

**HEARING
DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF
CHARTERED CERTIFIED ACCOUNTANTS**

REASONS FOR DECISION

In the matter of: Mr Richard Ian Kissack

Heard on: Wednesday, 07 December 2022

Location: Remotely via Microsoft Teams)

Committee: Mr Maurice Cohen (Chair)
Ms Jackie Alexander (Lay)
Mr Trevor Faulkner (Accountant)

Legal Adviser: Mr Alastair McFarlane

Persons present

and capacity: Ms Michelle Terry (ACCA Case Presenter)
Mr Richard Ian Kissack (ACCA Member)
Ms Nikita Apostol (Hearings Officer)

Outcome: Exclusion from Membership.
Costs of £5,000 awarded against Mr Kissack.

1. ACCA was represented by Ms Terry. Mr Kissack did attend but was not represented. The Committee had before it a bundle of papers, numbered pages 1–52, and two tabled additional bundles, numbered pages 1–35 and 1-15 and a service bundle numbered pages 1-23.

SERVICE

2. Having considered the service bundle, the Committee was satisfied that notice of the hearing was served on Mr Kissack in accordance with the Complaints and Disciplinary Regulations 2014 (“CDR”).

ALLEGATIONS

Allegation 1

1. On 10 May 2021, at the Court of General Gaol Delivery, Mr Richard Ian Kissack, a member of the Association of Chartered Certified Accountants ('ACCA') was convicted of:
 - i. Between 01 July 2011 and 26 April 2019 being knowingly concerned in the fraudulent evasion of Value Added Tax, contrary to section 72(1) of the Value Added Tax Act 1996;
 - ii. On or about 30 April 2012 making a statement which he knew to be false in a material particular when furnishing the Customs and Excise Division with a VAT Return, contrary to section 72 (3) of the Value Added Tax Act 1996;
 - iii. On or about 30 April 2013 making a statement which he knew to be false in a material particular when furnishing the Customs and Excise Division with a VAT Return, contrary to section 72 (3) of the Value Added Tax Act 1996;
 - iv. On or about 29 April 2014 making a statement which he knew to be false in a material particular when furnishing the Customs and Excise Division with a VAT Return, contrary to section 72 (3) of the Value Added Tax Act 1996;
 - v. On or about 30 April 2015 making a statement which he knew to be false in a material particular when furnishing the Customs and Excise Division with a VAT Return, contrary to section 72 (3) of the Value Added Tax Act 1996;

- vi. On or about 29 April 2016 making a statement which he knew to be false in a material particular when furnishing the Customs and Excise Division with a VAT Return, contrary to section 72 (3) of the Value Added Tax Act 1996;
 - vii. On or about 28 April 2017 making a statement which he knew to be false in a material particular when furnishing the Customs and Excise Division with a VAT Return, contrary to section 72 (3) of the Value Added Tax Act 1996;
 - viii. On or about 27 April 2018 making a statement which he knew to be false in a material particular when furnishing the Customs and Excise Division with a VAT Return, contrary to section 72 (3) of the Value Added Tax Act 1996;
 - ix. On or about 26 April 2019 making a statement which he knew to be false in a material particular when furnishing the Customs and Excise Division with a VAT Return, contrary to section 72 (3) of the Value Added Tax Act 1996;
2. By reason of his conduct at allegation 1 above Mr Kissack is liable to disciplinary action pursuant to byelaw 8(a)(ix).

BACKGROUND

3. Mr Kissack became a member of ACCA on 15 June 2001 and a Fellow of ACCA on 15 June 2006.
4. On 31 October 2019, it was brought to ACCA's attention by Mr Kissack's legal representative that Mr Kissack was subject to a VAT investigation being conducted by the Isle of Man Customs and Excise and Isle of Man police.
5. On 10 May 2021, Mr Kissack's representative informed ACCA that Mr Kissack was dealt with at the Court of General Gaol Delivery on the Isle of Man on 10 May 2021. He received a 22-month custodial sentence, suspended for a period of two years.
6. Person A informed ACCA on 18 August 2021 that the Attorney General had appealed Mr Kissack's sentence, and it was reduced from 22 months,

suspended to 13 months but made custodial, rendering Mr Kissack unable to respond to further correspondence.

7. ACCA obtained a copy of the Certificate of Conviction which confirmed the conviction and sentence.

ACCA SUBMISSIONS

Allegation 1

Proof of conviction

8. ACCA relies upon the certificate of conviction to evidence the conviction and submitted that in accordance with bye-law 8(ix) the conviction and the facts thereof are proven.

Discreditable to the Association or the Accountancy Profession

9. ACCA submitted that the offences of fraudulent evasion of VAT and making false statements are discreditable to the Association and the accountancy profession given the serious departure from the standards that one would expect from an ACCA Fellow. In addition, ACCA submitted that the public interest should be considered. The public interest includes the protection of the public, maintenance of public confidence in the profession and ACCA, and declaring and upholding proper standards of conduct and behaviour. ACCA submitted that such an offence undermines public confidence in ACCA and the accountancy profession and as such, Mr Kissack is liable to disciplinary action under byelaw 8(a)(ix).
10. ACCA contended that the public's trust in the profession might reasonably be undermined in light of this conviction, and as such, Mr Kissack is liable to disciplinary action under byelaw 8(a)(ix).

MR KISSACK'S SUBMISSIONS

11. Mr Kissack admitted the Allegation and did not dispute that he was convicted of these offences and accepted that these offences are discreditable to the profession.

