

## HEARING

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

#### REASONS FOR DECISION

<b>In the matter of:</b>	<b>Mr Adam J Bolger</b>
<b>Heard on:</b>	<b>Wednesday, 04 December 2024</b>
<b>Location:</b>	<b>Remote via Microsoft Teams</b>
<b>Committee:</b>	<b>Ms Kathryn Douglas (Chair) Ms Nimra Syeda (Accountant) Ms Caroline Robertson (Lay)</b>
<b>Legal Adviser:</b>	<b>Mr Charles Apthorp</b>
<b>Persons present:</b>	<b>Mr Adam J Bolger (Member) Ms Michelle Terry (Case Presenter on behalf of ACCA)</b>
<b>and capacity:</b>	<b>Ms Anna Packowska (Hearings Officer)</b>
<b>Summary:</b>	<b>Facts found proved. Severe reprimand</b>
<b>Costs:</b>	<b>£6,751</b>

1. The Committee confirmed that it was not aware of any conflicts of interest in relation to the case.

#### ACCA



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2. In accordance with the Complaints and Disciplinary Regulations (“the Regulations”), the hearing was conducted in public.
3. The hearing was conducted remotely through Microsoft Teams.
4. The Committee had considered the following documents: a Memorandum and Agenda (pages 1-2); a Hearing Bundle (pages 1-146); additional bundle (pages 1-3) and a Service Bundle (pages 1-22).

### **SERVICE OF PAPERS**

5. The Notice had been sent to Mr Adam John Bolger's ("Mr Bolger") registered email address and complied with the other requirements of the Regulations. Mr Bolger was in attendance, and it was unnecessary for the Committee to consider whether the appropriate documents had been served on Mr Bolger in accordance with the Regulations.

### **ALLEGATIONS AND BRIEF BACKGROUND**

6. Mr Bolger became an ACCA member on the 31 March 2006 and a fellow on the 31 December 2011.
7. A complaint was made about the quality of the work of Mr Bolger by a client ("Client A"). As a result of the issues raised, the matter was referred for investigation pursuant to the Complaints and Disciplinary Regulations 4(1)(a).

### **Allegations**

8. Mr Adam Bolger, an ACCA Member:
  1. failed to retain client identification records for at least five years after

the end of the client relationship, contrary to Paragraph 16 of Section B2 of ACCA Code of Ethics and Conduct.

2. failed to obtain professional clearance in respect of Client A contrary to Section 320 of ACCA's Code of Ethics and Conduct on or around November 2020;
3. failed to send to Client A a letter of engagement, contrary to Paragraph 5 of Section B9 of ACCA's Code of Ethics and Conduct on or around November 2020;
4. asserted he had written to HMRC when he had not done so on or around 29 April 2021;
5. did not send figures and/or an appeal to HMRC in a timely manner or at all on or around 23 June 2021, contrary to the Fundamental Principle of Professional Behaviour,
6. Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended) failed to cooperate with the investigation of a complaint, in that he did not respond fully to any or all of ACCA's correspondence dated:
  - (a) 24 October 2022
  - (b) 23 November 2022
  - (c) 12 December 2022
7. Mr Bolger's conduct in respect of the matters described in allegation 4 above was:

- (a) Dishonest, in that he knew that he had not written to HMRC even though he had asserted to Client A that he had;
- (b) In the alternative, any or all of the conduct referred to in allegation 4 above demonstrates a failure to act with integrity.

8. By reason of his conduct, Mr Bolger is:

- (a) Guilty of misconduct pursuant to bye-law 8(a)(i); in respect of any or all of the matters set out at allegations 1 - 7 above; or in the alternative
- (b) Liable to disciplinary action pursuant to bye-law 8(a)(iii) in respect of any or all of the matters set out at allegations 6 - 7 above.

9. As part of the investigation Mr Bolger was sent a letter of enquiries and it was alleged that his response had failed to fully answer the questions sent by ACCA.

## **DECISION ON FACTS, ALLEGATIONS AND REASONS**

### **EVIDENCE AND SUBMISSIONS OF THE ACCA**

- 10. Ms Terry submitted that the allegations were serious, in particular there was an allegation Mr Bolger had been dishonest in his dealings with a client in relation to the conduct of an HM Revenue and Customs investigation.
- 11. At the outset of the hearing Mr Bolger admitted allegations 1- 6 and denied allegation 7a and b.

