

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

### **REASONS FOR DECISION**

<b>In the matter of:</b>	<b>Mr James Thomas Coleman</b>
<b>Heard on:</b>	<b>Thursday, 26 May 2022</b>
<b>Location:</b>	<b>Remotely via Microsoft Teams</b>
<b>Committee:</b>	<b>Mr Martin Winter (Chair) Mr Ryan Moore (Accountant) Ms Rachel O'Connell (Lay Member)</b>
<b>Legal Adviser:</b>	<b>Mr Richard Ferry-Swainson</b>
<b>Persons present and capacity:</b>	<b>Ms Michelle Terry (ACCA Case Presenter) Ms Nikita Apostol (Hearings Officer)</b>
<b>Summary:</b>	<b>Allegation 1 found not proved in its entirety. Allegation 2(a), (b) &amp; (c) and Allegation 3(a) found proved. Allegation 3(b) found not proved. Severe reprimand.</b>
<b>Costs:</b>	<b>£6435.00</b>

### **INTRODUCTION/SERVICE OF PAPERS**

1. The Disciplinary Committee ("the Committee") convened to consider an Allegation against Mr Coleman, who did not attend and was not represented.

2. The papers before the Committee were a bundle numbered 1 to 355, an application to amend the Allegation, two emails from Mr Coleman, sent on the day of the hearing and the adjournment decision from December 2021. The Committee was also provided with a costs schedule. There was a service bundle numbered 1 to 33.

### **APPLICATION FOR PART OF THE HEARING TO BE IN PRIVATE**

3. At the outset of the hearing, Ms Terry made an application for part of the hearing to be dealt with in private where mention was made of Mr Coleman's health.
4. The Committee considered the application with care and accepted the advice of the Legal Adviser. The Committee was cognisant of the default position that these hearings are ordinarily conducted in public so that the public are aware of the functions being carried out by the Regulator. However, the Regulations do allow for the hearing or part of the hearing to be conducted in private, where to do so is in the interest of justice. The Committee was satisfied that it was in the interests of justice to protect Mr Coleman's private life and that any matters of health should be dealt with in private.

### **PROCEEDING IN ABSENCE**

5. Ms Terry made an application to proceed in the absence of Mr Coleman.
6. The Committee first considered whether the appropriate documents had been served in accordance with the Complaints and Disciplinary Regulations ("the Regulations"). The Committee took into account the submissions made by Ms Terry on behalf of ACCA and also took into account the advice of the Legal Adviser.
7. Included within the service bundle was the Notice of Hearing dated 24 April 2022, thereby satisfying the 28-day notice requirement, which had been sent to Mr Coleman's email address as it appears in the ACCA register. The Notice included details about the time, date, and remote venue for the hearing and also Mr Coleman's right to attend the hearing, by telephone or video link, and

- to be represented, if he so wished. In addition, the Notice provided details about applying for an adjournment and the Committee's power to proceed in Mr Coleman's absence, if considered appropriate. ACCA provided an email delivery receipt showing the email had been delivered to Mr Coleman's email account.
8. The Committee was satisfied that the Notice had been served in accordance with the Regulations, which require ACCA to prove that the documents were sent, not that they were received.
  9. Having so determined, the Committee then considered whether to proceed in Mr Coleman's absence. The Committee bore in mind that although it had a discretion to proceed in the absence of Mr Coleman, it should exercise that discretion with the utmost care and caution, particularly as Mr Coleman was unrepresented.
  10. Mr Coleman was sent a number of emails by the Hearings Officer, asking him if he would be attending the hearing. Mr Coleman did not respond to most of those emails. Attempts were also made to telephone Mr Coleman without success. However, on 25 May 2022, Mr Coleman did send an email to ACCA in which he said:

*"I will not be attending tomorrow as I don't think I would be able to cope. I do not know how to argue my case. I prepared the accounts to the best of my ability based on the information I was provided with from [Mr B's] sage prepared by [Mrs C] and from the certificate on gift and shares that were sined by [Mrs A] and again shown to me. I hope you will take this into account. Thank you for all your help and persistence in trying to contact me."*  
(sic).
  11. On the morning of the hearing, Mr Coleman sent a further email in which he said, *"I am happy to proceed as this just needs to be resolved."*
  12. The Committee noted the long history of the case and that there had been a previous adjournment in December 2021 at Mr Coleman's request on health grounds. On that occasion, he was informed that any further application to adjourn on health grounds would need to be supported by independent medical

evidence. Mr Coleman had not provided any such evidence and indeed made no application to adjourn on this occasion.

