

HEARING

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

REASONS FOR DECISION

In the matter of: Mr Patrick Alistair Charles Cooper

Heard on: Friday, 17 March 2023

Location: Remote video hearing via MS Teams

Committee: Mr Andrew Gell (Chair)
Dr David Horne (Accountant)
Dr Jackie Alexander (Lay)

Legal Adviser: Miss Judith Chrystie (Legal Adviser)

**Persons present
and capacity:** Ms Michelle Terry (ACCA Case Presenter)
Miss Geraldine Murray (Hearings Officer)

Summary Facts admitted.
Misconduct found.
Exclude from membership – no minimum period – no immediacy imposed.
Costs awarded to ACCA in sum of £7000.

ALLEGATIONS

1. The Committee considered the following allegations:

Patrick Cooper, a member of the Association of Chartered Certified Accountants ('ACCA') and director of the Firm ('the Firm')

- 1) On dates between December 2011 and August 2020 suspected, or had, reasonable grounds for suspecting, that Client A was engaged in money laundering activity, in that Client A was liable to pay VAT to HMRC and no such liability was paid (the 'VAT liability'), and:

- a. Contrary to paragraph 20 of Section B2 of ACCA's Code of Ethics and Conduct ('the CEC'), failed to notify the Firm's Money Laundering Reporting Officer promptly, or at all, of the VAT liability;
- b. On dates before 25 October 2019, contrary to paragraph 103 of Section B1 of the CEC, failed to inform Client A that the Firm could no longer continue to act for Client A given Client A's failure to make or authorise disclosure of the VAT liability to HMRC;
- c. Having obtained signed authority from Client A in a letter dated 25 October 2019, for the Firm to:
 - i. 'Write to HMRC on or before 31 December 2019 notifying them of the VAT arrears'
 - ii. 'Finalise all VAT return calculations and submit the information to HMRC'
 - iii. Agree amounts of interest and penalties payable'

Failed to undertake any of the above.

- d. Having obtained Client A's agreement in a letter dated 25 October 2019 that Client A would 'Arrange funds to settle all liabilities', Mr Cooper failed to do that following when Client A failed to settle any of the VAT Liability,

- i. Cease acting for Client A;
 - ii. Notify HMRC that the Firm had ceased to act in the terms described in paragraph 92 of Section B1 of the CEC
- 2) By reason of his conduct in respect of Allegations 1(a), 1(b) 1 (c) and/or 1(d) above, is:
 - i. Guilty of misconduct pursuant to byelaw 8(a)(i); or in the alternative
 - ii. Liable to disciplinary action pursuant to byelaw 8(a)(iii), in relation to Allegations 1(a) and/or 1(b).

PAPERS

2. The Committee considered the following papers:
 - a. Disciplinary Committee report and bundle with page numbers 1-486
 - b. Schedule of pseudonymisation with one page
 - c. Tabled Additional bundle with page numbers 1-3
 - d. Service Bundle with page numbers 1-27

BRIEF BACKGROUND

3. Mr Cooper was admitted as a member on 23 May 1985 and as a fellow on 23 May 1990. From November 2001 to 31 December 2020, Mr Cooper held an ACCA practising certificate with audit qualification; he does not currently hold a practising certificate.
4. From April 2003 to 17 December 2020, Mr Cooper was a director of the Firm. Person A was his co-director and had been the Firm's Money Laundering Reporting Officer (MLRO) since 2007.
5. In December 2011, Client A became a Client of the Firm. In June 2020, it emerged that Client A had failed to declare VAT over many years, but Mr Cooper had never reported Client A's failure to pay VAT to Person A, as the MLRO, nor to HMRC.

6. Person A provided a statement stating that he had reviewed Client A's files and discovered:

- a. Client A had been registered for VAT prior to the Firm's engagement in 2011 by which time there was already an outstanding VAT liability;
- b. The Firm had produced VAT calculations for Client A each year but there was no evidence of returns being filed or VAT being paid;
- c. There was correspondence between Client A and Mr Cooper, or those being supervised by him, referring to the outstanding VAT and the need for this to be regularised – but no evidence of this being actioned;
- d. As at 31 March 2019, Client A's VAT liability was almost £180,000;
- e. Mr Cooper never reported the VAT irregularities to him, as the Firm's MLRO.

