

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Roderick Brian Gunkel

Heard on: Wednesday 07 and Thursday 08 November 2023

Location: Remotely, via Microsoft Teams

Committee: HH Suzan Matthews KC (Chair)
Mr George Wood (Accountant)
Mrs Yvonne Walsh (Lay)

Legal Adviser: Ms Jane Kilgannon

Persons present

and capacity: Mr Alex Mills (ACCA Case Presenter)
Mr Roderick Brian Gunkel (the Member)
Miss Geraldine Murray (Hearings Officer)

Summary: Severe Reprimand
Fine of £2,866.00

Costs: £9,575.50

1. The Committee convened to consider three allegations against Mr Roderick Brian Gunkel (Mr Gunkel).

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

2. ACCA was represented by Mr Alex Mills (Mr Mills). Mr Gunkel was present and was not represented.
3. The Committee had confirmed that it was not aware of any conflicts of interest in relation to the case.
4. In accordance with Regulation 11(1)(a) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 (the Regulations), the hearing was conducted in public.
5. The hearing was conducted remotely through Microsoft Teams.
6. The Committee had considered the following documents in advance:
 - a. Memorandum and Agenda (pages 1 to 2);
 - b. Hearing bundle (pages 1 to 408);
 - c. Supplementary bundle (pages 1 to 97);
 - d. Tabled Additional bundle (pages 1 to 7);
 - e. Case Management Meeting decision, dated 05 September 2023 (pages 1 to 5); and
 - f. Service bundle (pages 1 to 18).

PRELIMINARY MATTERS

7. Mr Mills applied to amend Allegation 2 so that it referred to the relevant ACCA regulations rather than the associated anti-money laundering legislation. Mr Gunkel did not object to the application. The Committee accepted the advice of the Legal Adviser who referred it to Regulation 12(5) of the Regulations and relevant guidance in the ACCA document 'Guidance for Disciplinary Committee hearings' (1 January 2021). The Committee was satisfied that it was appropriate to allow this minor and uncontentious amendment. Taking into account all of the background to the case, the Committee considered that the amendment would more accurately capture the matter alleged and would not alter the substance of the allegation such as to cause any prejudice to Mr Gunkel. It therefore allowed the application to amend Allegation 2.

BRIEF BACKGROUND

8. Mr Gunkel has been a Member of ACCA since 1974 and a Fellow since 1980. He has never held an ACCA practising certificate.
9. On 03 September 2001, Mr Gunkel became a designated member of Firm B. Firm B applied for voluntary dissolution on 30 July 2003 and was dissolved on 12 August 2006. FAME information for Firm B indicates that its business activities included accountancy, taxation, payroll, and consultancy.
10. Since 22 January 2003, Mr Gunkel has been a director of Firm A. Companies House information for Firm A indicates that its business includes accountancy and audit.
11. Since January 2004 Mr Gunkel has held more than 50 per cent of Firm A shares. The most recent published information, on 02 February 2023, gave his shareholding as 52.5 per cent.
12. On 18 December 2020, ACCA received a complaint about Mr Gunkel from a member of the public. It included the information that Mr Gunkel appeared to be carrying on public practice without an ACCA practising certificate.
13. On 19 January 2022, Firm A applied to HMRC for anti-money laundering supervision. HMRC's Supervised Business Register includes an entry for Firm A with a start date of 25 April 2022.
14. Mr Gunkel accepts that he has never held an ACCA practising certificate and that Firm A was not registered with a supervisory authority for anti-money laundering purposes until 25 April 2022. However, he has explained that since 2010, he had been working on the basis that neither action was necessary, relying upon advice he says he received from an ACCA investigator. He states that *"ACCA gaved [sic] me clearance to continue practising as I always had done following an investigation in 2010. The final telephone conversation by the lady who undertook the investigation gave this green light to continue as before"* (page 70 of the Supplementary Bundle).

