

APPLICATION ON PAPERS
CONSENT ORDER CHAIR OF THE ASSOCIATION OF
CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: **Mr Michael Richard Gornall**

Considered on: **Thursday, 07 July 2022**

Location: **Remotely via Microsoft Teams**

Chair: **Mr Andrew Popat CBE**

Legal adviser: **Mr Alastair McFarlane**

Outcome: **Consent Order approved**

DOCUMENTS BEFORE THE COMMITTEE

1. The Committee received a bundle of papers, including a signed draft Consent Order, numbered pages 1-767, a signed Consent Order, a Service Bundle numbered pages 1-7 and two Cost Schedules.

ALLEGATIONS

Mr Michael Richard Gornall, FCCA, a Principal at Towers and Gornall:

1. Breached the fundamental principle of professional competence and due care (2018–2020) in that he:
 - a. Failed to fully follow the Charity Commission's Directions and guidance for examiners (CC32) in the independent examinations he carried out of the accounts set out in Schedule A.

- b. Caused or allowed accounts of Charity A for the year ended 31 October 2019 and 31 October 2020 to be prepared in accordance with the micro entity provisions and filed at Companies House when it was not, by virtue of being a charity, entitled to take advantage of those micro entity provisions.
2. Is by virtue of the fact above guilty of misconduct pursuant to byelaw 8(a)(i).

BACKGROUND

2. Mr Gornall has been a member of ACCA since 1996.
3. Independent Examiners must follow all the Charity Commission's Directions for examiners that apply. The Directions have legal force, as they are made by the Commission under section 145(5)(b) of the Charities Act 2011.
4. Mr Gornall was responsible for issuing the Independent Examiner's reports referred to below, but he did not fully follow applicable Charity Commission Directions, as detailed below:

Allegation 1a

Charity B – year ended 31/3/2020

Direction 10 states that the Independent Examiner, '*must where accruals accounts are prepared check that they comply with the applicable Statement of Recommended Practice: Accounting and Reporting by Charities (SORP) and the applicable accounting standard*'. However, these accounts contained a statement that they had been prepared in accordance with the Charities Statement of Recommended Practice: '*Accounting and Reporting by Charities*', (SORP), published in October 2000 and the Financial Reporting Standard for Smaller Entities (effective June 2002), both of which were obsolete. The accounts should have been prepared in accordance with the Charities SORP (FRS 102) (effective 01 January 2019).

Direction 13 states '*The content of the independent examiner's report must cover all the matters required by the 2008 Regulations*'. Paragraph 13.6 of the Directions and guidance sets out the required contents of the Independent Examiner's report, including,

'In their examiner's report the examiner must state...that the report relates to an independent examination carried out under section 145 of the 2011 Act' (the Charities Act 2011). However, the Independent Examiner's report in relation to these accounts, referred to the Charities Act 1993, which was obsolete.

Charity A – year ended 31/10/2019

Direction 10 states that the Independent Examiner *'must where accruals accounts are prepared check that they comply with the applicable Statement of Recommended Practice: Accounting and Reporting by Charities (SORP) and the applicable accounting standard'*. However, these accounts contained a statement that they had been prepared in accordance with the Charities Statement of Recommended Practice: Accounting and Reporting for charities (SORP 2005) and the Financial Reporting Standard for Smaller Entities (effective June 2002), both of which were obsolete. The accounts should have been prepared in accordance with the Charities SORP (FRS 102) (effective 01 January 2015).

In addition, the Charities SORP (FRS102) states *'All charities preparing accruals accounts must prepare a balance sheet at the end of each reporting period which gives a true and fair view of their financial position. The balance sheet provides a snapshot statement of a charity's assets and liabilities....'* It further states *'Fixed asset investments in quoted shares, traded bonds and similar investments must be measured initially at cost and subsequently at fair value (their market value) at the reporting date...'*

The company's accounting policy for investments in the accounts stated, *'Quoted investments held as fixed assets are valued at market value with the unrealised gain or loss on revaluation credited or deducted from the funds as arising...'* The balance sheet in the accounts included fixed investments of £824, which the notes referred to as being 3.5% war stock which had cost £898. However, all war stock was repaid in full by the UK Treasury on 09 March 2015.

Direction 13 states *'The content of the independent examiner's report must cover all the matters required by the 2008 Regulations'*. Paragraph 13.6 of the Directions and guidance sets out the required contents of the Independent Examiner's report, including, *'In their examiner's report the examiner must state...that the report relates to an independent examination carried out under section 145 of the 2011 Act'* (Charities Act 2011). However, the Independent Examiner's report in relation to these accounts

referred to Section numbers from the Charities Act 1993, which was obsolete.

Section 145(1)(a) of the Charities Act 2011 sets out the circumstances in which a charity's accounts must be examined by an Independent Examiner and, in relation to an Independent Examiner, states '*...that is, an independent person....*'.

