

CONSENT ORDERS HEARING

CONSENT ORDERS COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Christopher Kiely

Heard on: Thursday, 25 July 2019

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

Committee: Mr Michael Cann (Chairman)

Legal Adviser: Ms Valerie Charbit (Legal Adviser)

Summary: **Severe Reprimand**
Costs to be paid to ACCA in the sum of £2,500.00

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

1. The Committee considered a draft consent order signed by Mr Kiely on 1 May 2019, and on behalf of ACCA on 17 May 2019. The matter was listed to be considered on the basis of documents only. Neither Mr Kiely nor ACCA was present or represented.

CONSENT ORDER – DRAFT AGREEMENT

The Association of Chartered Certified Accountants (“ACCA”) and Mr Christopher Kiely (membership number 0861739) (“the Parties”) agree as follows:

Mr Christopher Kiely admits the following allegations:

Allegation 1

Mr Christopher Kiely signed all of the audit reports set out in Schedule 1 on the basis that the audits were conducted in accordance with the International Standards on Auditing when in fact they were not.

Allegation 2

Mr Christopher Kiely breached Regulation 16(1)(a) of the Global Practising Regulations 2.2 (Annex 2) in that he signed all of the audit reports set out in Schedule 1 without complying with one or more of the ISA standards set out in Schedule 2.

Allegation 3

Mr Christopher Kiely breached Regulation 16(2) of the Global Practising Regulations 2.2 (Annex 2) in that he made a report in respect of year ended 31 December 2015 regarding Client A to Law Society of Ireland which did not comply with their requirements or adhere to their guidance for the preparation and presentation of its reports.

Allegation 4

Mr Christopher Kiely failed to produce for inspection the audit files in respect of any of the audit reports set out in Schedule 3.

Mr Christopher Kiely is guilty of misconduct pursuant to bye-law 8(a)(i) in respect of allegations 1, 2, 3 and 4 above.

That Mr Christopher Kiely shall be severely reprimanded and shall pay costs to ACCA in the sum of £2,500.

SERVICE

2. The Committee was satisfied that ACCA had given adequate notice of this meeting, by a letter dated 21 June 2019, sent by email.

CONSTITUTION OF THE COMMITTEE

3. The Legal Adviser advised that The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014, amended 1 January 2017, regulation 5(7) states:

(7)The Consent Orders Committee shall consist of either a chairman and a legal adviser, or an assessor and a legal adviser.

CONSENT ORDERS HEARING

4. The words 'consist of' in the regulation suggest that the Legal Adviser would be a member of the Committee. For the Legal Adviser to be a full voting member of any Committee would be a departure from the function, and meaning, of a Legal Adviser as generally set out in ACCA's Regulations. There was no other indication that such was the intention. The Legal Adviser advised that the Committee should proceed on the basis that the Legal Adviser's role was advisory only.
5. The Committee accepted this advice.

BACKGROUND AND ADMISSIONS

6. Mr Kiely became an ACCA member on 30 September 2005. Mr Christopher Kiely became a Fellow of ACCA on September 2010.
7. On 13 August 2013, Mr Christopher Kiely was granted a Practising Certificate with Audit Qualification, which he continues to hold.
8. On 16 January 2017, a routine ACCA (first) monitoring visit took place at Mr Kiely's firm.
9. A referral was also made to the Admissions and Licensing Committee as a result of the findings from the monitoring visit. There were found to be serious deficiencies in the audit evidence which had resulted in audit opinions not being adequately supported by the work performed and recorded.
10. Mr Kiely signed all of the reports in respect of Company A, B and C, confirming they had been conducted in compliance with the ISAs, in circumstances where the deficiencies found in the audit evidence had resulted in audit opinions not being adequately supported by the work performed or recorded, to the extent that the audits had not been done in accordance with the ISAs.
11. Further, Mr Kiely admitted that the audits for Company A, B and C had not been done in accordance with the ISAs.
12. Mr Kiely further admitted that he had failed to comply with the requirements of the Law Society of Ireland, in respect of the report on behalf of Client A, and as such is in breach of Regulation 16(2) of the Global Practising Regulation 2.2 (Annex 2).
13. Mr Kiely also admitted that he was unable to produce any of the files set out in schedule 3, as he did not have audit files in respect of these clients.

14. The Admissions and Licensing Committee hearing took place on 19 June 2018. Mr Kiely has had conditions placed upon his Practising Certificate.
15. ACCA included the findings of a decision from the hearing of the Admissions and Licensing Committee on 19 June 2018, so as to bring the conditions placed upon his Practising Certificate to the attention of the Consent Orders Committee. ACCA confirms it has taken these into account in respect of measures of public protection, and in respect of the appropriate sanction in all of the circumstances.

