she did so deliberately, knowing them to be inaccurate. In reaching this conclusion, the Committee considered its findings in respect of the whole approach of Mrs Taylor towards the work she had undertaken for Charity A, the manner in which she was asked to perform the review, and her attitude towards being remunerated for such work. The Committee accepted Mrs Taylor's explanation and found that she did not believe she was undertaking public practice when reviewing and signing the IERs, and therefore did not appreciate that she was acting in breach of any of ACCA's regulations.
54. On the basis of such findings, the Committee concluded that, by the objective standards of ordinary decent people, such conduct would not be considered to be dishonest.
55. The Committee found allegation 1(c)(i) not proved.

56. **Allegation 1(c)(ii)**

57. The Committee relied on its findings of fact in relation to allegations 1(a) and (b) above and also the conclusions that it had reached in respect of allegation 1(c)(i).
58. On the basis of its findings, the Committee was not satisfied that ACCA had proved, on the balance of probabilities, that when Mrs Taylor submitted the declarations which formed the basis of allegation 1(b), it was done in a way which meant that she had failed to adhere to the ethical standards of her

profession. The Committee had found that her conduct had not been deliberate and it had concluded that she had unwittingly fallen foul of ACCA's regulatory requirements.

59. On this basis, the Committee found allegation 1(c)(ii) not proved.

**Allegation 1(c)(iii)**

60. The Committee relied on its findings of fact in relation to allegations 1(a) and (b) above.
61. On the basis of its findings, the Committee was not satisfied that ACCA had proved, on the balance of probabilities, that when Mrs Taylor submitted the declarations which formed the basis of allegation 1(b), she did so recklessly. ACCA had failed to prove that Mrs Taylor was aware of the circumstances, namely that she had been involved in public practice which required her to hold a PC, before making the declarations which had proved to be inaccurate, let alone that she was aware that such conduct gave rise to a risk.
62. Mrs Taylor had accepted that she had been careless in not checking ACCA's requirements before agreeing to assist Charity A, but the Committee did not consider that her conduct amounted to recklessness.
63. On this basis, the Committee found allegation 1(c)(iii) not proved.

**Allegation 1(d)**

64. The Committee found that Mrs Taylor had confirmed she did not obtain supervision for the accountancy services she provided to Charity A between 2015 and 2020 (page 342)
65. HMRC's AML Guidance (page 324) states that under the Money Laundering Regulations (MLRs), accountancy services requiring AML supervision included

*'...reviewing, analysing, calculating and reporting on financial information for other people... accounts preparation and signing'.*

66. Mrs Taylor accepted, and the Committee found, that she should have registered for, and obtained, supervision for the work undertaken by her. However, her failure to do so was considered by the Committee within the context of its overall findings.
67. The Committee therefore found allegation 1(d) proved.

#### **Allegation 1(e)**

68. The Committee considered whether Mrs Taylor, during the specified period, had failed to comply with the principle of professional behaviour. It noted that, in reaching its conclusions, it had to consider whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude that Mrs Taylor's conduct would adversely affect the good reputation of the profession.
69. In its judgement, when all the circumstances surrounding her behaviour were taken into account, the Committee was not satisfied that ACCA had established that Mrs Taylor's conduct would adversely affect the good reputation of the profession.
70. The Committee found allegation 1(e) not proved.

#### **Allegation 1(f)(i)**

71. It was submitted on behalf of ACCA that the conduct alleged at each allegation amounted to serious professional misconduct which brought discredit to Mrs Taylor, ACCA and the accountancy profession. The Committee did not agree. In exercising its judgment to determine whether ACCA had established that Mrs Taylor's conduct reached the high threshold so as to amount to misconduct, it had looked at all the circumstances surrounding this case. It noted that its

findings included breaches of ACCA regulations, but the Committee concluded that such breaches were of a technical nature and not deliberate. Furthermore, the breaches had arisen at a time when Mrs Taylor had been undertaking work for a charity without any wish on her part to gain financially or otherwise for that work.

72. Consequently, the Committee found allegation 1(f)(i) not proved.

**Allegation 1(f)(ii)**

73. As a result of its findings in respect of allegations 1(a) and (e), the Committee was satisfied that Mrs Taylor was liable to disciplinary action pursuant to byelaw 8(a)(iii).

74. The Committee therefore found allegation 1(f)(ii) proved.

**SANCTION AND REASONS**

75. 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 ("the Guidance"), and the principle of proportionality. It had also listened to legal advice from the Legal Adviser which it accepted.

76. 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.

77. 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.

78. The Committee considered whether any mitigating or aggravating factors featured in this case and considered the factors at section B8 of the Guidance.



79. In mitigation, the Committee understood that there were no previous findings against Mrs Taylor who had been a member since 2001.
80. The Committee believed that Mrs Taylor's motives in acting in the way that she did were important. She had wished to support a local charity. She had been approached as opposed to actively looking for such a role. She did not wish to be paid for the work and, when the charity insisted, she looked upon the £75 as a donation which she paid back in to charitable events.
81. There was no suggestion that the work Mrs Taylor had performed was inadequate or that the IER's were defective. No-one had been put at risk as a result of what she had done. Her shortcomings in relation to compliance with ACCA's regulations were inadvertent, as opposed to deliberate. Unfortunately, once she had fallen into error, that error reoccurred in the ensuing years, but it was the same error on each occasion caused by her failure to appreciate her regulatory responsibilities. She had not sought to gain by her conduct, and no one had lost as a result of her failure. Mrs Taylor had apologised for her failure to comply with the regulations and confirmed that she had not involved herself in such work again. Mrs Taylor had cooperated fully with the investigation.
82. As for aggravating features, the Committee repeated its finding that the breach of the regulations had occurred over a number of years although it amounted to the same error each year.
83. By reference to the Guidance, the Committee repeated that there was no evidence of loss or any adverse effect on a client or members of the public. The Committee was satisfied that Mrs Taylor had insight into her failings and it concluded that the risk of repetition of such behaviour was remote. Her conduct had also not been deliberate and she had expressed her regret.
84. The Committee concluded that the appropriate, proportionate and sufficient sanction was to order that Mrs Taylor shall be admonished.

## **COSTS AND REASONS**

85. The Committee had been provided with a schedule relating to ACCA's claim for costs (pages 1 to 8).
86. The Committee concluded that ACCA was entitled to be awarded costs against Mrs Taylor. However, the most serious allegations, including dishonesty and misconduct, had not been found proved. The amount of costs for which ACCA applied was £7,342.00.
87. Mrs Taylor had provided ACCA with details of her means in advance of the hearing and it was clear that her financial circumstances were conservative.
88. Taking account of all the circumstances, the Committee approached its assessment on the basis that Mrs Taylor was in a position to pay an award of costs made against her but that the amount claimed should be reduced to reflect the fact that the more serious allegations had not been found proved, and also Mrs Taylor's financial circumstances.
89. In exercising its discretion, the Committee considered that it was reasonable and proportionate to award costs to ACCA in the sum of £375.00.

## **EFFECTIVE DATE OF ORDER**

90. This order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

**Mr Martin Winter**  
**Chair**  
**05 April 2022**