

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Ms Charlotte Louise Cudlip

Heard on: Monday, 24 June 2024; Tuesday, 25 June 2024; Thursday, 27 June 2024; Friday 28 June 2024 and Tuesday, 02 July 2024

Location: Held Remotely via Microsoft Teams

Committee: HH Suzan Matthews KC (Chair)
Mr George Wood (Accountant)
Mr Roger Woods (Lay)

Legal Adviser: Mr Ashraf Khan

**Persons present
and capacity:** Mr Simon Walters (Case Presenter on behalf of ACCA)
Miss Nicole Boateng (Hearings Officer)
Ms Charlotte Louise Cudlip (Fellow)

Summary Admonishment

Costs: £2,000.00

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INTRODUCTION

1. The Disciplinary Committee (“the Committee”) met to hear allegations against Ms Charlotte Louise Cudlip. Ms Cudlip attended the hearing. She was not represented. ACCA was represented by Mr Simon Walters of Counsel.
2. The papers before the Committee consisted of a Report and Bundle consisting of 995 pages (“the Bundle”), a Service Bundle consisting of 21 pages and an Additional Bundles pages 1-72.

PRELIMINARY APPLICATIONS

3. There were no preliminary matters raised by either party to the Committee to consider. Given the domestic circumstances of Ms Cudlip, the Committee was advised that the Committee would adjourn at 3pm every day.

ALLEGATIONS

Allegation 1

- (a) That during the period of 5 December 2012 to 1 December 2014, Charlotte Louise Cudlip:
 - (i) Deleted and/or failed to forward to the directors of her then employer an email from HM Revenue and Customs dated 5 December 2012;
 - (ii) Destroyed or otherwise withheld from the directors of her then employer any or all correspondence that she had received from HM Revenue and Customs in connection with the penalties that had been levied against her then employer;
 - (iii) Made or caused to be made payments of outstanding VAT and/or penalties that had been levied against her then employer by HM Revenue and Customs in a series of small payments; and/or
 - (iv) Concealed payments of outstanding VAT and/or penalties made to HMRC from her employer.

- (b) Charlotte Louise Cudlip's conduct in respect of 1(a) was:
- (i) Dishonest, in that she sought to prevent her then employer becoming aware of the payments referred to in Allegations 1(a)(iii) and (iv) in the manner alleged; or in the alternative
 - (ii) Contrary to Section 110.1 (Integrity) of ACCA's Code of Ethics and Conduct, as applicable from 2012 to 2014
 - (iii) Contrary to Section 130.1(a) and/or Section 130.1(b) (Professional competence and due care) of ACCA's Code of Ethics and Conduct, as applicable from 2012 to 2014.

Allegation 2

- (a) That during the period of 1 to 17 July 2012, Charlotte Louise Cudlip prepared and caused to be submitted on behalf of her then employer a VAT return for the period of 1 April 2012 to 30 June 2012 which contained the following errors made by her:
- (i) An under-declaration of £187,584 as a result of incorrect figures being brought forward and/or additional invoices not being reversed out in the following quarter; and/or
 - (ii) An overclaim of £26,476 as a result of using an incorrect method of claiming VAT on goods imported from outside the European Union.
- (b) Charlotte Louise Cudlip's conduct in respect of 2(a) was contrary to Section 130.1(a) and/or 130.1(b) (Professional competence and due care) of ACCA's Code of Ethics and Conduct, as applicable in 2012.

Allegation 3

- (a) That during the period of 1 October 2012 to 17 December 2012, Charlotte Louise Cudlip prepared and caused to be submitted on behalf of her then employer a VAT return for the period of 1 July 2012 to 30 September 2012 which contained the following errors made by her:

- (i) A reclaim of an incorrect amount of VAT of £219,586.27; and/or
 - (ii) An incorrect amount of net VAT of -£219,586.27.
- (b) Charlotte Louise Cudlip's conduct in respect of 3(a) was contrary to Section 130.1(a) and/or Section 130.1(b) (Professional competence and due care) of ACCA's Code of Ethics and Conduct, as applicable in 2012.

Allegation 4

- (a) That during the period of 1 to 10 July 2014, Charlotte Louise Cudlip prepared and caused to be submitted on behalf of her then employer a VAT return for the period of 1 April 2014 to 30 June 2014 in which she incorrectly declared:
- (i) VAT due on sales of £50,640.69; and/or
 - (ii) VAT reclaimed of £79,030.45.
- (b) Charlotte Louise Cudlip's conduct in respect of 4(a) was:
- (i) Dishonest, in that she omitted output VAT on invoices which had been issued from the VAT return referred to in allegation 4(a)(i) when she knew this was incorrect; or in the alternative
 - (ii) Contrary to Section 110.1 and/or Section 110.2 (Integrity) of ACCA's Code of Ethics and Conduct, as applicable in 2014;
 - (iii) Contrary to Section 320.4A (Preparation and reporting of information) of ACCA's Code of Ethics and Conduct, as applicable in 2014;
 - (iv) Contrary to Section 130.1(a) and/or Section 130.1(b) (Professional competence and due care) of ACCA's Code of Ethics and Conduct, as applicable in 2014.

Allegation 5

- (a) Between 4 September 2012 to 25 January 2013, Charlotte Louise Cudlip did not provide Company B, appointed tax agents of her then employer, with information they had requested to submit German VAT Returns for her then employer.
- (b) Charlotte Louise Cudlip's conduct in respect of 5(a) was contrary to Section 130.1(b) (Professional competence and due care) of ACCA's Code of Ethics and Conduct, as applicable from 2012 to 2013.

Allegation 6

By reason of her conduct, Charlotte Louise Cudlip is:

- (a) Guilty of misconduct in respect of any or all of the matters set out at Allegations 1 to 5 above, pursuant to bye-law 8(a)(i); and/or
- (b) Liable to disciplinary action in respect of any or all of the matters set out at Allegations 1 to 5 above pursuant to bye-law 8(a)(iii).

BACKGROUND

The background, as put by the ACCA is as follows:

- 4. On 31 December 2006, Ms Cudlip became a Member of ACCA.
- 5. On 31 December 2011, Ms Cudlip became a Fellow of ACCA.
- 6. Ms Cudlip commenced employment with Company A in 2006.
- 7. On 17 July 2012, Company A's VAT Return for the period of 1 April 2012 to 30 June 2012 was submitted.
- 8. On 2 August 2012, HMRC undertook a visit to Company A.
- 9. On 3 August 2012, HMRC sent a letter to Ms Cudlip in respect of the VAT return for the period of 1 April 2012 to 30 June 2012, stating that there had been
 - (i) An under-declaration of £187,584 in respect of VAT accounting errors;
and

- (ii) there had been an overclaim of import VAT of £26,476.
10. On 4 September 2012, the appointed Tax Agents regarding the German VAT, Company B, sent an email to Ms Cudlip to request figures to enable them to process and submit the German VAT Returns for June 2012 and July 2012.
 11. On 7 September 2012, sent an email to Ms Cudlip to request figures for the June 2012 and July 2012 VAT submissions.
 12. On 10 September 2012, sent an email to Ms Cudlip to request figures for the June 2012 and July 2012 VAT submissions as the deadline to submit the German VAT Return was that day.
 13. On 12 September 2012, sent an email to Ms Cudlip attaching copies of the German VAT Returns for January 2012 to July 2012, confirming that these had been submitted as nil returns.
 14. On 1 October 2012, sent an email to Ms Cudlip to request figures in respect of the German VAT Return for September 2012 by 8 October 2012.
 15. On 8 October 2012, sent an email to Ms Cudlip to inform her that the deadline for filing tax returns was 10 October 2012.
 16. On 10 October 2012, sent an email to Ms Cudlip which requested figures for September 2012 as the German VAT deadline was this day.
 17. On 10 October 2012, sent an email to Ms Cudlip to inform her that a nil return had been submitted for Company A's September 2012 German VAT Return as they had not received any figures.
 18. On 29 November 2012, HMRC undertook a visit to Company A.
 19. On 5 December 2012, HMRC sent an email to Ms Cudlip which confirmed the adjustments that need to be made to the VAT Return of Company A for the period of 1 July 2012 to 30 September 2012.
 20. On 17 December 2012, HMRC wrote to Company A in respect of the VAT Return for the period of 1 July 2012 to 30 September 2012, stating that

- (a) The VAT reclaimed amount of £219,586.27 was incorrect (and should have been £145,746.09); and
 - (b) the NET VAT amount of -£219,586.27 was incorrect (and should have been -£34,257.10).

- 21. On 20 December 2012, sent an email to Ms Cudlip attaching copies of the German VAT Returns for October 2012 and November 2012 which it noted had been marked as nil as they had been unable to contact her.

- 22. On 2 January 2013, sent an email to Ms Cudlip informing her that the December 2012 German VAT Return was due to be submitted by 10 January 2013 and requested that figures be provided by 8 January 2013.

- 23. On 25 January 2013, sent an email to Ms Cudlip to confirm that Company A was only now required to submit an Annual German VAT Return for 2013 as their VAT liability for 2012 had been below €2,000.

- 24. On 10 July 2014, Company A 's VAT Return for the period of 1 April 2014 to June 2014 was submitted to HMRC.

- 25. On 28 July 2014, Ms Cudlip commenced her maternity leave.

- 26. On 28 July 2014, Ms Cudlip sent an email to Company A, attaching her timesheet which referred to her having spent a day on the office on 10 July 2014.

- 27. On 6 August 2014, HMRC undertook a visit to Company A.

- 28. On 11 August 2014, HMRC wrote to Company A in respect of the VAT return for the period of 1 April 2014 to 30 June 2014, stating that
 - (a) Output tax of £50,640.69 had been omitted in respect of three invoices; and
 - (b) import VAT entries of £79,030.45 had been claimed despite not being supported by C79 certificates.

29. On 29 April 2015, Company A sent a letter to HMRC, attaching a letter from Ms Cudlip to HMRC which stated:

“I am the accountant for Company A. Until going on maternity leave (June 2014) I was responsible for producing and submitting the company VAT return.”

“I had full responsibility for authorising and making all payments from the company bank accounts including PAYE and VAT payments. All post was also received into the accounts office (and not forwarded to the Directors).”

“We had 2 VAT inspections in 2012 and 2013 and I was the sole contact person for these inspections. These inspections resulted in the finding of errors on the VAT and I did not advise the Directors of these findings. The errors resulted in penalties which were paid by the Company A and I authorised the payments myself.”

30. A First Tier Tax Tribunal heard the case on 29 and 30 November 2016. It was noted that Ms Cudlip was not involved in these proceedings.

