

HEARING

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

In the matter of: Mr Carl David Rosen

Heard on: Thursday, 25 and Friday, 26 July 2024

Location: Remotely, via Microsoft Teams

Committee: HH Suzan Matthews KC (Chair)
Dr David Horne (Accountant)
Ms Diane Meikle (Lay)

Legal Adviser: Ms Jane Kilgannon

Persons present

and capacity: Mr Carl David Rosen (Member)
Mr Alex Mills (ACCA Case Presenter)
Ms Sofia Tumburi (Hearings Officer)

Summary: Exclusion from membership
Fine of £5,000.00

Costs: Mr Rosen to pay £9,000.00 towards ACCA's costs

1. The Disciplinary Committee (the Committee) convened to consider ACCA allegations against Mr Carl David Rosen (Mr Rosen). The matter had originally been scheduled for consideration on 14 May 2024, but that hearing was

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adjourned upon the application of ACCA. A Case Management Meeting was held on 09 July 2024.

2. Mr Alex Mills (Mr Mills) represented the Association of Chartered Certified Accountants (ACCA). Mr Rosen was present and was not represented.
3. The Committee had confirmed that it was not aware of any conflicts of interest in relation to the case.
4. In accordance with Regulation 11(1)(a) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 (the Regulations), the hearing was conducted in public.
5. The hearing was conducted remotely through Microsoft Teams.
6. The Committee considered the following documents:
 - a. A Hearing Bundle (pages 1 to 175);
 - b. A Supplementary Bundle (pages 1 to 252);
 - c. A Tabled Additional Bundle 1 (pages 1 to 13);
 - d. A Tabled Additional Bundle 2 (pages 1 to 21);
 - e. A Tabled Additional Bundle 3 (pages 1 to 5); and
 - f. A Service Bundle (pages 1 to 7).

PRELIMINARY MATTERS

7. Mr Mills applied to amend the Schedule of Allegations in two ways:
 - a. Changing the period of time referred to in Allegations 1, 2 and 3 to "*12 June 2013 to 18 May 2022*" in order to provide clarity that the Allegations did not relate to the period when Mr Rosen was not a member of ACCA (25 April 2011 to 11 June 2013) but without any concession that these matters had not arisen from 2007 onwards; and

- b. Correcting typographical errors throughout the allegations in terms of missing punctuation and correcting the mis-numbering of the final allegation.
8. Mr Rosen did not object to the application.
9. The Committee accepted the advice of the Legal Adviser who, on the basis of Regulation 12(5) of the Regulations and relevant guidance in the ACCA document 'Guidance for Disciplinary Committee hearings' (01 January 2021), advised the Committee as to its discretion to amend the allegations before it.
10. The Committee was satisfied that it was appropriate to allow these uncontentious amendments, which would not cause any prejudice to Mr Rosen. It therefore allowed the application.
11. The Committee noted that a previous committee had, at the 09 July 2024 Case Management Meeting, given ACCA permission to withdraw Allegation 5 and so the words "*WITHDRAWN*" had been substituted in the place of that allegation.

BRIEF BACKGROUND

12. Mr Rosen has been a Member of ACCA since 1998 and a Fellow since 2003. He has never held an ACCA practising certificate.
13. Company A was incorporated on 18 April 2002 and on 13 May 2002 Mr Rosen became a director.
14. On 25 April 2011 Mr Rosen's membership of ACCA automatically ceased due to his failure to pay his membership fee for 2011 and his failure to submit his continuing professional development declaration for 2010.
15. On 11 June 2013, the ACCA's Admissions and Licensing Committee granted Mr Rosen's application to be re-admitted to ACCA membership. The transcript of the relevant hearing (which was first made available in July 2024 at the request of Mr Rosen) recorded the following exchanges:

"MR ROSEN: [...] I have a large number of clients, not audit. Audit has never been any of my work. I must emphasise that. And I – on behalf of my clients, I

do their bookkeeping or they do their own bookkeeping and submit their accounts both to Companies House and to Revenue and I run payroll and VAT returns. So I run a full ambit of accountancy services but I'm careful not to put ACCA anywhere as under the regulations regarding a practising certificate, I cannot do that.

None of my work is forwarded or relied upon, to my knowledge, of third parties and my work centres around ensuring that directors satisfy their own legal obligations to file accounts which is, I'm sure you'll appreciate, quite a crucial point. I'm no different to any director who would know how to file his or her own accounts. So I offer the service of filing accounts on behalf of directors who don't know how to do it themselves.

So that's very much what my business centres around now and if you ask me legally, do I need a qualification? The answer is no, I don't, because I don't do anything which anybody with the required knowledge could do [...].

[...]

MR ROSEN: Well, I couldn't use the letters even if I were re-admitted, could I, because I would need a practising certificate to do that.

[COMMITTEE MEMBER]: So you wouldn't put it on any stationery.

MR ROSEN: No, I wouldn't. Well, I can't, can I? The regulations are quite clear on that. I can't do that.

[...]

CHAIR: [...] The Committee noted that Mr Rosen does not seek a practising certificate because he does not engage in public practice. He told the Committee that the core of his practise is to assist directors to perform their obligations to file accounts. He stated that he does not prepare accounts for third parties to rely on.

Nevertheless, the Committee had concerns that the work Mr Rosen undertakes is very close to public practice. He has some 200 clients and he says he provides a full ambit of accountancy services. It's essential that Mr Rosen has

a very clear understanding of what is permissible without a practising certificate and that he restricts his practice to what is permissible.

