

HEARING
DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF
CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Tendayi Goneso

Heard on: 09 April 2024

Location: Remotely via Microsoft Teams

Committee: Mr Neil Dalton (Chair)
Ms Joanne Royden-Turner (Accountant)
Ms Sue Heads (Lay)

Legal Adviser: Mr Robin Havard

**Persons present
and capacity:** Mr Alex Mills (ACCA Case Presenter)
Ms Lauren Clayton (Hearings Officer)

Observers: Ms Alison Sansome (ACCA)
Ms Sofia Tumburi (ACCA)

Summary Allegations 1(a) & 1(b), and 2(b) were found proved.
Sanction – Admonishment

Costs: £5,000

ACCA



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PRELIMINARY APPLICATIONS

SERVICE OF PAPERS

1. The Committee had considered the following documents: a Hearing Bundle (pages 1 to 76), an email from ACCA to Mr Goneso with an attached letter dated 05 April 2024 and documents from Companies House (pages 1 to 7), an email from Mr Goneso dated 09 April 2024 (pages 1 to 2), and a Service Bundle (pages 1 to 19). The Committee had listened carefully to the submissions made by Mr Mills and also considered legal advice, which it had accepted.
2. The Committee had read the letter dated 12 March 2024 sent by ACCA by email to Mr Goneso. It had noted the subsequent emails sent to him with the necessary link and password to enable him to gain access to the letter and the documents relating to this hearing.
3. The Committee was satisfied that such emails had been sent to Mr Goneso's registered email address in accordance with regulation 22 of the Complaints and Disciplinary Regulations 2014 as amended ("CDR"). The Committee had noted that the emails had been delivered successfully.
4. The emails and the documents to which Mr Goneso had access also contained the necessary information in accordance with CDR10.
5. Consequently, the Committee decided that Mr Goneso had been properly served with Notice of the proceedings.

PROCEEDING IN ABSENCE

6. On 28 March 2024, in the absence of any response from Mr Goneso to ACCA's letter of 12 March 2024, ACCA sent a further email to him, inviting him to indicate if he intended to attend the hearing on 09 April 2024 and reminding him of his ability to join the hearing remotely via video link or phone.
7. On 02 April 2024, ACCA called Mr Goneso and was able to speak with him on the phone. He stated that he had recently returned from holiday. Whilst he had received ACCA's documents, he had not had the chance to read them. It was agreed that ACCA would phone on the following day.

8. On 03 April 2024, ACCA spoke again with Mr Goneso, who indicated that he would not be attending the hearing due to other commitments. He confirmed that he was content for the hearing to proceed in his absence. He was asked to confirm as much in writing.
9. ACCA sent a further email to him on 08 April 2024 containing a link enabling him to join the hearing if he changed his mind.
10. On 09 April 2024, Mr Goneso sent an email to ACCA confirming that he did not intend to attend the hearing and that he consented to the hearing proceeding in his absence.
11. The Committee considered that ACCA had done everything possible to enable Mr Goneso to attend the hearing.
12. Mr Goneso had spoken with ACCA on the phone, confirming that he did not intend to attend. He had also sent an email to ACCA confirming that he consented to the hearing proceeding in his absence.
13. The Committee concluded that Mr Goneso had voluntarily absented himself from the hearing, which he could have joined by telephone or video link.
14. The Committee was also satisfied that, taking account of the nature of the allegations, it was in the public interest to proceed. The Committee did not consider that any benefit would be derived in adjourning the hearing and no such application had been made.
15. Finally, the Committee considered that it was in a position to reach proper findings of fact on the written evidence presented to it by ACCA, together with the responses that Mr Goneso had provided in the course of the investigation by ACCA.
16. The Committee ordered that the hearing should proceed in the absence of Mr Goneso.

LATE SUBMISSION OF DOCUMENTS

17. On behalf of ACCA, Mr Mills applied for leave to introduce an email sent to Mr Goneso on 05 April 2024 together with an attached letter of the same date which, in turn, referred to documents obtained from Companies House.
18. The letter notified Mr Goneso of three issues:
 - (i) That the allegations against him contained in the Case Management Form sent to Mr Goneso on 09 February 2024, and which were before the Committee today, were different to those contained in correspondence sent to him in 2022;
 - (ii) That ACCA no longer relied on paragraph 16 of the disciplinary report nor on pages 75 and 76 of the main bundle, and
 - (iii) ACCA's intention to rely on further documents from Companies House containing the filing history of Company A, such documents having been attached to the letter.
19. Mr Mills relied on CDR27, indicating that it was appropriate and in the interests of a fair hearing for the documents to be introduced. Indeed, the first issue was simply confirming the allegations which had already been served on Mr Goneso.
20. Secondly, ACCA's confirmation that it no longer relied on the submissions contained in paragraph 16 of the disciplinary report was to Mr Goneso's advantage.
21. Thirdly, the document from Companies House was a matter of public record.
22. In the circumstances, Mr Mills submitted that Mr Goneso was not prejudiced by the late submission of the documents.
23. Despite being sent the email and letter, Mr Goneso had failed to respond.
24. The Committee agreed with the submission of Mr Mills that none of the issues raised in the email and letter caused any prejudice to Mr Goneso. Indeed, it

was, to an extent, in his interests for this information to be placed before the Committee.

