

HEARING

**DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF
CHARTERED CERTIFIED ACCOUNTANTS****REASONS FOR DECISION**

In the matter of: Mr Matthew Jay

Heard on: Tuesday, 16 April 2024

Location: Remotely using Microsoft Teams

Committee: Ms Suzan Matthews KC (Chair)
Dr David Horne (Accountant member)
Ms Rachel O'Connell (Lay member)

Legal Adviser: Ms Valerie Charbit

**Persons present
and capacity:** Mr Benjamin Jowett (ACCA Case Presenter)
Mr Matthew Jay
Ms Lauren Clayton (Hearings Officer)

Observers: Ms Sofia Tumburi (ACCA staff)

Summary: Mr Jay removed from the Student Register and ordered to pay £1800 in costs to ACCA.

ALLEGATIONS AND SERVICE OF PAPERS

1. The Committee convened to consider the following allegations:

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Allegation 1

Mr Matthew Jay ('Mr Jay') an ACCA student,

- a) On 11 October 2022, accepted a caution for fraud by false representation committed against his employer, an offence which is discreditable to the Association or the accountancy profession.
- b) By reason of his conduct at Allegation 1a) above, Mr Jay is liable to disciplinary action pursuant to bye-law 8(a)(ix).

Allegation 2

Between 11 October 2022 and 05 September 2023, Mr Jay failed to promptly bring to the attention of ACCA that he may have become liable to disciplinary action by reason of having received a caution on 11 October 2022 from Gwent Police, pursuant to bye-law 10(b).

Allegation 3

By reason of his conduct at Allegation 2 above, Mr Jay is:

- a) Guilty of misconduct pursuant to bye-law 8(a)(i); or
 - b) Liable to disciplinary action pursuant to bye-law 8 (a)(iii).
2. The Committee had before it the following papers: a disciplinary committee bundle numbering 1-70 pages, a service bundle numbering 1-22 pages and a statement of financial position numbering 1-19 pages.
 3. Mr Jay attended the hearing, but he was not represented.

BRIEF BACKGROUND

4. On 29 November 2022, ACCA received a complaint from Company A regarding a former employee, Mr Jay. It was alleged that Mr Jay had submitted an application for funding to Company A's trustees in the name of another individual and submitted duplicate receipts which led to him being awarded £2,600.

Following an internal investigation, Company A referred the matter to Gwent Police and Mr Jay accepted a conditional caution (“caution”) for the fraud. He wrote a letter of apology and paid back the sum of £2,590.

5. On 28 September 2023, ACCA received a copy of the caution issued against Mr Jay on 11 October 2022, for one charge of fraud by dishonestly making a false representation, namely creating a fictional student and duplicating receipts intending to make a gain for himself, namely £2,590, contrary to sections 1 and 2 of the Fraud Act 2006.
6. Mr Jay became an ACCA registered student on 12 June 2017. By virtue of his registered status with ACCA, Mr Jay is bound by ACCA’s Bye-laws, Regulations and the Code of Ethics and Conduct.
7. Mr Jay was employed by Company A between 27 November 2017 – 03 February 2019. He was a trainee accountant and part of his role was to administer and collate applications for an endowment trust which would then be presented to the board of trustees for consideration. If approved each applicant would be awarded funding to support them on agricultural education courses.
8. During a period between November 2018 and January 2019, Company A said Mr Jay *“identified that [he] could exploit the process and use it for [his] own financial gain instead of implementing improvements and controls”*. He submitted an application for funding in the name of another person, Student A, requesting funding for books/travel and a laptop. The trustees at Company A agreed to award £2,600 for the application and Mr Jay submitted a number of receipts totalling £2,590 which were duplicates from those submitted by other students. Following Mr Jay’s resignation, Company A identified that the application might have been fraudulent, and enquiries were made with the college regarding the enrolment form upon which it was confirmed that Student A had never enrolled on the course and was not a student. Following an internal audit, Company A referred the matter to the police on 14 October 2019.”
9. Mr Jay was contacted by the police on 29 January 2022, and the investigation then took 8 months, after which he was offered a caution on condition that he pay back £2590 and write a letter of apology to Company A. Mr Jay states that he was very co-operative during the police investigation and despite his solicitor’s advice to respond with “no comment” during the interview, Mr Jay states he

“opted to come clean at the first opportunity, [he] didn’t want to hide from it anymore or want to waste any police resources on the matter”.

