

## HEARING

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

#### REASONS FOR DECISION

**In the matter of:** Mr Aloke Kumar Kundu

**Heard on:** Wednesday, 03 August 2022

**Location:** Remote hearing – via MS Team

**Committee:** Mr Andrew Gell (Chair)  
Mr David Horne (Accountant)  
Mr Andrew Skelton (Lay)

**Legal Adviser:** Miss Judith Chrystie (Legal Adviser)

#### Persons present

**and capacity:** Ms Ariane Tadayyon (ACCA Case Presenter)  
Ms Anna Packowska (Hearings Officer)  
Mr David Mason (Observer – newly appointed Legal Adviser)

**Summary** Removed from the student register

**Costs:** Costs awarded to ACCA in the sum of £6250.00

#### SERVICE OF PAPERS

1. Mr Kundu was neither present nor represented.

#### ACCA



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2. In order to determine whether the notice of the hearing dated 01 July 2022 had been served in accordance with the provisions of the Complaints and Disciplinary Regulations 2014 (amended 2020) ('the Regulations'), the Committee considered Service Bundle (1) with pages numbered 1-25 together with documents in its main hearing bundle with pages numbered 1 to 43.
3. The notice of hearing had been sent to Mr Kundu's registered address on 01 July 2022 and complied with the other requirements of the Regulations. Mr Kundu had not updated his registered address notwithstanding ACCA contacting him in prison on 16 June 2022 with the appropriate form so that he could provide updated contact details and a new registered address.
4. The Committee was satisfied that there was effective service under the Regulations, particularly given the features of bye-law 68. This specified that a member who has failed to give a registered address shall not be entitled to receive any notice or document and that any notice or document sent to the member's last known address shall be deemed to have been validly given.

#### **PROCEEDING IN ABSENCE**

5. The Committee recognised that it should only proceed in Mr Kundu's absence with the utmost care and caution.
6. On 21 January 2022, ACCA informed Mr Kundu that his conviction for VAT fraud was being investigated. At this time Mr Kundu was on bail at his home address awaiting sentence. In response, on 01 February 2022, Mr Kundu emailed ACCA asking to resign from ACCA's register as a student. (Owing to fact that he was the subject of an outstanding ACCA investigation, resignation was not permissible).
7. At no point since this email dated 01 February 2022 had Mr Kundu engaged with ACCA during its investigation; he had not contacted ACCA; he had not sought to participate in the proceedings before the Disciplinary Committee, having been informed of the opportunity to do so from prison.

8. The Committee considered that, prior to being imprisoned, Mr Kundu had been made aware of the proceedings. ACCA had taken the step of finding out where he was in prison and contacting him there. However, Mr Kundu had not responded. The Committee recognised that case law had confirmed that the fact that a student member had not updated contact details was unlikely to provide a reasonable explanation for a failure to participate.
9. The Committee determined that that there was no purpose in adjourning the hearing. At no point had Mr Kundu indicated that he wished to attend the hearing – indeed, he had asked to be removed from the student register - and, therefore, in the Committee’s view, it was unlikely that he would attend at a later date. The Committee considered that Mr Kundu had chosen to disengage with the process and had voluntarily waived his right to attend the hearing.
10. Further, the Committee recognised that there was a strong public interest in regulatory proceedings being considered and concluded expeditiously, particularly given the serious nature of the allegations arising from a criminal conviction, which had resulted in a custodial sentence and had been deemed urgent by ACCA warranting direct referral from the Investigating Officer to the Disciplinary Committee.
11. In all the circumstances, the Committee determined that it was reasonable and fair to proceed in Mr Kundu’s absence in accordance with its discretionary power at Regulation 10(7) of the Regulations.

## **ALLEGATION**

12. The Committee’s papers consisted of a hearing bundle with page numbered 1 to 43.
13. The Committee considered the following allegation:
  1. Mr Alope Kumar Kundu (‘Mr Kundu’), a student of the Association of Chartered Certified Accountants (‘ACCA’):

- a. On 14 January 2022, an ACCA student, Mr Alope Kumar Kundu, was convicted of 1 count of knowingly being concerned in fraudulent evasion of VAT at Snaresbrook Crown Court, which is discreditable to the Association and/or the accountancy profession;
- b. By reason of his conduct at 1(a) above, Mr Kundu is liable to disciplinary action pursuant to byelaw 8(1)(ix).