ALLEGATIONS (AS AMENDED)

Mr Roderick Gunkel, an ACCA Member:

Allegation 1

- (a) Between 03 September 2001 and 19 December 2022, has carried on public practice, contrary to Regulation 3(1)(a) of the Practising Regulations (2001 – 2002) and Regulation 3(1)(a) of the Global Practising Regulations (2003 – 2022) without an ACCA practising certificate.***

- (b) Between 01 January 2005 and 19 December 2022 has been a Director of Firm A without an ACCA practising certificate, contrary to Regulation 3(2)(a) of the Global Practising Regulations (2005 – 2022).***

- (c) Between 01 January 2006 and 19 December 2022, has held no less than 52.5% of shares in Firm A, in effect putting Mr Gunkel in the position of Principal at Firm A, without holding an ACCA practising certificate, contrary to Regulation 3(2)(b) of the Global Practising Regulations (2006 – 2022).***

Allegation 2

Between 26 June 2017 and 25 April 2022 Mr Gunkel failed to ensure that Firm A, being engaged in providing accountancy services, was registered with a supervisory authority for anti-money laundering purposes contrary to Regulation 3(2) of Global Practising Regulations (Annex 1) (2017 to 2022).

Allegation 3

By reason of his conduct above set out at allegations 1 and 2 above, Mr Gunkel is:

(a) Guilty of misconduct pursuant to byelaw 8(a)(i) in respect of either or both of allegations 1 and 2 above; or, in the alternative

(b) Liable to disciplinary action pursuant to byelaw 8(a)(iii) in respect of allegation 1 and 2 above.

DECISION ON ALLEGATIONS AND REASONS

ADMISSIONS

15. At the beginning of the hearing, Mr Gunkel admitted the following allegations: Allegations 1(a), 1(b), 1(c) and 2.
16. The Chair therefore announced, in accordance with Regulation 12(3)(c) of the Regulations, that Allegations 1(a), 1(b), 1(c) and 2 were found proved.

EVIDENCE AND SUBMISSIONS OF ACCA

17. Mr Mills outlined the ACCA case against Mr Gunkel by reference to the documentary evidence contained within the papers before the Committee.
18. Mr Mills submitted that it was more likely than not that the telephone conversation between the ACCA Investigator and Mr Gunkel in 2010 concluded with the ACCA Investigator providing a “*green light*” in general terms and not with specific reference to Mr Gunkel’s position carrying on in public practice or in relation to anti-money laundering supervision. In that regard he drew the Committee’s attention to what he described as inconsistencies in Mr Gunkel’s account of that conversation over time. He also asserted that it was inherently improbable that an ACCA Investigator would have provided specific incorrect assurances to Mr Gunkel in relation to such matters.
19. Mr Mills submitted that, for the period before the 2010 telephone conversation, Mr Gunkel had provided no explanation for his failure to ensure compliance with ACCA requirements in terms of the holding of an ACCA practising certificate.

20. Mr Mills submitted that, for the period following the 2010 telephone conversation, it was unreasonable for Mr Gunkel to have relied upon the ACCA's Investigator's remarks in the way that he did because:
 - a. The ACCA regulations were clear that a member carrying on public practice must have a practising certificate;
 - b. The CPD declaration forms from 2014 onwards included a declaration about the regulatory requirement to hold a practising certificate and this provided an opportunity for Mr Gunkel to become alerted to his need to comply with the requirement to hold a practising certificate;
 - c. It was Mr Gunkel's personal responsibility to ensure that he was in compliance with ACCA's regulations; and
 - d. It was unreasonable for Mr Gunkel to rely upon a general, non-specific "*green light*" from an ACCA Investigator who had been investigating an unrelated matter.
21. Mr Mills submitted that, in relation to the matters set out at Allegation 2 (relating to anti-money laundering supervision), Mr Gunkel could place no reliance upon the telephone conversation in 2010 because the relevant regulatory requirements were only introduced in 2017.
22. Mr Mills submitted that Mr Gunkel's conduct, in relation to each of the matters found proved by admission, had brought discredit to himself, ACCA and the accountancy profession as a whole because:
 - a. The requirements to hold a practising certificate and to ensure anti-money laundering supervision are important regulatory requirements;
 - b. The regulatory requirements in question were clear on the face of the relevant regulations and, if he had read them, should have been readily understood by Mr Gunkel, an experienced professional accountant; and

- c. Mr Gunkel was under a personal professional obligation to ensure that he complied with those regulations but he failed to do so.
23. Mr Mills therefore submitted that the conduct was serious and amounted to misconduct. In the alternative, Mr Mills submitted that the conduct, in breaching ACCA regulations, rendered Mr Gunkel liable to disciplinary action.