31. On 10 February 2017, the decision of the First Tier Tax Tribunal stated:

“Ms Cudlip was an ACCA qualified accountant who joined the company in September 2006. She was responsible for all aspects of the company's accounting function including the production of management accounts and invoices and the preparation and submission of the Appellant's VAT return”

“Ms Cudlip was given the responsibility of investigating how this was to be done and implementing the new arrangements. She identified an agent in Germany, and the Appellant was registered for VAT in Germany from 1 January 2012. As most of the goods shipped to Hamburg were- exported, the Appellant would have been able to reclaim the import VAT and as returns in Germany could be made monthly, this would improve cash flow”.

“Ms Cudlip submitted the 06/12 VAT return claiming a refund of VAT... Errors amounting to an under declaration of £187,584 arose as a result of incorrect figures being brought forward and/or additional invoices not being reversed out in the following quarter”.

“Instead of using the C79, Ms Cudlip had prepared her figures from the freight

forwarder invoices. These included German VAT which should have been claimed in Germany and were not eligible to be reclaimed in the UK. This resulted in an overclaim of £26,476... Person A did, however, discuss the errors and how to avoid them during the visit, in particular advising Ms Cudlip to use the forms C79 to reclaim import VAT and not the freight forwarder invoices”.

“Ms Cudlip prepared and submitted the 09/12 return which included a repayment claim... Person A again visited the Appellant's premises on 29 November 2012 for an assurance visit and further errors were discovered, mostly similar to those uncovered on the previous visit. These were summarised in Person A's email to Ms Cudlip dated 5 December 2012... In total, the amount of repayment overclaimed was £185,329.10... the errors were careless on the basis that they were large, basic errors, very similar to the errors found on the earlier visit, despite Person A having given Ms Cudlip advice about the C79s on the earlier visit”.

“Director C and Director D gave evidence, which we accept, that they knew nothing about the VAT assessments and penalties. They had asked Ms. Cudlip about HMRC's visits and she had assured them that all was well subject to a few inconsequential adjustments. She had taken steps to cover her tracks, deleting Person A's email of 5 December 2012 (which was only recovered from the hard drive archive on investigation after the facts all came out). All correspondence addressed to the company was received and dealt with in the accounts department. Ms Cudlip had destroyed all the correspondence about the penalties received from HMRC. As noted, Ms Cudlip had been given authority to make payments from the company bank account. Although payments were supposed to be prepared by one member of staff and approved by another, Ms Cudlip had used her access to the bank account to authorise herself both to prepare the payment and to authorise it. She had done this only for the penalty payments, with other disbursements being dealt with in the proper way. The payments of VAT and penalties were broken into smaller payments so as not to attract attention. Payments of PAYE of tens of thousands of pounds were regularly made to HMRC, so payments of that sort of amount to HMRC would not have aroused suspicion. In any event, as mentioned, the directors did not review the bank account regularly; but left it to Ms Cudlip to alert them to any anomalies. Nor were the penalties referred to in the accounts; Ms Cudlip took over the preparation of the accounts when the Appellant's turnover fell below the audit threshold and so she was able to conceal them”.

“Person B visited the Appellant's premises on 6 August 2014... A manual adjustment had been made to the return reducing the total net sales by £253,203.49 which reduced the VAT due by £50,604.69... Ms Cudlip said that she expected the invoices to be disputed and not paid and so had removed them from the return. No credit notes had been issued. Person B reduced the reclaim by £50,604.69 on the basis that once an invoice has been issued in respect of a supply it cannot simply be deducted because it might not be paid. Either a credit note must be issued (and the VAT adjustment will be made in that period) or bad debt relief must be claimed in order to recover the VAT”.

“The second category of error was the same as had been found in the two 2012 visits: the import VAT had been claimed by reference to the freight forwarder invoices and not the C79s... input tax of £79,030.45 had been overclaimed, Essentially, this was German VAT which should have been reclaimed in Germany and was not eligible to be reclaimed in the UK. Ms Cudlip's time sheet showed that she was in the office on the day the VAT return was submitted which was consistent with Employee E's statement to Person B that Ms Cudlip had submitted the return” (page 433).

“In any event, we find as a fact that the 06/14 VAT return was submitted by Ms Cudlip and that she made the manual adjustment to the figures which resulted in the errors”.

“On 29 April 2015, Director D sent Person B a letter signed by Ms Cudlip before she “resigned” in which Ms Cudlip confirmed that she had been the person solely responsible for submitting the VAT returns, that all the post was received in the accounts department and not forwarded to the directors, that she had authorised and paid the previous penalties herself and that the directors of the Appellant were completely unaware of all this until contacted by HMRC in the latter part of 2014”.

“Director C also discovered that Ms Cudlip had not made the legitimate claims to recover German VAT through Company B, the agents which she had appointed”.

“Further, Director C also found that there had been under-invoicing of approximately Euro 1m and that “there are missing funds to the tune of £1m. Charlotte had produced financial information which was patently untrue. Sales

were shown as having, been invoiced when they had not been, even when customers chased for an invoice, some sales invoices were written off and payments were allocated against invoices when no funds had been received”.

“... we accept that it was Ms Cudlip personally who made the errors in the VAT returns in dispute and that she took deliberate steps to conceal her actions from the directors including the fact of the penalties and the payment of them”.

“A reasonably competent accountant exercising reasonable care would not have made the basic errors which were in fact made' in the 09/12 VAT return and certainly would not have repeated errors which had recently been pointed out to her”.

“We have found as a fact that the directors did not know about the previous penalties or Ms Cudlip's other defaults until Autumn 2014”.

“They could not have known that Ms Cudlip had intercepted HMRC's letters and taken active steps to conceal the penalties from the directors”.

32. On 29 October 2018, the decision of the First Tier Tax Tribunal stated:

“We have found that there was a supply and the invoices were issued to Company H”.

“The evidence indicates that Ms Cudlip, who represents the company for this purpose, made a conscious decision to omit the invoices from the return and in fact made a manual adjustment to exclude them... Ms Cudlip took steps to exclude the invoices from the VAT return, which increased the repayment claim, and she must have intended that HMRC accept the return on that basis... We find that on the balance of probabilities, the inaccuracy in the 06/14 VAT return relating to the Company H invoices was a result of deliberate behaviour”.

DECISION ON FACTS/ALLEGATIONS AND REASONS

33. At the commencement of the hearing, Ms Cudlip admitted the following Allegations:

- a. Allegation 2 and all its particulars.
- b. Allegation 3 and all its particulars.

- c. Allegation 5(a).
34. The Committee considered evidence in relation Allegations 1 and its particulars, Allegation 4 and its particulars and Allegation 5(b).
35. The Committee heard live evidence from Director C. Director C was referred to their statement dated 19 January 2024, prepared for the purposes of these ACCA proceedings. They were also referred to their statement dated 6 May 2016, which were prepared for the purposes of proceedings at the First Tier Tax Tribunal. Director C confirmed they have signed these statements and they are both true to the best of their knowledge and belief.
36. Mr Walters, on behalf of ACCA, asked questions to clarify matters in Director C's statements. Director C was asked about the VAT returns. They stated Ms Cudlip, as the most senior Accountant in the office, was solely responsible for completing and submitting all VAT returns. Director C stated they had no input in completing or submitting the VAT returns herself, nor did their Co-Director, Director D.
37. Director C confirmed all the accounting information was held on the company's "Access" accounting system.
38. Director C stated that in August 2012 they and Director D were on holiday when a VAT inspection took place. They stated it was not unusual for VAT inspections to take place at the office.
39. Director C stated Ms Cudlip went on maternity leave in summer of 2014.
40. Director C was referred to page 409 of the Bundle. This was an email from Ms Cudlip to Director C attaching Ms Cudlip's timesheet. Director C confirmed the VAT return was submitted on Thursday 10 July 2014. They acknowledged that there is no reference in the timesheet to Ms Cudlip completing and filing the VAT return, however they are aware that Ms Cudlip completed and filed the return because Employee E, the trainee in accounts, had told them that Ms Cudlip had checked the return and filed it with HMRC.
41. Director C was referred to page 158 of the Bundle, which is an email from Director D to Person F at HMRC, dated 29 April 2015, attaching a letter from Ms Cudlip to HMRC. This was an undated letter on company letterhead,

purporting to be written and signed by Ms Cudlip. Director C stated that they had seen this letter. The letter itself is at page 162 of the Bundle. Director C confirmed this letter was drafted by Ms Cudlip. They acknowledged that Director D may have asked Ms Cudlip to write to HMRC to explain and exonerate the Directors for passing incorrect information on to HMRC but they could not confirm when this request was made. Director C stated Ms Cudlip was not told what to say as she is the only person aware of the full facts. Director C could not confirm when this letter was written, as it was undated.

42. Director C was referred to the second paragraph of that letter in which it is stated that Ms Cudlip was the accountant of Company A until June 2014. Director D stated this was incorrect. Ms Cudlip went on maternity leave in July 2014 and was responsible for the preparation and submission of the VAT return 17 July 2014.
43. Director C was asked questions about the German tax agent. They confirmed this was a UK registered company but they dealt with European tax. Director C stated that Ms Cudlip was solely responsible for liaising and providing the documentation for accounting to Company B. It was Ms Cudlip who has initially contacted the agent in the first place, the Directors had no contact with them.
44. Director C stated that it was not until after Ms Cudlip went on maternity leave that they discovered Ms Cudlip did not respond to requests for information by Company B. They stated that Ms Cudlip had failed to reclaim €407,000 of VAT. This affected the cashflow of the company, although eventually the amount was reclaimed back at the end of 2014/early 2015. Director C stressed that some of this money could have been reclaimed back in 2012 and would have helped the cash flow at the time, which was very pressurised as the company had been a victim of fraud perpetrated by an employee in Hong Kong. Director C stated that luckily there was a high-net-worth investor, who agreed to inject further funds where necessary, but there were very tight cashflow issues at times. Director C stressed they could not understand why the VAT was not reclaimed, as it was a very straight forward process. The refunds came very quickly from the German VAT office once the claims were properly lodged.
45. Director C was asked about HMRC penalties. They stated they became aware of HMRC penalties after Ms Cudlip went on maternity leave on 28 July 2014. They stated they would have expected Ms Cudlip to inform either them or Director D about the penalties being incurred. In August 2014, Director C was

not aware of any payment for HMRC penalties. Until that time, they had not read any correspondence from HMRC regarding penalties due to errors in the VAT returns. They stated that if they had been aware, they would have been obliged to include this information in the year ending accounts. Ms Cudlip was responsible for preparing the year ending accounts. Ms Cudlip was given an Audi company car based on figures suggesting there was a profit. They would not have been provided with a company car if Director C had known the company was being fined by HMRC.