13. The Committee noted that Mr Coleman faced serious allegations and that there was a clear public interest in the matter being dealt with expeditiously, particularly given the historic nature of the matters alleged, dating back to 2015. The Committee considered an adjournment would serve no useful purpose, because it seemed unlikely that Mr Coleman would attend on any other occasion, and he had not applied for one. In light of Mr Coleman's clear indication that he would not be attending the hearing and that he was happy for it to proceed, the Committee concluded that Mr Coleman had voluntarily absented himself from the hearing and thereby waived his right to be present and to be represented at this hearing.
14. In all the circumstances, the Committee decided that it was in the interests of justice that the matter should proceed, notwithstanding the absence of Mr Coleman. No adverse inference would be drawn from his non-attendance.

#### **APPLICATION TO AMEND THE ALLEGATIONS**

15. Ms Terry made an application to make a minor amendment to Allegation 3 (b) by adding "(b)" so that the Allegation would read as follows:

*"Liable to disciplinary action in respect of any or all the matters set out at allegations 1 (b) and/or 2, pursuant to bye-law 8(a)(iii)."*

16. Ms Terry submitted that this requested amendment would not cause any prejudice to Mr Coleman and was minor in nature. She added that Mr Coleman had been notified of this proposed amendment and had not raised any objection.
17. The Committee heard and accepted the advice of the Legal Adviser. It noted the nature of the requested amendment and was satisfied that it was minor in nature and would not cause Mr Coleman any prejudice. It did not affect the gravamen of the matters alleged against Mr Coleman, but rather clarified matters and it was important that the Allegation was clearly pleaded. The Committee also noted that Mr Coleman had not raised any objection to the

proposed amendment. The Committee was satisfied that it was in the interests of justice to allow the amendment requested.

## **ALLEGATIONS/BRIEF BACKGROUND**

18. It is alleged that Mr Coleman is liable to disciplinary action on the basis of the following Allegation (as amended):

### **Allegations**

#### Allegation 1

- (a) Mr James Thomas Coleman, a member of ACCA, between May 2015 and November 2015:
  - (i) Advised Mrs A to lend money; and/or
  - (ii) Facilitated Mrs A's loan of £350,000, to Company D (his firm's client) or Mr B (a director of Company D).
  
- (b) Mr Coleman's conduct set out at 1(a) above was contrary to:
  - (i) Section 120.1 and/or 120.2 (Objectivity) of ACCA's Code of Ethics and Conduct, as applicable in 2015; or in the alternative
  - (ii) Section 150.1 (Professional behaviour) of ACCA's Code of Ethics and Conduct, as applicable in 2015.

#### Allegation 2

Contrary to Regulation 3(1)(a) of the Complaints and Disciplinary Regulations 2014 (as applicable from 2019 to 2020), Mr Coleman failed to co-operate fully with the investigation of a complaint in that he failed to respond fully or at all to ACCA's correspondence on:

- (a) 13 December 2019; and/or

(b) 10 January 2020; and/or

(c) 28 January 2020.

### Allegation 3

By reason of his conduct, Mr Coleman is:

(a) Guilty of misconduct in respect of any or all the matters set out at allegations 1 and/or 2, pursuant to byelaw 8(a)(i); or in the alternative

(b) Liable to disciplinary action in respect of any or all the matters set out at allegations 1(b) and/or 2, pursuant to byelaw 8(a)(iii).