EVIDENCE AND SUBMISSIONS OF MR GUNKEL

24. Mr Gunkel had provided a detailed written response to the ACCA allegations in a Defence Statement dated 18 September 2023 (including a copy of his complaint to the President of ACCA dated 14 May 2022) and in a completed ACCA Case Management Form dated 13 September 2023. Mr Gunkel also gave oral evidence to the Committee and answered questions from Mr Mills and the Committee.
25. In relation to Allegations 1(a), 1(b), 1(c) and 2, Mr Gunkel stressed that when the issue about the absence of his practising certificate and the absence of anti-money laundering supervision for Firm A were brought to his attention, he made swift admissions and sought to rectify the matters immediately. He stated that in the telephone conversation in 2010 the ACCA Investigator had assured him that his practice up to that point had been fine and that he could “*carry on as before*”. On that basis, Mr Gunkel contended that the breaches of ACCA regulations had not been his fault but, rather, the fault of ACCA. He believes that he was misled by the ACCA investigator and that it was not his responsibility to check whether what the ACCA Investigator had told him was correct.
26. Mr Gunkel accepted that, during the telephone conversation in 2010, there was no discussion about Mr Gunkel not having an ACCA practising certificate. He stated that anti-money laundering provisions were mentioned but accepted that this would not have included anti-money laundering supervision. Rather, it was a discussion about the complaint that had led to the investigation and there was a general remark at the end of the conversation that gave Mr Gunkel the

impression of a “*green light*” to continue practising as he had been until that point.

27. In relation to the period between 2001 and 2010, Mr Gunkel accepted that he should have had a practising certificate to carry on public practice. He explained that he had misinterpreted the relevant regulations and had believed that, because he was trading via a limited liability company, there was no need for him to hold a practising certificate. Mr Gunkel stated that he did not know why he did not make any enquiries to double-check his understanding of the relevant regulations at that point.
28. In relation to the period between 2010 and 2022, Mr Gunkel stated that he did not look at the Chartered Certified Accountants’ Global Practising Regulations (the Global Practising Regulations). However, he stressed that he kept an eye on any changes that happened to ACCA regulations and did not notice any change in requirements about practising certificates.
29. Mr Gunkel explained that he had signed the CPD declaration forms in 2014, 2015, 2016, and 2017 confirming that “*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*”, because he treated the form simply as a declaration about his completion of CPD activities and nothing more. The Committee noted that Mr Gunkel also signed the CPD declaration form in 2018 but appeared to have crossed parts of it out. When asked whether he had read and understood the declaration about practising certificates before he signed the form, Mr Gunkel stated that he didn’t give it a second thought because the form said “*CPD*” at the top and did not say anything at the top about practising status. He added that, if there had been two separate sections to sign on the form, he might have given it more thought.
30. Mr Gunkel drew the Committee’s attention to the fact that before 2014, the CPD declaration forms did not include any reference to the requirement to hold a practising certificate for carrying on public practice. Mr Gunkel stated that it was mischievous of ACCA to include that wording from 2014 and was designed to trick people into signing something that they should not be signing.

31. In relation to Allegation 2, Mr Gunkel stated that, because he believed that he was “*under the umbrella*” of ACCA as an ACCA Fellow, he was under the impression that he was “*regulated*” and so needed to take no further action in relation to the anti-money laundering supervision requirement. He stated that, as ACCA did not contact him about this, he did not think that he needed to do anything. He believed that he was already “*registered*” to the extent that he needed to be.
32. Mr Gunkel indicated that he wished to regularise his position so that he could continue to work as a professional accountant with membership of ACCA. He explained that he planned to retire in 2-3 years, but for the moment wished to retain involvement with Firm A to support his colleagues who will eventually take over responsibility for the firm.