Paragraph 13.6 of the Charity Commission's Directions and guidance states that in their Examiner's report, the Examiner must state their name. However, the Independent Examiner's report in relation to these accounts contained references to 'We', 'Our work', 'Our responsibility', 'our attention', 'our opinion' and, rather than naming a person – that is, Mr Gornall- as Independent Examiner, contained the name of the firm of which he was a Principal, Towers and Gornall. There is no provision in the Charities Act 2011 for a firm to act as Independent Examiner.

Charity C

In relation to Charity C, Mr Gornall has informed ACCA '*...I do not think we were aware that the [Charity C] was a charity. This job was inherited by us from one of our previous partners and we simply prepared a brief set of accounts for the trustees, in the format that they were used to*'.

Year ended 31/3/2018

Direction 12 states '*The examiner must compare any narrative information or figures in the trustees' annual report with the accounts in order to identify any material inconsistency between the trustees' annual report and the accounts*'.

Paragraph 12.1 of the Directions and guidance states '*...The Trustees must prepare the report...*'. Paragraph 12.1 goes on '*...Charity reporting and accounting: the essentials (CC15d) – sets out the required contents of the trustees' annual report.*'. Charity reporting and accounting: the essentials (CC15d) says, '*...all registered charities must prepare a trustees' annual report...*', and sets out '*matters that all charities must report*'.

However, these accounts did not contain a Trustees' Report. Instead, there was a 'Chairman's Report'. This did not contain all of the '*matters that all charities must report*'. By way of examples of this, the Chairman's Report did not include the charity registration number, particulars, including the date if known, of the nature of the governing document

for example trust deed, memorandum and articles of association etc...., the names of all those who were the charity's trustees on the date the report was approved.

Direction 13 states '*The content of the independent examiner's report must cover all the matters required by the 2008 Regulations*'. Paragraph 13.6 of the Directions and guidance sets out the required contents of the Examiner's report, including '*In their examiner's report the examiner must state...that the report relates to an independent examination carried out under section 145 of the 2011 Act*' (Charities Act 2011). However, the Independent Examiner's report in relation to these accounts referred to the Charities Act 1993, which was obsolete.

Year ended 31/3/2019

There was a similar breach of direction 12 for this year. The accounts did not contain a Trustees' Report. Instead, there was a 'Chairman's Report' which did not contain all of the '*matters that all charities must report*'.

By way of examples of this, the Chairman's Report did not include the charity registration number, particulars, including the date if known, of the nature of the governing document for example trust deed, memorandum, and articles of association etc., names of all those who were the charity's trustees on the date the report was approved. Further, there was a similar breach of Direction 13 again referring to the incorrect Charities Act as in the previous year.

Mr Gornall's working papers

During the investigation, Mr Gornall admitted to ACCA that his working papers in relation to the accounts referred to in Schedule A did not include all those set out in paragraph 3.3 of the Charity Commission's directions and guidance.

Allegation 1(b)

Mr Gornall was the Principal at Towers and Gornall responsible for the preparation of the accounts of Charity A years ended 31/10/2019 and 31/10/2020 filed at Companies House. Both of these years' filed accounts stated, '*The financial statements have been prepared in accordance with the micro-entity provisions...*'. However, as set out in Section 384B(1)(f) of Companies Act 2006, the micro-entity provisions do not apply in

relation to a company's accounts for a particular year if it was at any time within that year a charity and so the company was not entitled to take advantage of the micro-entity provisions in the relevant years.

CHAIR'S DECISION

5. Under Regulation 8(8) of the Complaints and Disciplinary Regulations 2014, the Chair must determine whether, based on the evidence before them, the draft Consent Order should be approved or rejected. The Chair had regard to the Consent Orders Guidance.
6. The Chair noted that under Regulation 8(12) they shall only reject the signed Consent Order if they are of the view that the admitted breaches would, more likely than not, result in exclusion from membership. The Chair accepted that a proper investigation had been conducted by ACCA.
7. The Chair considered the seriousness of the breaches as set out and the public interest, which includes the protection of the public, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and performance. They balanced this against Mr Gornall's interests and his previous good character, long career, his admissions, and his co-operation with ACCA. There was no suggestion of dishonesty.
8. The Chair noted the list of aggravating and mitigating factors advanced at paragraph 10 of the draft Consent Order bundle. They noted the steps that Mr Gornall has taken in order to ensure that his firm now complies with the requirements.
9. The Chair had regard to ACCA's Guidance for Disciplinary Sanctions. They were satisfied that there had been early and genuine acceptance of the misconduct and that the risk to the public and profession from Mr Gornall continuing as a member was low.
10. For the reasons set out above, the Chair was satisfied that the admitted breaches would be unlikely to result in exclusion from membership, and therefore there was no basis for them to reject the Consent Order under Regulation 8(12). The Chair noted the proposed Consent Order, and considering all the information before them, was satisfied that a severe reprimand was an appropriate and proportionate disposal of this case.

ORDER

11. The Chair, pursuant to their powers under Regulation 8, made an Order in terms of the draft Consent Order, namely that Mr Gornall be severely reprimanded, and pay ACCA's costs of £2,345.

Mr Andrew Popat CBE
Chair
07 July 2022