19. On 15 March 2004, Mr Coleman became a Member of ACCA and on 15 March 2009, he became a Fellow of ACCA.
20. In May 2013, Mr Coleman began acting as the accountant for Company D. Company D ran a caravan park. Mrs A had a house on the caravan park and Mr B, ran the site.
21. In May 2015, Mrs A's husband died.
22. In May 2015, Mr Coleman contacted Mrs A saying he knew she would have some money coming in following the death of her husband and, it was alleged, stated that it would be a good idea for her to invest money in Company D. The same month Mr Coleman met with Mrs A and allegedly told her that lending money to Mr B (a director of Company D) was a very safe bet as he seemed to be doing well.
23. On 22 September 2015, Mrs A transferred £350,000 to Mr B.
24. On 09 November 2015, Mr Coleman and Mrs C (the bookkeeper at Company D) visited Mrs A and provided her with a loan agreement to sign which she did in the presence of Mr Coleman, he also signed it at some stage.

25. On 07 May 2019, Company D entered into a Company Voluntary Arrangement (CVA), with Mr E, appointed as Supervisor.
26. On 13 June 2019, Mrs A sent an email to Mr Coleman stating that she had trusted his financial advice and had lost money.
27. On 30 June 2019, Mrs A sent a text message to Mr Coleman stating that she had taken his advice and lent money to Mr B.
28. On 16 July 2019, Mrs A spoke to Mr Coleman on the telephone. Mrs A wanted Mr Coleman to contact Mr E to let him know that she was the biggest creditor in the CVA, but it was alleged Mr Coleman said he could not do that as he should not have advised her as he was not an Independent Financial Adviser.
29. On 13 December 2019, ACCA sent a letter to Mr Coleman to request that he provide information by 09 January 2020. No response was received.
30. On 10 January 2020, ACCA sent a letter to Mr Coleman to request that he provide the information requested in its letter of 13 December 2019 by 24 January 2020 and pointing out to Mr Coleman his duty to co-operate with the investigation. No response was received.
31. Mr Coleman did not attend the hearing, the only written representations he provided for the Committee to consider are those contained in the email dated 25 May 2022 and detailed above.

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

32. The Committee considered with care all the evidence presented and the submissions made by Ms Terry. The Committee accepted the advice of the Legal Adviser.

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

33. ACCA relied on the evidence of Mrs A, who gave oral evidence to the Committee. She provided a statement dated 05 May 2020, almost five years after she transferred the money to Mr B in September 2015. The hearing was

nearly two years after that. When giving her evidence, Mrs A admitted to being muddled at times and the Committee could readily understand the challenges in trying to remember conversations which took place five years ago. In her statement, she said Mr Coleman contacted her by phone, said he knew she had some money coming in following the death of her husband and that it would be a good idea for her to invest in Mr B's business. She said this was something that she agreed with at the time and that she had previously loaned money to Mr B, and he had always paid the money back, sometimes with interest. To the Committee, that account did not appear to be sufficiently detailed to amount to Mr Coleman having advised her to provide the loan. Furthermore, in her oral evidence, she said that it was Mr B who had first raised the suggestion of a loan and in the sum of £350,000 and he said his accountant would be in touch with her about it. Thereafter, she was contacted by Mr Coleman. As Mr B's accountant, it would not be unreasonable for him to contact Mrs A on behalf of Mr B and to provide a loan agreement and even to counter-sign the agreement.

34. The Committee accepted that there would be a conflict of interest for Mr Coleman to have advised Mrs A to lend money to the company and/or Mr B when he, Mr Coleman, was acting as accountant for Company D and Mr B. The issue, therefore, was whether, on the evidence before it, the Committee could be satisfied, on the balance of probabilities, that Mr Coleman had advised Mrs A to lend the money. The Committee was satisfied that there were conversations between Mr Coleman and Mrs A, but, on her evidence, it was Mr B who first raised the issue of the loan and thus matters were already under way at the time Mr Coleman contacted Mrs A.
35. The Committee noted that Mrs A was seeking to recall a telephone conversation that took place nearly five years before she made her statement and nearly seven years before this hearing. There was no contemporaneous note made and no contemporaneous documentary evidence to support what was said. Mrs A referred to there being emails from Mr Coleman in which he provided advice, but she had been unable to find them. She said she had lost some emails in 2013 or 2014 as a result of a computer issue. When it was pointed out that the Committee were concerned with 2015, she then said it must have been in 2015, although the Committee noted that she had been able to produce some emails from 2015. There were other inconsistencies in her



evidence which made it difficult for the Committee to be clear about what she accurately remembered being said such a long time ago.