DECISION AND REASONS

33. Having found the facts admitted and proved in relation to Allegations 1(a), 1(b), 1(c) and 2, the Committee then considered whether those matters amounted to misconduct as set out at Allegation 3(a) or, in the alternative, amounted to conduct which rendered Mr Gunkel to disciplinary action as set out at Allegation 3(b).
34. The Committee considered with care all of the evidence presented and submissions made by Mr Mills and Mr Gunkel.
35. The Committee accepted the advice of the Legal Adviser, who referred it to the relevant parts of the Regulations, the Byelaws, the ACCA Code of Ethics and Conduct, guidance from relevant case law and the ACCA document ‘Guidance for Disciplinary Committee Hearings’ (01 January 2021).
36. The Committee noted that the burden of proving any factual elements of the remaining allegations rested with ACCA, and that the standard of proof applicable was the civil standard, that is, the balance of probabilities.

37. The Committee also noted, however, that there was no burden and standard of proof applicable to its substantive decisions in relation to misconduct. Rather, those are a matter for the judgment of the Committee.

Allegation 3(a) – proved

38. In relation to Allegations 1(a), 1(b) and 1(c), and the period 2001 to 2010, the Committee considered that Mr Gunkel had put forward no reasonable explanation for his failure to obtain a practising certificate whilst carrying on public practice. Taking Mr Gunkel's own account of what happened, the Committee found that Mr Gunkel either misunderstood the relevant regulations or failed to check them in the first place.
39. The Committee found that there had been a telephone conversation between an ACCA investigator and Mr Gunkel in 2010, in which the ACCA Investigator had made a comment that Mr Gunkel could “*carry on as before*” or words to that effect. There was clear evidence that the telephone conversation had taken place, Mr Gunkel had provided a clear and consistent account throughout that such comments had been made and ACCA did not seek to challenge that matter. The Committee noted that Mr Gunkel had accepted at the hearing, however, that the ACCA Investigator had not provided any specific reassurances about the absence of an ACCA practising certificate or about anti-money laundering supervision, because those matters were simply not discussed during the telephone conversation.
40. In relation to Allegations 1(a), 1(b) and 1(c), and the period 2010 to 2022, the Committee found Mr Gunkel's assertion that he believed that the ACCA Investigator's comment meant that he could carry on without changing any aspect of his practice for the following twelve years to be surprising. The Committee accepted that he might have reasonably drawn some reassurance from the comment in the very short term and in relation to the matters that were the subject of the investigation. However, it found that it was unreasonable for Mr Gunkel to have held that belief for the full twelve-year period because:

- a. The investigation was into a discrete matter raised by way of a complaint and was not a general review of Mr Gunkel's practice as an accountant;
 - b. If the ACCA Investigator had wished to provide such an important and far-reaching reassurance to Mr Gunkel, it was improbable that the matter would not have been put into writing for future reference;
 - c. Twelve years is a long period, over which Mr Gunkel must have appreciated that regulatory requirements can and do change; and
 - d. The CPD declaration forms from 2014 to 2018 included reference to the requirement to hold a practising certificate where carrying on public practice, and Mr Gunkel had sight of those forms at least once a year when he completed and signed them.
41. If, as Mr Gunkel told the Committee, he signed the CPD declaration forms from 2014 to 2018 without carefully reading the matters which he was confirming, the Committee considered that to be an example of Mr Gunkel failing to exercise due care and attention and failing to take an opportunity to ensure that he was meeting the regulatory requirements that applied to him.
42. In relation to Allegation 2, and the period 2017 to 2022, the Committee considered that Mr Gunkel's telephone conversation with the ACCA Investigator in 2010 was irrelevant because the requirement for anti-money laundering supervision had not been introduced until 2017. Mr Gunkel had told the Committee that he was aware of new anti-money laundering legislation coming into force from 2017 onwards and the Committee considered that he should therefore have appreciated the possibility of updated regulatory requirements being introduced as a consequence. On that basis, the Committee found it surprising that Mr Gunkel did not make any checks to understand whether he needed to make any changes to ensure that he was in compliance with regulatory requirements.
43. The Committee considered Mr Gunkel's explanation that he believed that he was "*under the umbrella*" of ACCA and so already "*registered*" to the extent that he needed to be, to be an unreasonable belief in the circumstances. There was

no evidence that Mr Gunkel had been given any indication or reassurance from the ACCA investigator in 2010 or any other part of ACCA since the relevant requirement was introduced in 2017 that Firm A was under ACCA's supervision for anti-money laundering purposes.