The Committee has therefore determined to allow Mr Rosen's application for re-admission subject to provisions to ensure that his business activities remain within proper limits. The Committee recommends that ACCA review Mr Rosen's business within 12 months to ensure that he has not engaged in public practice without a practising certificate. To assist that process, the Committee will impose a condition requiring Mr Rosen to provide information to ACCA.

The Committee has therefore determined to allow Mr Rosen's application subject to a condition. Mr Rosen will be re-admitted immediately. The following condition will apply for a period of 12 months from today: Mr Rosen shall provide to ACCA on request, any information it may reasonably require from time to time to satisfy itself that he has not engaged in public practice without a practising certificate. That concludes the decision.

Mr Rosen, it's not for this Committee to determine whether you are or are not engaged [inaudible].

MR ROSEN: I appreciate that.

CHAIR: You appreciate the answers that you gave to the Committee, there is a concern. It's not a clear dividing line.

MR ROSEN: I appreciate that, yes.

CHAIR: Therefore what we are doing is advising you to ensure that you satisfy yourself and obviously ensure that there's a process whereby ACCA can satisfy themselves.

MR ROSEN: Yes, I full [inaudible].

[...]

CHAIR: I hope you understand that that was a concern of the Committee but not something that should detract from the overall decision.

MR ROSEN: Yeah, that's why I wanted to raise it as well because I –

CHAIR: There are various ways you can obtain advice and I'm sure the duty is on you to do so.

MR ROSEN: Yes, I appreciate that."

16. The written reasons produced by the Admissions and Licensing Committee and sent to Mr Rosen in 2013 included the following paragraphs:

"9. The Committee noted that Mr Rosen does not seek a practising certificate because he does not engage in public practice. He told the Committee that the core of his practice is to assist directors to perform their obligations to file accounts. He stated that he does not prepare accounts for third parties to rely on.

10. Nevertheless the Committee had concerns that the work Mr Rosen undertakes is very close to public practice. He has some 200 clients and, he says, provides a full ambit of accountancy services. It is essential that Mr Rosen has a very clear understanding of what is permissible without a practising certificate and that he restricts his work to what is permissible.

11. The Committee has therefore determined to allow Mr Rosen's application for readmission, subject to provisions to ensure that his business activities remain within proper limits.

12. The Committee recommends that ACCA review Mr Rosen's business within 12 months to ensure that he is not engaged in public practice without a practising certificate. To assist that process the Committee will impose a condition requiring Mr Rosen to provide information to ACCA".

17. On 15 February 2021 ACCA received information including a document that had been prepared by Mr Rosen on behalf of Company B. It was on letterheaded paper including the name of Company A, its trading name and reference to Mr Rosen as the proprietor of Company A. Next to Mr Rosen's name, were the letters "ACCA". The document included an itemised list of service charge expenditure incurred by Company B as managing agents for a

property for the year ending 31 December 2019, which included accountancy fees of £1,100.00. The document included the following statement:

“ACCOUNTANT’S REPORT”

We certify that the above statement of service charges expenditure for the period ended 31 December 2019 in respect of this property is in our opinion a fair summary of the landlord’s relevant costs for that period and is sufficiently supported by accounts, receipts and other documents which have been produced to us”.

18. The document concluded with the signature of Mr Rosen, together with the trading name of Company A and the words “*Chartered Accountants*”, and was dated 01 December 2020.
19. On 16 December 2021 HMRC confirmed to ACCA that Company A and Mr Rosen had been supervised for Anti-Money Laundering purposes by HMRC from 13 October 2021 onwards.

AMENDED ALLEGATIONS

Mr Carl David Rosen, an ACCA Member:

1. Between 12 June 2013 to 18 May 2022, carried on public practice without holding a valid ACCA Practising Certificate, contrary to paragraph 3(1)(a) of the Global Practising Regulations.
2. Between 12 June 2013 to 18 May 2022, was a director of Company A, a firm where public practice was carried on in the name of the firm, without holding a valid ACCA Practising Certificate contrary to paragraph 3(2)(a) of the Global Practising Regulations.
3. Between 12 June 2013 to 18 May 2022, held shares of over 75% in Company A, a firm where public practice was carried on in the name of the firm, which in effect puts him in the position of a principal of the firm, without holding a valid ACCA Practising Certificate contrary to paragraph 3(2)(b) of the Global Practising Regulations.

4. Between 26 June 2017 to 14 September 2021 being engaged in providing accountancy services through Company A failed to register with a supervisory authority for anti-money laundering purposes in accordance with the requirements of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.
5. WITHDRAWN
6. By reason of his conduct in respect of any or all the matters set out at 1 above, Mr Rosen is:
 - a. Guilty of misconduct, pursuant to bye-law 8(a)(i); or in the alternative
 - b. Save for allegation 4, liable to disciplinary action pursuant to bye-law 8(a)(iii).

DECISION ON ALLEGATIONS AND REASONS

20. Mr Rosen responded to the allegations. His responses did not amount to clear, unqualified and unequivocal admissions. Therefore, they were treated as denials and ACCA was required to prove the matters alleged.
21. Mr Mills outlined the ACCA case against Mr Rosen by reference to the documentary evidence contained within the papers before the Committee.
22. In relation to Allegations 1, 2 and 3, Mr Mills stated that it is not in dispute that Mr Rosen and Company A are one and the same, and that Mr Rosen is a director of Company A. Mr Mills referred the Committee to Companies House documentation listing Mr Rosen as a person with significant control over Company A from 10 July 2016 onwards. Under the sub-heading "*Nature of control*" it recorded "*Ownership of shares – 75% or more*". On the second day of the hearing, Mr Mills was given permission to introduce a further piece of documentation from Companies House (Tabled Additional Bundle 3). That document indicated that, on 23 June 2024, Companies House was notified of a change in the shareholding apportionment of Company A so that, from that date, Mr Rosen held "*more than 25% but not more than 50%*" of the shares in the company. Mr Mills submitted that it was open to the Committee to find, on

the basis of that documentation taken together, that Mr Rosen had been a 75% or more shareholder in Company A between 12 June 2013 and 18 May 2022.