12. Ms Terry, on behalf of the ACCA, submitted that at the relevant time Mr Bolger was the Director of Henry Thomas Advisory and responsible for the operation of the firm and the conduct of the firm. The complaint by Client A to ACCA arose from the instruction of the firm to lodge an appeal against an assessment by HMRC.
13. Ms Terry noted that in Mr Bolger's response to the complaint sent to the ACCA on 18th June 2022, he stated that he had verified the identity of Client A but that he has not retained any evidence of such verification. It was submitted by Ms Terry that this was evidence that Mr Bolger has not kept client identification records and that he was in breach of Paragraph 16 of Section B2 of ACCA Code of Ethics and Conduct.
14. Ms Terry also noted in Mr Bolger's response that he admitted not obtaining professional clearance in respect of Client A as he did not think it was necessary. ACCA submitted by failing to obtain the required professional clearance Mr Bolger was in breach of Section 320 of ACCA Code of Ethics and Conduct.
15. Ms Terry noted that there was evidence in the bundle from Client A that Client A had not received an engagement letter from Mr Bolger and that Mr Bolger was unable to produce an engagement letter when requested to do so by ACCA. Ms Terry submitted that Mr Bolger by his failure to provide an engagement letter for a client was in breach of Paragraph 5 of Section B9 of ACCA's Code of Ethics and Conduct.
16. Ms Terry referred to evidence that Mr Bolger had stated on several occasions to both HMRC and Client A that he had written to HMRC on or about the 29 April 2021 ("the appeal letter"). Ms Terry submitted that there was no evidence in the hearing bundle that the appeal letter had been sent to HMRC. Further Client A was recorded as sending numerous letters to Mr Bolger inquiring whether the appeal had been submitted.

17. Ms Terry submitted that there was evidence that the appeal letter to HMRC and/or the figures had not been sent by Mr Bolger in a timely manner or at all at around the 23 June 2021. She submitted that Mr Bolger was in breach of the Fundamental Principle of Professional Behaviour.
18. Ms Terry drew the Committee's attention to evidence in the bundle that ACCA had written to Mr Bolger on three occasions, on the 24 October, 23 November and 12 December 2022, with additional queries. This provided him with an opportunity to respond in full to the complaint. She submitted that the correspondence exhibited in the bundle shows that Mr Bolger had received and read all three letters as he had responded to each letter acknowledging their receipt. Ms Terry informed the Committee that Mr Bolger had written on the 18 June 2022 an email setting out his position prior to those three letters being sent to him.
19. Ms Terry went on to submit that Mr Bolger had failed to engage fully with the investigation and many of ACCA's questions to him remain unanswered. She submitted as a result Mr Bolger was in breach of Complaints and Disciplinary Regulation 3(1). She went on to raise Mr Bolger's lack of professionalism which hampered the ACCA investigation and showed a disregard for the ACCA's investigatory and regulatory process.
20. Ms Terry submitted in respect of allegation 7a, where it was alleged that Mr Bolger's conduct as admitted in allegation 4, was dishonest. She further submitted that he knew that he had not sent the appeal letter and/or figures to HMRC and/or to the client and had maintained he had done so to client A.
21. In the alternative she submitted that the conduct lacked integrity in that he failed to act in accordance with his professional obligations.

22. Ms Terry submitted that such conduct amounted to misconduct or in the alternative the member was liable to disciplinary action pursuant to by-law 8(a)(iii).

#### **MR BOLGER'S RESPONSE**

23. Mr Bolger gave evidence to the Committee and referred to his response dated 18th June 2022 provided to the ACCA and his statement for the Committee provided on the 04 December 2024.

24. Mr Bolger had responded to the ACCA to the complaint. He stated that the reason for his delay in responding to the complaint up until that point:

*“is that we have had an issue with a former senior employee which has resulted in us having to terminate his employment with the firm. The reason I mention this is that he is mentioned in the complaint, (Employee 1). This employee was dismissed for theft, unreasonable behaviour and quality issues. The reply has been made difficult as we are unable to gain access to his emails and so I may have to request a little more time to answer aspects of your questions as I will need sight of his emails. I would also state that I have access to (Client A's) electronic data, but not his paper files, which are in storage, and they are being returned next week.”*

25. Mr Bolger went on to state that he agreed to act for Client A in an ongoing tax investigation in or about November 2020. He stated he knew this family and may have viewed the client's ID at a meeting and was unable to locate a copy of the document. He also stated he did not obtain professional clearance as he felt it was not necessary.

26. Mr Bolger in his correspondence had referred to a copy of an email to HMRC but had not provided a copy to ACCA and would send it once he

found it and within 7 days. He stated he had '*various issues with the HMRC Officer*' and went on to state Client A had not returned the engagement letter provided to him. Mr Bolger also highlighted the difficulty he had suffered with Covid and the staff member. He confirmed after these events that a full anti-money laundering exercise had been completed at the firm and a review of engagement letters and proposals.