7. ACCA submitted that:

- a. Mr Cooper was responsible for the engagement with Client A from December 2011 until he was suspended.
- b. Client A was registered for VAT and was well in excess of the VAT threshold for the years Client A engaged the Firm. Client A charged output VAT on its goods and services.
- c. Client A was already overdue on its VAT payments by up to 2½ years at the start of Client A's engagement with the Firm. Mr Cooper should have taken prompt steps to ensure Client A disclosed the overdue VAT to HMRC or authorised the Firm to do so and, if not, after three months he should have advised the client that the Firm could no longer act. He did not do so until 25 October 2019.
- d. Mr Cooper prepared quarterly figures for Client A which were referred to within the trial balance for each year 2011-2019. Annual accounts for Client A were prepared from these trial balances by Mr Cooper, or those he supervised. Mr Cooper was, therefore, aware that VAT returns should have been filed and VAT liability paid by Client A but there was no evidence of VAT returns being filed or VAT liability paid whilst Client A engaged the Firm.

- e. Having advised Client A of the need to regularise the VAT position on engagement in 2011 and then reminded them about every two years – such as in letters dated 11 November 2013, 10 June 2015 and 14 November 2017 – it was clear Mr Cooper was aware of the overdue and increasing VAT liability but did nothing more.
 - f. As an experienced accountant, director of the Firm and having sole responsibility for Client A's engagement, it is submitted that Mr Cooper would have suspected or had reasonable grounds for suspecting that Client A was engaged in money laundering activity.
 - g. Given the provisions of paragraph 20, section B2 of the CEC, the Anti-Money Laundering Guidance for the Accountancy Sector and section 393 of the Proceeds of Crime Act, Mr Cooper was under a statutory responsibility to report the matter to the Firm's MLRO and failed to do so promptly, or at all.
 - h. Client A appeared to be in a position to pay the VAT liability. Whilst Mr Cooper had stated that Client A did not wish to pay the VAT until they had the resource to do so, the annual financial statements for Client A from 2010 -2019 record a total profit for the period of £230,334 - in excess of the VAT liability of £178,239.10.
 - i. Mr Cooper did not prioritise informing HMRC.
8. ACCA also relied on a letter dated 25 October 2019, which was countersigned by Client A. In the letter Mr Cooper was authorised to, '*...write to HMRC on or before 31 December 2019 notifying them of the VAT arrears, finalise all VAT calculations and submit the information to HMRC and to agree amounts of interest and penalties payable*'. In addition, within the letter, Client A agreed to provide the Firm with the funds to settle their liability and to file future VAT on time, in default of which the Firm would cease to act for Client A and, '*notify all regulatory authorities*'.
 9. ACCA stated that Mr Cooper did not take action and Client A remained a client of the Firm. ACCA submitted that the expectation from the letter was that funds would be paid to HMRC by 21 December 2019 and, given this did not happen, Mr Cooper should have ceased acting for the client on 01 January 2020, and should have advised HMRC of the Firm's decision to stop acting for them.
 10. In correspondence with ACCA, Mr Cooper stated:

- a. He did not discuss the matter with Person A – advising that he and Person A worked independently, dealing with their own clients and making their own decisions.
 - b. He discussed his decisions with the client manager and sought specialist advice from a consultant who was a VAT expert and was satisfied with his initial decisions.
 - c. He believed Person A would have required him to stop acting for Client A regardless of his explanations.
 - d. In about September 2015, when the outstanding VAT was about £76,000, Client A refused to give him authority to approach HMRC until they had the resources to settle the debt.
 - e. Client A had tried to sell a plot of land in 2013/14 in order to use the proceeds towards the VAT liability but the sale was delayed.
 - f. He had decided to put more pressure on Client A at the end of December 2019 but owing to staff shortages and the pandemic, he did not go to see them until 13 August 2020 where he was given authority to inform HMRC but, on 21 August 2020, he was suspended by Person A and subsequently resigned. Mr Cooper never approached HMRC.
11. Following a successful application to proceed in private, [Private].
12. [Private]

DECISION ON FACTS AND REASONS

13. Mr Cooper admitted the factual allegations in their entirety. In accordance with the provisions under regulation 12(3)(c) of the Complaints and Disciplinary Regulations 2014 (as amended), the Chair announced that the facts set out in allegation 1(a), (b), (c) and (d) were found proved.
14. Mr Cooper accepted that the conduct set out – and admitted - in allegation 1 amounted to misconduct. The Committee recognised that, however, whether or not the conduct amounted to misconduct was a matter for them consider and judge.