23. Mr Mills stated that the key issue in dispute in relation to Allegations 1, 2 and 3 is whether Mr Rosen was engaged in public practice at the relevant times. Mr Mills referred the Committee to the definition of public practice set out at Regulation 4(1) of the Chartered Certified Accountants' Global Practising Regulations 2003 (the Global Practising Regulations):

“(b) Signing or producing any accounts or report or certificate or tax return concerning any person’s financial affairs, whether an individual sole-trader, an unincorporated body or a firm, in circumstances where reliance is likely to be placed on such accounts or report or certificate or tax return by any other person (the “third party”), or doing any other thing which may lead the third party to believe that the accounts or report or certificate or tax return concerning the financial affairs of such a person have been prepared, approved or reviewed by the practitioner; and/or

(c) Holding oneself or itself out, or allowing oneself or itself to be held out, as being available to undertake the activities referred to in (a) and (b) above (and allowing oneself to be known as a, or a firm of “Chartered Certified Accountant(s)”, “Certified Accountant(s)”, “Chartered Accountant(s)”, “Accountant(s)” or “Auditor(s)” or any similar description or designation standing for any such description in the context of the practitioner’s business shall be regarded as an example of such a holding out); and/or

(d) Holding oneself out, or allowing oneself to be held out, as a sole proprietor, partner or director of a firm, or designated member or member of a limited liability partnership, where public practice is carried on”.

24. Mr Mills submitted that Mr Rosen, via Company A, had carried out public practice at the relevant times in that he had:
- a. Prepared and filed statutory accounts;
 - b. Produced a service charge report for Company B that included an “accountant’s report”;

- c. Held himself out as an accountant;
 - d. Prepared personal and company tax returns; and
 - e. Prepared accounts or issued reports containing assurance opinions for charity clients.
25. Mr Mills drew the Committee's attention to the following documents:
- a. The report prepared by Mr Rosen for Company B, in which Mr Rosen included an "*accountant's report*", letterhead including "ACCA" and signed off Company A as "*Chartered Accountants*";
 - b. The Unaudited Financial Statements of Company C for the year ended 31 May 2018, with Company A's trading name and "ACCA" recorded on the first page;
 - c. The Unaudited Financial Statements of Company D for the year ended 28 February 2021, with Company A's trading name recorded on the first page;
 - d. The Unaudited Financial Statements of Company E for the year ended 31 May 2021, with Company A's trading name recorded on the first page; and
 - e. The Unaudited Financial Statements of Company F for the year ended 31 May 2021, with Company A's trading name recorded on the first page.
26. Mr Mills submitted that any third party (which he said should be understood as "*any other person*" as per the definition in the Global Practising Regulations) reading the report that Mr Rosen prepared for Company B would inevitably place weight on being told that an accountant had reviewed the service charge statement and thought that it was a "*fair summary of the landlord's relevant costs*".
27. Mr Mills submitted that the financial statements prepared for Companies C, D, E and F were examples of Mr Rosen preparing financial statements which are statutory accounts and of a public nature. He submitted that they were not

examples of management accounts or mere bookkeeping. As such, Mr Mills submitted that the documents were likely to be relied upon by third parties.

28. Mr Mills submitted that Mr Rosen's reference to himself as an accountant, or a member of ACCA, on a number of the documents referenced above, amounted to Mr Rosen holding himself out as being available to undertake public practice.
29. Mr Mills drew the Committee's attention to the fact that Mr Rosen had stated to ACCA that the mainstream of his work included the filing of tax returns and accounts with HMRC. Mr Mills submitted that there is a clear likelihood that a third party, most obviously HMRC, is likely to place reliance upon them.
30. Mr Mills explained that Mr Rosen had stated that he undertook work for some of his charity clients on a voluntary basis and for others he charged a "*nominal fee*" to cover expenses. Referring to the ACCA 'Honorary work' factsheet, Mr Mills submitted that it is only if there is a complete absence of a fee that the 'honorary work' exception applies and the work would not be considered to be public practice. Mr Mills drew the Committee's attention to what he said were inconsistencies in the way that Mr Rosen had responded to ACCA's questions about his charity work. He submitted that this might indicate to the Committee that it is more likely than not that Mr Rosen did charge a fee for his charity work and so did not benefit from the honorary work exception from the practising certificate requirement in relation to that work.
31. In relation to Allegation 4, Mr Mill's referred to Regulation 3(2) of Annex 1 to the Global Practising Regulations which provides that:

"Members who provide accountancy services within the terms of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 by way of business, including those that fall outside the meaning described by regulation 4 of the Global Practising Regulations (for example book-keeping) will be subject to supervision for compliance with the anti-money laundering provisions under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. In such cases, eligible members should consider obtaining a practising certificate from the Association in order to be supervised by the Association. Alternatively, members must register with HM Revenue and Customs or another body recognised for such purposes".