36. The Committee also bore in mind the fact that Mrs A first raised these issues in June 2019, shortly after Company D had entered into its CVA, resulting in a financial dispute whereby she stood to lose a significant amount of money. In such circumstances, the Committee could not dismiss the possibility that Mrs A was recalling matters favourable to herself, clouded perhaps by a desire for a particular outcome. She told the Committee that she wanted revenge for the advice Mr Coleman had given her and revenge against Mr B and the Committee found the use of such language concerning. It was apparent that Mrs A's relationship with Mr B had deteriorated significantly after Company D entered into the CVA.
37. In all the circumstances, the Committee concluded that Mrs A's evidence was not consistently reliable enough for it to be able to be satisfied, on the balance of probabilities, that Mr Coleman had actually advised her to lend the money, rather than just facilitated the arrangement that had been initiated by, on her evidence, Mr B.
38. The Committee therefore found Allegation 1(a)(i) not proved.

**Allegation 1(a)(ii) - not proved**

39. Ms Terry conceded that if the Committee were to find Allegation 1(a)(i) not proved then Allegation 1(a)(ii) would fall. ACCA could not say that it would have been improper for Mr Coleman to have facilitated a loan to Company D or Mr B when he was acting as Accountant for Company D and Mr B, as a director of Company D. The Committee agreed with that conclusion and therefore found Allegation 1(a)(ii) not proved.

**Allegation 1(b)(i) & (ii) - not proved**

40. Allegation 1(b) relied on there being a positive finding in relation to Allegation 1(a). Since the Committee had found Allegation 1(a) not proved it followed that Allegation 1(b) was also, therefore, not proved.

**Allegation 2(a), (b) & (c) - proved**

41. The Committee was advised by the Legal Adviser that the duty to co-operate with an ACCA investigation is absolute, that is to say every relevant person is under a duty to co-operate with an Investigating Officer in relation to the consideration and investigation of any complaint. A failure, or partial failure, to co-operate fully with the investigation of a complaint shall constitute a breach of the Regulations and may render the relevant person liable to disciplinary action. The Committee was satisfied that Mr Coleman had failed to respond at all to the letters sent to him by the Investigating Officer on the three dates referred to.
42. The Committee therefore found Allegation 2 proved in its entirety.

**Allegation 3(a) - proved**

43. Having found the facts proved in Allegation 2, the Committee then considered whether they amounted to misconduct. The Committee was of the view that by not responding to the three letters sent to him, Mr Coleman was thereby failing to co-operate properly with the investigation being carried out by his Regulator into his alleged misconduct. The Committee considered this to be a serious matter. A member should not be able to frustrate, delay, or derail completely an investigation into their conduct. Being a member of ACCA brings with it a duty to co-operate, both in relation to compliance with the Regulations and into the investigation of a complaint. The Committee was satisfied that such behaviour represented a serious falling short of professional standards and brought discredit upon Mr Coleman and also upon the profession and ACCA as a Regulator. It therefore decided that Mr Coleman's behaviour in failing to co-operate amounted to misconduct.
44. The Committee therefore found Allegation 3(a) proved.

**Allegation 4(b) - not proved**

45. Having found the behaviour amounted to misconduct, it was not necessary for the Committee to also consider whether Mr Coleman was liable to disciplinary action, since this was alleged in the alternative.