## **BACKGROUND**

14. On 23 July 2002, Mr Kundu first registered as an ACCA student. He remains a student.
15. On 14 January 2022, HMRC notified ACCA that Mr Kundu had pleaded guilty and was convicted of one count of knowingly being concerned in the fraudulent evasion of VAT at Snaresbrook Crown Court.
16. The VAT fraud was committed between 30 August 2016 and 01 October 2017, related to three companies, and involved fraudulent VAT repayment claims totalling £160,000 - £96,000 of which was claimed and paid (but later refunded to HMRC) and £64,000 which was withheld by HMRC.
17. On 01 April 2022, Mr Kundu was sentenced to 30 months imprisonment and ordered to pay the victim surcharge of £170.00.
18. ACCA had obtained the following documents:
  - a. a Certificate of Conviction dated 20 April 2022, which set out the conviction and sentence imposed.
  - b. the Sentencing Remarks of Deputy Circuit Judge Moore, who described the fraud as:
    - i. *'perfectly straightforward... but, nevertheless, sophisticated'*;

- ii. involving Mr Kundu amending genuine receipts for false amounts and sending them to HMRC as verification for VAT repayment claims;
  - iii. '*wholly impossible*' without Mr Kundu.
19. On 14 January 2022, HMRC issued a News Briefing with the headline, '*London accountant guilty of £160k tax fraud*' in which Mr Kundu was described as having created bogus paperwork to carry out the fraud whilst acting an accountant. He was identified as a member of ACCA.
20. No formal response from Mr Kundu had been received.
21. On behalf of ACCA, the Case Presenter submitted that all aspects of allegation 1 were proved: the certificate of conviction was conclusive proof of the conviction. The Case Presenter referenced the Judge's Sentencing Remarks and submitted that these demonstrated that Mr Kundu's position as an accountant was pivotal in the commission of the offence, which led to the Judge stating that Mr Kundu's professional body should be notified of the conviction and his conduct in committing the offence fell far below that which would be expected of a student member.

#### **DECISION ON FACTS/ALLEGATION AND REASONS**

22. The Committee found allegation 1(a) proved.
23. In accordance with the provisions at bye-law 8(e), the Committee regarded the certificate of conviction (signed and sealed by Snaresbrook Crown Court) as conclusive proof that Mr Kundu had pleaded guilty to a criminal offence, namely, knowingly being concerned in the fraudulent evasion of VAT.
24. Further the Committee was satisfied that the offence was discreditable to both the Association and to the accountancy profession. It considered that the fraud was planned, dishonest, involved significant sums of public monies over a period of time. It regarded Mr Kundu as highly culpable as a student accountant

and considered that the seriousness of the offending was recognised given the imposition of a custodial sentence.

25. Recognising that it was borrowing the language relating to misconduct, the Committee considered that Mr Kundu's criminal behaviour fell very short of what was expected of him as an individual on the student register. The Committee regarded the offence as disreputable for Mr Kundu as an individual but also for the wider profession. It considered such criminality would detrimentally impact on the public's perception of accountants linked with the ACCA and confidence in the integrity, trustworthiness, and reliability of the accountancy profession more widely. It considered that public confidence would be badly damaged if the conviction was not recognised for its discreditable nature given the public should rightly expect accountants to be trustworthy and honest, particularly in connection with finances.
26. The Committee found allegation 1(b) proved.
27. Owing to the Bye-law 8(1)(ix) states: '*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 to the accountancy profession*' The Committee considered that this is, in effect, what was set out at allegation 1(a), namely that Mr Kundu was convicted of a criminal offence which was discreditable to the Association and/or to the accountancy profession. The Committee had already found proved for the reasons set out above.

## **SANCTIONS AND REASONS**

28. The Committee had regard to the Guidance for Disciplinary Sanctions from January 2021 ('the Guidance').
29. The Committee reviewed the mitigation in the case. It acknowledged that Mr Kundu had no disciplinary history with ACCA and, moreover, the Sentencing Remarks by Deputy Circuit Judge Moore had recognised that he was an individual of previous good character. Whilst it noted that Mr Kundu had attempted to resign from the student register which might suggest some

recognition of the severity of conviction, the Committee considered that, owing to Mr Kundu's lack of engagement, there was very limited evidence of his insight into the serious nature of the conviction, his relating criminal offending and the detrimental impact of this on him as a regulated student and the wider reputation of the accountancy profession and ACCA as a membership body.