46. Director C was taken to an email at page 966 of the bundle. This was an email from Person A of HMRC to Ms Cudlip on 5 December 2012. This email set out a number of issues with the VAT calculations. Director C stated this email had been deleted by Ms Cudlip. Director C only found out about the email either after finding the email in Ms Cudlip's deleted emails or from the HMRC. Director C stated they knew the email had been deleted because they looked for the email and found that it had been deleted after the server was checked.
47. Director C stated most of their time was taken up assisting the authorities to prosecute the ongoing fraud case in Hong Kong. They checked bank statements and provided the Hong Kong police with copies but they assumed any payments to HMRC were because they was due to be paid or PAYE. They stated they did not interrogate individual payments on the bank statement as their main concern was to look for unusual transactions to third parties. They stated they had no reason to think they were payments for penalties. It did not occur to them that there were more than the normal number of payments going to HMRC, especially as they were only looking at the statements on an *ad hoc* basis.
48. Director C was asked about the company. They stated the company no longer exists and they have lost their house. They placed responsibility of the failure of the business and loss of their house on Ms Cudlip's shoulders. Director C stated they have been trying to rectify the financial damage Ms Cudlip has done to the company for a number of years. Director C reiterated the Hong Kong case took up a huge amount of their time away from the operations of the business. They relied on Ms Cudlip to execute their responsibilities with diligence and care and placed trust in her to process the accounts correctly and properly. Director C stated Ms Cudlip was either incompetent or dishonest.

49. Ms Cudlip cross examined Director C. She asked Director C about the payment procedures at the company before the Hong Kong case started. Director C explained it was a simple case of checking the invoice and making payment.
50. Director C agreed they had access to the bank statements at any time they needed access.
51. Director C agreed disciplinary action could have been taken against Ms Cudlip but stated Ms Cudlip was not at the office due to maternity leave and an investigation was still being undertaken. It would have been wrong to take action until a full investigation was concluded. The true picture did not emerge until much later, until the company had re-hired the Accountant who had originally trained Ms Cudlip. Director C could only ask for clarification from Ms Cudlip during the 'keep in touch' days, when she attended the office.
52. Director C was asked about the additional pressure Ms Cudlip was under at the work during the Hong Kong case. Director C stated that Ms Cudlip was taking regular and full lunch breaks, she finished work on time most days, and was very chatty with other staff at work. Occasionally, she had to be told to focus on work. It did not occur to Director C that Ms Cudlip was under pressure.
53. Director C accepted that during Ms Cudlip's pregnancy she was under some pressure and this was during the period when she filed the VAT return for the quarter ending June 2014.
54. Director C agreed Director D was at the office every day. They operated an open-door policy and the atmosphere in the office was relaxed.
55. The Committee referred Director C to pages 230 of the Bundle, which exhibited the June 2014 VAT return. Director C was asked to confirm whether the annotated handwriting belonged to her. Director C stated they did not recognise the handwriting to be theirs, or anyone else's in the office.
56. The Committee asked Director C to clarify the time period in which the accounting irregularities took place. Director C stated there were some irregularities in end of 2009 and early 2010 but the majority of the irregularities took place once they became involved in the Hong Kong case.

57. Director C stated there was a meeting in September 2014 to discuss the financial situation of the company. Director C stated that the German VAT was not discussed at the meeting because at that point the Directors were not aware of the situation.
58. The Committee heard evidence from Director D. Director D confirmed they had prepared two statements. The first statement was prepared for the First Tier Tax Tribunal dated 6 May 2016. The second was prepared for the purposes of these ACCA proceedings and is dated 3 June 2024. Director D confirmed both statements contained their signature and are true to the best of their knowledge and belief.
59. Director D was asked questions by Mr Walters.
60. Director D was asked about the case in Hong Kong. They stated that much of their time was taken up by this investigation. They stated that they had a well-established senior team which included Ms Cudlip. They relied on Ms Cudlip to keep the business moving. Director C, focused on the historical aspect of the business to assist the Hong Kong investigation whilst they concentrated on current matters.
61. Director D stated they were office based. They were available to deal with any issues arising. They had an open-door policy so any member of staff could raise any concerns with them at any time, if it was necessary.
62. Director D was asked about German VAT situation. They stated that Ms Cudlip had responsibility for dealing with the agents, Company B. They stated that the company secured 4 to 5 orders from its main customer, Company C, per year for about 4 or 5 years totalling £400,000.00 - 700,000.00. They stated that Ms Cudlip contacted Company B to deal with the VAT in relation to these transactions. They stated Company B was Ms Cudlip's contact, she owned the relationship with Company B. They had no contact with them.
63. Director D stated that nil returns were submitted because no information was provided to Company B by Ms Cudlip. They confirmed the company paid Company B its fees on a monthly basis. They did not know there was an issue with the way the German VAT was being processed. Ms Cudlip never raised any issues with them about any difficulties with reclaiming the VAT back from German Customs. As far as Director D was concerned, there were no issues.

64. Director D stated the Company had a high-net-worth individual who invested money into the company, when investment was required during tight cash flow situations.
65. Director D stated that Ms Cudlip was the only person with responsibility to submit VAT returns in the UK. So far as the June 2014 return is concerned, Director D stated that they first became of concerns regarding the VAT on 11 August 2014. They stated that they had subsequently discovered a junior member of the accounts team, Employee E, had correctly inputted the figures but Ms Cudlip had subsequently altered the figures and submitted the return online. Director D stated that Ms Cudlip told them Employee E had submitted the return, which was not true.
66. Director D stated that they spoke to Ms Cudlip about the VAT situation due to the fines, however, they did not recall specifically discussing the German VAT.
67. Director D confirmed Ms Cudlip went on maternity leave in summer 2014. They could only speak to her about the VAT issues when she came into work for *'keep in touch days'*. When Director D did speak to Ms Cudlip about VAT issues, they said Director C was present. This was at their office. They did not recall if any notes were taken.
68. Director D was shown page 400 of the Bundle, which purports to be minutes of an interview with Ms Cudlip on 1 December 2014. They confirmed they did not take the notes. They thought the notes would have been taken by Director C. Director D states the contents of the minutes appear to be accurate. They recalled Ms Cudlip's demeanour to be *'like someone who knew the game was up... like a borderline confession but still a denial'*. They stated it was not their intention to discipline Ms Cudlip but to try and find a way of understanding whether there was a way of finding the money and bringing it back into the business. They stated Ms Cudlip resigned in April 2015 because she had been *'found out to be a complete incompetent'*.
69. Director D was taken to page 158 of the Bundle. They stated that between the months of becoming aware of the VAT and Ms Cudlip resigning, they confirmed they emailed HMRC on 29 April 2015. In this email, they attached an undated letter signed by Ms Cudlip at pages 162 of the Bundle. They stated this letter was scanned by either them or Director C, prior to emailing. Director D stated

the letter was given to him by Ms Cudlip either at a 'keep in touch day' or during of the last days of her employment. Director D stated they still had a good relationship with Ms Cudlip and asked her to write this letter to exonerate them from looking like they lied to HMRC as they had innocently repeated her lies. Ms Cudlip agreed to write the letter the same day. Ms Cudlip drafted the letter. Director D wanted Ms Cudlip to take responsibility for what she had done. Director D did not recall whether the first draft was scanned and emailed to HMRC or whether further drafts were prepared.

70. Looking at the letter to HMRC at page 162, Director D confirmed they read the letter. They stated that they did not recall when Ms Cudlip went on maternity leave. They stated they had not seen any correspondence from HMRC until the irregularities were discovered after Ms Cudlip went on maternity leave. Director D confirmed that it is correct Ms Cudlip did not inform them or Director C of the VAT errors. They stated they did not look at the bank statements. They stated that whilst the company paid the penalties, they were not aware they were penalties until 2014.
71. Director D stated all correspondence came to the accounts office and it was opened and distributed from there. No emails were ever forwarded to them from Ms Cudlip. Director D stated they subsequently discovered emails had been deleted by Ms Cudlip. Director D stated being fined by HMRC was extremely serious. They would expect this information to be shared by Ms Cudlip within hours.
72. Director D stated they reviewed year ending accounts. The company did have auditors but during the cash flow crisis, they agreed for Ms Cudlip to prepare them. Ms Cudlip told Director D she was qualified and happy to prepare the accounts to save paying the auditors between £4,000-£5,000. Director D stated on reflection he was foolish to trust her.
73. Director D stated that the business had been subjected to a major fraud in Hong Kong and Ms Cudlip's actions and failures eventually led to the collapse of the business and loss of their house.
74. Director D said they had understood that attempts were made to engage Ms Cudlip with the First Tier Tax Tribunal process but they said she was non-responsive throughout.

75. Director D was cross examined by Ms Cudlip.
76. Director D explained that they had a great relationship with Ms Cudlip and she was admired by the accounts team. They were shocked by the events that had been uncovered. They confirmed they had an open-door policy and they were always available. They accepted they and Ms Cudlip communicated daily.
77. Director D confirmed they spoke about the effects of the impact of the Hong Kong case with the senior team, this included Person G. The Hong Kong case took up a lot of Director C's time. The data drag was hefty, used up some of the account's teams. Director C brought everyone gifts as a thank you.
78. After the trial, Director D and C were emotionally drained. Shortly after the case, Director D confirmed that Director C found it harder. The business was struggling for money. Director D accepted they had a conversation with Ms Cudlip and they told her that they were concerned about Director C's health and all future business matters should go through them.
79. Director D was asked about the meeting on 1 December 2014. The minutes are recorded at page 400 of the Bundle. Director D stated they were not aware of the minutes until they were shown to them at this hearing. Director D did not recall how the meeting was called. They denied they placed pressure on Ms Cudlip to come into work for the meeting, despite her having a new baby to look after. Director D denied Ms Cudlip came into work with the baby. Director D stated that Director C completed the minutes. Ms Cudlip stated she was extremely nervous. At the end of the meeting, Ms Cudlip's return to work was discussed. She was told she could do 4 days per week instead of 5 Director D agreed it was not a hostile meeting. Director D stated Ms Cudlip's co-operation was paramount as she was the only one who knew what was happening. At that point they were not clear about the invoices, just the VAT reclaim.
80. Director D was asked about the letter at page 162 of the Bundle. It was put to them that the letter was already drafted for Ms Cudlip to sign. Director D denied this.
81. Director D confirmed back in 2014, Ms Cudlip's surname was Cudlip-Bartlett and agreed the letter missed the name 'Bartlett' out under the signature.