27. Mr Bolger gave evidence and was cross examined by Ms Terry. In oral evidence Mr Bolger apologised for his conduct and set out the steps taken to correct the admitted misconduct. He denied that he had deliberately misled HMRC or Client A and stated he had been informed by Employee 1 that the letter to HMRC referred to in Employee 1's email of 29th April 2021 had been sent by Employee 1. He admitted that he had asserted to Client A and HMRC that the letter had been sent based on information provided by Employee 1.
28. Prior to the hearing facts were agreed between Mr Bolger and ACCA which included that he had failed to keep client identification records for at least five years after the end of a client relationship and he had failed to obtain professional clearance in respect of Client A, (in relation to Allegation 2).
29. The Committee accepted the advice of the Legal Adviser, which included reference to the applicable burden and standard of proof, and the interpretation of the term misconduct. The Committee noted and took account of Mr Bolger's good character in reaching its decisions.

### **Allegation 1**

30. The Committee finds allegation 1 proved.
31. The Committee carefully considered the documents in the hearing



bundle and the submissions of the parties. Mr Bolger had stated that Client A was well known to him and the son of the client had been known to Employee 1 for some time and Mr Bolger was aware of this background. The Committee noted that Mr Bolger admitted that he had failed to keep client identification records for at least five years after the end of a client relationship. It therefore found the allegation proved on his admission.

### **Allegation 2**

32. The Committee finds allegation 2 proved.
  
33. Mr Bolger admitted that he had failed to obtain professional clearance from Client A's previous accountant. Mr Bolger had said that the Client did not want him to contact the previous accountant, and it was not necessary to do so. The Committee therefore found the allegation proved on his admission.

### **Allegation 3**

34. The Committee finds allegation 3 proved.
  
35. The Committee noted Mr Bolger admitted he had not sent the engagement letter to Client A. He stated that a letter was passed to Client A at a meeting but not signed and returned to him or the firm by Client A and the Client had not been chased for this. The Committee therefore found allegation 3 proved on his admission.

### **Allegation 4**

36. The Committee finds allegation 4 proved.

37. The Committee noted that Mr Bolger in evidence stated that at the relevant time an employee would write a letter in his name and send it. He went on to state that he thought that the letter had been sent and took responsibility although he had not done it himself. He admitted the allegation on the basis that being a director he was responsible for Employee 1's assertion on 29<sup>th</sup> April 2021 that a letter had been sent. The Committee therefore found allegation 4 proved on his admission.

### **Allegation 5**

38. The Committee finds the allegation proved on Mr Bolger's admission. The Committee note the contemporaneous correspondence sent by Client A's wife complaining about the failure of Mr Bolger and the firm to expedite the appeal. It noted that Mr Bolger accepted that the notice of appeal was sent by him in June 2021, but that the appeal and supporting documentation was not sent by him or his firm at all.

### **Allegation 6**

39. The Committee finds the allegation proved on Mr Bolger's admission. The Committee noted the correspondence exhibited in the bundle which showed that Mr Bolger had received and read all three letters as he had responded to each letter acknowledging receipt. The Committee noted that Mr Bolger had earlier sent to ACCA a response setting out his position prior to the three letters being sent to him.

### **Allegation 7a**

40. The Committee finds allegation 7a not proved. In reaching its finding it took account of Mr Bolger's previous good character having no regulatory findings made against him. The Committee had previously found, as admitted by Mr Bolger, that he had not sent the appeal letter

to HMRC on or about the 29 April 2021. The Committee reminded itself that allegation 7a of dishonesty, in relation to allegation 4 only, related to the events on or around 29th April 2021 and not to events in June 2021 or later.

41. The Committee noted that whilst Mr Bolger was copied into Employee 1's email of 29th April 2021 to HMRC, which stated, "*.. our tax expert Adam Bolger has sent you correspondence relating to this in the post ...*" and as a director takes responsibility for this assertion, there is no evidence that Mr Bolger personally asserted on or around that date that a written communication was sent to HMRC by him. The Committee noted in the hearing bundle there are a number of later references in the correspondence to letters and emails being sent or re-sent to HMRC or Client A. The Committee also noted that an email was sent on the 22 June to HMRC by Mr Bolger, but it is unclear whether the references to emails and letters are to that email rather than earlier correspondence in April or May 2021. The Committee also noted that no other correspondence was made available to it regarding the period around 29th April 2021. The Committee therefore was not satisfied that Mr Bolger was referring to a letter sent around 29th April 2021.
42. Having established Mr Bolger's state of mind and knowledge at the relevant time the Committee found allegation 7a not proved.
43. The Committee went on to consider allegation 7b, which was an alternative to allegation 7a. The Committee noted that despite Mr Bolger taking responsibility as a director for the assertion of 29<sup>th</sup> April that correspondence had been sent to HMRC there is no evidence that Mr Bolger personally asserted on or around that date that the letter was sent. It therefore followed that the Committee found allegation 7b not proved.