10. Mr Jay accepted and signed a caution on one charge of fraud by dishonestly making a false representation, namely creating a fictional student and duplicating receipts intending to make a gain for himself, namely £2,590, contrary to sections 1 and 2 of the Fraud Act 2006, on 11 October 2022.
11. Following the complaint from Company A, ACCA contacted Mr Jay on 25 August 2023. Mr Jay submitted his response on 06 September 2023, in which he admitted that he accepted a caution for theft on 11 October 2022; that he failed to promptly bring the caution to the attention of the ACCA; that he presented a false application to Company A; and that he presented false documents to support a funding claim to the value of £2590.
12. Mr Jay confirmed that the *“dates and information provided by [Company A] are correct apart from the date I submitted the application which would have been in 2019 not 2020”*. Mr Jowett on ACCA’s behalf, accepted the dates advanced by Mr Jay were correct.
13. Further, Mr Jay stated, *“First and foremost, I deeply regret my actions and have spent considerable time reflecting on why and what drove me to do what I did. None of the following are excuses nor am I trying to justify my actions because they were completely wrong and unethical. During the third quarter of 2019 [Private]. I was constantly looking to keep busy by being out of the house and not alone. I took on the mortgage responsibility by myself whilst also trying to live the high life [Private]. This wasn’t a healthy combination and financial pressure was growing.*
...
I also rationalised what I was doing by convincing myself that some of the applicants of the trust were already taking advantage. I would tell myself things such as the money wouldn’t be missed, no one would be hurt and that I was just as deserving of financial help.
...
This has been an isolated incident that occurred very early in my accounting career, it’s an action I will always regret.

I did not report this to the ACCA as I am not actively studying and have not sat an exam since December 2020 and therefore thought it was not applicable. However, I now understand that as I pay the annual fee, I am a student member and therefore subject to the disciplinary procedure”.

14. In the complaint to ACCA, Company A confirmed that £2,590 had been paid back and that Company A had received Mr Jay’s letter of apology.
15. Company A stated that, *“Matthew was a trainee accountant in Company A, he was in a position of trust which he abused. In addition to this during his employment Company A were funding his training for ACCA, giving him time off to study and paying for his exams. As a trainee accountant Matthew would have known what he was doing was wrong. As a member of ACCA, he will be in a position to obtain other finance roles where he may abuse the trust of other employers. He has said in his letter of apology that he will not but this needs to be considered.....Finally, Matthew was a popular member of the team, it was one of his colleagues that discovered the fraud, both his team member and I as his manager feel let down and saddened by his actions”.*
16. On 09 February 2024, ACCA wrote to Mr Jay informing him that this matter would be referred to ACCA’s Disciplinary Committee for hearing. Mr Jay provided ACCA with a completed Case Management Form on 10 February 2024 in which he made admissions in respect Allegations 1(a) 1(b) and 2.

