

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mrs Kate Davies

Heard on: Tuesday, 28 November 2018

Location: ACCA's Offices, The Adelphi, 1-11 John Adam Street,
London, WC2N 6AU

Committee: Mrs Kate Douglas (Chairman), Mrs Judith Glover
(Accountant) and Dr Pamela Ormerod (Lay)

Legal Adviser: Mr Alastair McFarlane

Persons present

and capacity: Mr Mohammed Ismail (ACCA Case Presenter)
Miss Rachael Davies (Hearings Officer)

OUTCOME: **Facts proved and misconduct found. Sanction:
Severe Reprimand. Costs: £6,000 awarded against
Mrs Davies.**

1. ACCA was represented by Mr Ismail. Mrs Davies did not attend and was not represented. The Committee had before it a bundle of papers, numbered pages A-Y and 1 – 166, and a service bundle numbered pages 1-14.

SERVICE/ PROCEEDING IN ABSENCE

2. Having considered the service bundle on this case, the Committee was satisfied that the Notice of Hearing, dated 26 October 2018, was served on Mrs Davies in accordance with the Complaints and Disciplinary Regulations 2014 (Amended 1st January 2018) ("CDR"). The Committee saw a "Shipment Receipt" confirming sending to her registered address.

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3. The Committee next considered whether it was in the interests of justice to proceed in Mrs Davies's absence. The Committee accepted the advice of the Legal Adviser. The Committee was mindful that Mrs Davies had a right to attend the hearing and to participate, and that the discretion to proceed in her absence must be exercised with the utmost care and caution.
4. The Committee noted that ACCA's Notice of Hearing, dated 26 October 2018, was sent to Mrs Davies' registered postal address and copied to her registered e-mail address – although the latter “bounced back”. It considered it more likely than not, that Mrs Davies did not receive the notice, as it appeared from the documentation that she left that property in December 2016. It noted the Hearing Officer's Telephone Attendance Note of 29 October 2018, in which Ms B at the registered address indicated, on the phone, that the bundle had been received by courier, but that Mrs Davies “was no longer there.” There has been no substantive contact from Mrs Davies with ACCA's Investigation Department since June 2017. It noted that there had been telephone contact between Mrs Davies and ACCA's Connect Department on 1 June 2018, where she indicated that she had sold her practice and was no longer engaged in public practice work, and wanted her practising certificate withdrawn. Further, the Committee noted that this morning, the Hearings Officer had attempted to telephone Mrs Davies on both of the telephone numbers ACCA held for her. Both these numbers had been notified by Mrs Davies, and the mobile number had been confirmed in June 2018, and used successfully. No successful contact was made and the mobile phone number (which went to answerphone) stated that it was Mrs Davies's phone. The Committee also noted that in her email of 13 October 2017, Mrs Davies indicated that she had been signed off work from October 2016 to April 2017, and was subsequently working part-time. There was no medical evidence before the Committee to indicate any health problems were continuing today, such that Mrs Davies was unable to attend or participate in the hearing. Further it was clear from that e-mail that Mrs Davies was aware the investigation was on-going. In all the circumstances, the Committee was therefore satisfied that Mrs Davies was aware of the proceedings and had voluntarily absented herself.
5. The Committee was satisfied that all reasonable attempts had been made to secure Mrs Davies's attendance at the hearing. She had not engaged with

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the substantive proceedings and the Committee was not persuaded that any adjournment would increase the chance of Mrs Davies attending or participating in the case on a future date. These were serious allegations. On the information before it, and bearing in mind its duty to ensure the expeditious conduct of its business and the wider public interest, the Committee was satisfied that it was in the interests of justice to proceed in the absence of Mrs Davies. The Committee reminded itself that her absence added nothing to ACCA's case and was not indicative of guilt.