82. Director D was asked about Company C orders. They confirmed there were shipments to Hamburg in June, July and August. They stated it was not all year round.
83. Director D was asked about invoicing of customers. They confirmed the company used a factoring firm for invoice financing. They stated they did not recall the terms and conditions. They stated that the company would borrow approximately £500,000.
84. Director D confirmed Ms Cudlip left on good terms. They believed that she would resign as she *'could not stay and clear up the mess that she had made'*. They had no doubt that she would *'not be able to face up to staying'* at the company.
85. In relation to the First Tier Tribunal, Director D recalled having a telephone conversation with Ms Cudlip in late 2015/early 2016 about helping HMRC. They stated they were pleased that she agreed to co-operate, however they understood she did not respond to HMRC requests for assistance.
86. Director D was asked about Director C raising a complaint with ACCA in May 2015. They stated they were aware of the complaint but had no recollection of the date the complaint was made.
87. Director D was re-examined about the letter sent to HMRC at page 162 of the Bundle. They confirmed the letter was drafted by Ms Cudlip.
88. In relation to meeting, Director D does not recall putting pressure on Ms Cudlip specifically but accepted there was urgency in trying to find out what was going on. They maintained the baby did not come into the factory. They asserted it was a fabrication to say the baby was brought to the meeting.
89. Director D stated the answers given by Ms Cudlip during the meeting were very vague. He stated Ms Cudlip knew *the 'gig was up, and she knew she had done something terribly, terribly wrong'*. It was not a heated meeting. It was all done very calmly and cordially. There was no benefit in alienating Ms Cudlip.
90. Director D stated that in the finance team, she was the most senior person.

91. Director D was asked questions by the Committee. Director D confirmed the company employed 25-30 staff. They stated that all staff would be aware of Ms Cudlip's position in the company.
92. Director D confirmed the company reclaimed approximately £400,000 in German VAT. It was claimed retrospectively. The company had to borrow that money from elsewhere and pay interest on it.
93. Director D stated there was about £1 million unprocessed invoices. The company recovered 50-60% of that value.
94. Director D stated the Auditors regularly audited until Ms Cudlip started doing the audits. When things started to unravel, the Auditors were brought back in.
95. In relation to the letter at page 162, Director D stated that they don't not recall whether it was a combined effort between Director D and C and Ms Cudlip.
96. Director D was referred to page 230 of the Bundle. This is the VAT return for the quarter ending 30 June 2014. Director D did not recognise the handwriting on this document.
97. Director D was asked about the email which was allegedly deleted. They stated they were not aware of when the email was deleted or if the data would show when the email was deleted. Director D stated they know the email was deleted after HMRC corrected them when they asserted that the company had an exemplary record. This prompted an investigation into Ms Cudlip's email and the server, which revealed that Ms Cudlip had read the email and deleted it.
98. Ms Cudlip gave evidence.
99. Ms Cudlip told the Committee that she joined Company A in 2006 at the age of 22. She was not qualified at that the time. This was her second full time job. She initially worked for a firm of Accountants. She stated the environment at Company A was very different in that it was not as structured as working in an Accountancy practice. Company A was a husband-and-wife business and very fluid. Meetings were not documented and there was an *ad hoc* management style.

100. Ms Cudlip said she had a very good working relationship with Director C and Director D and remained good even after she had left the business. The Committee was referred to page 582 of the Bundle, which shows Director C positively communicating with Ms Cudlip in November 2014. At page 583, email communication on 28 April 2015, between Ms Cudlip and Directors C and D which remained amicable.
101. Ms Cudlip stated Directors C and D were present all the time. She agreed they operated an open-door policy.
102. Ms Cudlip stated she was told by Directors C and D about what was happening in Hong Kong. She was not told what impact this would have on staffing, particularly within the finance team. She stated there was an extra draw on time which was not discussed or considered and it added more pressure as time went on.
103. Ms Cudlip stated that by summer 2012, the Directors were consumed by the Hong Kong case. When the case had started, the Directors were out of the business for a couple of weeks and then they went on holiday.
104. Ms Cudlip had an open conversation with Director D about Director C's health. Director D asked Ms Cudlip to run all business matters through them only as they were concerned about Director C's health.
105. Ms Cudlip stated she was tasked with the German VAT in 2012. Ms Cudlip explained there were nil returns only when nil returns were justified, given the lack of trading during most months in relation to the German VAT. Ms Cudlip disputed any concealment.
106. Ms Cudlip accepted there were errors in her VAT returns, but she maintained she did speak to Director D about this. Unfortunately, these conversations were not documented. She did not discuss the issues with Director C as she was asked not to by Director D due to her health concern.
107. Ms Cudlip stated she felt between 2012-2014, there was pressure applied to the employees of the company by the Directors to go above and beyond what was reasonable. She agreed cash flow was extremely tight. Often she could have to call suppliers to delay payment.

108. Ms Cudlip stated the Directors chose not to review bank statements, despite these documents being available to them.
109. Ms Cudlip stated the company rarely had money to pay PAYE on time and HMRC would visit to collect the funds. Director D was present when this happened. At one stage HMRC made a list of the assets the company had due to lack of payment. Ms Cudlip stated that because cash was tight, she made small more frequent payments to HMRC.
110. Ms Cudlip stated that the company did utilise invoice financing. The finance company had strict rules. The main requirement from the factoring company was that no invoice could be paid unless the company was in possession of a signed proof of delivery. This was a problem on occasion because delivery drivers often did not give importance to delivering these back to the company early. For that reason, the company could not raise an invoice. This led to difficulties because cash flow was so tight.
111. Ms Cudlip stated much of the pressure in the business was driven by cash flow problems. It got harder and harder over time.
112. Ms Cudlip stated she was expecting a baby in 2014. The pressure kept ramping up. She referred the Committee to a text message from work colleague Person G, Operations Manager at Company A, on 11 June 2014, asking Ms Cudlip to care as too much stress was not good for her. Ms Cudlip stated Person G was not someone she would speak to about such matters but even they texted her asking her to take care.
113. Ms Cudlip stated she went on maternity leave on 4 July 2014. She referred the Committee to a text at page 581, which she sent on 4 July 2014, which demonstrated she had an hour to go before her maternity leave.
114. Ms Cudlip stated she came back on 10 July 2014 to train Employee E. She denied submitting the VAT return. She pointed to Director D's statement where they stated the 'other girls' submitted the return. She denied calling HMRC.
115. Ms Cudlip stated Person H, the Office Manager/Human Resources contacted Ms Cudlip on numerous occasions to inform her she did not have to respond to office communication. However, Ms Cudlip had a good relationship with the Directors' and agreed to go into the meeting in December, after Director D

- insisted. Ms Cudlip stated the office was 1 hour drive with the baby. She felt backed into a corner as the Directors were extremely experienced businesspeople and were quite a force to deal with. When Ms Cudlip arrived, she was met by Person H. She stated this was unusual but Ms Cudlip believed it was to check she was ok. The meeting took place in a small staff room. Person H asked if she was ok and whether she wanted them to stay. Ms Cudlip said she was fine.
116. Ms Cudlip states the minutes are not full. She stated the letter was discussed in the meeting alongside favourable terms for her returning to work. Ms Cudlip stated she was in a really vulnerable position. Both Directors were aware of the mistakes in the VAT returns at the time.
 117. During the meeting Director C went to get the documents. Ms Cudlip was trying to feed the baby at the time, preoccupied and stressed.
 118. She agreed the meeting was not an aggressive meeting but asserted the minutes read like it was a stern meeting. She pointed out that Director D accepted they were keen to keep Ms Cudlip on side.
 119. Ms Cudlip stated she was very vulnerable at the time and was presented with very agreeable terms of return. At the same time, the Directors handed her the letter to sign. It was printed on company letter. She stated she did not draft the letter. She confirmed the signature at page 162 was her signature. In the letter there is no reference to the name Bartlett, which was a name she used at the time, whilst she was still married. Ms Cudlip stated this letter had to be written whilst she was employed on 1 December, not after she left Company A.
 120. Ms Cudlip stated she could not understand why the Directors would want to keep her on side if she was responsible for damaging the business. Even on the last working day, Director D had kind words for her. The Committee were referred to page 584 of the Bundle, which is an email to Director D thanking them for their kindness towards her.
 121. Ms Cudlip stated that Director C raised a complaint with ACCA on 19 May 2015. ACCA wrote to Ms Cudlip some years later. She stated every complaint should be investigated at the time it was raised. ACCA did not investigate this matter in 2015. She stated nearly 10 years have passed since the complaint, consequently, memories have faded and evidence has been potentially lost. In

short, she submitted she has been denied the opportunity to prepare her defence fairly. Ms Cudlip was sceptical of ACCA in that they only actioned the complaint after HMRC reported the matter to them once the First Tier Tribunal had decided the case. She stated the case was put to her in October 2019 for the first time, five years ago.

122. Ms Cudlip also pointed out that the Hearing was originally scheduled to be held between 25-27 January 2022. ACCA contacted her a couple of weeks before the final hearing to ask if she had any objections to moving the date as ACCA could not locate Directors C and D. Ms Cudlip points out that this case is largely dependent of the Directors and she had an opportunity to insist on going ahead. She stated that her case would have been stronger but she agreed to the adjournment to give the Directors a chance to give evidence. Ms Cudlip has waited for the case to be rescheduled.

123. Ms Cudlip was cross examined by Mr Walters.

124. Referring to Allegations 2 and 3, Ms Cudlip accepted that she prepared the VAT returns submitted them. She accepted it was part of her core responsibilities at that point to prepare and file VAT returns. She stated she started to prepare VAT returns when she first joined Company A but did not submit them; that was done by Director C.

125. Ms Cudlip stated the Auditors did not oversee preparation of Ms Cudlip's VAT accounts. HMRC would only visit if they carried out inspections.

126. In relation to the errors in the VAT returns during 2012, this happened when the Hong Kong issues started. Director C was no longer around and there was extra pressure on the office. Ms Cudlip accepted she made an error.

127. Ms Cudlip stated the German VAT was set up as a monthly return. Ms Cudlip accepted that she was sent email correspondence from Company B requesting paperwork to enable them to process the German VAT returns. However, Ms Cudlip stated that at the time there was a lot going on and she could have overlooked the requests or may have thought that this was being dealt with within the UK VAT return. She maintained she was not deliberately ignoring Company B. With hindsight, she accepted she did not provide her employer with a competent professional service in relation to the German VAT. She also accepted that she had not maintained her knowledge and skills to the relevant

standards required. Since working for Company A, she stated she had not dealt with German VAT again.

128. Referring to the letter at page 162 of the Bundle, Ms Cudlip maintained she did not draft the contents of the letter. She stated she did not know when she signed the letter, but it was put to her on 1 December 2014, at the meeting. Ms Cudlip stated the letter was read to her at the meeting. She did not agree with all the contents but did not highlight the parts she disagreed with. This was because Director D knew of the errors in 2012 but Director C did not. Ms Cudlip did not know how to address the situation given the pressure she was under at the time. She stated she felt her job hung on whether she signed the letter or not as the Directors knew about the errors on the VAT returns and the penalties by this time. They had enough to end her employment. She accepted by accepting what was said in the letter when it wasn't true, she failed in maintaining professional standards. She stated at the time she had a baby, felt very vulnerable and under pressure. She accepted she must have known a letter containing lies would be sent to HMRC.
129. Ms Cudlip stated that she is telling the truth now and she should have refused to sign the letter at the time. Ms Cudlip accepted this was her signature but at the time she went by the name Charlotte Cudlip-Bartlett.
130. Ms Cudlip stated she resigned due to the travel time and the environment was still pressurised and it was time for her to find a new challenge closer to home and look after her own family. She denied it was because she could not face the office staff.
131. Ms Cudlip denied preparing the letter at page 162. She maintained these were not her words and she was not seeking to distance herself from the letter because it undermined her position in relation to the outstanding allegations.
132. Ms Cudlip accepted the emailed timesheet at page 409 is her email. She denied filing the return on 10 July 2014. She accepted she was training Employee E as per her timesheet. She accepted the June 2014 VAT return was submitted the same day but not by her.
133. Ms Cudlip was taken to the statement of Person B at page 300 of the Bundle, specifically paragraphs 5 to 9. The statement is dated 4 April 2016. Ms Cudlip

reiterated she did not prepare or file the VAT return. She stated on 6 August 2014 [PRIVATE].