ACCA’S SUBMISSIONS

17. ACCA submitted that Allegation 1 is capable of proof by the signed caution dated 11 October 2022, in which Mr Jay admitted to committing fraud against his employer by dishonestly making a false representation, namely creating a fictional student and duplicating receipts intending to make a gain for himself, namely £2,590, contrary to sections 1 and 2 of the Fraud Act 2006.
18. ACCA also relied on Mr Jay’s admissions that he had accepted the caution for fraud and that he had submitted a false application and documents in support of a funding claim to the value of £2590.
19. ACCA submitted that the offence is discreditable to the Association and the accountancy profession under bye-law 8(a)(ix). The offence reflects a serious departure from the standards that one would expect of ACCA students. ACCA

relies on the complaint submitted by Company A in which it was stated that *“Matthew was a trainee accountant in Company A, he was in a position of trust which he abused... As a trainee accountant Matthew would have known what he was doing was wrong. As a member of ACCA, he will be in a position to obtain other finance roles where he may abuse the trust of other employers. He has said in his letter of apology that he will not but this needs to be considered”*.

20. Further, ACCA relied on Mr Jay’s email dated 06 September 2023 in which he stated that he *“identified that [he] could exploit the process and use it for [his] own financial gain instead of implementing improvements and controls”*. Mr Jay committed this offence in his capacity as a trainee accountant. ACCA submitted that this offence if not challenged by ACCA, would undermine public confidence in ACCA and the accountancy profession. Accordingly, Mr Jay is liable to disciplinary action pursuant to bye-law 8(a)(ix).
21. In respect of Allegation 2, ACCA submitted that there is no record of Mr Jay notifying ACCA of the caution dated 11 October 2022. ACCA only became aware of the issue upon receiving a complaint from his former employer. ACCA also relied on the fact that Mr Jay admitted that he failed to promptly notify ACCA of the caution as he was not actively studying and *“thought it was not applicable”*. ACCA submits that Mr Jay ought to have been aware of his professional obligations as a registered student and that he had a duty to disclose the caution for an offence committed while he was working in an accountancy role.
22. Mr Jowett invited the Committee to consider that the facts found proved in Allegation 2 amounted to misconduct. He submitted that the extent of the delay, 11 months after the caution was accepted, and the fact that notification of the caution to ACCA was only prompted by ACCA’s enquiries were matters the Committee should take into consideration when deciding if misconduct was made out.
23. ACCA submitted that if the facts set out at Allegation 2 are found proved, Mr Jay acted in a manner which brings discredit to himself, ACCA and to the accountancy profession. Accordingly, Mr Jay’s conduct amounts to misconduct pursuant to byelaw 8(a)(i).

THE STUDENT’S RESPONSE

24. At the outset of the hearing Mr Jay admitted Allegation 1(a), 1(b), and Allegation 2.
25. In respect of Allegation 3, Mr Jay said that his failure to notify ACCA was a complete oversight on his part and he had not been studying at that time, his last exam was he said in December 2019. He said he believed that he would only need to report matters if had he gone on to complete ACCA's exams. He accepted that it was his responsibility to report the caution to ACCA however he said he was not aware that he had to notify ACCA of the caution at the time.

DECISION ON FACTS/ALLEGATIONS AND REASONS

26. The Committee found Allegations 1(a), 1(b) and Allegation 2 proved pursuant to Regulation 12(3)(c) of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 (amended 01 January 2019) ("DC Regulations").
27. The Committee noted that Mr Jay was a student member who was at an early stage in his accountancy training. However, it determined that despite his openness and frankness since he was confronted by ACCA, it was satisfied that his failure to report the caution to ACCA did amount to misconduct.
28. The Committee noted that Byelaw 8 stated "*misconduct includes (but is not confined to) any act or omission which brings, or is likely to bring, discredit to the individual or to the Association or to the accountancy profession*". The Committee noted that this was repeated in ACCA's Guidance for Disciplinary Committee's at paragraph 100. It therefore determined that Mr Jay's failure to report the caution to ACCA whilst remaining a student member for a further 11 months, until he was confronted, was in the circumstances an omission which amounted to misconduct. In the Committee's judgement although Mr Jay had overlooked reporting this, the Committee considered that his duty to do so was one which the public and the profession would expect of an ACCA student member. It was therefore satisfied that his failure to do so amounted to misconduct.
29. The Committee therefore found misconduct and Allegation 3(a) proved.
30. Accordingly, the Committee did not go on and consider Allegation 3(b) as that was an alternative allegation.