ALLEGATIONS

Allegation 1

- (a) Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014, Mrs Kate Davies has failed to co-operate fully with the investigation of a complaint in that she failed to respond, fully or at all, to any or all of ACCA's correspondence as set out in Schedule A
- (b) Contrary to Regulation 4(5)(b) of Membership Regulations 2014, Mrs Kate Davies has failed to notify ACCA of changes to her registered address and place of business between 23 May 2017 and 9 February 2018.
- (c) In light of the facts set out at 1(a) and/or 1(b) above Mrs Kate Davies is:
 - i. Guilty of misconduct pursuant to bye-law 8(a)(i), or
 - ii. Liable to disciplinary action pursuant to bye-law 8(a)(iii).

BACKGROUND

6. Mrs Davies became a member of ACCA on 31 December 2001, and a fellow on 31 December 2006. She holds a general practising certificate, and was in practice as the sole practitioner of Figurewise Ltd.

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7. Figurewise Limited was dissolved on 23 May 2017, according to Companies House records.
8. On 26 May 2017, a complaint was received by ACCA, from Mr A concerning Mrs Davies not responding to a request for professional clearance, and transfer of information. A formal complaint had been issued to Figurewise Ltd on or around 18 April 2017 by Mr A.
9. ACCA initially referred the complaint to the ACCA Conciliation Team. Following an unsuccessful attempt to conciliate the matters, the complaint was referred to the Investigations Department on 15 August 2017.
10. However, the documentation provided by Mr A was considered insufficient to substantiate the complaint, and therefore Mr C, the Senior Investigations Officer wrote to Mr A on 25 August 2017, asking him to provide further information.
11. On 28 September 2017, Mr C spoke with Mr A by telephone. Mr A confirmed receipt of the letter of 25 August 2017, and that he had not responded. Mr A stated the aim of his complaint was to flag the behaviour of an ACCA member. Mr C discussed with Mr A the position should Mr A withdraw from the complaint. In addition, it was explained that matters could only be taken forward based on the evidence obtained. Mr A confirmed that he wished to be kept informed. Mr C stated that another request for the information would be sent.
12. Despite reminders, Mr A did not provide further information. In the final reminder, dated 29 September 2017, Mr A was advised that if he did not provide the further information requested, he would be deemed to have withdrawn his complaint and, as such, no longer entitled to participate in the investigation process. Mr A was advised of losing his status on 13 October 2017.

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ACCA SUBMISSIONS

13. The inclusion in the evidence bundle of the material provided by Mr A is therefore considered relevant by ACCA, to the extent that it shows the nature of the complaint and how important it was for Mrs Davies to have co-operated. The material was therefore not included as evidence substantiating any of the heads of complaint raised by Mr A.
14. ACCA submitted that Mrs Davies is liable to disciplinary action on the basis of her failure to co-operate and update her contact details with ACCA.
15. On 2 June 2017, Mrs D, a Senior Investigations Officer in the Conciliation Team, sent a letter and emailed Mrs Davies, requesting her to contact her regarding a complaint.
16. On 9 June 2017, Mrs Davies telephoned Mrs D. During the conversation Mrs Davies stated that she had received the letter and email of 2 June 2017 from Mrs D; that she had not received any correspondence from Mr A or the client concerned; that she was winding down her business following three bereavements in the last year including her husband. Mrs Davies provided her mobile number to Mrs D.
17. On 12 June 2017, Mrs D emailed Mrs Davies, providing details of the complaint.
18. On 13 June 2017, Mrs D emailed Mrs Davies providing a copy of the letter for professional clearance and accounts for the client, which Mr A opined were incorrect.
19. On 19 June 2017, Mrs Davies e-mailed Mrs D. She had indicated that she had been away between 10 June and 18 June 2017, and that she would look at the complaints in the coming week.
20. On 23 June 2017 Mrs Davies called Mrs D and informed her of the following:
 - a. [REDACTED]