44. Taking all of these matters into account, the Committee considered that Mr Gunkel had departed significantly from what was proper in the circumstances, falling far below the standards expected of professional accountants. He had failed to ensure the compliance of himself and Firm A with important regulatory requirements over an extended period of time. The explanations that Mr Gunkel had provided for his conduct were inadequate and demonstrated a lack of insight into the seriousness of his omissions.
45. The Committee considered that such a lack of professionalism on the part of Mr Gunkel had the potential to undermine the public's confidence in the ACCA and the accountancy profession. It clearly brought discredit to Mr Gunkel, the ACCA and the accountancy profession.
46. For those reasons, the Committee concluded that the matters found proved at Allegations 1(a), 1(b), 1(c) and 2, amounted to misconduct. Accordingly, the Committee found Allegation 3(a) proved in relation to Allegations 1(a), 1(b), 1(c) and 2.
47. Given its finding in relation to Allegation 3(a), it was not necessary for the Committee to consider the alternative matter set out at Allegation 3(b).

DECISION ON SANCTION AND REASONS

48. In reaching its decision on sanction, the Committee took into account the evidence that it had already heard, and the submissions made by Mr Mills and Mr Gunkel. This included confirmation from Mr Gunkel that his personal financial position would not preclude him being able to pay any financial penalty that the Committee may decide to impose. The Committee also referred to the ACCA document 'Guidance for Disciplinary Sanctions' (01 January 2021).

49. In response to a query from the Committee, Mr Mills confirmed that prior to 01 March 2020, where a breach of the requirement to hold an ACCA practising certificate for engaging in public practice was inadvertent and regularised, ACCA's approach was to allow the matter to "*rest on file*". However, since 01 March 2020, ACCA's approach has been to deal with the matter by way of ACCA's disciplinary process. Mr Mills made two submissions in relation to the policy change. First, Mr Gunkel's case had come to be investigated after the 01 March 2020 policy change date. Second, the relevant circumstances did not apply in this case. He stated that the Committee may have found Mr Gunkel to have acted inadvertently, but his position has not been regularised because he has not obtained an ACCA practising certificate, resigned as an ACCA member or ceased to be a director and principal of Firm A.
50. The Committee accepted the advice of the Legal Adviser including the following principles:
- a. The purpose of a sanction is not to punish, but to protect the public, maintain public confidence in the profession and to maintain proper standards of conduct;
 - b. Any sanction must be proportionate, so the Committee must balance the interests of the member with the interests of wider ACCA membership and the public; and
 - c. The Committee must consider the sanctions in order of severity, starting with the least severe first.
51. When deciding on the appropriate sanction, the Committee carefully considered whether there were any aggravating and mitigating features in this case.
52. The Committee identified the following aggravating features:
- a. The repeated nature of the failures over an extended period of time;