32. Mr Mills submitted that, as an ACCA member, but not the holder of an ACCA practising certificate, that regulation required Mr Rosen to be registered with HMRC for Anti-Money Laundering supervision from 26 June 2017 onwards (when the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 came into force).
33. Mr Mills drew the Committee's attention to the fact that Mr Rosen registered with HMRC for Anti-Money Laundering supervision on 13 October 2021, which was four years later than required. He explained that 14 September 2021 is the date referred to in Allegation 4 because ACCA accepts that that is when Mr Rosen made his application (and paid any fee, if applicable) in order to register with HMRC for supervision.
34. In relation to Allegation 6 with reference to Allegations 1, 2 and 3, Mr Mills submitted that Mr Rosen's conduct had brought discredit to himself, ACCA and the accountancy profession as a whole because:
 - a. The conduct was sustained over an extended period;
 - b. It included more than one form of carrying on public practice; and
 - c. The regulatory requirements in question were clear on the face of the relevant regulations and it was Mr Rosen's professional responsibility to ensure his own compliance with them.
35. Mr Mills submitted that Mr Rosen cannot explain or excuse his conduct by reference to what he was told at the Admissions and Licensing Committee hearing on 11 June 2013 and in that committee's written reasons. Mr Mills submitted that both the transcript and the written reasons make it clear that Mr Rosen was told that the committee was not making any decision about whether or not his current work amounted to public practice. Indeed, Mr Mills submits that the Committee gave Mr Rosen a clear warning that he must make his own enquiries to ensure that he was compliant with ACCA regulations in relation to public practice.
36. In addition, Mr Mills submitted that what Mr Rosen had actually told the Committee about his practice was not comprehensive, in the sense that he had not spelled out that his work included the production and submission of

statutory accounts to Companies House and HMRC. He had instead referred more broadly to bookkeeping, assisting directors, offering a “*full ambit*” of accountancy services, and the submission (with no mention of the production) of accounts to Companies House and HMRC.

37. In relation to Allegation 6 with reference to Allegation 4, Mr Mills submitted that the need for HMRC supervision was ascertainable from the ACCA rules and the period during which Mr Rosen was not supervised was significant. As such, Mr Mills submitted that Mr Rosen’s conduct, in not ensuring he and Company A were supervised, had brought discredit to himself, ACCA and the accountancy profession as a whole. In the alternative, Mr Mills submitted that the conduct, in relation to the alleged breach of the Anti-Money Laundering supervision requirements set out at Allegation 4, rendered Mr Rosen liable to disciplinary action.
38. Mr Mills submitted that the relevant ACCA rules (in particular Regulation 3(2) of Annex 1 to the Global Practising Regulation 2003 as set out in the ACCA Rulebook from 2018 onwards) made it clear that Mr Rosen either needed an ACCA practising certificate or to be supervised by HMRC. He submitted that the fact that Mr Rosen either did not read that requirement, did not understand it, or chose to rely on some other information, did not absolve Mr Rosen of his professional responsibility to make himself aware of the regulatory requirement and to comply with it.
39. The Committee noted that detailed written representations had been provided by Mr Rosen’s previous legal representatives, but that Mr Rosen had written to ACCA on 30 September 2022 and 19 October 2022 stating that they no longer represented him and he disputed some of the statements that they had made on his behalf. On that basis, the Committee treated the correspondence from the previous legal representatives with caution and focussed instead on the written representations provided subsequently by Mr Rosen directly.
40. Mr Rosen gave oral evidence to the Committee and was cross-examined. He also answered questions from the Committee.
41. In relation to Allegations 1, 2 and 3, Mr Rosen stated that:

- a. Although he was a shareholder of Company A at the relevant times, his shareholding was 50%, not 75%. He responded to the new ACCA documentation from Companies House dated 23 June 2024 (Tabled Additional bundle 3). He explained that, prompted by Companies House, he had realised that the Companies House records had been inadvertently incorrect. Therefore, he corrected the records to show that he held 50% and not 75% of the shares;
- b. The “*mainstream*” of his work is filing company accounts with Companies House and HMRC and that this does not involve signing the accounts. He does not undertake any type of auditing work;
- c. The filing of documents at Companies House involves no holding out nor any information on which a third party could rely;
- d. Neither Mr Rosen nor Company A have a website or LinkedIn profile. Therefore, Mr Rosen does not hold himself out to be a chartered accountant in any way, or represent himself as available to provide accountancy services that he is not authorised to provide. He stated that holding out necessitated some sort of representation and he had made no such representation of availability;
- e. He stressed that he did not want to produce the service charge report for Company B, but did so after immense pressure from a director of Company B. He stated that this was a one-off, and did not represent his “*practice*” in any wider sense;
- f. He did not consider his production of the service charge report for Company B to be public practice because the information was prepared by Company B, a property management company, and he simply checked the accuracy of the information before the report was passed to the leaseholders. He stressed that the report was private, and not to be made public, and so there was no reason to believe that the content of the report might be relied upon by third parties. He considered Company B to be the primary recipient of the report, and the leaseholders as ‘second parties’ rather than “*third parties*”;