25. The Committee granted Mr Mills's application.

ALLEGATIONS

1. From 06 September 2021 until around September 2022 Mr Tendayi Goneso, a registered student:
 - a) Was and/or held himself out as a member of Company A where public practice was carried on in the name of the firm contrary to paragraph 8(2)(a)(iii) of the Membership Regulations.
 - b) Held rights in Company A, where public practice was carried on in the name of the firm, which in effect put him in the position of principal of the firm contrary to paragraph 8(2)(a)(iv) of the Membership Regulations.
2. By reason of either or both of the matters set out at allegation 1 Mr Goneso is:
 - a) Guilty of misconduct pursuant to bye-law 8(a)(i), or in the alternative;
 - b) Liable to disciplinary action pursuant to bye-law 8(a)(iii).

DECISION ON FACTS, ALLEGATIONS AND REASONS

26. As stated above, and in reaching its decisions with regard to the allegations, the Committee had considered the following documents: a Report of Disciplinary Allegations and Evidence Bundle (pages 1 to 76), an email from ACCA to Mr Goneso with an attached letter dated 05 April 2024 and documents from Companies House (pages 1 to 7), an email from Mr Goneso of 09 April 2024 (pages 1 to 2), and a Service Bundle (pages 1 to 19). The Committee had listened carefully to the submissions made by Mr Mills and also considered legal advice, which it had accepted.

ALLEGATION 1(a) & (b)

27. On 18 August 2019, Mr Goneso became a registered ACCA student.
28. Allegations 1(a) and (b) related to breaches of Membership Regulations 8(2)(a)(iii) and 8(2)(a)(iv) ("MR").
29. MR8(2)(a)(iii) provides that an ACCA student may not be, or hold themselves out to be, a member of a limited liability partnership where public practice is carried on in the name of the firm or otherwise in the course of the firm's business.
30. MR8(2)(a)(iv) provides that an ACCA student may not hold rights in a firm where public practice is carried on in the name of the firm, or otherwise in the course of the firm's business, which in effect put him in the position of a principal of the firm.
31. The meaning of "public practice" is defined by ACCA's Global Practising Regulation 4 and includes the following provisions which are relevant to these proceedings:

(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.

HISTORY OF COMPANY A

32. Based on documentation from Companies House and correspondence from Mr Goneso, the Committee found the following facts.
33. Company A was incorporated on 06 September 2021. Mr Goneso was appointed a Designated Member and Principal of Company A on that date, holding directly or indirectly more than 50% of the Company A voting rights. This entry on Companies House records was under the heading, *"Individual Person with significant control details."*
34. On 18 August 2022 Mr Goneso ceased being a designated member of Company A, and therefore no longer exercised any voting rights.
35. It was initially stated in ACCA's report that the end date stipulated in the allegation of, "...around September 2022" had been used in the allegations as that is the month in which the referral to a Disciplinary Committee was made.
36. In the course of his oral submissions, Mr Mills made it clear that the period during which ACCA maintained Mr Goneso was in breach of MR8(2)(a)(iii) and (iv) was the date of incorporation of Company A on 06 September 2021 and the date of his resignation as a designated member and principal on 18 August 2022.

CONTACT WITH ACCA

37. ACCA records showed, and the Committee found, that, on 16 September 2021, Mr Goneso contacted ACCA enquiring if he *"can practice at the level I am at now"*. Mr Goneso was advised that he could not practise until he was a full member of ACCA and had a practising certificate.

38. Subsequently, in a letter from ACCA sent by email on 03 March 2022, Mr Goneso was asked a series of questions regarding his involvement with Company A.

39. In his response dated 16 March 2022, Mr Goneso stated in respect of the phone call on 16 September 2021:

"Yes, I contacted ACCA to enquire about having a practice licence as I was not sure if I was allowed or not at my level and the response was no and that I had to complete all the modules before applying for the practice licence. I had to research for other routes as my ambition was to have my own practice, which I did. However, I have not yet given up on my ambition to qualify as ACCA practitioner as I am still studying and sitting for my exams."