30. The Committee regarded Mr Kundu's criminality and the conviction as serious. Mr Kundu used his position as an accountant to perpetrate a fraud on public funds. This was an abuse of position. The Committee recognise that in the Sentencing Remarks, Deputy Circuit Judge Moore stated, '*You knew perfectly well what you were doing and, in my judgement, because of your position as an accountant, there is a demonstrable high culpability here of the breach of trust*'.
31. The Committee considered that, in a case involving a criminal conviction for intentional, premeditated, repeated, planned fraud involving sophisticated methods and significant sums, it could not to be in the public interest to impose no order or to conclude this matter with an admonishment or either form of reprimand. The Committee took account of paragraph E2 of the Guidance which stated that the public is entitled to expect a high degree of probity from a professional who has undertaken to abide by a code of ethics. It did not consider that a high degree of probity was demonstrated by Mr Kundu. For over a year, Mr Kundu had deliberately defrauded the tax-payer by reclaiming VAT from the HRMC using false documents. This was dishonesty, fraudulent conduct over a prolonged period.
32. The Committee reviewed the Guidance in relation to a sanction of a severe reprimand. The Committee recognised that Mr Kundu had a previous good record. However, the Committee also considered that important factors that might indicate that a severe reprimand was a reasonable and proportionate sanction were not present in this case – this was intentional conduct, there was harm to public monies, there was no expression of regret or remorse, no cooperation with ACCA and no references provided. In addition, the Committee had not been able to assess Mr Kundu's insight or understanding of his criminality and its impact, including on the accountancy profession and ACCA.

33. The Committee regarded this case as extremely serious and wholly inconsistent with the expectations on an accountant to be honest. Mr Kundu abused his position of trust as a student accountant in a pattern of fraudulent behaviour, which he (necessarily given the nature of fraud) attempted dishonestly to cover up. In these circumstances, given the serious departure from the professional standards expected, considered that the only appropriate order in the public interest was to remove Mr Kundu's name from the student register. It considered that this reflected the seriousness of the criminal conviction relating to a deliberate and premeditated attempt to defraud the HMRC; such offending was fundamentally incompatible with being an accountant and remaining on the student register.
34. The Committee, therefore, ordered that Mr Kundu's name should be removed from the student register. It further ordered that no application for readmission should be considered before 5 years had elapsed. It considered whether any readmission should be linked to the period of Mr Kundu's custodial sentence (including the amount he would service on licence) but was satisfied that the imposition of the maximum timeframe regarding readmission was necessary to reflect the need to uphold public confidence following the gravity of Mr Kundu's criminal offending and to declare acceptable standards of conduct to the wider profession.

### **COSTS AND REASONS**

35. ACCA claimed costs in the sum of £6,810.00.
36. The Committee recognised that under Regulation 15(1) of the Regulations, it could direct that Mr Kundu pay such sum by way of costs to ACCA as it considered appropriate. It considered that it was appropriate to impose a cost order.
37. The Case Presenter submitted that the sum claimed should be reduced in recognition that neither the hearing nor the Interim Order hearing had lasted the time estimated. The Committee considered that a reduction of costs of half of each of these hearings was necessary to reflect the reduced hearing lengths. It determined that an appropriate cost claim would be in the sum of £6,250. It



considered that this sum reflected the amount properly incurred in investigating and hearing the allegation against Mr Kundu.

38. Mr Kundu had not provided any statement or evidence as to his means. By not completing the statement or providing evidence about his means to pay, the Committee had no insight or genuine understanding about Mr Kundu's ability to pay. The Committee was conscious that Mr Kundu was in prison and, as a consequence, he would not currently have any earning capacity. However, it had no evidence about other assets or means on which properly to justify making a significant reduction on costs bearing in mind the principle that the wider membership of ACCA should not be expected to subsidise those who, as a consequence of their own failings, had required ACCA to instigate disciplinary proceedings.
39. The Committee ordered that Mr Kundu should pay costs in the sum of £6,250.

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

40. The Committee considered that imposing the order with immediate effect was necessary in the public interest. It considered that the conviction was so serious and so entirely incompatible with remaining on the student register that, although Mr Kundu was currently in prison and therefore not able to offer accountancy services to the public, Mr Kundu's name needed to be removed with immediate effect to prevent further damage to public confidence in the regulation of the profession.
41. The Committee revoked the Interim Suspension Order.

**Mr Andrew Gell**  
**Chair**  
**03 August 2022**