

## HEARING

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

#### REASONS FOR THE DECISION

<b>In the matter of:</b>	<b>Mr Shamim Al Mamun Bhuyian</b>
<b>Heard on:</b>	<b>Thursday 16 and Friday 17 June 2022</b>
<b>Location:</b>	<b>Held remotely by video conference</b>
<b>Committee:</b>	<b>Mrs Helen Carter-Shaw (Chair) Mr Constantinos Lemonides (Accountant) Mr Colin Childs (Lay)</b>
<b>Legal Adviser:</b>	<b>Mr Richard Ferry-Swainson</b>
<b>Persons present and capacity:</b>	<b>Ms Michelle Terry (ACCA Case Presenter) Miss Nyero Abboh (Hearings Officer) Mr Shamim Al Mamun Bhuyian (Member) Mr Paul Dipré (Member's representative)</b>
<b>Summary:</b>	<b>Allegations 1.1 and 1.2 found proved. Allegations 2 and 3 (in its entirety) found not proved. Misconduct not found proved, but Member found to be liable to disciplinary action.</b>
<b>Costs:</b>	<b>£5000</b>

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## **INTRODUCTION/SERVICE OF PAPERS**

1. The Disciplinary Committee (“the Committee”) convened to consider a number of Allegations against Mr Bhuyian.
2. The papers before the Committee were in a bundle numbered 1 to 170, an additional bundle numbered 1 to 9, a supplementary bundle numbered 1 to 51, a tabled additional bundle 2, numbered 1 to 7 and a 7-page ACCA Factsheet entitled ‘Am I in public practice’. There was also a service bundle numbered 1 to 14 and a costs bundle.

## **APPLICATION TO AMEND THE ALLEGATION**

3. At the outset of the hearing, Ms Terry made an application to amend the Allegations by deleting the year 2018 from Allegations 2 and 3 and adding to Allegation 3 a further Allegation at 3.3 alleging in the alternative to 3.1 and 3.2 that Mr Bhuyian was reckless when completing the 2019 and 2020 annual declarations. Ms Terry submitted that the changes were necessary to reflect the state of the evidence and to provide the Committee with an alternative outcome should they decide Mr Bhuyian’s conduct was neither dishonest nor lacking in integrity. She submitted that the proposed amendments did not prejudice Mr Bhuyian in his defence.
4. Mr Bhuyian had been sent the proposed amendments on 14 June 2022 and he responded saying that he did not object to the changes, a position Mr Dipré maintained on his behalf at the hearing.
5. The Committee considered the application with care and took into account the submissions made by both parties. The Committee received and accepted the advice of the Legal Adviser. The Committee was satisfied that the proposed amendments to remove 2018 more accurately reflected the evidence and that the addition of an allegation of recklessness was appropriate in all the circumstances. The Committee therefore allowed all the requested amendments and in doing so took into account the lack of any objection by Mr Bhuyian.

## **ALLEGATIONS/BRIEF BACKGROUND**

6. It is alleged that Mr Bhuyian is liable to disciplinary action on the basis of the following Allegations:

**Allegations (as amended)**

1. Mr Shamim Al Mamun Bhuyian, a Fellow of ACCA, breached the Global Practising Regulations 2003 with regard to any or all of the following:
  - 1.1 Between 20 October 2019 and 19 December 2020, was in public practice contrary to Regulation 3(1)(a) of the Global Practising Regulations (2019 - 2020);
  - 1.2 Was a Director of 'S&B Accountants Limited' between 20 October 2019 to 19 December 2020, a firm where public practice was carried on, contrary to Regulation 3(2)(a) of the Global Practising Regulations (2019 - 2020);
2. Mr Shamim Al Mamun Bhuyian submitted annual declarations to ACCA for 2019, 2020 in which he declared he had not engaged in public practice activities without holding an ACCA practising certificate when he had.
3. Mr Shamim Al Mamun Bhuyian's conduct referred to at paragraph 2 was:
  - 3.1 Dishonest in that he knew the annual declarations he submitted in all or any of the 2019, 2020 returns as at allegation 2 were not true; or in the alternative;
  - 3.2 Conduct that demonstrated that he acted with a lack of integrity.
  - 3.3 In the further alternative, reckless in that Mr Shamim Al Mamun Bhuyian failed to have any or any proper regard as to whether the declarations he gave in all or any of the 2019 and 2020 CPD returns that he had not engaged in public practice without holding a practising certificate were true.
4. By reason of his conduct, Mr Shamim Al Mamun Bhuyian is:

4.1 Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of any or all of the matters set out at allegations 1 to 3 above; or in the alternative;

4.2 Liable to disciplinary action pursuant to bye-law 8(a)(iii) in relation to allegation 1 above.

7. Mr Bhuyian became a member of ACCA on 22 April 2016. He has never held an ACCA Practising Certificate (PC).

8. ACCA received an anonymous complaint concerning Mr Bhuyian in November 2020. Subsequent searches by ACCA found Mr Bhuyian had been in, or holding out to be in, public practice, namely as Director and shareholder of a public practice firm.