## **SANCTION AND REASONS**

46. In reaching its decision on sanction, the Committee took into account the submissions made by Ms Terry. Mr Coleman had neither attended, nor had he provided any personal mitigation for the Committee to take into account, other than the detail provided in the email of 25 May 2022, referred to above. 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 Coleman, 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.
47. When deciding on the appropriate sanction, the Committee carefully considered the aggravating and mitigating features in this case.
48. The Committee considered the following aggravating factor: a pattern of behaviour over a period of time.
49. The Committee considered the following mitigating factor: a lack of any previous disciplinary history with ACCA.
50. The Committee considered all the options available from the least serious upwards.
51. The Committee did not think it was appropriate to take no further action, admonish or reprimand in a case where a member had failed to cooperate with ACCA's investigation department, thereby undermining the integrity of ACCA's ability to investigate complaints. The Committee was cognisant of the guidance and the seriousness of such findings. Although there was no evidence of any continuing risk to the public, the Committee did not consider the misconduct in this case to be of a minor nature. The Committee did not, therefore, consider the public interest would be met by any of these sanctions.
52. The Committee then considered whether a severe reprimand would adequately reflect the seriousness of the case. The guidance indicates that such a sanction would usually be applied in situations where the conduct is of a serious nature but where there are particular circumstances of the case or mitigation advanced

which satisfy the Committee that there is no continuing risk to the public and there is evidence of the individual's understanding and appreciation of the conduct found proved. The Committee considered these criteria to be largely met. The Association provides specific guidance on factors relevant to seriousness in specific case types. Failure to co-operate with ACCA's investigation department is considered to be in the "very serious" category. The guidance adds that a severe reprimand may be appropriate where, *inter alia*, the following factors are present:

- the misconduct ... is no longer continuing, though the member may have acted recklessly;
- evidence that the conduct would not have caused direct or indirect harm;
- previous good record;
- no repetition of failure/conduct - it was an isolated incident.

53. The Committee was satisfied that these factors were largely present in this case and, after careful consideration, concluded that a severe reprimand was a sufficient and proportionate sanction to mark the seriousness of Mr Coleman's conduct and to uphold standards and maintain confidence in the profession. Mr Coleman chose to ignore the three letters sent to him by those tasked with the investigation into his alleged conduct. He has provided no explanation for his non-compliance. A member of ACCA should not be able to frustrate or delay an investigation into their conduct by not responding to correspondence sent to them. The Committee considered it important that professional accountants are aware that they should not behave in this way and the importance of the duty to comply with requests, emanating from their Regulatory body.

54. The Committee looked at the guidance for exclusion but considered such a sanction would be disproportionate in this case in light of the nature of the misconduct and the matters found not proved. Whilst undoubtedly serious, this was not the worst case of misconduct. Although not an isolated incident, the Committee did consider Mr Coleman's behaviour consisted of a single chain of events. The Committee also took into account the fact that the primary matters alleged against Mr Coleman, which led to the investigation, had been found not proved. The Committee noted that Mr Coleman had a previously long and discipline-free history with ACCA, that his misconduct occurred some time ago

and that there was no evidence of a repeat of his behaviour. The Committee also took into account the personal circumstances which Mr Coleman referred to and which are touched on elsewhere in this determination.

55. The Committee therefore ordered that Mr Coleman be severely reprimanded.

### **COSTS AND REASONS**

56. ACCA applied for costs in the sum of £11,177.50. The Committee was provided with a schedule of costs. The Committee was satisfied that the costs claimed were appropriate and reasonable. However, the costs were based on the entire investigation and the primary complaint had been found not proved. The Committee considered it appropriate to make a reduction in light of this. In addition, the case had been listed for a whole day and in the event took less than the whole day and the Committee considered it appropriate to make a small reduction to reflect this.

57. The Committee noted that the normal position is that a member against whom an allegation has been found proved, should pay the reasonable and proportionate costs of ACCA bringing the case. This is based on the principle that the majority of members should not be required to subsidise the minority who, through their own failings, have found themselves subject to disciplinary proceedings.

58. Mr Coleman did not provide any details of his means or provide any representations about the costs requested by ACCA, there was, therefore, no evidential basis upon which the Committee could make any reduction on that ground.

59. In light of its observations above, the Committee decided to make an order in the sum of £6,435.00.

### **EFFECTIVE DATE OF ORDER**

60. This Order will take effect at the expiry of the appeal period or any appeal, should one be pursued.

**Mr Martin Winter  
Chair  
26 May 2022**