SANCTIONS, COSTS AND REASONS

31. Mr Jay has no previous disciplinary findings against him. Mr Jowett said that Mr Jay had cooperated with ACCA throughout the disciplinary investigation, and he had attended the hearing.
32. Mr Jowett applied for costs of £4563.70. This included the costs of the investigation and the costs of the hearing.
33. Mr Jay submitted that he was extremely remorseful and that these matters were out of character. He relied on [Private] at that time to mitigate his position. He stated he had been open with his current employer about this disciplinary hearing and he was allowed to keep his job and was supported by them.
34. Mr Jay submitted that he was a [Private]. He relied on his good previous record and his current positive work record since the police caution. He said he has a good job at the moment and his employer knew about these proceedings and supported him. He said he deeply regretted his actions. He relied on the fact that this was an isolated incident. He said that he had had to tell his parents and partner about his dishonesty which was very difficult. He said he had been open and honest as soon as he was contacted by the police about it all.
35. He said financially he was responsible, and he provided a full statement of means with supporting documentation. This showed that his monthly expenditure was approximately the same as his monthly income and his expenditure included repayments for loans.
36. Mr Jay's supporting documentation regarding his finances was so the Committee had evidence to confine any order for costs due to his limited means. He provided proof of his income and outgoings.
37. The Committee considered DC Regulation 13(4) in determining what sanction to impose on Mr Jay. It took into account ACCA's Guidance on Disciplinary Sanctions (updated January 2021) ("GDS") and ACCA's Guidance for Costs Orders.
38. The Committee determined that the matters found proved were overall too serious for 'no action' to be taken or for an 'admonishment' or 'reprimand'. It took into account that Allegation 1 was a police caution for an offence of dishonesty.
39. The Committee further considered that Mr Jay had stolen from his employer and that although he had repaid the amount he had stolen it was not an insignificant

amount. It further took into account that the GDS said that “*Dishonesty, even when it does not result in direct harm or loss or is related to matters outside the professional sphere undermines trust and confidence in the profession..... when considering whether any mitigation presented by the member is so remarkable or exceptional that it warrants anything other than exclusion from membership or removal from the student register.*”

40. The Committee went on to consider whether the factors relating to a ‘severe reprimand’ were met in this case. It did not consider that Mr Jay posed an ongoing risk to the public, but it was satisfied that he had acted deliberately and that in doing so he had undermined public confidence. Although it accepted this was an isolated incident taken at a time when Mr Jay had difficult personal circumstances and that he had fully cooperated with both the police and ACCA since he had been confronted with these matters, the Committee was not persuaded that a ‘severe reprimand’ was a sufficient sanction for a student member facing allegations encompassing dishonesty and misconduct.
41. Although Mr Jay had good mitigation and had sought to rehabilitate himself since these matters, the Committee decided that his mitigation was not so exceptional that any sanction less than removal from the student register was appropriate in this case. The Committee was satisfied that Mr Jay’s overall conduct had amounted to a serious departure from ACCA’s standards and that the abuse of his position at the time and his failure to report the caution to ACCA meant that only a sanction of removal from the student register would meet the public interest.
42. The Committee accepted on the documentary evidence before it that Mr Jay had [Private] with which to pay any costs order. However, it was satisfied that an order for costs should be made. It therefore reduced the total order [Private] and because the actual hearing took less than half a day.
43. It therefore ordered that Mr Jay pay costs of £1800 to ACCA.

EFFECTIVE DATE OF ORDER

44. Mr Jowett did not advance any submissions that an immediate order was necessary for the protection of the public.

45. The Committee found no reasons why an immediate order was in the interest of the public under DC Regulation 20 in this case. It therefore decided that the order for removal from the student register would take place at the expiry of any appeal period.

HH Suzan Matthews KC
Chair
16 April 2024