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- b. [REDACTED]
 - c. The client had been “awkward” for 18 months, getting angry with her, refusing to pay for on-going work and threatened to engage a new accountant.
 - d. Mrs Davies believed her that she and the client had parted ways. The client returned at the 11th hour to request the preparation of a VAT return.
 - e. Mrs Davies was winding up her late husband’s companies and closing bank accounts at this time.
 - f. Mrs Davies lost access to her emails which was not restored until May 2017. She was abroad in May 2017 and her phone did not receive calls whilst abroad.
 - g. Mrs Davies had been signed off work for being ill and dealing with her husband’s inquest and the hospital.
 - h. Mrs Davies had moved out of the offices in December 2016, which the client was made aware of.
 - i. Mrs Davies stated she had updated ACCA records but not Companies House.
 - j. Agreement that Mrs Davies would send the transfer documents in the following week, and would email a response to Mrs D, and provide the letter of engagement.
21. On 28 June 2017, Mrs D e-mailed Mrs Davies requesting the transfer information, as discussed on 23 June 2017.
22. On 30 June 2017, Mrs D left a voicemail for Mrs Davies requesting the transfer information.
23. On 3 July 2017, Mrs D emailed Mrs Davies chasing the transfer information and the written response to the complaint. On 4 July 2017, Mrs D left a

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voicemail for Mrs Davies to return her previous call. Further, on 4 July 2017, Mrs D emailed Mrs Davies noting that if a response was not provided by 11 July 2017 the matter would be referred to the Investigations Department.

24. On 12 July 2017, Mrs D left a message with her contact details and requested Mrs Davies to call.
25. On 12 July 2017, Mrs D emailed Mrs Davies stating that no response to the emails and voicemails had been received. In addition the ACCA Complaints and Disciplinary Regulations 3(1)(a) regarding her duty to co-operated were provided. Mrs Davies was given until 26 July 2017 to respond.
26. On 15 August 2017, the complaint was referred to the Investigations Department following the unsuccessful conciliation.
27. On 15 August 2017, Mrs D e-mailed Mrs Davies and Mr A to notify them of the matters being referred to the Investigations Department.
28. On 25 August 2017, Mr C e-mailed Mrs Davies confirming the complaints received and requesting further documentation.
29. On 28 September, 2017 Mr C e-mailed Mrs Davies chasing the information requested on 25 August 2017.
30. On 10 October 2017, Mr C telephoned Mrs Davies on the mobile number previously provided to ACCA. A message was left requesting she contact Mr C on the contact details given.
31. On 10 October 2017, Mr C checked the members' database for possible alternate addresses to contact Mrs Davies, noting that none were recorded.
32. On 13 October 2017, Mrs Davies emailed Mr C stating:
 - a. She had only just seen the email from Mr C dated 28 September 2017.

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- b. She believed everything had been explained and provided to Mrs D.

Allegation 1(a)

33. ACCA contended that, in failing to respond to the requests of the Investigations Officer, Mrs Davies had breached Complaints & Disciplinary Regulation 3(1). Mrs Davies was under a duty to co-operate, and therefore respond, to the Investigations Officer's correspondence, in which she was asked for an explanation of the allegations raised against her. Failure to co-operate fully with one's professional body was a serious matter, demonstrating a lack of professional responsibility and a disregard for ACCA's regulatory process. A failure to adequately respond to questions asked by ACCA during an investigation into one's conduct, prevented ACCA from fully investigating and, if necessary, taking action upon, what might be a serious matter.

Allegation 1(b)

34. ACCA submitted that the documentation clearly shows that Mrs Davies had failed to update her address details.

Allegation 1(c)

35. In relation to misconduct, ACCA submitted that this was a matter of judgment for the panel and not a matter of evidence. ACCA reminded the Committee that in *Roylance v General Medical Council [2001] 1 AC 311* at p330, it was stated that:

“Misconduct is a word 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.”