15. The Committee found Mr Cooper to be guilty of misconduct. It regarded his conduct as falling far below the standards expected of a professional accountant. The Committee considered the admitted conduct related to a serious set of issues, involved considerable outstanding monies, which should have been available to the public through the taxation regime, and continued over an extended period of time amounting to several years.
16. In addition, the Committee regarded the conduct as significant, repeated breaches of a multiple set of legal provisions, regulations and professional ethical standards. The Committee was satisfied that Mr Cooper was aware of the requirements and expectations placed on him, yet had failed to follow them in respect of Client A. The Committee did not consider that Mr Cooper's motivation for repeatedly tolerating Client A's failure to file VAT returns and to pay the outstanding liability was relevant to its view that his actions and omissions constituted misconduct.

SANCTION AND REASONS

17. The Committee had regard to the Guidance for Disciplinary Sanctions ('the Guidance').
18. The Committee considered the mitigation and aggravated features in the case: Mr Cooper had been an accountant for almost 40 years and had no disciplinary history, had made an early admission of the allegation, had cooperated and constructively engaged with ACCA's investigation and the disciplinary process. Further, the Committee took into account the positive references that Mr Cooper had provided. However, it gave them limited weight because these had been selected from the Firm's website rather than being bespoke testimonials for the purposes of the hearing and there was no indication that those writing them were aware of the allegations against him.
19. Although Mr Cooper had made an early admission, the Committee considered that he had demonstrated limited insight into the misconduct. Mr Cooper had not given any indication that he recognised the implications of his wrongdoing – such as the impact on public funds through a large amount of VAT remaining outstanding as well as its impact on public confidence and trust in the accountancy profession. Further, Mr Cooper had not provided any detailed explanation as to why he allowed the VAT liability to remain unpaid and unreported for such a long period of time. Whilst the Committee recognised - and sympathised – with the personal circumstances that Mr Cooper experienced in 2018 and through into 2020, this only accounted for a small period of the misconduct

and, further, there was no evidence before the Committee that these circumstances, together with the difficulties within the Firm itself, impacted on his work more widely.

20. Given the serious nature of the misconduct, the Committee determined a sanction was required. Further, given the long period over which the misconduct continued, the amount of money outstanding and the overall significance of the issues, the Committee concluded that it would be wholly inappropriate and insufficient to conclude this matter with an admonishment, a reprimand or a severe reprimand. It considered that none of these orders would reflect the gravity of the misconduct. They would be inadequate in declaring appropriate standards of behaviour to the accountancy profession and could have a detrimental impact on the public's confidence in accountancy and the regulation of the profession. Further, it noted that, either none, or most, of the factors set out in the Guidance to suggest that one of these orders was sufficient to conclude the matter, were not present in this case.
21. In light of the significant breaches of legal and professional obligations over a considerable period of time, the harm caused to public funds as result of Mr Cooper's conscious decision not to take action, his limited insight into his failings and the lack of evidence before it that Mr Cooper had taken steps to correct his failures and remediate, the Committee was not confident that future errors would not occur. The Committee therefore concluded that the only appropriate and proportionate sanction in the particular circumstances of this case was exclusion from membership; such an order was necessary in the public interest.

COSTS AND REASONS

22. [Private].
23. ACCA claimed costs in the sum of £7577.67. This was a revised claim following submissions by Mr Cooper that some costs related to a second allegation that was not pursued.
24. ACCA further acknowledged that some elements of the schedule could be reduced as the hearing had not lasted as long as anticipated.
25. Mr Cooper provided a statement of financial position which set out that he has limited income and that his financial outgoings exceeded his income but also identified some

readily accessible assets. The evidence of Mr Cooper's financial circumstances was not disputed or challenged by ACCA.

26. The Committee determined that any order for costs was affordable by Mr Cooper and would not lead to undue hardship. As a consequence, it determined that it would be appropriate to make an order for costs to prevent the burden of Mr Cooper's misconduct falling on the rest of ACCA's membership. However, it did consider that the sums should be reduced to reflect that the hearing had not taken the whole day and that there was correspondence between ACCA and Mr Cooper and ACCA and Person A endeavouring to obtain evidence from the Firm to enable Mr Cooper to prepare his case. The protracted nature of this correspondence had increased the costs at no fault of Mr Cooper.
27. The Committee therefore ordered Mr Cooper to pay ACCA's costs in the sum of £7000.

EFFECTIVE DATE OF ORDER

28. The Committee considered whether the order should be made with immediate effect. It determined that there was no reason to impose the order with immediate effect.

Mr Andrew Gell
Chair
17 March 2023