40. In the same letter Mr Goneso confirmed that he was a designated member of Company A and that it was a public practice entity which had been providing services to clients. Mr Goneso said that he registered the partnership on 06 September 2021 when he ceased working at Company B, and that he only began practising once he had obtained a licence to practise from the Association of Accounting Technicians ("AAT") on 09 December 2021, and had registered for anti-money laundering purposes with HMRC. In that letter, Mr Goneso attached documentary evidence of the licence issued by AAT and registration with HMRC.

41. Mr Goneso stated, *"yes, I do agree that I am a principal of Company A which is fully registered, licensed and regularised to engage in public practice"*.

42. On 18 March 2022, ACCA replied to Mr Goneso citing the provisions of MR8(2).

43. On 23 March 2022, Mr Goneso wrote to ACCA stating:

"I am admitting that I am a designated member of Company A and at the same time being an ACCA student. I believe that although I am in breach of The Chartered Certified Accountants' Membership Regulations 2014 regulation 8(2)a, I have regularised my position in this firm by arranging to carry out public practice work in a supervised capacity. I am providing accountancy services within the terms of the Money Laundering, Terrorist Financing and Transfer of

Funds (Information on the Payer) Regulations 2017. I am therefore being supervised by HM Revenue & Customs in accordance with The Chartered Certified Accountants' Membership Regulations 2014 regulation 8(2) j. I have also sought further supervision from the Association of Accounting Technicians who have provided me with an accountancy practising licence. In all my engagements in public practice I have not affiliated myself with the ACCA board. I only describe myself as a member of AAT."

44. However, upon being asked to comment on the draft report to the disciplinary assessor, Mr Goneso said as follows in an email dated 19 August 2022:

"I do want to state that I did everything out of ignorance and in all honesty and truthfulness, I did not think that I was doing anything wrong. With hindsight I should have done things differently.

I only believed that with the vast experience that I have of more than 20 years in Accounts and taxation and the degrees that I already have, I was eligible to practice. That was my honest assumptions hence I sought other ways to do so. I also assumed that I could then continue with studies since everything was Accounts related. I have now come to understand everything based on those facts and the ACCA rule book. However, I have since taken steps to take myself off the public domain as a practising Accountant wishing to offer services to the public until I complete my ACCA studies and get licenced. I had since pulled down my LinkedIn and resigned as designated member of all public companies that I was associated with."

45. The Committee was satisfied that, in becoming a designated member and principal shareholder in Company A whilst a student member of ACCA, Mr Goneso was in breach of MR8(2)(a)(iii) and (iv), which prohibited him from being a designated member and principal shareholder of a firm where public practice was carried out. The Committee was satisfied that:

- a) Companies House records of Company A showed that Mr Goneso was a designated member and principal rights holder in the firm between 06 September 2021 and 18 August 2022. Indeed, Mr Goneso accepted that this was so, and

- b) Mr Goneso further accepted that Company A was providing services to clients, which Mr Goneso described as “*accountancy services*” .
46. Consequently, the Committee found that the definition of public practice in GPR4(1)(b) had been met due to the nature of the activities being undertaken at Company A .
47. The Committee found that the definition of public practice under GPR4(1)(d) had also been met as a result of Mr Goneso holding himself out as a member of Company A where such activities were taking place.
48. Further the Committee was satisfied that Mr Goneso was in breach of GPR4(1)(c) as the name Company A fell within the description of a name which “*shall be regarded as*” an example of holding oneself out to be available to undertake the services described in GPR 4(1)(b).
49. The Committee reached such conclusions, noting that, in accordance with MR8(2)(i) there was an exception to MR8(2)(a) in circumstances where a student is a member of certain other regulatory bodies, or holds certain other qualifications, such as being a member of ICAEW. The exception only applied as long as the student referred to themselves as a member of the other body and not ACCA. However, whilst Mr Goneso referred to his membership of AAT, that body is not included in this list, and so there was no applicable exception.
50. Similarly, Mr Goneso’s reference to MR8(2)(j) did not provide any exception or defence to the alleged breach of the MR. That regulation related to anti-money laundering supervision rather than the public practice prohibition in MR8(2)(a).
51. Consequently, on this basis, the Committee found allegations 1(a) and 1(b) proved.

ALLEGATIONS 2(A)

52. In reaching its decision regarding whether Mr Goneso's conduct as outlined above amounted to misconduct, it took into consideration the submissions made by Mr Mills.