134. Ms Cudlip accepted that Directors C and D tried to understand what had gone wrong. She stated that had they both been aware of what had gone wrong in 2012, they would possibly try to do something about it.
135. Ms Cudlip denied she was being dishonest and not telling the truth.
136. Ms Cudlip accepted deleting the email. She agreed that the deleted email must have been deleted as the Directors have said it was found in a deleted folder by them. She stated she does not have any other choice but to accept it but she does not know. She accepted that the evidence appears to show that she failed to forward the email, again because the Directors have said. She stated she has no choice but to accept those evidence as she cannot prove otherwise this 10 years later.
137. Ms Cudlip confirmed Company A ceased to use the Auditor for a period. She stated this was because the company was not reaching the threshold of requiring a full audit. She stated she was competent enough to compile the accounts and was happy to take on the responsibility to save the company money as it was under financial pressure at the time.
138. Ms Cudlip stated small company accounts were filed which included a balance sheet but not profit and loss account. She stated she follow the same process from the previous year when accounts were filed by external accountants. Director D wanted to follow the same process.
139. Ms Cudlip denied she was using the gap in time as an excuse for her memory lapse. She stated that if she did remember she should say. She does not want to guess.
140. Ms Cudlip accepted she authorised the payments to HMRC and stated the cash flow was so tight, the payments were in small sums. She denied paying in smaller amounts so that they would be less obvious to the Directors. She stated her employer was aware of these payments.
141. Ms Cudlip accepted she understood this was a very serious situation. She accepted her failings had cost the company money. She realised that the

- company could discipline her. She stated she felt the pressure for this reason and felt indebted to the Directors.
142. Ms Cudlip denied she was trying to ‘cover [her] backside’ because she had made serious errors costing her employer money. She denied dishonesty.
143. Ms Cudlip stated she was currently working as a Financial Controller for a construction company. She manages a team of four and reports to the Finance Director and Chief Financial Officer. Ms Cudlip stated that after she found out she was being investigated by ACCA, she has not used her position as an ACCA member as part of her employment. She stated her employer is aware the allegations against her. She stated she gave them a copy of the letter dated 22 October 2019 from ACCA setting out the allegations against her at page 467 of the Bundle. She has not spoken to her employer about what will happen to her employment if a serious sanction is imposed.
144. The Committee asked Ms Cudlip questions.
145. Ms Cudlip stated Director D knew about the HMRC errors shortly after the Hong Kong case, after she went to them with the information. They were disappointed but this was not the biggest issue they had to deal with at the time.
146. Ms Cudlip stated the proof of delivery had to be signed by the warehouse and given to the delivery driver of the truck. They did not always appreciate the importance of these documents so it took them sometime 4 weeks to return the proof of delivery.
147. Ms Cudlip looked at page 406 of the Bundle. She confirmed this document shows the payments to HMRC between November 2012 and March 2013. She did not recall any payment plan.
148. As to the German VAT, there would be about 1-3 months populated returns and the rest would be nil returns because of the lack of business activity for majority of the year.
149. Ms Cudlip was asked about the handwriting at page 230 of the VAT return for the period ending June 2014. Ms Cudlip stated it was not her handwriting.

150. As to the 1 December 2014 meeting, Ms Cudlip stated she did not draft the minutes and did not see them until the papers for this case had been served on her. She stated it could only have been drafted by Director C or D, most likely Director C.
151. Ms Cudlip stated she did not feel she had a hostile relationship with Person A from HMRC. She did not accept she was uncooperative with them during their visits.

SUBMISSIONS

152. The Committee took into account ACCA's written representations which were further developed by Mr Walters orally in closing arguments. The Committee also took into account written responses from Ms Cudlip which were further developed by her orally during closing.

Submissions on behalf of ACCA

153. In respect of Allegation 1(a)(i), ACCA submitted that Ms Cudlip deleted and/or failed to forward to the directors of Company A an email from HM Revenue and Customs dated on or about 5 December 2012.
154. ACCA relied on the on the findings of the First Tier Tax Tribunal which accepted the evidence of the Directors of Company A that *"they knew nothing about the VAT assessments and penalties"*. ACCA further relied on the fact that the First Tier Tax Tribunal had found that Ms Cudlip *"...had taken steps to cover her tracks, deleting Person A's email of 5 December 2012 (which was only recovered from the hard drive archive on investigation after the facts all came out)"*.
155. In relation to Allegation 1(a)(ii), ACCA submitted that Ms Cudlip destroyed or otherwise withheld from the directors of Company A any or all correspondence that she had received from HM Revenue and Customs.
156. ACCA relied on the decision of the First Tier Tax Tribunal which stated *that "Ms Cudlip has destroyed all the correspondence about the penalties received from HMRC"*. ACCA also rely on the witness statement and evidence of Director C who stated that *"in November 2012 there was a further inspection which again was handled by Charlotte. Following that inspection Charlotte once again failed*

to notify the Directors of the outcome of that inspection and all correspondence was destroyed”.

“With regards to the previous errors in the VAT return the Directors were completely unaware of these. Charlotte sought to deliberately hide this from us by deleting emails and destroying letters”.

157. In relation to Allegation 1(a)(iii), ACCA submitted that Ms Cudlip made or caused to be made payments of outstanding VAT and/or penalties that had been levied against Company A by HMRC in a series of small payments.

158. ACCA relied on the decision of the First Tier Tax Tribunal which found that *“...Ms Cudlip had used her access to the bank account to authorise herself both to prepare the payment and to authorise it. She had done this only for the penalty payments, with other disbursements being dealt with in the proper way”.*

“The payments of VAT and penalties were broken into smaller payments so as not to attract attention. Payments of PAYE of tens of thousands of pounds were regularly made to HMRC, so payments of that sort of amount to HMRC would not have aroused suspicion”.

159. In relation to Allegation 1(a)(iv), ACCA submitted that Ms Cudlip concealed payments of outstanding VAT and/or penalties made by Company A to HMRC from Director C and/or Director D.

160. ACCA rely on the decision of the First Tier Tax Tribunal which found that:

“Nor were the penalties referred to in the accounts; Ms Cudlip took over the preparation of the accounts when the Appellant's turnover fell below the audit threshold and so she was able to conceal them”.

“...we accept that it was Ms Cudlip personally who made the errors in the VAT returns in dispute and that she took deliberate steps to conceal her actions from the directors including the fact of the penalties and the payment of them. We have found that the directors were unaware of the situation until Person B's letter following the August 2014 visit”.

“They could not have known that Ms Cudlip had intercepted HMRC's letters and taken active steps to conceal the penalties from the directors”.

“In any event, as mentioned, the directors did not review the bank account regularly; but left it to Ms Cudlip to alert them to any anomalies. Nor were the penalties referred to in the accounts; Ms Cudlip took over the preparation of the accounts when the Appellant's turnover fell below the audit threshold and so she was able to conceal them”.

161. In relation to Allegation 1(b)(i) ACCA submitted that the conduct set out at Allegation 1(a) clearly amounts to dishonesty on the basis that Ms Cudlip knew that she:
- (a) Was making payment of VAT and/or penalties in order to prevent her employer become aware of these; and
 - (b) Had concealed payments of outstanding VAT and/or penalties made to HMRC from Director C and/or D in order to prevent them becoming aware of these.
162. It was further submitted that such conduct would be regarded as dishonest according to the standards of ordinary decent people.
163. So far as Allegation 1(b)(ii) was concerned, ACCA submitted that even if dishonesty is not found proved, the Committee are able to find a breach of the Fundamental Principle of Integrity.
164. In relation to Allegation 1(b)(iii) ACCA submitted that Section 130.1(a) (Professional competence and due care) of ACCA's Code of Ethics and Conduct (“the Code”) required Ms Cudlip to maintain her professional knowledge and skill at the level required to ensure that her employer received competent professional service.
165. Section 130.1(b) of the Code required Ms Cudlip to act diligently in accordance with applicable technical and professional standards when providing professional services. Section 130.4 of the Code states that diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.
166. ACCA submitted that Ms Cudlip's conduct as contained in Allegation 1(a) was contrary to Section 130.1(a) and/or (b) of the Code for the following reasons:

- (a) Ms Cudlip's deletion and/or failure to forward HMRC's email to her dated on or about 5 December 2012 to Director C and/or Director D;
 - (b) Ms Cudlip's destruction or withholding from Director C and/or Director D of correspondence received from HMRC; and
 - (c) Ms Cudlip's making or causing of outstanding VAT and/or penalties to be paid in small payments, ensured that Ms Cudlip's employer did not receive a competent professional service and/or demonstrated that Ms Cudlip had not acted diligently as her then employer was not made aware of, and unable to detect, matters that were important to Company A.
167. In relation to Allegation 2(a), ACCA submitted that during the period of 1 to 17 July 2012, Ms Cudlip prepared and caused to be submitted on behalf of Company A, her then employer, a VAT return for the period of 1 April 2012 to 30 June 2012 which contained the following errors made by her:
- (a) An under-declaration of £187,584 as a result of incorrect figures being brought forward and/or additional invoices not being reversed out in the following quarter; and/or
 - (b) An overclaim of £26,476 as a result of using an incorrect method of claiming VAT on goods imported from outside the European Union.
168. ACCA relied on:
- (a) Ms Cudlip's letter to HMRC (undated) which states *"Until going on maternity leave (June 2014) I was responsible for producing and submitting the company VAT return"*;
 - (b) The VAT Return of Company A for the period of 1 April 2012 to 30 June 2012;
 - (c) Ms Cudlip's email to ACCA of 2 December 2019 attached a letter which stated that *"I believe I did submit the June 2012 VAT return"*;
 - (d) HMRC's letter to Ms Cudlip of 3 August 2012 which states *"basically at the end of each period you have been adjusting both your Input and*

Output tax in respect of late or not approved invoices. The differences appear to have caused where the wrong figures have been brought forward or the additional invoices have not been reversed out...On the basis of this there appears to have been an overall under declaration of £187,584.”

