

HEARING

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

In the matter of: Mr John Edward Alexander

Heard on: Wednesday, 04 September 2024

Location: Held Remotely via Microsoft Teams

Committee: Mr David Tyme (Chair)
Dr David Horne (Accountant)
Ms Caroline Robertson (Lay)

Legal Adviser: Mr Ashraf Khan

**Persons present
and capacity:** Mr Kamran Khan (ACCA Case Presenter)
Ms Sofia Tumburi (Hearings Officer)

Observers: Oliver Carr (Financial Reporting Council)
Mohamed Gure (Financial Reporting Council)

Summary Admonishment

Costs: £5,000.00

INTRODUCTION

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1. The Disciplinary Committee (“the Committee”) met to hear allegations against Mr John Edward Alexander. Mr Alexander attended. He was not represented. ACCA was represented by Mr Kamran Khan.
2. The papers before the Committee consisted of a Service Bundle of 23 pages, the Disciplinary Committee Hearing Bundle of 147 pages, a Tabled Additional Bundles of 22 pages and a Tabled Additional 2 Bundle of 4 pages.

ALLEGATIONS

Allegation 1

- (a) That on 17 November 2016, John Alexander purchased a motor vehicle (registration number [PRIVATE]) for his own personal use which he then caused to be:
 - (i) Registered as an asset of Company A, of which he was the Finance Director; and/or
 - (ii) Included in the VAT Return of Company A with the result that VAT would be reclaimed in respect of the motor vehicle and would not be payable by him personally.
- (b) Mr Alexander’s conduct in respect of 1(a) was:
 - (i) Dishonest, in that he knew that the motor vehicle was for his own personal use yet caused this to be registered as an asset of Company A and/or included in the VAT return of Company A; or in the alternative;
 - (ii) Contrary to the Fundamental Principle of Integrity, as applicable from 2016 to 2019, in that such conduct demonstrates a failure to be straightforward and honest; or in the alternative;
 - (iii) Contrary to the Fundamental Principle of Professional Competence and Due Care, as applicable from 2016 to 2019.

Allegation 2

- (a) That John Alexander sent a letter to ACCA dated 19 June 2019 in which he incorrectly stated that the purchase of a motor vehicle (registration number [PRIVATE]) was initially processed through Company A in error.
- (b) Mr Alexander's conduct in respect of 2(a) was:
 - (i) Dishonest, in that he knew that the purchase of the motor vehicle was being processed through Company A; or in the alternative;
 - (ii) Contrary to the Fundamental Principle of Integrity, as applicable in 2019, in that such conduct demonstrates a failure to be straightforward and honest.

Allegation 3

Contrary to Regulation 3(1)(a) of the Complaints and Disciplinary Regulations 2014 (as applicable in 2021), John Alexander 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) 18 February 2021; and/or
- (b) 12 March 2021; and/or
- (c) 29 March 2021.

Allegation 4

By reason of his conduct, Mr Alexander is:

- (a) Guilty of misconduct in respect of any or all the matters set out at allegations 1, 2 and/or 3, pursuant to bye-law 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)(iii) and/or 3, pursuant to bye-law 8(a)(iii).

BACKGROUND

3. On 15 June 2000, Mr Alexander became a Member of ACCA. On 15 June 2005, Mr Alexander became a Fellow of ACCA.
4. On 24 November 2019, ACCA received a complaint from Mr B (who is no longer a complainant) that raised issues in respect of the conduct of Mr Alexander. An investigation was carried out by ACCA and as a result of that investigation, ACCA now allege that Mr Alexander is liable to disciplinary action as set out in the aforementioned allegations.
5. The alleged factual background is that on 17 November 2016, Mr Alexander attended a car auction and purchased a Porsche Panamera motor vehicle (registration number [PRIVATE]) (“the Vehicle”) for £39,354 using his own funds.
6. On 18 November 2016, Mr Alexander signed a cheque on behalf of Company A to himself for £39,354.
7. On 02 December 2016, the cheque payment of £39,354 from Company A to Mr Alexander cleared.
8. On 01 December 2017, Mr B sent an email to Mr Alexander that referred to the Vehicle as being comprised in the money owed by Mr Alexander to Company A.
9. On 14 November 2018, the Driver & Vehicle Licensing Agency sent a letter to Mr Alexander, at his home address, in respect of taxation of the Vehicle.
10. On 19 June 2019, Mr Alexander sent a letter to ACCA in which he stated:

“It has come to my attention...that there was an error in the accounts filed for the YE 31st January 2018...the vehicle was initially processed through the company in error. It was immediately transferred to myself...”