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36. It was ACCA's submission that if any, or all, of the facts set out at Allegations 1(a) to 1(b) were found proved, Mrs Davies had acted in a manner which brought discredit to her and to the accountancy profession, and her conduct amounted to misconduct pursuant to bye-law 8(a)(i). ACCA submitted that if it was accepted that Complaints & Disciplinary Regulation 3(1) had been breached by virtue of the facts and submissions stated above, then bye-law 8(a)(iii) was automatically engaged.
37. In the absence of a finding of misconduct, if it is accepted that Membership Regulations 4(5)(b) and Complaints and Disciplinary Regulations 3(1) have been breached by reason of the facts set out above, then bye-law 8(a)(iii) is automatically engaged, as per Allegation 1(c)(ii).

MRS DAVIES' SUBMISSIONS

38. Mrs Davies responses are summarised in paragraphs 19, 20, and 32 above.

DECISION ON ALLEGATIONS AND REASONS

39. The Committee accepted the advice of the Legal Adviser. The Committee reminded itself that the burden of proving the allegations was on ACCA alone, and that Mrs Davies's absence added nothing to ACCA's case and was not indicative of guilt. The standard of proof to be applied throughout was the ordinary civil standard of proof, namely the 'balance of probabilities'.

DECISION ON FACTS

40. The Committee carefully considered all the documentary evidence it had received, as well as the submissions of Mr Mohammed Ismail, on behalf of ACCA, and such documentary responses as it had from Mrs Davies.

Allegation 1(a)

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41. The Committee was mindful that ACCA had particularised the failure to cooperate fully, as a failure to respond to the correspondence listed in Schedule A (namely, the email of 8 November 2017 and the letters and emails of 1 February 2018 and 9 February 2018).
42. The Committee firstly asked itself whether ACCA had proved, on the balance of probabilities, that Mrs Davies had received the correspondence in Schedule A, as she could not fail to respond to that correspondence if she had not received it.
43. The Committee considered that it was unlikely that she had received the hard copy of the letters dated the 1 and 9 February 2018. The documentation led the Committee to the conclusion that Mrs Davies, and her company, had, more likely than not, left the registered address premises at some stage between December 2016 and May 2017, when the company was dissolved.
44. Nonetheless, the Committee was satisfied that it was more likely than not that she did receive email copies of the letters dated 1 and 9 February 2018, as well as the email dated 8 November 2017. This was because Mrs Davies had responded to ACCA in an email dated 23 June 2017, confirming that she had rectified the situation with her email account and, in an email from that account dated 13 October 2017, confirmed that she had received an email from ACCA, but that she did not "regularly monitor this email account". It also noted that an email sent by ACCA in May 2018 did not "bounce back" (in contrast to more recent emails to the same account), and that the email copies of the letters of the 1 and 9 February 2018, and the email of 8 November 2017 did not "bounce back".
45. The Committee next asked itself whether ACCA had proved that Mrs Davies had not responded to the Schedule A correspondence. It noted that there were responses in the ACCA bundle, and that a response to 8 November 2017 email was chased by a letter sent on 7 December 2017; that a response to the 1 February 2018 letter was chased in the letter of 9 February 2018 and that a response to the 9 February 2018 letter was chased in an email dated 19 February 2018. The Committee determined that it was a reasonable inference from their absence in the bundle, and

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the fact of the chasing letters that there had been no responses by Mrs Davies to the correspondence in Schedule A.

46. The Committee considered there was an obligation on professionals to respond to investigative enquiries made of them by their regulator and that this was part of the duty set out in Regulations 3(1). Therefore Mrs Davies non-response amounted to a failure. Accordingly for those reasons the Committee was satisfied that Allegation 1(a) was proved.

Allegation 1(b)

47. The Committee specifically considered ACCA's print out of Mrs Davies's registered address, and noted that Mrs Davies indicated that she had left that address in December 2016. Despite express requests from ACCA, including an email from Mr C dated 13 October 2017 inviting her to update her details in writing, the Committee was satisfied that Mrs Davies did not do this. It was further satisfied that she had an obligation to do so under the Regulations, and accordingly it was satisfied that Allegation 1(b) was proved.