9. ACCA's investigation found evidence that Mr Bhuyian had been a Director of 'S&B Accountants Limited' (S&B/the firm) where, it is alleged, public practice was carried on as follows:

1. Companies House records showed:

i. Mr Bhuyian was a Director of S&B from 20 October 2019 to 19 December 2020.

ii. S&B had been registered with the word 'Accountants' in its name which comes within the definition of a public practice activity.

iii. Mr Bhuyian had held himself out as a 'Certified Chartered Accountant' in Companies House records for S&B.

2. Google searches for S&B returned results which appeared to confirm public practice was being carried on.

3. S&B's website described the firm's public practice activities as:

*"S&B Accountants / One stop solution for Accountancy...Taxation,*

*Payroll and VAT...[we] will file all the annual accounts limited companies are required to submit...including a full CT600 Corporation Tax Return”.*

4. An advertisement for S&B on www.yell.com provided a review for the firm in March 2019 which stated, “*They prepared and submitted by accounts on time...*” [sic]
5. The firm’s LinkedIn profile repeated the descriptions of the firm’s activities shown on its advertisement at www.yell.com.
6. Mr Bhuyian’s Facebook page referred to him as ‘Director ’at S&B from 24 May 2020 to present.
7. S&B’s Facebook page listed the firm’s services which included public practice including ‘*Annual Accountants preparation & submission/Corporation Tax Returns preparation & submission...*’.
10. Mr Bhuyian has, as a result of ACCA’s investigation, resigned as Director and divested his shares in S&B (which he only held for one day)
11. While Mr Bhuyian has asserted he did not sign off any public practice work, ACCA’s enquiries found the firm’s other Director (Person A) was not regulated by a supervisory body to carry out public practice.
12. On 26 January 2021, ACCA received a letter from Person A stating:

*“Re: Confirmation of Public Practice responsibilities*

*The determination of this letter is to confirm that I am the solitary director and shareholder of S & B Accountants Limited and as a practice principal I sign off all statutory documents on behalf of the practice. I accept all responsibilities of public practice activities undertaking by S & B Accountants Limited.”*

#### **DECLARATIONS TO ACCA**

13. Mr Bhuyian submitted annual CPD (Continuing Professional Development) declarations to ACCA for the years 2019 and 2020 which 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 understood the instructions and guidance”. [sic]*

14. The associated guidance notes for the declaration 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. Please refer to the factsheet Do I need a practising certificate available online ...”*

15. A screenshot from ACCA’s database of the dates that ACCA received Mr Bhuyian’s CPD declarations was provided to the Committee.
16. Prior to these declarations, when he became an ACCA member in 2016, Mr Bhuyian had also provided ACCA with a Declaration as to his public practice activities which declared:

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

17. On 01 February 2021, Mr Bhuyian provided signed written undertakings to ACCA as follows:

- (a) *I will not offer/carry out those services deemed as public practice unless I am an employee of a firm in/holding out to be in public practice;*
- (b) *I will not accept an appointment, or hold myself out as available to accept an appointment as an auditor; and*
- (c) *I will not advertise myself as an ACCA member, a Chartered Certified Accountant or use my designatory letters during the course of my*

*business or on business stationary/signage unless I am an employee of a firm in/holding out to be in public practice. [sic]*