“When goods are imported from outside the EU the goods will attract Vat at the appropriate rate. This can be reclaimed using the Certificates (C79’s) which are issued on a monthly basis...It would appear that you have been claiming using both your deferment statements and invoices from your freight forwarders which is not correct and can lead to errors...This shows an apparent over claim of £26,476.000...”

- (e) The decision of the First Tier Tax Tribunal which states “...Person A discovered a number of basic errors in the VAT return...Errors amounting to an under declaration of £187,584 arose as a result of incorrect figures being brought forward and/or additional invoices not being reversed out in the following quarter”.

“...Person A found errors, in relation to overclaimed import VAT...Instead of using the C79, Ms Cudlip had prepared her figures from the freight forwarder invoices. These included German VAT which should have been claimed in Germany and were not eligible to be reclaimed in the UK. This resulted in an overclaim of £26,476...”

169. In relation to Allegation 2(b), ACCA submitted Section 130.1(a) of the Code required Ms Cudlip to maintain her professional knowledge and skill at the level required to ensure that her employer received competent professional service.
170. Section 130.1(b) of the Code required Ms Cudlip to act diligently in accordance with applicable technical and professional standards when providing professional services. Section 130.4 of the Code states that diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.
171. ACCA submitted that Ms Cudlip’s conduct as contained in Allegation 2(a) was contrary to Section 130.1(a) and/or (b) of the Code as the under-declaration of £187,584 was as a result of incorrect figures being brought forward and/or additional invoices not being reversed out in the following quarter which

suggests that Ms Cudlip had not maintained her professional skill at a level to ensure that Company A received competent professional service and/or that she had not acted diligently in respect of this assignment.

172. In relation to Allegation 3(a), ACCA submitted that during the period of 1 October 2012 to 17 December 2012, Ms Cudlip prepared and caused to be submitted on behalf of Company A, her then employer, a VAT return for the period of 1 July 2012 to 30 September 2012 which contained the following errors made by her:

- (a) A reclaim of an incorrect amount of VAT; and/or
- (b) An incorrect amount of net VAT.

173. ACCA relied on the following evidence in respect of this allegation:

- (a) Ms Cudlip's letter to HMRC (undated) which states *"Until going on maternity leave (June 2014) I was responsible for producing and submitting the company VAT return"*.
- (b) In the letter that was attached to her email to ACCA of 2 December 2019, Ms Cudlip states that she has no reason to believe that she did not prepare and submit Company A's VAT Return for the period of 1 July 2012 to 30 September 2012.
- (c) HMRC's letter to Company A of 17 December 2012 (pages 105 to 106) states that Company A's VAT Return for the period of 1 July 2012 to 30 September 2012 was incorrect as:
 - (i) The VAT reclaimed amount of £219,586.27 was incorrect (and should have been £145,746.09); and
 - (ii) The net VAT amount of -£219,586.27 was incorrect (and should have been -£34,257.10).
- (d) The decision of the First Tier Tax Tribunal of 10 February 2017 states that:

"Ms Cudlip prepared and submitted the 09/12 return which included a repayment claim...further errors were discovered...These were

summarised in Person A's email to Ms Cudlip dated 5 December 2012...the amount of repayment overclaimed was £185,329.10".

174. *"A reasonably competent accountant exercising reasonable care would not have made the basic errors which were in fact made in the 09/12 VAT return and certainly would not have repeated errors which had recently been pointed out to her."*
175. In relation to Allegation 3(b), ACCA submitted that Section 130.1(a) of the Code required Ms Cudlip to maintain her professional knowledge and skill at the level required to ensure that her employer received competent professional service.
176. ACCA further submitted Section 130.1(b) of the Code required Ms Cudlip to act diligently in accordance with applicable technical and professional standards when providing professional services. Section 130.4 of the Code states that diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.
177. ACCA submitted that Ms Cudlip's conduct as contained in Allegation 3(a) was contrary to Section 130.1(a) and/or (b) of the Code as she had made errors relating in respect of a reclaim of VAT and the net VAT amount which suggests that Ms Cudlip had not maintained her professional skill at a level to ensure that Company A received competent professional service and/or that she had not acted diligently in respect of this assignment.
178. In relation to Allegation 4(a), ACCA submitted that during the period of 1 to 10 July 2014, Ms Cudlip prepared and caused to be submitted on behalf of Company A, her then employer, a VAT return for the period of 1 April 2014 to 30 June 2014 in which she incorrectly declared:
- (a) VAT due on sales; and/or
 - (b) VAT reclaimed.
179. ACCA relied on the following evidence in respect of this allegation:
- (a) Ms Cudlip's letter to HMRC (undated) which states *"Until going on maternity leave (June 2014) I was responsible for producing and submitting the company VAT return"*.

- (b) The VAT Return of Company A for the period of 1 April 2014 to 30 June 2014;
- (c) On 28 July 2014, Ms Cudlip sent an email to Director C which attached her “...timesheet for my additional hours worked since 4th July”.
- (d) The timesheet attached to Ms Cudlip’s email to Director C of 28 July 2014 stated, “Thur 10th July 8 Day in office: Sam training / call with Bibby 9.30am – 5.30pm”.
- (e) On 11 August 2014, HMRC sent a letter to Company A which referred to:
 - (i) Output tax of £50,640.69 having been omitted in respect of 3 invoices; and
 - (ii) Import VAT entries of £79,030.45 having been claimed despite not being supported by C79 certificates.
- (f) The witness statement of Person B of HMRC dated 30 March 2016 states “I questioned Employee E about the 06/14 VAT repayment. Employee E informed me that the return had been completed by Ms Cudlip”.
- (g) The decision of the First Tier Tax Tribunal of 10 February 2017 which found that “Ms Cudlip had made a manual adjustment to include a reclaim in respect of the German VAT before submitting the return”.

“...we find as a fact that the 06/14 VAT return was submitted by Ms Cudlip and that she made the manual adjustment to the figures which resulted in the errors”.
- (h) The decision of the First Tier Tax Tribunal of 29 October 2019 which found that “Ms Cudlip was an experienced accountant...she must have known that she could not omit output VAT on invoices which had been issued from the VAT return because she thought they would not be paid...the tax must be accounted for when the supply is made, whether or not the recipient of the supply pays for it. If the recipient does not pay, an adjustment can be made in a later period of the taxpayer can claim bad debt relief”.

“The evidence indicates that Ms Cudlip, who represents the company for this purpose, made a conscious decision to omit the invoices from the return and in fact made a manual adjustment to exclude them”.

“Ms Cudlip took steps to exclude the invoices from the VAT return, which increased the repayment claim, and she must have intended that HMRC accept the return on that basis”.

“...the inaccuracy in the 06/14 VAT return relating to the Company H invoices was as a result of deliberate behaviour”.

180. In relation to Allegation 4(b)(i) ACCA submitted that the conduct set out at Allegation 4(a)(i) clearly amounts to dishonesty on the basis that Ms Cudlip knew that she could not omit output VAT on invoices from the VAT return because she thought they would not be paid but did so, nonetheless.
181. In relation to Allegation 4(b)(ii), ACCA submitted that even if dishonesty is not found proved, the Committee are able to find a breach of the Fundamental Principle of Integrity. Further, ACCA rely on Section 110.2 (Integrity) of ACCA's Code of Ethics and Conduct which specifically refers to a professional accountant not knowingly being associated with returns where the professional accountant believes that the information contains a materially false or misleading statement or information provided recklessly.
182. In relation to Allegation 4(b)(iii), ACCA submitted that Section 320.4A (Preparation and reporting of information) of ACCA's Code of Ethics and Conduct required Ms Cudlip to not be associated with returns where she believes that the information contains a materially false or misleading statement or contains statements or information furnished recklessly.
183. ACCA submitted that Ms Cudlip's conduct at Allegation 4(a)(i) was contrary to Section 320.4A of ACCA's Code of Ethics and Conduct as Ms Cudlip believed that the incorrect declarations in respect of VAT due on sales and VAT reclaimed in the VAT return for the period of 1 April 2014 to 30 June 2014 were materially false or misleading or that she had furnished such information recklessly.

184. As to Allegation 4(b)(iv), ACCA submitted Section 1(a) of the Code required Ms Cudlip to maintain her professional knowledge and skill at the level required to ensure that her employer received competent professional service.
185. ACCA submitted Section 130.1(b) of the Code required Ms Cudlip to act diligently in accordance with applicable technical and professional standards when providing professional services. Section 130.4 of the Code states that diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.
186. ACCA submitted that Ms Cudlip's conduct as contained in Allegation 4(a) was contrary to Section 130.1(a) and/or (b) of the Code as she had made errors in respect of a reclaim of VAT and VAT due on sales in the VAT Return of Company A for the period of 1 April 2014 to 30 June 2014 which suggests that Ms Cudlip had not maintained her professional skill at a level to ensure that company received competent professional service and/or that she had not acted diligently in respect of this assignment.
187. In relation to Allegation 5(a) ACCA submitted that between 4 September 2012 to 25 January 2013, Ms Cudlip did not provide Company B, appointed tax agents of her then employer, with information they had requested to submit accurate German VAT Returns for her then employer.
188. ACCA relied on the following evidence in respect of this allegation:
- (a) On 25 July 2012, COMPANY B sent an email to Ms Cudlip confirming that Company A's German VAT number had been allocated.
 - (b) On 3 September 2012, Company B sent an email to Ms Cudlip, requesting Company A 's German VAT figures for August 2012 by 6 September 2012.
 - (c) On 4 September 2012, Company B sent an email to Ms Cudlip requesting Company A's figures which would enable them to process and submit German VAT Return in respect of June and July 2012.
 - (d) On 7 September 2012, Company B sent an email to Ms Cudlip requesting figures in respect of Company A as soon as possible as the deadline to file the German VAT Return was 10 September 2012 (page 288).

- (e) On 10 September 2012, Company B sent an email to Ms Cudlip reminding her that the deadline to file a German VAT return for Company A was today. Company B requested figures from Ms Cudlip as soon as possible.
- (f) On 12 September 2012, Company B sent an email to Ms Cudlip which confirmed that a nil return had been submitted for Company A's German VAT returns for the period of January 2012 to July 2012.
- (g) On 1 October 2012, Company B sent an email to Ms Cudlip which requested figures for Company A's September 2012 German VAT return by 8 October 2012.
- (h) On 8 October 2012, Company B sent an email to Ms Cudlip which requested Company A's figures as soon as possible due to the filing deadline of the September German VAT return of 10 October 2012.
- (i) On 10 October 2012, Company B sent an email to Ms Cudlip which requested figures for September 2012 as the German VAT deadline was today.
- (j) On 10 October 2012, Company B sent an email to Ms Cudlip which confirmed that a nil return had been submitted for Company A's German VAT return for September 2012 as they had received no figures from her.
- (k) On 20 December 2012, Company B sent an email to Ms Cudlip which confirmed that they had submitted nil returns in respect of Company A's October and November 2012 German VAT returns as they had not been able to contact her.
- (l) On 2 January 2013, Company B sent an email to Ms Cudlip stating that the deadline for the submission of Company A's German VAT return was 10 January 2013 and requesting figures by 8 January 2013.
- (m) On 25 January 2013, Company B sent an email to Ms Cudlip stating that as Company A's 2012 VAT liability was below €1,000, they are only required to submit an annual return for 2013.