- g. He had prepared the financial accounts of Companies C, D, E and F with no intent for them to be relied upon by third parties. Nor was it reasonably likely that such reliance would have taken place;
 - h. His use of “ACCA” on the Unaudited Financial Statements for Company C was in error and out of a false sense of pride, rather than a holding out. It certainly did not indicate availability to undertake public practice work;
 - i. The charity accounts that he produced were either subject to no charge to the clients or a nominal charge only to cover expenses. As such, he believed that the work fell within the ‘honorary work’ exception from the public practice regulatory requirements; and
 - j. Mr Rosen stated that he had hundreds of clients
42. In summary, Mr Rosen submitted that there was insufficient evidence for the Committee to find that he had been engaged in public practice between the relevant dates in breach of the Global Practising Regulations.
43. In relation to Allegation 4, Mr Rosen stated that he relied upon the HMRC website which was misleading because it said “*You may need to register with HMRC if you do not have a listed supervising body*”. Mr Rosen said that he did check the ACCA rulebook at the relevant time (2018 rulebook, given that the Anti-Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 came into force in 2017) and they were not helpful because, in relation to anti-money laundering supervision, they only referred to student members of ACCA, and not members of ACCA.
44. In relation to Allegation 6, Mr Rosen disputed that he had brought himself or ACCA into disrepute.
45. In relation to Allegations 1, 2 and 3, Mr Rosen stressed to the Committee that he had relied upon what he had thought was a confirmation by the Admissions and Licensing Committee in its 2013 re-admission decision that his practice at that time, the nature of which had not changed in the intervening period, was not public practice. In particular, he relied on the fact that that Committee has stated that his work “*is very close to public practice*”. He took that to mean that,

although it was very close to public practice, it was not public practice and so he was not required to hold a practising certificate.

46. Mr Rosen argued that ACCA had been remiss in not sending him a copy of the transcript of the Admissions and Licensing Committee decision, alongside the written reasons, or at least offering him the opportunity to request a copy of the transcript. He submitted that had he had sight of the transcript, he would have had a clearer understanding that the committee had misgivings about whether he needed to have a practising certificate. He drew the Committee's attention to the Chair of that committee having stated "*Therefore what we are doing is advising you to ensure that you satisfy yourself*", which he felt was not properly included or reflected in the written reasons. Had he seen the transcript, Mr Rosen stated that he would have seen that advice as imposing a requirement on him to take further steps in relation to ensuring that he did not need a practising certificate. He says he would have done so.
47. Mr Rosen stressed that he had no intention to breach any ACCA regulations and that, if he did breach any ACCA regulations, it was unwitting, based on a misunderstanding of the requirements due to ACCA's failure to clearly convey its re-admission decision in 2013.
48. In relation to Allegation 4, Mr Rosen submitted that he was not aware of the requirement to register with HMRC for supervision because the guidance from HMRC was misleading. Furthermore, Mr Rosen submitted that he clearly had no intent to avoid proper supervision since he rectified the position immediately when he became aware of the requirement in 2021.
49. Under cross-examination, Mr Rosen accepted that:
 - a. The accounts produced for Companies C, D, E and F were statutory accounts (and not management accounts), filed with Companies House;
 - b. The production of statutory accounts involves work that goes beyond basic bookkeeping;
 - c. The correspondence with ACCA in the year leading up to the Admissions and Licensing Committee hearing in June 2013 referenced Mr Rosen as

a “*freelance bookkeeper*” and did not refer to him producing statutory accounts;

- d. During the Admissions and Licensing Committee hearing, he referred to submitting accounts to Companies House and HMRC, but not to producing the accounts (although he stated that, in this context, submitting implies production) and stated that none of his work was relied upon by third parties;
 - e. That the description of the nature of his work at paragraph 9 of the written reasons of the Admissions and Licensing Committee (“*to assist directors to perform their obligations to file accounts*”) was not an accurate summary of his work at that time because it was not a full description;
 - f. That he inferred from paragraph 10 of the written reasons of the Admissions and Licensing Committee (“*Nevertheless the Committee had concerns that the work Mr Rosen undertakes is very close to public practice. He has some 200 clients and, he says, provides a full ambit of accountancy services. It is essential that Mr Rosen has a very clear understanding of what is permissible without a practising certificate and that he restricts his work to what is permissible*”) that he could carry on with what he was doing, that is without a practising certificate;
 - g. The inclusion of “ACCA” on the Unaudited Financial Accounts for Company C was an “*inadvertent slip*”, a mistake; and
 - h. That had he looked carefully at the ACCA Rulebook 2018, he would have seen that, as an ACCA member without a practising certificate, he needed to be registered with HMRC for anti-money laundering supervision.
50. In response to questions from the Committee, Mr Rosen confirmed that:
- a. The work he undertook for charities included independent examination of the accounts and reviews in accordance with the requirements of the Companies Act 2006. The accounts would have then been lodged with the Charity Commission and so would have been a matter of public record; and

- b. He received a fee of £1,100.00 for the production of the service charge report for Company B, about which he was unhappy because he thought it was too high for the work done.
51. The Committee considered with care all of the evidence presented and submissions made by Mr Mills and Mr Rosen.
 52. The Committee accepted the advice of the Legal Adviser, who referred it to the relevant parts of the Regulations, the Global Practising Regulations, the By-laws, guidance from relevant case law and the ACCA document 'Guidance for Disciplinary Committee Hearings' (1 January 2021).
 53. The Committee noted that the burden of proving the factual allegations rested with ACCA, and that the standard of proof applicable was the civil standard. That is, the balance of probabilities.
 54. The Committee also noted, however, that there was no burden and standard of proof applicable to its substantive decisions in relation to misconduct. Rather, those are a matter for the judgment of the Committee.