18. On 02 February 2021, Mr Bhuyian sent a letter by email to ACCA detailing his responses to the matters alleged. He said that S&B Accountants Limited appointed him as a Director on 20 October 2019 and he resigned on 19 December 2020. He said he did not hold any shares in the company until 18 December 2020 when this investigation was instigated, and he then gave up his shares the following day when he resigned as Director. He said that because Person A was approved as a Money Laundering Supervisor and the only responsible person for public practice, he thought his role as Director would not fall under the definition of public practice. He went on to say, *“I admit that as an ACCA member I should have been aware about ACCA’s rules of public practice and must have acted upon following the rules book. I must categorically offer repentance for my activities and assuring to preserve ACCA’s reputation and will observe my responsibilities in the future.” [sic]*
19. Mr Bhuyian said that until he became Director of S&B Accountants Limited he had no official connection with the firm, but he willingly supported Person A in the startup process of their practice and he gave advice and assistance, but that it was Person A who signed off any public practice work.
20. Mr Bhuyian spoke about the hard work and sacrifice required to become an ACCA member and how he felt proud to have been able to use the suffix ACCA after his name. He said it was *“beyond mind that I will be declaring false statements while completing CPD declaration.” [sic]* He said it was due to a lack of awareness and understanding that he made mistakes and he offered his unconditional apology. He assured ACCA that he would not repeat his mistakes and would endeavor to obey ACCA’s rules and regulations.
21. In a second letter, dated 05 July 2021, Mr Bhuyian repeated his apology for what he referred to as his *“lack of awareness and understanding” [sic]* which led him to make a *“naïve mistake” [sic]* in accepting the appointment of Director at S&B Accountants Limited. He said that as soon as his mistake was pointed out to him, he resigned his directorship and reiterated that his involvement in S&B Accountants Limited had been negligible and that he had never received

any financial benefit from this association. With reference to his declarations to ACCA he said:

*“I have been employed in accountancy practices for a long period and it was my understanding that working under the supervision of a principal, my involvement in any accountancy practice will not fall under the definition of public practice. At S & B Accountants [Person A] is the principal from the start of the business til now, and I had a similar impression that my directorship or shareholding will not fall under the definition of public practice. Unfortunately, it was my layman understanding that if I become a director of an accountancy practice, my involvement will not fall under the definition of public practice. The only time I became aware of this was when this investigation was instigated. If I knew that I would not have committed these to jeopardise my future and integrity.” (sic)*

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

22. The Committee considered with care all the evidence presented and the submissions made by Ms Terry and Mr Dipré. The Committee accepted the advice of the Legal Adviser and bore in mind that it was for ACCA to prove its case and to do so on the balance of probabilities. In reaching its decisions on the facts the Committee also took into account Mr Bhuyian’s good character.

### **Allegation 1 - proved**

1. Mr Shamim Al Mamun Bhuyian, a Fellow of ACCA, breached the Global Practising Regulations 2003 with regard to any or all of the following:
  - 1.1 Between 20 October 2019 and 19 December 2020, was in public practice contrary to Regulation 3(1)(a) of the Global Practising Regulations (2019 - 2020);
  - 1.2 Was a Director of ‘S&B Accountants Limited ’between 20 October 2019 to 19 December 2020, a firm where public practice was carried on, contrary to Regulation 3(2)(a) of the Global Practising Regulations (2019 - 2020);



23. There was no dispute that Mr Bhuyian was a fellow of ACCA. Equally, there was no dispute that between 20 October 2019 and 19 December 2020 he was a Director of S&B Accountants Limited. Ms Terry submitted that by virtue of being a Director of a company that was carrying out public practice, together with the matters referred to in paragraph 9 above, Mr Bhuyian fell afoul of the definition of someone who was holding themselves out to be in public practice and he was, therefore, acting contrary to the Global Practising Regulations (“GPRs”) as alleged. She conceded that ACCA had no evidence that Mr Bhuyian had actually engaged in any public practice activities, just that he had held himself out as available to carry them out.
24. Mr Dipré argued that, according to GPRs 3 and 4, the fact that Mr Bhuyian was not the sole Director, Person A being a de facto Director of S&B Accountants Ltd, meant that he did not fall foul of GPR4(1)d) and he invited the Committee to conclude that the word ‘sole’ before the word proprietor must also apply to the other description that followed, including Director.
25. GPR 4(1)(d) states:

*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.*
26. The Committee was satisfied that 1(a) did not apply, there being no evidence Mr Bhuyian ever accepted an appointment as an auditor. Equally, following Ms Terry's concession that there was no evidence of Mr Bhuyian actually carrying out any public practice activities, the Committee was satisfied that 1(b) did not apply either. However, by allowing himself to be associated with a business that clearly carried out public practice activities, the Committee was satisfied that Mr Bhuyian did fall foul of 1(c). Furthermore, he also fell afoul of 1(d) in that the Committee was satisfied that he had held himself out, or allowed himself to be held out, as a Director of a firm where public practice was carried on. The Committee rejected Mr Dipré's submission that the word 'sole' applied equally to all the descriptions that followed 'sole proprietor' since this could not be true of a partnership, which requires at least two people. The Committee was satisfied that the description 'sole' referred only to proprietor and not to any of the following designations.
27. Having reached that conclusion, it followed that Mr Bhuyian was, in the limited way referred to above, in public practice on the given dates, contrary to Regulation 3(1)(a), as alleged. The Committee therefore found Allegation 1.1 proved.
28. It also followed that the Committee found proved that Mr Bhuyian was a Director of S&B Accountants Limited on the given dates, that this was a firm that was carrying out public practice activities, albeit there was no evidence that he himself was actually carrying out any public practice activities, and that this was contrary to Regulation 3(2)(a) - which used the same terminology with reference to 'sole' as discussed above. The Committee thus found Allegation 1.2 proved.