- (n) The decision of the First Tier Tax Tribunal states “...a substantial amount of the penalties arose from erroneous claims for refunds of German VAT on the UK VAT returns....Director C also discovered that Ms Cudlip had not made the legitimate claims to recover German VAT through COMPANY B, the agents which she had appointed”.

“In Germany, returns are submitted monthly and had claims been submitted timeously, the VAT would have been reclaimable every month with significant cash flow benefits to the company”

- (o) Director C’s witness statement of 6 May 2016 states that “...during 2012 €50,494.58 was reclaimable...”;

“...[COMPANY B] submitted a nil return for 2013. I now understand that during 2013 5,862.77 was reclaimable”;

“This continued into 2014; Charlotte failed to advise [COMPANY B] when in fact €287,810.76 was reclaimable”; and

“In summary, a net reclaim of €407,000 from 2012 to July 2014 was due from the German VAT office which Charlotte failed to reclaim even though this was her responsibility and indeed it had been Charlotte who set the whole process up with [COMPANY B]”.

189. In relation to Allegation 5(b), ACCA submitted Section 130.1(b) of the Code required Ms Cudlip to act diligently in accordance with applicable technical and professional standards when providing professional services. Section 130.4 of the Code states that diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.

190. ACCA submitted that Ms Cudlip’s conduct as contained in Allegation 5(a) was contrary to Section 130.1(b) of the Code as it demonstrates that she had not acted diligently when providing professional services to her then employer.

Submissions by Ms Cudlip

191. Ms Cudlip submitted a written response to ACCA allegations before this hearing. In the letter to ACCA attached to her email of 2 December 2019, she stated:

“There are references to tribunal between my old employer, Company A, and HMRC regarding VAT penalties. Your correspondence is the first I have known of these tribunals.”

“I left on maternity leave at the end of June 2014 and returned to work in February 2015. I resigned in March 2015 and offered to work longer than my notice in my contract to help give longer to find a suitable replacement. Directors C and D seemed happy with the extended notice and we left on good terms.”

“...I feel ‘on the back foot’ somewhat, as these matters arose in 2012 and 2014 (some 5-7 year ago) and the tribunal notes were published in February 2017 and October 2018, so over 1 year go. I have little or no evidence to help in my response.” [It is accepted that Ms Cudlip did not have access to the documents that were before the First Tier Tax Tribunal when she wrote this letter]

“I believe I did submit the June 2012 VAT return. I am not sure at what point Director C stopped reviewing these ahead of submission.”

“I do recall there being errors on the numbers bought forward and carried forward. I also recall explain this to Director C. Their reaction was of extreme disappointment. (Correctly so) But no further communication came from themselves or Director D. I changed the processes behind the VAT submission to ensure prior periods would be closed off before preparing the VAT return to stop the same error.”

“...if there were errors in VAT being claimed in error as it was imported directly to Germany I have no evidence or reason to dispute this claim, but I cannot remember this.”

“When Person A advised using C79 to reclaim import VAT we discussed the above issue of the freight forwarders clearing these on our behalf, which I thought was agreed we could do so.”

“The error on the June 2012 return resulted from bought forward and carried

forward numbers being incorrect. This error was not repeated. The errors arising on processing appear to be at source of when the invoice was posted onto the system.”

“With regards to the June VAT return there is large dispute over who submitted this. I can confirm from my records, my last day in the office was Friday 4th July 2014. The VAT return remains unsubmitted at this point in time.”

“Para 49, also states that credit notes were supposed to have been issued to go against these as title of the goods did not pass and reads as though Director D was fully aware of this issue and the amounts included / excluded from the VAT return.”

“I strongly believe the email received from Person A was discussed with Director C and Director D. However, I have no evidence to this. I have no access to my old email account (its property of Company A) Surely seeing that an email has been deleted is by no means prove that it wasn't read, passed on and understood first? All VAT records were also kept in lever arch files. Was this not printed and out here? Again, I have no evidence to show this, but strongly deny evidence was withheld from the Directors of Company A.”

“I earlier ... explained that I went through the error with Director C on the bought forward and carried forward issue. I deny the correspondence was destroyed.”

“Cashflow was a major factor of Company A. I cannot recall a time when the PAYE was paid on time and we often had visit from HMRC payment team to collect money. Therefore, payments of around £10-£20k were often made to the revenue at all times through the month. The payments were not broken down into smaller amount so as not to attract attention but more so that the cashflow the company could allow of these payments.”

“I took over the preparation of accounts in 2008. I am confused over the statement ‘so as was able to conceal them’ I'm not sure what ‘them’ refers to. If it's in relation of the VAT penalties, it would appear I took over the accounts in 2008, so I could conceal penalties that didn't occur until 4 years later. I disagree with this statement.”

“To this day, its disputable who submitted the June VAT return but records show I was on maternity leave during this time.”

“Para 49 of the tribunal shows Director D was aware of the situation with Company H and the deliveries and subsequent invoices / credit notes that followed. I however dispute that the June 2014 VAT return was filed by myself. I am aware that you cannot simply not pay the VAT due on sales invoices as ‘they won’t be paid.’”

“Yes. [COMPANY B] had chased for information. This was fully handed over to Director C ahead of my maternity leave. Time pressures and restrictions meant that this was a lower priority. I always kept Director C (or in her absence Director D) up to date on work properties which is clear from the tribunal. They were aware of the level of pressure and time constraints I was working under.

“Furthermore, the tribunal talks and notes my poor health in pregnancy, but what is not discussed, is how my workload was covered. There was no maternity cover put in place other than Director C herself. Employee F was interviewed to join the team. As part AAT qualified she would add some additional resource, but it was Director C who was covering my role. This was also the case while I was off work and suffering with poor health in my pregnancy.”

192. Ms Cudlip endorsed the above written submissions in closing.

SUBMISSIONS ON MISCONDUCT

Submissions on behalf of ACCA

193. As to Allegation 6, which alleges misconduct, ACCA submitted that in respect of Allegation 1, in order for Ms Cudlip’s conduct to amount to a breach of bye-law 8(a)(i) it must amount to misconduct. ACCA cited Bye-law 8(c) states that “for the purpose of bye-law 8(a), misconduct includes (but is not confined to) any act or omission which brings, or is likely to bring, discredit to the individual or relevant firm or to the Association or to the accountancy profession.”

194. ACCA reminded the Committee that Bye-law 8(d) provides that when assessing the conduct in question, regard may be had to the following:-

- (a) Whether an act or omission, which of itself may not amount to misconduct, has taken place on more than one occasion, such that together the acts or omissions may amount to misconduct;
 - (b) Whether the acts or omissions have amounted to or involved dishonesty on the part of the individual or relevant firm in question; and
 - (c) The nature, extent, or degree of a breach of any code of practice, ethical or technical, adopted by the Council, and to any regulation affecting members, relevant firms or registered students laid down or approved by Council.
195. ACCA submitted the issue of whether Ms Cudlip's conduct amounts to misconduct is a matter of judgment for the panel and not a matter of evidence.
196. In respect of the meaning of "misconduct", ACCA cited the case of *Roylance v General Medical Council* [2001] 1 AC 311 which states that *"the meaning of this term is of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety in any given case may often be found by reference to the rules and standards ordinarily required to be followed by a practitioner in the particular circumstances."*
197. ACCA submitted that if any or all of the facts are found proven in Allegations 1(a)(i) to (iv) and 1(b)(i) to (iii), Ms Cudlip had brought discredit to herself and is therefore guilty of misconduct.
198. So far as Allegations 1(a)(i) to (iv) and 1(b)(i) to (iii), ACCA's submission on misconduct was made on the basis that:-
- (a) All of the conduct contained at Allegation 1(a)(i) to (iv) bring discredit to Ms Cudlip, ACCA, and the accountancy profession as a result of the importance of professional accountants ensuring that their employers are made aware of financial matters of a serious nature rather than such matters being concealed.
 - (b) Any finding of dishonesty/breach of the fundamental principle of integrity also amounts to serious professional misconduct which brings discredit to Ms Cudlip, ACCA, and the accountancy profession.

- (c) Any finding of breach of professional competence and due care also amounts to serious professional misconduct which brings discredit to Ms Cudlip, ACCA, and the accountancy profession.
199. ACCA submitted that in the event that Allegation 1(a)(i), 1(a)(ii), 1(a)(iii) and/or 1(a)(iv) is found proven but Allegation 1(b)(i) to (iii) is not, Ms Cudlip is guilty of misconduct on the basis that the conduct alleged at Allegation 1(a)(i) to (iv) amounts to serious professional misconduct on its own which brings discredit to Ms Cudlip, ACCA, and the accountancy profession. The conduct brings discredit as it is important that ACCA members ensure that their employers are made aware of financial matters of a serious nature rather than such matters being concealed.
200. As to Allegation 2, ACCA submitted if any or all of the facts are found proven in Allegation 2, Ms Cudlip is guilty of misconduct on the basis that the conduct alleged amounts to serious professional misconduct on its own which brings discredit to Ms Cudlip, ACCA and the accountancy profession. The conduct brings discredit as it is important that accountants that are regulated by ACCA avoid making significant errors in VAT returns.
201. ACCA submitted that in the event that Ms Cudlip has committed any breach of ACCA's bye-laws or of any Regulations made under them in respect of which she is bound, then she shall be liable to disciplinary action pursuant to bye-law 8(a)(iii).
202. Allegation 2(b) alleges that Ms Cudlip has breached Section 130.1(a) and/or (b) of the Code. Accordingly, ACCA submitted that Ms Cudlip is liable to disciplinary action pursuant to bye-law 8(a)(iii) in the event that Allegation 2(b) is found proven.
203. In relation to Allegation 3, ACCA submitted that Ms Cudlip is guilty of misconduct on the basis that the conduct alleged amounts to serious professional misconduct on its own which brings discredit to Ms Cudlip, ACCA and the accountancy profession. The conduct brings discredit as it is important that accountants that are regulated by ACCA avoid making significant errors in VAT returns.