ALLEGATIONS 1, 2 AND 3 – PROVED

55. In relation to Allegations 1, 2 and 3, and the period 12 June 2013 to 18 May 2022, the Committee noted that it was not in dispute that Mr Rosen was a director of Company A, and that he did not hold an ACCA practising certificate.
56. In terms of the level of Mr Rosen's shareholding in Company A, the Committee noted that Mr Rosen had disputed that he had a more than 75% shareholding at the relevant times, stating that he must have erroneously mis-recorded his level of shareholding when notifying Companies House of the situation in 2016 but that he had corrected the position last month.
57. The Committee noted that Mr Rosen had not produced any independent evidence that contradicted the Companies House document produced by ACCA recording him as a more than 75% shareholder in the company from 10 July 2016 onwards. It found that the changed position indicated by the further Companies House documentation dated 23 June 2024 was not probative as to the position between 12 June 2013 and 18 May 2022 because it happened

after that period and nothing on the face of the document indicated that it had retrospective effect.

58. The Committee also noted that the solicitors previously instructed by Mr Rosen had written to ACCA on his behalf on 18 May 2022 and stated that Mr Rosen and another person were “*joint shareholders*”. However, that statement did not indicate the apportionment of the joint shareholding, and was not supported by any independent documentation.
59. Therefore, on the balance of probabilities, the Committee found it more likely than not that Mr Rosen held a shareholding in Company A at 75% or more at the relevant times.
60. The Committee considered whether Mr Rosen and Company A had carried on public practice such that there was a breach of the requirement to hold a practising certificate when carrying on public practice.
61. The Committee found that it was more likely than not that Mr Rosen and Company A did carry on public practice at the relevant times. In coming to that conclusion, the Committee had particular regard to the following matters:
 - a. Mr Rosen had prepared and signed a service charge report for Company B, a document which included an “*accountant’s report*” providing an opinion that the expenditure listed was a fair summary, and so could reasonably have been foreseen to be relied upon by third parties, namely the relevant leaseholders as they had a direct interest in the accuracy of the expenditure listed in the report;
 - b. Mr Rosen, on his own admission, had produced and filed statutory accounts for Companies C, D, E and F. On the basis that those documents were produced to comply with statutory obligations and were provided to a third party – Companies House – it was likely that a third party may rely upon them;
 - c. Mr Rosen had held himself and/or Company A out as carrying on public practice in that he had (i) signed the service charge report prepared for Company B using the Company A trading name and the words “*Chartered Accountants*”; and (ii) recorded “ACCA” next to the Company

A trading name on the Unaudited Financial Statements prepared for Company C;

- d. Mr Rosen had accepted that his work during the relevant period had included submitting accounts and tax returns to HMRC, and he had separately stated that submitting documents implies also the production of those documents. The production of tax returns is expressly included within the definition of public practice in the Global Practising Regulations and both accounts and returns submitted to HMRC are clearly likely to be relied upon by a third party, namely HMRC; and
 - e. The Committee had been provided with copies of accounts produced by Mr Rosen for two charities. In addition, Mr Rosen told the Committee that he had produced accounts for a number of charities during the relevant period. Although Mr Rosen had argued that the work fell outside of the scope of requiring a practising certificate because it fell within the 'Honorary work' exception, after considering the details of how that exception applies and the factual circumstances in relation to Mr Rosen's work, the Committee was not persuaded that the exception applied. The key issue was whether a "*fee or other benefit [was] receivable in consideration for the work performed*". Mr Rosen gave inconsistent accounts of whether a fee was receivable, indicating at the hearing that the only fees charged were to cover expenses incurred on behalf of the charities. The Committee found, on the balance of probabilities, that a fee had been receivable by Mr Rosen for his work undertaken for charities.
62. Accordingly, the Committee found Allegations 1, 2 and 3 proved.

ALLEGATION 4 – PROVED

63. In relation to Allegation 4, and the period 26 June 2017 to 14 September 2021, the Committee noted that it was not in dispute that Mr Rosen and Company A did not hold a practising certificate and were not registered with HMRC for Anti-Money Laundering supervision during the relevant period. The Committee noted that such registration was a requirement of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. On that basis, the Committee found that Mr Rosen and Company A had failed to comply with the relevant requirement.

64. Accordingly, the Committee found Allegation 4 proved.

ALLEGATION 5 – WITHDRAWN

ALLEGATION 6 – PROVED

65. In relation to Allegations 1, 2 and 3, the Committee was surprised at Mr Rosen's assertion that he believed that the ACCA Admission and Licensing Committee's decision to re-admit him as a member meant that the Committee had confirmed that he could continue as before and that no practising certificate was required. The Committee noted the clear warning that that the ACCA Admission and Licensing Committee had given to Mr Rosen that, in their view, his work appeared to be very close to public practice and he ought to be careful to ensure that he was complying with the relevant regulatory requirements. That was not an endorsement of Mr Rosen's previous approach. Rather, it was an expression of concern that he needed to take steps to ensure that he was in compliance with the public practice regulatory requirements. The evidence before the Committee indicated that Mr Rosen did not take any such steps. Moreover, as per the Committee's findings above, he went on to undertake work that amounted to public practice and to hold himself out to be in public practice. The Committee considered these acts and omissions to be serious failures of compliance with important regulatory requirements.
66. The Committee did not accept Mr Rosen's argument that his breach of the requirement to hold a practising certificate was the fault of ACCA because the written reasons of the Admissions and Licensing Committee were unclear and he had not been provided with or offered a copy of the transcript of the relevant hearing, which would have provided the necessary clarity. The Committee carefully examined both the transcript and the written reasons. Whilst the written reasons understandably did not include a verbatim account of what had been said at the hearing, the Committee's view was that it accurately and clearly explained the situation to Mr Rosen, namely that it was his responsibility to check that he was complying with the public practice regulatory requirements and that that Committee was not making any decision on the point. If Mr Rosen had failed to understand that, it was not the fault of that Committee who had articulated the relevant matters clearly. Further, it was not the fault of ACCA who was under no obligation to provide or offer a copy of the transcript of the hearing to Mr Rosen, particularly given that there was no sense in which Mr

Rosen had indicated that he believed the contents of the written reasons provided to be unclear or that they had failed to accurately reflect what he had been told at the hearing.

