

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Marc Keating

Heard on: Tuesday, 23 April 2019

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

Committee: Mr James Kellock (Chairman)
Mr Peter Douglas (Accountant)
Mr Michael Lamb (Lay)

Legal Adviser: Mr Alastair McFarlane (Legal Adviser)

Persons present and capacity: Ms Sarah Cawley-Wilkinson(ACCA Case Presenter)
Ms Pamella Ramphal (Hearings Officer)
Mr Marc Keating (Member)
Mr Jake Richards (Counsel for Mr Keating)

Summary **Exclusion from membership, with immediate effect**
Costs of £5000.00 awarded against Mr Keating

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1. ACCA was represented by Ms Sarah Cawley-Wilkinson. Mr Keating attended with his father and was represented by Mr Jake Richards, Counsel instructed by Mr Keating. The Committee had before it a bundle of papers, numbered pages, 1–63, and additional bundles numbered pages 70-71, and page 72 and tabled additional bundles re costs numbered pages 64-66 and 70-71.

ALLEGATIONS

Allegation 1

- a) On 10 August 2018 Mr Marc Keating was convicted of attempt to engage in sexual communication with a child x3 contrary to Section 1(1) Criminal Attempts Act 1981 at Newcastle Upon Tyne Court which is discreditable to the Association or the accountancy profession;
- b) By reason of his conduct at 1(a) above, Mr Marc Keating is liable to disciplinary action pursuant to bye-law 8(a)(ix).

BACKGROUND

2. Mr Keating became an ACCA member on 30 June 2017.
3. On 24 August 2018, ACCA received an anonymous complaint stating that Mr Keating pleaded guilty to 3 counts of communicating with a person under 16 for sexual gratification knowing they were under 16.
4. On 10 September 2018, ACCA sought from Mr Keating an explanation of the circumstances and events, which led to his conviction and documentary evidence of the conviction.

ACCA SUBMISSIONS

5. A Certificate of Conviction from Newcastle Upon Tyne Court dated 17

September 2018 confirms that Mr Keating was convicted of attempting to engage in sexual communication with a child x3. The certificate confirms that the sentence imposed was 6 months imprisonment suspended for 2 years. Mr Keating is also subject to a RAR [Rehabilitation Activity Requirement] x 30 days and 120 hours unpaid work. In addition, he is subject to a SHPO [Sexual Harm Prevention Order] for 7 years.

6. ACCA submitted that Mr Keating was found guilty of attempting to engage in sexual communication with a child x3 and this is evidenced by the certificate of conviction in accordance with bye-law 8(e).
7. As a result of these convictions, ACCA submitted Mr Keating is liable to disciplinary action in accordance with bye-law 8(a)(ix). ACCA contended that the offences committed by Mr Keating are discreditable to ACCA and the accountancy profession given that the public's trust in the profession might reasonably be undermined in light of his conduct. ACCA submit that the offences of attempting to engage in sexual communication with a child are discreditable to the Association and the accountancy profession given the serious departure from the standards that one would expect from an ACCA member.
8. In addition, ACCA submits that the public interest needs to be considered in this matter. The public interest includes the protection of the public, maintenance of public confidence in the profession, the declaring and upholding of proper standards of conduct and behaviour. ACCA submits that Mr Keating's convictions undermine public confidence in the profession.

MR KEATING'S SUBMISSIONS

9. Mr Keating does not dispute he was convicted.
10. Mr Keating responded to ACCA's original enquiries on 26 September 2018.
11. Mr Keating stated:

"On 4 June 2017, I was arrested for attempted sexual communication with a

child. Having recently broke up with my partner I turned to an app called Grindr for people to chat with and friendship. I started chatting with a couple of younger lads who were 13 and 14. Out of naive curiosity as to why they were on there, I stupidly got into conversation with them, some of the content and questions I asked were of a sexual nature.

The boys were in fact fictitious social media profiles set up by Group A, an online vigilante group operating in the north east of England.

Following an investigation by the police, which lasted just over a year, my case was brought before a Magistrates court on 13 July 2018. I pleaded guilty to the charges as they were at that stage. It was at this point I notified employers, who initiated their own disciplinary investigation.

On 10 August I attended crown court for my plea hearing at which stage the sexual gratification part of the charges was dropped. As I had pleaded guilty, I was then convicted of the charges.

On this same date my employer at the time deemed it gross misconduct and, with a view to potential damage to the firm's reputation, sent me a dismissal notice. I had also sent a letter of resignation however, these letters crossed paths in the post. It is unclear as to whether I resigned or was dismissed.

I was sentenced on 17 September 2018 to 6 months in prison suspended for 2 years and 120 hours of unpaid work, along with a Sexual Harm Prevention Order (SHPO).

I have had bad experiences with relationships in the past that have caused some psychological damage. As part of the case, I had a report done by a psychologist in order to show my past and for the court to better understand my experiences and the sort of person I am (a copy of the report in enclosed).

I am devastated by what has happened and the impact it has had on my life. I deeply regret it and want to be able to continue in my chosen career and

will accept any sanction that the committee deem appropriate. I would also like to add that at no stage in this episode has there been any named link between myself and ACCA; the only reference has been to me being an accountant.