204. ACCA submitted that in the event that Ms Cudlip has committed any breach of ACCA's bye-laws or of any Regulations made under them in respect of which she is bound, then she shall be liable to disciplinary action pursuant to bye-law 8(a)(iii).
205. Allegation 2(b) alleged that Ms Cudlip has breached Section 130.1(a) and/or (b) of the Code. ACCA submitted that Ms Cudlip is liable to disciplinary action pursuant to bye-law 8(a)(iii) in the event that Allegation 3(b) is found proven.
206. So far as Allegation 4 is concerned, ACCA submitted that if any or all of the facts are found proven in Allegation 4, Ms Cudlip is guilty of misconduct on the basis that the conduct alleged amounts to serious professional misconduct on its own which brings discredit to Ms Cudlip, ACCA, and the accountancy profession. The conduct brings discredit as it is important that accountants that are regulated by ACCA avoid making significant errors in VAT returns.
207. ACCA submitted that in the event that Ms Cudlip has committed any breach of ACCA's bye-laws or of any Regulations made under them in respect of which he is bound, then she shall be liable to disciplinary action pursuant to bye-law 8(a)(iii).
208. Allegation 4(b)(iv) alleges that Ms Cudlip has breached Section 130.1(a) and/or (b) of the Code. ACCA submitted that Ms Cudlip is liable to disciplinary action pursuant to bye-law 8(a)(iii) in the event that Allegation 4(b)(iv) is found proven.
209. In relation to Allegation 5, ACCA submitted that if any or all of the facts are found proven in Allegation 5, Ms Cudlip is guilty of misconduct on the basis that the conduct alleged amounts to serious professional misconduct on its own which brings discredit to Ms Cudlip, ACCA and the accountancy profession. The conduct brings discredit as it is important that professional accountants provide information both required and requested by third parties to submit accurate VAT Returns.
210. ACCA submitted that in the event that Ms Cudlip has committed any breach of ACCA's bye-laws or of any Regulations made under them in respect of which he is bound, then she shall be liable to disciplinary action pursuant to bye-law 8(a)(iii).

211. Allegation 5(b) alleges that Ms Cudlip has breached Section 130.1(b) of the Code. ACCA submitted that Ms Cudlip is liable to disciplinary action pursuant to bye-law 8(a)(iii) in the event that Allegation 5(b) is found proven.

Submissions by Ms Cudlip

212. Ms Cudlip accepted she had made errors but denied she is guilty of misconduct but agreed she may be liable to disciplinary action for her mistakes.

213. The Committee considered legal advice from the Legal Adviser, which it accepted.

DECISION AND REASONS

214. The Committee accepted that Ms Cudlip, as a member, was bound by the ACCA's Bye-laws and Regulations.

215. At the outset, the Committee determined that its fact-finding function was severely damaged by the passage of time and entrenchment of memories. Documents supplied to ACCA and relied on in support were partial and selective and the passage of time had deprived Ms Cudlip of the opportunity of rebutting them or producing contextual documents. The Committee accepted Ms Cudlip evidence that she had a telephone call from Director D regarding co-operating with the First Tier Tribunal. Both she and Director D confirmed her willingness to participate but she heard nothing more until she learnt about the outcome several years later. It determined it was unsatisfactory to rely on the First Tier Tax Tribunal's findings during a disciplinary hearing, as it was so partial. Ms Cudlip was not given the opportunity to challenge any assertions made against her at that hearing. The high-water mark of the ACCA evidence for her non-involvement was Director D's statement that their barrister told them she had not replied, but this explanation is not cited in the First Tier Tribunal reasons. The reason for her non-involvement is not clear and remains disputed. The Committee concluded that it was not safe or fair to place reliance on the Tribunal's findings in the above circumstances. The Committee, unlike the Tribunal, had the advantage of hearing Ms Cudlip's evidence and cross examination of the witnesses.

216. The Committee considered Allegation 1(a)(i); the Committee was concerned in the document trail efforts were not made to obtain data from the server of

Company A which could have assisted the Committee to decide on the balance of probabilities whether Ms Cudlip did delete the email. It noted that this event took place over a decade ago and the company no longer exists so any attempts at this late stage would have been futile.

217. The Committee noted that under cross examination, Ms Cudlip reluctantly accepted that she must have deleted the email but this admission was made on the basis given the passage of time, she felt she had no evidence to disprove what the Directors were asserting. The Committee determined it was not for Ms Cudlip to prove she was innocent. The Committee was mindful that the burden of proof rests on ACCA. Given the lack of continuity, the passage of time and lapses in the memories of Directors C and D as to the detail, Committee determined the evidential threshold was not passed and therefore this allegation was found not proved.
218. The Committee considered Allegation 1(a)(ii). The Committee noted that the Directors were preoccupied with the Hong Kong case at the time. Director C spent nearly all of their time dealing with the case and Director D was at the office but appeared not to take any direct interest in the accounting processes of the company. They confirmed they did not look at the bank statement and it appeared to the Committee they relied entirely on Ms Cudlip without at least overseeing her work. The Committee determined both Directors were under a duty to oversee Ms Cudlip's work, despite the circumstances. The Committee also noted that Ms Cudlip stated she was under a lot of pressure at the time with staffing resources also being allocated to the Hong Kong case. She maintained she had spoken to Director D about the issues with HMRC in 2012 but they did not want her to tell Director C due to concerns over the latter's health. The Committee could not rely entirely on the accounts given by Directors C and D due to the lack of detail in their evidence, given the passage of time. The Committee determined the evidence in relating to this allegation was weak. Accordingly, the Committee were not satisfied on the balance of probabilities that Ms Cudlip destroyed or withheld from the directors any or all correspondence received from HM Revenue and Customs in connection with the penalties.
219. The Committee considered Allegation 1(a)(iii). The Committee found the evidence of Directors C and D unclear due to the passage of time. The Committee paid particular attention to the schedule for payments to HMRC and noted the evidence from Ms Cudlip that she was trying to help the company's

- cash flow issues by spreading the payments. The Committee was satisfied that there was evidence that the company suffered cash flow difficulties and a series of payments were made to ease cashflow. The Committee determined these payments could not be described as small. Accordingly, the Committee was not satisfied this allegations was proved on the balance of probabilities.
220. The Committee considered Allegation 1(a)(iv). The Committee accepted that abbreviated accounts which had been consented to and signed off by the Directors, do not show profit and loss and therefore would not identify penalties paid to HMRC. There is no suggestion that the balance sheet was inaccurate in anyway. Accordingly, the Committee was not satisfied that Ms Cudlip had concealed payments of outstanding VAT and/or penalties made to HMRC.
221. Given the Committee's findings above, the Committee was not satisfied Allegation 1(b) (i), (ii) or (iii) was proved on the balance of probabilities.
222. The Committee considered Allegation 4 (a)(i) and (ii), which alleged that during the period of 1 to 10 July 2014, Ms Cudlip prepared submitted a VAT return for the period of 1 April 2014 to 30 June 2014 in which she incorrectly declared VAT due on sales and/or VAT reclaimed.
223. The Committee did not find Directors C and D's evidence reliable due to the passage of time.
224. The Committee noted that Director D in his correspondence to the HMRC stated that while Ms Cudlip was on maternity leave errors were made by inexperienced staff in the return.
225. The Committee noted that Person B in their witness statement said that Employee E told her that Ms Cudlip had done the return but this was said when Ms Cudlip was not present.
226. The Committee noted that on the Time Sheet showing considerable details of work done throughout July, there is no mention of a completion of the VAT return.
227. The Committee were satisfied that the handwriting on the return was not Ms Cudlip's.

228. In the circumstances, the Committee was not satisfied on the balance of probabilities this allegation is proved.
229. Given the Committee's findings in relation to Allegation 4(a) above, the Committee was not satisfied Allegation 4(b)(i)-(iv) is proved on the balance of probabilities.
230. In relation to Allegation 5(b), the Committee noted that Ms Cudlip has accepted that she did not provide the information requested by the company's tax agents. She stated it was not deliberate, but she was under pressure at the time. However, the Committee noted there were numerous chasers from the tax agents for information which were unanswered. The company sustained a loss of reclaimable VAT which affected its cash flow. Whilst this money was eventually recovered, at the time, the company was in need of cash injection and the VAT reclaims would have undoubtedly assisted. The Committee determined that this allegation is proved on the balance of probabilities.
231. Considering Allegation 6, the Committee considered the proved allegations as a whole, taking into account all the circumstances. The Committee judged that the actions of Ms Cudlip were not dishonest, and cumulatively did not pass the threshold so as to amount to serious professional misconduct. The Tribunal heard evidence from HMRC witnesses that the VAT returns contained errors as a result of carelessness and the Committee were satisfied that Ms Cudlip was under considerable pressure at the time.
232. The Committee also considered whether disciplinary action should be taken pursuant to bye-law8(a)(iii). The Committee determined that there has been a breach of the bye-laws/regulations and therefore Ms Cudlip is liable to disciplinary action for her failures.

SANCTION AND REASONS

233. The Committee considered what sanction, if any, to impose taking into account all the evidence, ACCA's Guidance on Sanctions and Costs and the principle of proportionality. It had listened to submissions from Mr Walter and Ms Cudlip.
234. 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 Ms Cudlip's own interests. It noted that the purpose of

sanction was not punitive and that the purpose of any sanction was 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.

235. The Committee noted the following aggravating features of this case:

- a. The nature of the errors in the work led to serious financial consequences for Company A and Directors C and D.
- b. The period of time over which this happened.
- c. The number of sets of accounts/returns.

236. The Committee noted the following mitigating features:

- a. Ms Cudlip's previous good character and good character subsequent 2014.
- b. Delay.
- c. Her considerable remorse and her clear learning experience from these historic events.

237. The Committee determined it was disproportionate and not in the public interest to take no action.

238. The Committee considered Admonishment. The Committee took into account the delay in bringing this case was a unique and significant mitigating factor. It was evident from the hearing Ms Cudlip had suffered a great deal of stress over the period 2019-2024 due to these proceedings. She demonstrated extensive evidence of remorse and reflection. She is no longer working in an environment where EU VAT is a consideration. She has maintained her knowledge and is valued as an employee by her current employer. The Committee deemed Admonishment was the most proportionate, fair and appropriate sanction and did not discern any risk to the public in this case.

EFFECTIVE DATE OF ORDER

239. The Order will take effect at the expiry of any period for appeal.

COSTS AND REASON(S)

240. The Committee has been provided with a Detailed costs schedule relied upon by ACCA. The Committee noted that the hearing had overrun due to unavoidable circumstances. The amount of costs for which ACCA applied was £17,618.00.

241. The Committee concluded that ACCA was entitled to be awarded partial costs against Ms Cudlip but it noted that she had made full admissions to the proven allegations back in October 2021. The hearing was adjourned in February 2022 on application by ACCA. The one proven allegation after this hearing adds little to the overall outcome. The Committee accepted it was impractical for Ms Cudlip to provide a meaningful financial statement due to [PRIVATE]. This background has been taken into account when assessing the application for costs. The Committee considered the more likely award of costs in non-disputed resolution of the matters, had they been dealt with in 2021, and after careful consideration, decided to awards costs in the sum of £2,000.00.

HH Suzan Matthews KC
Chair
2 July 2024