Allegation 1(c)

48. The Committee next asked itself whether Mrs Davies was guilty of misconduct on the basis of Allegations 1(a) and 1(b) having been proved. It considered this in relation to each proved allegation cumulatively.
49. The Committee had regard to the definition of misconduct in bye-law 8(c) and the assistance provided by the case law on misconduct. It was satisfied that Mrs Davies's actions brought discredit on her, the Association, and the accountancy profession. It was satisfied that every professional had an obligation to co-operate fully with their professional body, and to engage with it when any complaints were raised against the individual. Such co-operation was fundamental to the regulator being able to discharge its obligations of ensuring protection of the public, and upholding the reputation of the profession. These same considerations apply to her failure to update her registered address. The Committee was

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satisfied that Mrs Davies's failures were sufficiently serious to reach the threshold of misconduct.

50. For those reasons, the Committee was satisfied that Allegation 1(c)(i) was proved. It did not therefore need to consider the alternative of liability to disciplinary action as set out in Allegation 1(c)(ii).

SANCTIONS AND REASONS

51. The Committee noted its powers on sanction were those set out in Regulation 13(4). It had regard to ACCA's Guidance for Disciplinary Sanctions, and bore in mind that sanctions are not designed to be punitive and that any sanction must be proportionate. It accepted the advice of the Legal Adviser.

52. The Committee considered that the failure to co-operate fully with ACCA was also serious, undermining its opportunity to regulate the profession properly.

53. The Committee identified the following mitigating factors:

- Mrs Davies has no previous disciplinary history and has been a member for nearly 17 years;
- The failures were against a background of tragic personal circumstances, [REDACTED];
- Mrs Davies was then placed in the position of having to run her late husband's businesses;
- There were [REDACTED] health issues;
- There had been some engagement and this was not therefore a case of no co-operation at all.

54. The aggravating factors the Committee identified were:

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- Mrs Davies' failures continued for a prolonged period;
- There was no evidence of any insight into the importance of a professional co-operating with her regulator and the public protection that such co-operation ensures.

55. The Committee was satisfied, in view of the seriousness of Mrs Davies' failings, that the sanctions of No Further Action, Admonishment and Reprimand were insufficient to protect the public and maintain public confidence in the profession. Nor would they uphold proper standards of conduct. Bearing in mind the tragic personal circumstances, and that this was not a case of no co-operation with her regulator, the Committee was persuaded that a Severe Reprimand was the appropriate and proportionate sanction. The Committee considered that, but for the personal mitigation that it concluded was compelling, exclusion from membership would have been the appropriate sanction.

COSTS AND REASONS

56. The Committee received a tabled additional bundle, numbered pages 167-172, relating to the cost schedule in which ACCA claimed costs of £9,200.16. It noted that there was no evidence from Mrs Davies as to her financial means. Nonetheless, the Committee noted Mrs Davies' health had resulted in her working part-time after an extended period off work, that her company had closed, as had her husband's businesses, and that her husband had died. It considered it reasonable to infer in those circumstances that her means were reduced. The Committee considered it proportionate to take a "broad-brush" approach and decided that it was appropriate to award reduced costs in this case. The Committee was satisfied that the sum of £6,000 was reasonable, appropriate and proportionate. Accordingly, it ordered that Mrs Davies pay ACCA's costs in the amount of £6,000.00.

EFFECTIVE DATE OF ORDER

57. This order shall take effect from the date of the expiry of the appeal period, unless notice of appeal is given prior to the expiry of that period, in which

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case it shall become effective (if at all) as described in the Appeal Regulations. The Committee was not persuaded that the ground for imposing an immediate order was made out.

Mrs Kathryn Douglas
Chairman
28 November 2018