DECISION ON ALLEGATIONS AND REASONS

12. The Committee accepted the advice of the Legal Adviser.
13. The Committee considered the documentary evidence together with the submissions of Ms Terry on behalf of ACCA and Mr Kissack's submissions.
14. The Committee noted Mr Kissack's admissions to the Allegation and found those facts proved by virtue of his admissions under Complaints and Disciplinary Regulations 12(3). Further and in any event, the Committee was satisfied, by virtue of the certificate of conviction, that he was convicted of the offences of fraudulent evasion of VAT and making false statements. Accordingly, it was satisfied that the conviction set out under Allegation 1 was proved.

Discreditable to the Association and Profession

15. The Committee then considered whether the proved conviction was discreditable to the Association and the accountancy profession. It noted the submissions of Ms Terry for ACCA and of Mr Kissack and his acceptance that it was discreditable.
16. The Committee was satisfied that the proved conviction was discreditable to the Association and the accountancy profession. This was because of the serious nature of the conviction for which Mr Kissack received a 13-month immediate custodial sentence. The Committee was satisfied that such serious offending would undermine the standing of the profession in the eyes of the public and was therefore discreditable to the accountancy profession. The Committee reminded itself of Sir Thomas Bingham MR (as he then was) observations in Bolton v Law Society [1994] 1 WLR 512, as to the reputation of the profession this was "part of the price" of being a member of a profession. The Committee

was satisfied that Mr Kissack's conduct amounted to a serious falling short of his professional obligations.

17. Accordingly, the Committee was satisfied that the conviction rendered Mr Kissack liable to disciplinary action pursuant to bye-law 8(a)(ix).

SANCTIONS AND REASONS

18. The Committee noted its powers on sanction were those set out in Regulation 13(3). It had regard to ACCA's Guidance for Disciplinary Sanctions (the "Guidance") and bore in mind that sanctions are not designed to be punitive and that any sanction must be proportionate. It accepted the advice of the Legal Adviser.

19. The Committee noted Mr Kissack's written responses, as well as his oral submissions. Mr Kissack stated that:

"There was an effort to face what I did and make an offer to put things right which has been done. My motivation for diverting the VAT was not to pay for a fancy woman or have super cars, a drug addiction or a gambling habit but to ensure that people who wanted to break up my family were frustrated."

20. The Committee reminded itself that it was not its function to punish a member for the second time in relation to the conviction and that whilst noting the Guidance, its function was to determine the appropriate and proportionate sanction on the merits of the individual case.

21. The Committee reminded itself that each case was to be judged on its own facts, and that the appropriate and proportionate sanction was a matter of this Committee's sole judgment.

22. The Committee considered Mr Kissack's conduct that led to the conviction to be very serious. The Committee had specific regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour and maintain the reputation of the profession. The Committee found Mr Kissack's submission that there would be no repetition of this behaviour "because his children had grown up and therefore there would be no repeat of the financial

pressures he was under at the time”, to be both surprising and concerning. This in the Committee’s judgment was indicative of his lack of insight into the seriousness of his offending and did not mitigate any risk of reoccurrence.

23. It considered the following to be aggravating factors:

- Serious conviction involving fraud for gain that undermined public confidence in the profession;
- The offending was over a prolonged period of some years and was planned;
- An immediate custodial sentence was imposed;
- He has demonstrated no insight into the seriousness of such behaviour and as to the consequences for the reputation of the profession;
- He wrongly indicated that no-one lost from his offending, contending that this was a “victimless” crime.

24. The Committee considered the following to be mitigating factors

- Mr Kissack pleaded guilty to the charges for which he was convicted;
- He has admitted ACCA’s case;
- He has no adverse disciplinary history;
- He self-reported, has fully engaged and co-operated openly with ACCA and the Committee;
- He has repaid all monies to the Customs & Excise including all interest and penalties.

25. Given the Committee’s view of the seriousness of his conduct and the need to uphold the reputation of the profession, it was satisfied that it was not appropriate or sufficient to conclude this case with ‘No Further Action’.

26. The Committee noted that while some of the factors listed in the Guidance for an ‘Admonishment’ and ‘Reprimand’ were present, it was sequentially not satisfied that neither of these sanctions were sufficient to highlight to the profession and the public the gravity of the conviction.

27. The Committee next considered the sanction of 'Severe Reprimand'. It noted that a majority of the factors in favour of this sanction were not present including the lack of insight, unintentional conduct and genuine expression of regret. The Committee considered that the behaviour was so serious that it was fundamentally incompatible that Mr Kissack should remain a member. The majority of the factors for exclusion were present, including that this was a serious conviction involving prolonged dishonesty. It was satisfied that only a sanction of exclusion was sufficient to protect and uphold the standing and reputation of the profession and the public's confidence in it.

COSTS AND REASONS

28. ACCA submitted cost bundles and Mr Kissack submitted a statement of means. ACCA claimed costs of £8,790.50 based on an assessment of what work this case had involved but noted Ms Terry's concession that the case had taken less time than estimated. The Committee noted the statement of financial position sent in by Mr Kissack, which included evidence of income and his submissions.
29. The Committee decided that it was appropriate to award costs. It noted that Mr Kissack had self-reported this matter and fully co-operated with ACCA. The Committee made a reduction for the less time the case took and took account of Mr Kissack's means as declared on his statement of means. It concluded that the sum of £5,000.00 was appropriate and proportionate. Accordingly, it ordered that Mr Kissack pay ACCA's costs in the sum of £5,000.00.

EFFECTIVE DATE OF ORDER

30. ACCA did not seek an Immediate Order and the Committee was not satisfied that an Immediate Order was necessary in the circumstances this case.

Mr Maurice Cohen
Chair
07 December 2022