## **Allegation 8**

### **Misconduct and Liability to Disciplinary Action**

44. In relation to allegations 1 - 6 the Committee considered the conduct as admitted to be a serious breach of professional obligations engaging both protection of the public and public confidence in the profession. The failure to comply with the obligations included a failure to obtain professional clearance, and no proper client identification. In addition, the failure to cooperate with the investigation undermined the regulatory purpose of the ACCA as it was in the public interest for members to engage with investigations into their conduct.
45. In the Committee's view there were individual and culminative breaches of the regulations, which were serious, striking at the core role of the Regulator, which was to maintain standards and public confidence in the profession.
46. It found that allegations 1, 2, 3, 4, 5 and 6 taken individually and cumulatively amounted to serious misconduct.
47. The Committee did not go on to consider whether there were breaches of bye-law 8(a)(iii) as that was put in the alternative.

### **SANCTION(S) AND REASONS**

48. Ms Terry made submissions regarding the appropriateness and proportionality of sanction. The Committee received advice from the Legal Adviser and in determining the appropriate and proportionate sanction considered the least restrictive sanctions first before moving onto the more serious ones.

49. Mr Bolger in mitigation explained the difficulties of managing the problems associated with Employee 1 and that this was made more difficult as he was a friend and a founding member of the firm. Mr Bolger also set out that new staff had been introduced to manage the firm to ensure that the same issues that had occurred in the past did not arise in the future.
50. The Committee considered what sanction, if any, to impose in the light of its findings, having regard to ACCA's Guidance for Disciplinary Sanctions (2024). It first sought to identify aggravating and mitigating factors.
51. Mr Bolger had no previous disciplinary findings against him. In the Committee's view his good character should be taken into account as he had been an ACCA member for 18 years and Fellow since 2011.
52. In the Committee's view Mr Bolger had committed what it considered to be serious and multiple acts of misconduct.
53. The Committee took into account section C of the ACCA Guidance for Disciplinary Sanctions.
54. The Committee first considered mitigating factors which included that Mr Bolger had:
  - taken remedial steps including engaging a specialist training organisation and implementing new systems designed to prevent recurrence;
  - been a member for 20 years without any previous regulatory findings;
  - pressures at work including staff health, key personnel leaving and staffing issues surrounding covid;

- shown remorse and insight into the misconduct;
  - partially cooperated with the investigation and attended the hearing;
  - admitted some faults at an early stage.
55. The Committee then considered aggravating factors which included:
- harm to a vulnerable client;
  - misconduct over a period of several months;
  - delaying and frustrating the investigation by not fully engaging.
56. The Committee considered that taking no further action or imposing an admonishment did not reflect the seriousness of the conduct.
57. In respect of a reprimand the Committee considered the factors listed at C3. It considered both the failures to provide an engagement letter, the other breaches combined with the failure to fully cooperate in the regulatory investigation to be serious and not minor. It noted that the period of misconduct was not short and that there had been significant distress to a client.
58. In respect of a severe reprimand the Committee considered the factors listed at C4. It noted that in addition to showing some insight and remorse there was evidence that the misconduct had been addressed, procedures, training, a supervisory member of staff and new systems had been introduced.
59. It went onto consider whether exclusion was a proportionate sanction. It considered that there was a limited continuing risk to public confidence or risk to the public of the conduct being repeated. The Committee noted that the conduct was in respect of one client in a long period of practice. The Committee determined that in all the circumstances the

proportionate sanction was severe reprimand.

## **COSTS AND REASONS**

60. Ms Terry applied for costs totalling £6,571 and referred the Committee to the costs schedules and drew the Committee's attention to the length of the hearing, which was then approaching the estimated 6 hours.
61. The Committee was satisfied that the proceedings had been properly brought and that ACCA was entitled in principle to its costs. The Committee also recognised that it needed to consider the principle that the majority of those paying ACCA's fees should not be required to subsidise the minority who, through their own misconduct, have found themselves subject to disciplinary proceedings. The Committee considered that the time spent, and the sums claimed were reasonable. Therefore, the reasonable costs are assessed to be £6,571.
62. There was no information before the Committee about Mr Bolger's means, and he accepted he had means to pay ACCA's costs.
63. The Committee took account of paragraph 27 of the Guidance for Costs Orders. The Committee directed that Mr Bolger is to pay £6,751 towards ACCA's costs.

**Ms Kathryn Douglas**  
**Chair**  
**04 December 2024**