**Allegation 2 - not proved**

- 2 Mr Shamim Al Mamun Bhuyian submitted annual declarations to ACCA for 2019, 2020 in which he declared he had not engaged in public practice activities without holding an ACCA practising certificate when he had.
29. It was not contested that Mr Bhuyian submitted annual CPD declarations to ACCA in 2019 and 2020. It was also not disputed that he had not held a Practising Certificate. The allegation, however, was that he had declared that he had not engaged in public practice activities when he had. Ms Terry, as referred to above, had conceded that ACCA had no evidence to prove that Mr Bhuyian had actually engaged in public practice activities. The instructions and guidance clearly draw a distinction between engaging in public practice activities and holding oneself out, as described in GPR 4(1)(c). It followed that as ACCA had not proved that Mr Bhuyian had actually *engaged* in public practice activities then this Allegation had not been proved.

### **Allegation 3 - not proved**

3. Mr Shamim Al Mamun Bhuyian's conduct referred to at paragraph 2 was:
- 3.1 Dishonest in that he knew the annual declarations he submitted in all or any of the 2019, 2020 returns as at allegation 2 were not true; or in the alternative;
- 3.2 Conduct that demonstrated that he acted with a lack of integrity.
- 3.3 In the further alternative, reckless in that Mr Shamim Al Mamun Bhuyian failed to have any or any proper regard as to whether the declarations he gave in all or any of the 2019 and 2020 CPD returns that he had not engaged in public practice without holding a practising certificate were true.
30. Allegation 3 was predicated on a positive finding in relation to Allegation 2. Since the Committee had found Allegation 2 not proved, it therefore followed that Allegation 3 (in its entirety) was also not proved.

### **Allegation 4.1 - not proved**

31. Mr Bhuyian, as a Fellow of ACCA, failed to comply with ACCA's GPRs for a period of 14 months, when he held himself out as being in public practice whilst a Director of S&B Accountants Limited. The Committee noted that, apart from one day, Mr Bhuyian did not hold any shares in the company and that at all times Person A was a de facto Director and indeed either side of the period when he was the actual Director, it was Person A who was the Director of the firm. She also held all the shares.
32. The question for the Committee was whether this demonstrated a flagrant disregard for ACCA's GPRs and his obligations as a Fellow, or a mistake on his part, as he stated in his written accounts sent to ACCA. In all the circumstances, the Committee considered Mr Bhuyian to have been naive and careless in allowing himself to become a Director of S&B Accountants Limited. He should have known better and paid closer attention to ACCA's Regulations. In his written submissions, he said he should have been aware of the Rules and followed the Rule Book, and he is right. Had he been actually carrying out public practice activities the Committee would doubtless have taken a different view, but on the basis of mistakenly, through ignorance, allowing himself to be held out as available to carry out such activities the Committee did not consider his actions to be so serious as to amount to misconduct.
33. The Committee therefore found Allegation 4.1 not proved.

#### **Allegation 4.2 - proved**

34. Having found Allegation 4(i) not proved the Committee went on to consider whether Mr Bhuyian was liable to disciplinary action pursuant to byelaw 8(a)(iii), as alleged in Allegation 4.2. Mr Bhuyian was a Fellow of ACCA at the relevant time and thereby bound by the Regulations. He had breached the GPRs by his actions as detailed in Allegation 1.1 and 1.2. Such breaches clearly made him liable to disciplinary action and the Committee therefore found Allegation 4.2 proved.