- b. The risk of harm to the public, in that Mr Gunkel and Firm A were operating without the required practice certification and supervision; and
 - c. The lack of insight demonstrated, in that Mr Gunkel had attempted to shift the responsibility for his omissions to others.
53. The Committee identified the following mitigating features:
- a. The absence of any previous disciplinary history with ACCA across a long (49 year) history of ACCA membership;
 - b. Early admissions;
 - c. The omissions were inadvertent (and Mr Gunkel's incorrect understanding of his position was somewhat reinforced by his understanding of the conversation with the ACCA Investigator in 2010);
 - d. No attempt to conceal the omissions once brought to Mr Gunkel's attention;
 - e. Mr Gunkel's attempts to regularise his position by applying for a practising certificate and obtaining the supervision of HMRC;
 - f. No repetition of the conduct; and
 - g. Mr Gunkel's prompt and active engagement with the regulatory process.
54. The Committee considered the available sanctions in increasing order of severity.
55. The Committee considered taking no action against Mr Gunkel. However, given the seriousness of the conduct, the Committee considered that it would be inappropriate to take no action.
56. The Committee considered imposing an admonishment on Mr Gunkel. The Committee noted that the guidance indicated that an admonishment would be appropriate in cases where most of the following 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; and
 - i. Relevant and appropriate testimonials and references.
57. The Committee considered that this was not a case where an admonishment would be appropriate. This was not an isolated incident because the matters found proved included failures to comply with a number of regulatory requirements over a period of many years (up to 20 years in one case). Although Mr Gunkel had engaged with the ACCA disciplinary process, provided early admissions and taken some corrective steps (applying for a practising certificate and registering with HMRC for anti-money laundering supervision), there had been no evidence of remorse/apology and limited evidence of insight because Mr Gunkel had maintained throughout that his omissions were, in large part, the fault of ACCA. Mr Gunkel had not provided any testimonials and references to be considered.
58. The Committee was satisfied that Mr Gunkel had acted unwittingly in that he had a flawed understanding of his position prior to 2010 and had mistakenly relied upon the general advice of an ACCA Investigator in 2010 giving him “*the green light*” to continue practising as he had been. The Committee found it probable that Mr Gunkel had genuinely believed that he was acting appropriately because his omissions in failing to obtain a practising certificate

and ensuring the required supervision of anti-money laundering activities did not make sense, given the risks that doing so would raise for the reputation of Mr Gunkel, Firm A and their clients.

59. Taking all of these matters into account, together with the seriousness of the misconduct found, the Committee concluded that an admonishment would be an inappropriate and inadequate response.
60. The Committee next considered imposing a reprimand. The Committee noted that the guidance indicated that a reprimand would be appropriate in cases where:
 - a. The misconduct is of a minor nature;
 - b. There appears to be no continuing risk to the public; and
 - c. There has been sufficient evidence of an individual's understanding, together with genuine insight into the conduct found proved.
61. In relation to Allegations 1(a), 1(b) and 1(c), the Committee considered that none of these features were present in this case. The misconduct was of a serious nature, insufficient understanding or insight had been demonstrated by Mr Gunkel because he had blamed others for his omissions and had still failed to correct the situation by obtaining an ACCA practising certificate, resigning from ACCA or ceasing to be the director and principal of Firm A. In such circumstances, the Committee considered that there therefore remained a continuing risk to the public. For those reasons, the Committee concluded that a reprimand would be inappropriate.
62. In relation to Allegation 2, the Committee noted the additional guidance set out at pages 24 to 29 of the ACCA document 'Guidance for Disciplinary Sanctions' (01 January 2021) in relation to allegations of breaches of anti-money laundering regulations. The Committee considered that this element of misconduct at the "*less serious*" end of the scale – in the "(c)" category – because the failure was inadvertent and because action had been taken to regularise the position (by registering with HMRC for anti-money laundering

supervision). On that basis, the Committee considered that there was no ongoing risk to the public.

63. Applying those findings to the guidance set out at page 25 of the guidance document (row 1), the Committee considered that a sufficient, appropriate and proportionate non-financial sanction would be a reprimand and a sufficient, appropriate and proportionate financial sanction would be a fine of £2866.00, reflecting the amount that would have been due for payment to cover an initial practising certificate in 2017 and the renewal fees due from 2017 to 2022. In coming to the decision on the financial penalty in respect of Allegation 2, the Committee took into account the fact that Mr Gunkel and Firm A would have paid an amount to register with HMRC for anti-money laundering supervision. It also took into account the information that Mr Gunkel had provided as to his own financial position and ability to pay.
64. In relation to Allegations 1(a), 1(b) and 1(c), the Committee considered whether to impose a serious reprimand. The Committee noted that the guidance indicated that a severe reprimand would be appropriate in cases where the conduct is of a serious nature but where the circumstances of the case or mitigation advanced satisfies the Committee that there is no continuing risk to the public. The Committee considered that the conduct was of a serious nature but that there was important evidence of mitigation, in that Mr Gunkel's misconduct had been unwitting. The Committee noted that, arising from Mr Gunkel's omissions, there was an ongoing risk to the public that was continuing because he had not yet obtained an ACCA practising certificate. However, the Committee considered that the risk was ameliorated somewhat by Mr Gunkel's clear desire and willingness to correct the situation and regularise his position if possible. On that basis, the Committee concluded that a severe reprimand would be a sufficient, appropriate and proportionate sanction in relation to Allegations 1(a), 1(b) and 1(c). The Committee considered that a severe reprimand would mark the seriousness of the misconduct and address the wider public interest in maintaining confidence in the ACCA and accountancy profession and upholding proper standards of conduct and performance.