“The transaction date for the posting of the purchase invoice was the 17 November 2017”.

“The vehicles was not used for any business mileage”.

“I feel it is my obligation to inform the ACCA of this error”.

11. On 18 February 2021, ACCA sent a letter to Mr Alexander to request that he provide further information by 11 March 2021.
12. On 12 March 2021, ACCA sent a letter to Mr Alexander to request his response to its letter of 18 February 2021 by 26 March 2021.
13. On 29 March 2021, ACCA sent a letter to Mr Alexander to request his response to its letter of 18 February 2021 by 05 April 2021, failing which an allegation under Regulation 3(1) of ACCA’s Complaints and Disciplinary Regulations would be raised against him.

ACCA SUBMISSIONS

14. In respect of Allegation 1(a), ACCA submitted Mr Alexander purchased the Vehicle for his own personal use on 17 November 2016. This is because:
 - (a) In the complaint form submitted to ACCA, Mr B stated that “John Edward Alexander purchased a Porsche Panamera ([PRIVATE]) in November 2016, he purchased through the company, registered it as a capitol asset and also claimed VAT relief through the company”;
 - (b) Company D issued an invoice to Mr Alexander, containing his home address, in respect of the purchase of a “[PRIVATE] PORSCHE PANAMERA” for £32,795.01 plus VAT of £6,558.99;
 - (c) The DVLA wrote to Mr Alexander, at his home address, in respect of the Vehicle;
 - (d) In his letter to ACCA of 19 June 2019, Mr Alexander stated that “The vehicles was not used for any business mileage”; and
 - (e) In his letter to ACCA of 19 January 2020, Mr Alexander stated that:
 - (i) He attended the auction with the intention of personally purchasing a vehicle;

(ii) The Vehicle was purchased using his personal funds; and

(iii) The Vehicle had not been registered to Company A.

15. In respect of Allegation 1(a)(i), ACCA submitted that Mr Alexander caused his purchase of the Vehicle to be registered as an asset of Company A. This is because:

(a) In the complaint form submitted to ACCA, Mr B stated that Mr Alexander registered the Vehicle as a capital asset of Company A;

(b) Mr Alexander was the Finance Director of Company A;

(c) Mr Alexander was aware of the Vehicle being processed through Company A; and

(d) The Vehicle was included in the fixed asset register of Company A.

16. In respect of Allegation 1(a)(ii), ACCA submitted that Mr Alexander caused his purchase of the Vehicle to be included in the VAT Return of Company A. This is because:

(a) In the complaint form submitted to ACCA, Mr B asserted that Mr Alexander claimed VAT relief through Company A in respect of the Vehicle;

(b) By his own admission, Mr Alexander subsequently reversed the transaction (including VAT) in respect of the Vehicle.

17. In respect of Allegation 1(b)(i) ACCA submitted that the conduct set out at Allegation 1(a) clearly amounted to dishonesty on the basis that Mr Alexander knew that he was purchasing a vehicle for his own personal use, registered in his name, but still caused the Vehicle to be registered as an asset of Company A and for VAT to be reclaimed by Company A when the Vehicle was not (i) purchased by Company A; or (ii) owned by Company A.

18. ACCA further submitted that such conduct would be regarded as dishonest according to the standards of ordinary decent people.
19. Alternatively, in Allegation 1(b)(ii), ACCA submitted that even if dishonesty is not found proved, the Committee should find a breach of the Fundamental Principle of Integrity in that such conduct demonstrates a failure to be straight forward and honest.
20. Alternatively, in Allegation 1(b)(iii), ACCA submitted Mr Alexander's conduct was in breach of the Fundamental Principle of Professional Competence and Due Care to maintain his professional knowledge to ensure that Company A received competent professional service.
21. In respect of Allegation 2(a), ACCA submitted that Mr Alexander sent a letter to ACCA on 19 June 2019 in which he stated that the purchase of the Vehicle was initially processed through Company A in error when no such error has occurred. This is because:
 - (a) In his letter to ACCA of 19 June 2019, Mr Alexander stated that "The error involved a purchase of a motor vehicle [PRIVATE]. The purchase of the vehicle was initially processed through the company in error".
 - (b) Mr Alexander's purchase of the Vehicle being processed through Company A was no error as:
 - (i) Mr Alexander purchased the Vehicle in his own name (as detailed above in the submissions relating to Allegation 1(a));
 - (ii) By his own admission, Mr Alexander was fully aware that his purchase of the Vehicle was being processed through Company A;
 - (iii) Mr Alexander declined to respond to ACCA's letter of 18 February 2021 which contains further queries about this "error".
22. In respect of Allegation 2(b), ACCA submitted that the conduct set out at Allegation 2(a) clearly amounts to dishonesty on the basis that:

- (a) Mr Alexander knew that the processing of the purchase of the Vehicle through Company A was not in error yet informed ACCA that this had been an error; and
 - (b) Mr Alexander's letter to ACCA of 19 June 2019 appears to have been motivated by the correspondence he received from Mr B and/or Mr B's solicitors from 23 April 2019, questioning his purchase of the Vehicle, rather than any genuine discovery of an error (despite Mr Alexander asserting to ACCA that "I feel it is my obligation to inform ACCA of this error..."). This is further demonstrated by the timing of Mr Alexander email to Company A's accountants to effectively reverse the relevant transaction on 29 April 2019 following the letter that Mr B's solicitors sent to Mr Alexander on 23 April 2019 in which Mr Alexander's purchase of the Vehicle was referred to.
- 23. Alternatively, in Allegation 2(b)(ii), ACCA submitted that even if dishonesty is not found proved, the Committee should find a breach of the Fundamental Principle of Integrity in that such conduct demonstrates a failure to be straight forward and honest.
- 24. In respect of Allegation 3, ACCA submitted that this allegation is capable of proof by reference to the factual summary above and the documents in the Disciplinary Committee Hearing Bundle.
- 25. ACCA submitted that Regulation 3(1)(a) of the CDR imposed a duty upon Mr Alexander to co-operate with the investigation of a complaint. Regulation 3(1)(b) of the CDR elaborates on the nature of this duty by stating that it includes "...providing promptly such information...as the investigating officer...may...require.". Regulation 3(1)(c) of the CDR is clear that a partial failure to co-operate fully shall constitute a breach of the CDR. Accordingly, ACCA submitted that Mr Alexander failed to provide a substantive response to ACCA's correspondence and this represents a breach of the duty contained in Regulation 3(1)(a) of the CDR.
- 26. In Allegation 4, ACCA submit that if any or all of the facts are found proven then Mr Alexander has brought discredit to himself and is therefore guilty of misconduct pursuant to bye-law 8(a)(i) or in the alternative, liable to disciplinary

action in respect of any or all of the matters set out in Allegations 1(b)(iii) and/or 3, pursuant to bye-law 8(a)(iii).

SUBMISSIONS BY MR ALEXANDER

27. The Committee noted that in his letter to ACCA of 19 January 2020, Mr Alexander stated:

“I had attended the auction to purchase a new car. Whilst at the auction at Mr B insisted that the car should be purchased through the business...He was aware that my intention was to reverse the transaction to make it correct in its substance”.

“I attended the auction for the vehicle with the intention of personally purchasing a vehicle. The vehicle was paid for with my personal funds from my current account. Mr B insisted that it would be better for the company to purchase the vehicle as it would increase the assets and as it was a VAT qualifying vehicle that invoice should be processed through the company”.

“I was reluctant to do so but at his insistence the vehicle was processed through the company. I decided that I was not happy with the vehicle being in the company and I was unwilling to accept a company car due to the tax liability. I therefore reversed the transaction and removed the car from the company records on the 1st February 2018...”

“The amount of the reversal was for the full value including VAT. At no time did I gain financially, and the company was in no way financially disadvantaged...The VAT liability was fully paid to HMRC”.

“As the vehicle had been purchased in my name and had not been registered in the companies name I was...of the opinion that it was not a company vehicle. I therefore made the changes to the company records dated 1st February 2018 as this was the earliest date I could make the change to the records due to the ledger being closed for earlier periods”.

“...it was an error in processing the transaction made under duress...”

“The vehicle was never registered in the name of the Company”.

28. In respect of Allegations 1 and 2, Mr Alexander gave evidence at the hearing. He admitted that the Vehicle was purchased in his own name. He stated the purchase of the Vehicle was processed through Company A. He denied any form of dishonesty or lack of integrity in his conduct and explained there were issues between himself and Mr B, who were in dispute. Mr Alexander stated that Mr B had intimidated him, assaulted and reported him to ACCA as part of this intimidation. Mr Alexander stated he was not dishonest and that he corrected the error and took responsibility for the cost of the vehicle personally.
29. As to Allegation 3, Mr Alexander accepted that there was a failure to fully cooperate with ACCA [PRIVATE]. He went on to say that when he did respond, he would not get responses for some months and would not follow up his correspondence.
30. [PRIVATE].
31. [PRIVATE].
32. Mr Alexander explained the Case Management Form was completed by his then solicitors based on information provided by him, but he stated he did not instruct them to admit any allegations. He could not explain why admissions were made on his behalf. He stated this was incorrect.
33. Mr Alexander stated there was no gain for himself or the company. He stated that he repaid the company the full value for the Vehicle and Company A paid the VAT on the Vehicle. He stated that he sustained the loss on depreciation personally.