67. In relation to Allegation 4, the Committee noted that Mr Rosen had stated that he had failed to understand the requirement to register with HMRC for anti-money laundering supervision. As the requirement was in place from 2017 onwards, and Mr Rosen did not register until 2021, the breach of the requirement lasted for four years.
68. The Committee accepted Mr Rosen's account that he had not understood that he was required to be supervised by HMRC. His account was supported by the fact that the HMRC guidance he showed to the Committee appeared to be somewhat ambiguous and that Mr Rosen had corrected the position and registered for HMRC supervision in 2021. The Committee did not accept, however, that this was a good excuse for the failure because it was Mr Rosen's professional responsibility to make the relevant enquiries and to ensure that he was compliant. Failing to do so was a serious professional omission.
69. Taking all of these matters together, the Committee considered that Mr Rosen had departed significantly from what was proper in the circumstances, falling far below the standards expected of professional accountants. He had failed to ensure the compliance of himself and Company A with important regulatory requirements over an extended period of time. The explanations that Mr Rosen had provided for his conduct were inadequate and demonstrated a lack of insight into the seriousness of his omissions.
70. The Committee considered that such a lack of professionalism on the part of Mr Rosen had the potential to undermine the public's confidence in the ACCA and the accountancy profession. It brought discredit to Mr Rosen, the ACCA and the accountancy profession as a whole.
71. For those reasons, the Committee concluded that the matters found proved at Allegations 1, 2, 3, and 4 – taken together - amounted to misconduct. Accordingly, the Committee found Allegation 6(a) proved.
72. Given its finding in relation to Allegation 6(a), it was not necessary for the Committee to consider the alternative matter set out at Allegation 6(b).

DECISION ON SANCTION AND REASONS

73. In reaching its decision on sanction, the Committee took into account the evidence that it had already heard, and the submissions made by Mr Mills and Mr Rosen. The Committee also referred to the ACCA document 'Guidance for Disciplinary Sanctions' (14 February 2024).
74. The Committee accepted the advice of the Legal Adviser including the following principles:
- a. The purpose of a sanction is not to punish, but to protect the public, maintain public confidence in the profession and to maintain proper standards of conduct;
 - b. Any sanction must be proportionate, so the Committee must balance the interests of the member with the interests of wider ACCA membership and the public; and
 - c. The Committee must consider the sanctions in order of severity, starting with the least severe first.
75. When deciding on the appropriate sanction, the Committee carefully considered whether there were any aggravating and mitigating features in this case.
76. The Committee identified the following aggravating features:
- a. The deliberate nature of the holding out conduct;
 - b. The repeated nature of the failures over an extended period of time (nine years in relation to the public practice matters and four years in relation to the anti-money laundering supervision matter);
 - c. The risk of harm to the public, in that Mr Rosen and Company A were operating without the required practice certification and anti-money laundering supervision;

- d. The lack of understanding and insight demonstrated as to the seriousness of the conduct; and
 - e. A previous disciplinary finding against Mr Rosen (although the Committee noted that the matter was from a long time ago, in 2003).
77. The Committee identified the following mitigating features:
- a. The omissions may have been inadvertent initially (although the Committee considered that Mr Rosen failed to make reasonable checks as time went on to ensure that his understanding of his own position was correct);
 - b. Mr Rosen had regularised his position in relation to anti-money laundering requirements by obtaining the supervision of HMRC from 2021 onwards; and
 - c. No evidence of actual loss to clients or the public.
78. The Committee considered the available sanctions in increasing order of severity.
79. The Committee considered taking no action against Mr Rosen. However, given the seriousness of the conduct, the Committee considered that it would be inappropriate to take no action.
80. The Committee considered imposing an admonishment on Mr Rosen. The Committee noted that the guidance indicated that an admonishment would be appropriate in cases where most of the following are present:
- a. Evidence of no loss or adverse effect on client / members of the public;
 - b. Early admission of the facts alleged;
 - c. Insight into failings;
 - d. Isolated incident;

- e. Not deliberate;
 - f. Genuine expression of remorse/apology;
 - g. Corrective steps have been taken promptly;
 - h. Subsequent work satisfactory; and
 - i. Relevant and appropriate testimonials and references.
81. The Committee considered that this was not a case where an admonishment would be appropriate. This was not an isolated incident because the matters found proved included failures to comply with a number of regulatory requirements over a number of years. Although Mr Rosen had engaged with the ACCA disciplinary process, and taken some corrective steps in registering with HMRC for anti-money laundering supervision, there had been little evidence of insight because Mr Rosen had maintained throughout that his omissions were, in large part, the fault of ACCA. Mr Rosen had not provided any testimonials and references to be considered by this Committee.
82. Taking all of these matters into account, together with the seriousness of the misconduct found, the Committee concluded that an admonishment would be an inappropriate and inadequate response.
83. The Committee next considered imposing a reprimand. The Committee noted that the guidance indicated that a reprimand would be appropriate in cases where:
- a. The misconduct is of a minor nature;
 - b. There appears to be no continuing risk to the public; and
 - c. There has been sufficient evidence of an individual's understanding, together with genuine insight into the conduct found proved.
84. The Committee considered that none of these features were present in this case. The misconduct was of a serious nature, insufficient understanding or insight had been demonstrated by Mr Rosen because he had blamed ACCA

for his own omissions and, although he was now registered with HMRC for anti-money laundering supervision, he had still failed to correct the situation in relation to his public practice by obtaining an ACCA practising certificate. In such circumstances, the Committee considered that there therefore remained a continuing risk to the public. For those reasons, the Committee concluded that a reprimand would be inappropriate.