I can confirm that I have no other criminal matters to disclose.

I have enclosed a copy of the psychologist's report, which was prepared as part of my defence, along with two character references.

I am truly sorry for my actions and, as per my statement; I am devastated by the impact of this whole matter. I would dearly love to continue in chose profession and will accept any sanction that you feel is appropriate".

DECISION ON ALLEGATIONS AND REASONS

12. The Committee accepted the advice of the Legal Adviser. The Committee reminded itself that the burden of proving the factual allegations, rested upon ACCA. The standard of proof to be applied throughout was the ordinary civil standard of proof, namely the 'balance of probabilities'.
13. The Committee carefully considered the documentary evidence it had received, as well as the submissions of Ms Sarah Cawley-Wilkinson on behalf of ACCA and Mr Richards' submissions on behalf of Mr Keating.

ALLEGATIONS 1 (a)

14. The Committee was satisfied by virtue of Mr Keating's certificate of conviction and his admission, that Mr Keating was convicted of attempting to engage in sexual communication with a child x3. Accordingly, it was satisfied that Allegation 1 (a) was proved.
15. The Committee noted that both ACCA and Mr Keating accepted that the convictions were discreditable to the Association and the accountancy profession. Exercising its own judgment the Committee had no doubt that the proved convictions were discreditable to the Association and the

accountancy profession. This was because of the serious nature of the conduct. It was self-evidently discreditable to the Association and the accountancy profession given the serious departure from the standards that one would expect from an ACCA member. Such serious offending would undermine the standing of the profession in the eyes of the public and was therefore discreditable to the accountancy profession. The Committee was satisfied that Mr Keating's conduct amounted to a serious falling short of his professional obligations. It had no doubt that it was sufficiently serious to render him liable to disciplinary action, as it was discreditable conduct.

SANCTIONS AND REASONS

16. The Committee noted its powers on sanction were those set out in Regulation 13(3). 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 noted the submissions of the parties and the "Position Statement" on behalf of Mr Keating, dated 23 April 2019. It accepted the advice of the Legal Adviser.
17. The Committee considered Mr Keating's conduct that led to the convictions to be very serious. The Committee had specific regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. Attempting to engage in sexual communications with children strikes at the heart of the public's trust in their fellow citizens and behaving in such a manner by a member of the accountancy profession undermines its reputation and public confidence in it.
18. The Committee considered the following to be aggravating factors:

- Serious convictions that undermined the reputation of the profession;
- Although Mr Keating was unaware that he was being entrapped, his actions had the potential to cause harm to innocent minors (had there been real victims).

19. The Committee considered the following to be mitigating factors:

- Mr Keating pleaded guilty at the Crown Court and admitted his wrongdoing to his regulator;
- Supportive reference from his current employer, who is aware of the convictions;
- He has expressed remorse and apologised;
- The Committee considered there was limited evidence of insight into the seriousness of the conduct and impact on the reputation and good standing of the profession;
- The Committee noted the psychologist's assessment that there was a low risk of repetition of the behaviour and that he is undergoing CBT;
- Full co-operation with ACCA.

20. The Committee had specific regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. Such convictions go to the heart of public trust in a professional and undermine the profession's reputation and public confidence in it.

21. Given the Committee's view of the seriousness of his conduct, it was satisfied that the sanctions of No Further Action, Admonishment, Reprimand and Severe Reprimand and Fine were insufficient to highlight to the profession and the public the gravity of the proven conduct.

22. The Committee acknowledged that the reputation of the profession was more important than the fortunes of the individual member and was satisfied that this could only adequately be maintained by an order of exclusion. The Committee determined that Mr Keating's criminal convictions were fundamentally incompatible with him remaining a member of ACCA and considered that the only appropriate and proportionate sanction was that he

be excluded from membership.

23. The Committee carefully considered whether to exercise its power to impose an order precluding Mr Keating from applying for re-admission until the expiry of a specified period. However, in the circumstances of this case, it decided it was not necessary to make any such order. Mr Keating is therefore able to re-apply for membership after a 12-month period, should he wish.

COSTS AND REASONS

24. ACCA claimed costs of £6,412.19, based on an assessment of what work this case had involved. The Committee noted the Statement of Financial Position submitted by Mr Keating and the submissions as to his means.
25. The Committee decided that it was appropriate to award costs in this case, and that the sums claimed were reasonable. However, it noted Ms Cawley-Wilkinson's concession that the case had not taken a full day and put into the balance Mr Keating's means. It concluded that the sum of £5,000.00 was appropriate and proportionate. Accordingly, it ordered that Mr Keating pay ACCA's costs in the amount of £5,000.00.

EFFECTIVE DATE OF ORDER

26. This order shall take effect immediately. The Committee was persuaded that it was in the interests of the public under Regulation 20(1)(b) to impose an immediate order, given the seriousness of the convictions in this case and the need to maintain the reputation of the profession

James Kellock
Chairman
23 April 2019