DECISION ON FACTS/ALLEGATIONS AND REASONS

34. The Committee took into account ACCA's written representations which were supplemented by Mr Khan orally. The Committee took into account the written response from Mr Alexander. The Committee considered legal advice from the Legal Adviser, which it accepted.

35. The Committee considered Allegation 1 and 2 separately. It concluded that the Vehicle was intended to be purchased as a company asset and that because the auction house would only deal with individuals the purchase had to be made in Mr Alexander's name. The Vehicle was subsequently registered as an asset of Company A. Furthermore, the Committee noted there was no loss to Company A or HMRC and there was no attempt to conceal the transaction from the Company A's officers. Accordingly, the Committee did not find that Mr Alexander knew he was being dishonest or that his conduct would be regarded as dishonest by ordinary decent people. Furthermore, for the same reasons as set out above, the Committee did not consider Mr Alexander's conduct lacked integrity, nor that his conduct was contrary to the fundamental principle of professional competence and due care. At best, there was an error which Mr Alexander recognised and corrected in due course.
36. The Committee considered Allegation 3. The Committee determined that there had been a failure to fully cooperate with ACCA. It accepted Mr Alexander may have been going through a difficult period personally, nevertheless, there was a duty to co-operate.
37. The Committee considered Allegation 4. Whilst the Committee acknowledged Mr Alexander was suffering from personal issues at the relevant time, it determined that a failure to co-operate with the regulator is a serious matter. Accordingly, in the Committee's judgement, this act falls short of proper professional standards and would be considered deplorable conduct by fellow professionals. Accordingly, in the Committee's judgement, Mr Alexander is guilty of serious professional misconduct in respect of Allegations 3(a), (b) and (c).
38. Given the Committee's finding in respect of misconduct, it did not go on to consider Allegation 4(b).

SANCTION AND REASONS

39. The Committee considered the available sanctions starting with the least serious. In reaching a decision on sanction, the Committee took into account the public interest and Mr Alexander's own interests. It noted that the purpose of sanction was not punitive but to protect members of the public, maintain

public confidence in the profession and in the ACCA, and to declare and uphold proper standards of conduct and performance.

40. The Committee determined that failing to cooperate with an investigation is very serious misconduct.
41. The Committee considered whether any aggravating or mitigating factors featured in this case.
42. The Committee noted there was continued failure over a long period time to fully cooperate with ACCA. The Committee felt Mr Alexander had not demonstrated full insight into his misconduct nor was he remorseful or apologetic for his failure to co-operate.
43. The Committee took into account Mr Alexander's personal circumstances at the time, that this was an isolated incident and that there are no previous disciplinary findings against him. It also took into consideration references/testimonials in Mr Alexander's favour.
44. The Committee determined Mr Alexander's misconduct was very serious therefore taking no further action would be wholly insufficient and inappropriate.
45. The Committee considered Admonishment. It noted:
 - There was no loss to a client and/or members of the public,
 - This was an isolated incident,
 - Corrective steps had been taken; and
 - Relevant and appropriate testimonials/references had been provided.
46. Given the circumstances of this case, the Committee determined Admonishment is a sufficient sanction. The Committee considered whether to combine this sanction with a fine, however, it determined that as there was no financial benefit to Mr Alexander, a fine would be disproportionate in the circumstances.

EFFECTIVE DATE OF ORDER

47. The Committee noted that ACCA have not made an application for an immediate order. The Committee determined it was not in the public interest to impose an immediate order. The order will take effect after the expiry of the appeal period or after any appeal has been determined.

COSTS AND REASON(S)

48. The Committee has been provided with a detailed costs schedule and noted ACCA's guidance on costs orders.
49. The Committee concluded that ACCA was entitled to be awarded costs against Mr Alexander. The amount of costs for which ACCA applied was eight thousand nine hundred and sixty-six pounds and 50 pence (£8,996.50).
50. The Committee took into account representations made by Mr Alexander as to his general financial circumstances, noting that he currently earns [PRIVATE]. Mr Alexander accepted that he has not provided the Committee with information as to his income net of expenses. The Committee found it difficult to properly assess Mr Alexander's ability to pay costs given the lack of information, however, it decided to make deductions to the amount claimed by ACCA in light of the outcome of these proceedings.
51. Accordingly, the Committee decided it would be reasonable and proportionate to award ACCA costs in the sum of five thousand pounds (£5,000.00).

Mr David Tyme
Chair
04 September 2024