85. The Committee considered imposing a serious reprimand. The Committee noted that the guidance indicated that a severe reprimand would be appropriate in cases where the conduct is of a serious nature but where the circumstances of the case or mitigation advanced satisfies the Committee that there is no continuing risk to the public. The Committee considered that the conduct was of a serious nature but that there was insufficient mitigation or circumstances that removed the continuing risk to the public. Mr Rosen had failed to make reasonable checks that he was in compliance with ACCA regulatory requirements over an extended period of time, putting his clients and potential clients at risk of harm and risking the reputation of ACCA and the accountancy profession as a whole. On that basis, the Committee concluded that a severe reprimand would be inappropriate because it would not provide adequate protection for the public, and nor would it adequately address public confidence and the need to maintain proper professional standards.
86. The Committee considered whether to exclude Mr Rosen from membership. Taking into account the seriousness of that conduct and the resultant ongoing risk to the public, the Committee concluded that the most appropriate sanction was exclusion from membership. The Committee considered Mr Rosen's conduct found proved to be so serious as to be fundamentally incompatible with being an ACCA member.
87. The Committee acknowledged that exclusion from membership was the most severe sanction available and had the potential to cause professional and financial hardship to Mr Rosen. However, in the circumstances of this case, the Committee considered that the public interest (both in terms of public protection and in maintaining standards and confidence in the profession) outweighed Mr Rosen's own interests, and therefore exclusion from membership was the only appropriate and proportionate sanction available.

88. Accordingly, the Committee decided that the only appropriate and proportionate sanction to impose was an order excluding Mr Rosen from membership of ACCA.
89. The Committee considered that the circumstances of the case did not warrant an order restricting Mr Rosen's right to apply for re-admission beyond the normal minimum period.
90. The Committee considered whether to impose a fine. The Committee considered that a fine was appropriate in this case given that Mr Rosen will have derived financial benefit from undertaking public practice whilst not holding a practising certificate. For example, the Committee was aware that Mr Rosen had received a fee of £1,100.00 for the production of the service charge report for Company B. In determining the level of the fine, the Committee took into account the seriousness of the conduct overall, but also the fact that there was no evidence of actual financial loss to any clients or to the public. In the circumstances, the Committee considered that it was appropriate and proportionate to impose a fine of £5,000.00.
91. As Mr Rosen had chosen not to disclose to the Committee any details of his financial position, the Committee considered that there was no evidence before it to indicate that imposing a fine at this level would result in Mr Rosen facing undue financial hardship.

DECISION ON COSTS AND REASONS

92. Mr Mills, on behalf of ACCA, applied for Mr Rosen to make a contribution to the costs of ACCA in bringing this case. Mr Mills applied for costs in the sum of £9,423.00. The application was supported by a schedule breaking down the costs incurred by ACCA in connection with the investigation and the hearing.
93. Mr Rosen had declined to provide the Committee with a completed Statement of Financial Position.
94. The Committee accepted the advice of the Legal Adviser who referred the Committee to Regulation 15(1) of the Regulations and the ACCA document 'Guidance for Costs Orders' (September 2023).

95. The Committee was satisfied that ACCA was entitled to costs in principle and had been justified in investigating these matters. Having reviewed the schedule, the Committee considered that the costs claimed appeared to have been reasonably and proportionately incurred.
96. The Committee considered whether Mr Rosen's conduct during the investigation and disciplinary proceedings had had any effect on the costs incurred, whether beneficial or otherwise. The Committee considered that Mr Rosen should not be penalised in any way for his decision to contest the case against him. However, neither did the Committee find any evidence that Mr Rosen's conduct throughout the investigation and disciplinary proceedings had been sufficiently beneficial to warrant a reduction in the amount of costs to be awarded.
97. As Mr Rosen had declined to disclose details of his financial position, the Committee:
- a. Found no basis for reducing the costs payable on the grounds of Mr Rosen's ability to pay; and
 - b. Considered that there was no evidence before it to indicate that awarding costs against Mr Rosen would result in him facing undue financial hardship.
98. The Committee made a reduction to the costs payable on the basis that the hearing on Friday 26 July 2024 was slightly shorter than the time estimated in the costs schedule, and on the basis of ACCA's withdrawal of Allegation 5 part of the way through the investigation.
99. Taking all of these circumstances into account, the Committee decided that Mr Rosen should be ordered to make a contribution to the costs of ACCA in the sum of £9,000.00.

ORDER

100. The Committee made the following order:
- a. Mr Rosen shall be excluded from ACCA membership;

- b. Mr Rosen shall be fined the sum of £5,000.00; and
- c. Mr Rosen shall make a contribution to ACCA's costs in the sum of £9,000.00.

EFFECTIVE DATE OF ORDER

- 101. In accordance with Regulation 20(1)(a) of the Regulations, the orders relating to exclusion from membership and fine shall take effect at the expiry of the appeal period.
- 102. In accordance with Regulation 20(2) of the Regulations, the order relating to costs shall take effect immediately.

HH Suzan Matthews KC
Chair
25 and 26 July 2024