#### **SANCTION AND REASONS**

35. In reaching its decision on sanction, the Committee took into account the submissions made by Ms Terry and those made by Mr Dipré. It took into account the matters found proved together with the mitigation provided. The Committee referred to the Guidance for Disciplinary Sanctions issued by ACCA and had in mind the fact that the purpose of sanctions was not to punish Mr Bhuyian, but to protect the public, maintain public confidence in the profession and maintain proper standards of conduct, and that any sanction must be proportionate. The Committee accepted the advice of the Legal Adviser.
36. When deciding on the appropriate sanction, the Committee carefully considered the aggravating and mitigating features in this case.
37. The Committee found the following aggravating factors: the extended period during which Mr Bhuyian held himself out as available for public practice work whilst not in possession of a Practising Certificate; the potential for financial harm for the public who may have considered S&B Accountants Limited had a greater professional standing than it did and also potential reputational harm for the profession and ACCA.
38. The Committee found the following mitigating factors; no previous disciplinary record; Mr Bhuyian accepted it was his failure and his responsibility to ensure he was aware of the Regulations and that he adhered to them; no evidence of any actual public practice activities being carried out by him; immediate and effective corrective steps taken as soon as his error was made known to him; insight into his failings and remorse for his actions; testimonials that spoke very highly of him.
39. The Committee did not think it appropriate, or in the public interest, to take no further action in a case where a member had held himself out to be in public practice without a Practising Certificate for a period of 14 months. Every member is duty bound to abide by the Regulations and it was careless for Mr Bhuyian not to have ensured he was aware of what he was allowed to do.
40. The Committee then decided whether to admonish Mr Bhuyian. The Guidance states this sanction may be appropriate where most of the following factors are present:

- a) Evidence of no loss or adverse effect on client/members of the public;
- b) Early admission of the facts alleged;
- c) Insight into failings;
- d) Isolated incident;
- e) Not deliberate;
- f) Genuine expression of remorse/apology;
- g) Corrective steps have been taken promptly;
- h) Subsequent work satisfactory;
- i) Relevant and appropriate testimonials and references

41. The Committee did consider most of these factors to be present and although Mr Bhuyian did not make formal admissions to any of the matters alleged he did accept the underlying facts and, quite rightly, acknowledged that it is his responsibility to both know the Regulations governing members of ACCA and to follow them. On this occasion he failed to do so. However, the Committee has already concluded that this was not a flagrant disregard of the Regulations, but rather a naïve mistake that arose through ignorance. Of course, ignorance is no defence and, as a Fellow of ACCA, he was duty bound to have known what he was and was not permitted to do. It was important, therefore, to mark these breaches of the GPRs in order to send out a message that the Regulations are there to protect members of the public and must be adhered to. However, there was no evidence of loss or adverse effect on clients or members of the public, although there was the potential for harm and/or reputational damage; he had shown genuine insight into his failings; whilst the period for which the breaches occurred was protracted, it was the only time he has breached the Regulations in an otherwise blemish-free practice; the Committee was satisfied that his conduct was not deliberate; Mr Bhuyian had made genuine expressions of remorse and apology, as seen in his letters dated 02 February 2021 and 05 July 2021; he had taken immediate corrective steps

and provided appropriate undertakings; there was no evidence that his subsequent work was anything but satisfactory and he provided relevant and appropriate testimonials and references that spoke highly of his professionalism and character.

42. In all the circumstances, the Committee was satisfied that an admonishment was the appropriate and proportionate sanction in this case and that any more onerous a sanction would be disproportionate.
43. The Committee therefore ordered that Mr Bhuyian be admonished.

### **COSTS AND REASONS**

44. ACCA applied for costs in the sum of £9,773.00. The Committee was provided with a schedule of costs. The Committee was satisfied that the costs claimed were appropriate and reasonable. However, the Committee noted that a number of the matters alleged, including the most serious, had not been proved. Furthermore, the costs reflected a two-day hearing when in the event the second day finished early. Ms Terry said that the costs for her attendance and those of the Hearings Officer were estimated costs and the Committee is entitled to make reductions to reflect the shorter second day. The Committee therefore considered it appropriate to make a reduction to the amount requested to reflect these factors.
45. Mr Bhuyian provided details of his means, both income and investments. Mr Dipré submitted that any costs awarded should reflect the fact that the most serious charges against Mr Bhuyian had not been found proved and that the hearing had not taken the full two days. He also added that the Committee should take into account Mr Bhuyian's limited means, whilst acknowledging that the burden of the cost of investigating matters should not be borne by members who had done no wrong.
46. With regard to Mr Bhuyian's means the Committee noted that Mr Bhuyian had sufficient investments to cover the cost of an award and therefore his limited income did not amount to a reason for reducing the cost requested further.

47. In light of the above the Committee decided to reduce the amount requested and to make an order in the sum of £5,000.00.

**EFFECTIVE DATE OF ORDER**

48. This order will have effect at the expiry of the appeal period, or at the conclusion of any appeal if one is made.

**Mrs Helen Carter-Shaw**  
**Chair**  
**17 June 2022**