65. The Committee considered that excluding Mr Gunkel from ACCA membership would be disproportionate because, although the misconduct had been serious, there was important evidence of mitigation (most notably, the fact that the omissions had been inadvertent and any ongoing risk to the public was limited). As such, the Committee considered that the misconduct was not so serious as to be fundamentally incompatible with being an ACCA member.

DECISION ON COSTS AND REASONS

66. Mr Mills, on behalf of ACCA, applied for Mr Gunkel to make a contribution to the costs of ACCA in bringing this case. Mr Mills applied for costs in the sum of £9,575.50. The application was supported by a schedule breaking down the costs incurred by ACCA in connection with the hearing.
67. Mr Gunkel had not provided the Committee with a completed Statement of Financial Position. However, he had indicated that his financial position would not preclude him from being able to pay the amount applied for should the Committee decide to award that amount. Mr Gunkel did assert, however, that the costs payable should be reduced to reflect the length of time taken by ACCA to investigate the matters which he considered to be unjustified in certain respects.
68. The Committee accepted the advice of the Legal Adviser who referred the Committee to Regulation 15(1) of the Regulations and the ACCA document 'Guidance for Costs Orders' (September 2023).
69. The Committee was satisfied that ACCA was entitled to costs in principle and had been justified in investigating these matters, including in terms of the length of time taken. Having reviewed the schedule, the Committee considered that the costs claimed appeared to have been reasonably and proportionately incurred.
70. The Committee considered whether Mr Gunkel's conduct during the investigation and disciplinary proceedings had had any effect on the costs incurred, whether beneficial or otherwise. The Committee noted that ACCA had offered Mr Gunkel the option of resolving the matter by way of a Consent Order

and that Mr Gunkel had not accepted that offer before the deadline of 10 May 2022 had expired. Mr Gunkel had told the Committee that the reason for him not accepting the offer before the deadline had expired was because he wished to wait for other matters related to Firm A to be completed first. The Committee considered that Mr Gunkel should not be penalised in any way for his decision not to sign the Consent Order within the deadline specified. However, neither did the Committee find any evidence that Mr Gunkel's conduct throughout the investigation and disciplinary proceedings had been sufficiently beneficial to warrant a reduction in the amount of costs to be awarded.

71. On the basis of the information provided by Mr Gunkel as to his financial circumstances, the Committee found no basis for reducing the costs payable on the grounds of Mr Gunkel's ability to pay. It considered that Mr Gunkel would be able to pay the amount in question without undue financial hardship.
72. The Committee considered Mr Gunkel's submissions as to his personal circumstances but found that these did not justify any reduction in the costs payable.
73. Taking all of these circumstances into account, the Committee decided that Mr Gunkel should be ordered to make a contribution to the costs of ACCA in the sum of £9,575.50.

ORDER

74. The Committee made the following order:
 - a. Mr Gunkel shall be severely reprimanded;
 - b. Mr Gunkel shall be fined the sum of £2,866.00; and
 - c. Mr Gunkel shall make a contribution to ACCA's costs in the sum of £9,575.50.

EFFECTIVE DATE OF ORDER

75. In accordance with Regulation 20(1)(a) of the Regulations, the orders relating to severe reprimand and fine shall take effect at the expiry of the appeal period.
76. In accordance with Regulation 20(2) of the Regulations, the order relating to costs shall take effect immediately.

HH Suzan Matthews KC
Chair
08 November 2023