53. The Committee found the submissions of Mr Mills on this issue to be fair and balanced, taking account of the fact that Mr Goneso had decided not to participate in the hearing.
54. Mr Mills invited the Committee to consider the following factors as ones which may support a finding of misconduct, namely: the MRs and related rules and regulations are clear and accessible; the onus of meeting the obligation to comply with the regulations rested with Mr Goneso; the breach extended over a period of months, and he could have sought more information and help from ACCA in terms of advice when setting up Company A.
55. Mr Mills suggested the Committee might also take the following into account which were in Mr Goneso's favour: the breach was unintentional. There was no evidence that Mr Goneso had set out to deliberately ignore his regulatory responsibilities. Secondly, the breach arose primarily as a result of the name of Company A which included reference to accounting services. Thirdly, there was no evidence to suggest that Mr Goneso himself had engaged in public practice before December 2021 which coincided with him obtaining his licence from AAT and the certificate from HMRC. Fourthly, he had sought some clarification from ACCA albeit he could have been more investigative in his approach. Finally, there was no evidence to suggest that he had, at any stage, held himself out as an ACCA member.
56. The Committee considered that Mr Mills had identified the relevant issues it had to consider in determining whether Mr Goneso's breaches amounted to misconduct.
57. Taking account of the high threshold which must be achieved for such a finding to be made, and balancing the issues that had been identified for and against a finding of misconduct, the Committee determined that the nature of the breaches that had been found proved did not amount to misconduct.
58. Consequently, the Committee found allegation 2(a) not proved.

ALLEGATION 2(B)

59. Based on the same conclusions as set out above, and relying on its findings of fact in respect of allegations 1(a) and 1(b), the Committee found that Mr Goneso had breached MR8(2) and was therefore liable to disciplinary action.
60. On this basis, the Committee found allegation 2(b) proved.

SANCTION AND REASONS

61. The Committee considered what sanction, if any, to impose taking into account all it had read in the bundle of documents, ACCA's Guidance for Disciplinary Sanctions, and the principle of proportionality. It had listened to submissions from Mr Mills, and to legal advice from the Legal Adviser, which it accepted.
62. The Committee considered the available sanctions in increasing order of severity having decided that it was not appropriate to conclude the case with no order. As stated above, the onus of meeting the obligation to comply with the regulations rested with Mr Goneso.
63. The Committee was mindful of the fact that its role was not to be punitive and that the purpose of any sanction was to protect members of the public, maintain public confidence in the profession and in ACCA, and to declare and uphold proper standards of conduct and performance.
64. The Committee considered whether any mitigating or aggravating factors featured in this case.
65. The Committee accepted that there were no previous findings against Mr Goneso. His correspondence also showed evidence of insight and a willingness to address the particular failing which had been identified; indeed, he had taken steps to regularise his position.
66. On the basis of the Committee's findings, and by reference to the Guidance, the Committee concluded that no aggravating factors featured in this case.
67. The Committee decided that an admonishment was an appropriate, proportionate and sufficient sanction.

68. In reaching its decision, the Committee had considered the criteria for an admonishment in the Guidance and found that a substantial number applied to Mr Goneso's case. There was no evidence of any loss or adverse effect on a client or member of the public; he had admitted his wrongdoing in his correspondence with ACCA; in doing so, he had shown a level of insight; the breaches were not deliberate, and, even though the regulatory breaches had existed for a period of months, such breaches originated from one mistake.

COSTS AND REASONS

69. The Committee had been provided with a Simple Costs Schedule (page 1) and a Detailed Costs Schedule (pages 1 to 2). The Schedules presented to the Committee had been revised and so it was their third iteration which the Committee considered.
70. The Committee concluded that ACCA was entitled to be awarded costs against Mr Goneso, as the factual allegations had been found proved. The amount of costs for which ACCA applied was £6,536.50.
71. Mr Goneso had failed to provide the Committee with details of his means. This was despite being told in the Notice of Proceedings that, if any or all of the allegations were found proved, ACCA would make an application for costs. Further, Mr Goneso was advised that he should provide details of his means if he wished to argue that he could not afford to pay any amount of costs awarded against him; he was provided with a template schedule to complete in relation to his finances.
72. In the circumstances, the Committee reached its decision based on Mr Goneso being able to pay any amount in respect of costs the Committee was minded to impose.
73. The Committee noted that the amount of estimated time claimed in respect of today's hearing was greater than the time the hearing had actually taken. Further, due to submissions made by Mr Mills regarding the history to the matter, the Committee considered it would be appropriate to reduce the amount of costs awarded.

74. In all the circumstances, the Committee exercised its discretion when determining the amount Mr Goneso should be expected to pay. Taking account of what had been said by Mr Mills, the Committee considered that it was reasonable and proportionate to award ACCA costs in the reduced amount of £5,000.

EFFECTIVE DATE OF ORDER

75. The order will take effect at the expiry of the appeal period allowed for an appeal in accordance with the Appeal Regulations.

**Mr Neil Dalton
Chair
09 April 2024**