Allegation 1

16. Mr Kiely was responsible for the completion and filing of the audits for Company A, B and C. It is accepted by both parties that Mr Kiely declared that he had conducted the audits for Companies A, B and C in accordance with the International Standards on Auditing, when he had not done.
17. ACCA submitted that Mr Kiely signed three audit reports without completing audit work to support the report issued. Mr Kiely therefore provided inaccurate information to third parties. ACCA submitted that, this behaviour falls below the standard expected of an ACCA member, and brings discredit to Mr Kiely personally, to ACCA, and to the accountancy profession in general, as he was placed in a position of responsibility to express an opinion on the truth and fairness of the accounts of his clients. Such failings and/or breaches constitute an act or omission which falls short of what would be proper in the circumstances, and therefore constitutes misconduct. Mr Kiely accepted he was guilty of misconduct.

Allegation 2

18. Regulation 16(1)(a) of Global Practising Regulation 2.2 (Annex 2) provides that Mr Kiely was required to comply with all the applicable sections of ACCA's Rulebook, and in particular the International Standards on Auditing. It is clear from the report of the Senior Compliance Officer that the audit reports in respect of Company A, B and C did not comply with the International Standards on

Auditing. Further it is agreed by Mr Kiely that he did not comply with these standards.

19. It is submitted that Mr Kiely signed three audit reports without completing audit work to support the report issued. Mr Kiely has therefore provided inaccurate information to third parties. This behaviour falls below the standard expected of an ACCA member, and brings discredit to Mr Kiely personally, to ACCA and to the accountancy profession in general, as he was placed in a position of responsibility to express an opinion on the truth and fairness of the accounts of his clients.
20. In light of the facts set out above, ACCA submitted, and Mr Kiely agreed, that Mr Kiely is guilty of misconduct.

Allegation 3

21. Regulation 16(2) of the Global Practising Regulations 2.2 (Annex 2) provides that Mr Kiely was required to comply with the guidance or requirements of the Law Society of Ireland, in respect of regulatory reports on behalf of his clients. It is clear from the report of the Senior Compliance Officer that the audit report, in respect of Client A, did not comply with these requirements. Further, it is agreed by Mr Kiely that he did not comply with these requirements.
22. In light of the facts set out above, ACCA submitted, and Mr Kiely agreed, that Mr Kiely is guilty of misconduct.

Allegation 4

23. Mr Kiely has, by his own admission, failed to provide ACCA with audit files in respect of the audit report detailed at Schedule 3.
24. Mr Kiely has admitted that he did not have files for these clients, and could not show that he had completed audit work to support the reports issued.

25. Mr Kiely could therefore have provided inaccurate information to third parties. ACCA submitted that this behaviour falls below the standard expected of an ACCA member, and brings discredit to Mr Kiely personally, to ACCA, and to the accountancy profession in general as he was placed in a position of responsibility to express an opinion on the truth and fairness of the accounts of his clients.

26. In light of the facts set out above ACCA submitted and Mr Kiely agreed, that Mr Kiely is guilty of misconduct.

DECISION AND REASONS

27. The Committee was satisfied that there was a case to answer, and that the Investigations Officer had carried out an appropriate investigation. It was satisfied that it was appropriate to deal with the matter by way of a consent order. The Committee did not consider that any amendments were required.

28. It was satisfied that Mr Kiely's actions amounted to misconduct.

29. The Committee considered the proposed sanction. The Committee was satisfied that the admitted breaches would not be likely to lead to an order of exclusion from membership, as such, a sanction would be disproportionate in the circumstances of this case.

30. In considering whether a reprimand was an appropriate sanction, the Committee referred to ACCA's Guidance on Disciplinary Sanctions, and the public interest, which includes the following principles:

- a) Protection of members of the public;
- b) Maintenance of public confidence in the profession and in ACCA;
and
- c) Declaring and upholding proper standards of conduct and performance.

31. The aggravating factors were noted by the Committee as follows:

- The importance and significance of audit work, and that members of the public are entitled to place absolute reliance on statements by an auditor in public company records.
- Mr Kiely has signed an audit report without having completed adequate audit work to support the audit report issued. This conduct is very serious, as the audit report is relied on by the users of the financial statements, including potential funders of the charity, Government bodies (including the Health Services Executive) and Companies Registration Office.
- In his role as auditor, Mr Kiely had a public duty to protect the public and ensure he had performed sufficient audit work to enable him to state that the accounts were true and fair, and had been properly prepared, he did not do this

32. In deciding that a severe reprimand is the most suitable sanction, paragraphs C4.1 to C4.5 of ACCA's Guidance have been considered, and the following mitigating factors have been noted:

- Mr Kiely has been a member of ACCA since 2005, and has a previous good record with no prior disciplinary sanctions having been imposed against him.
- Mr Kiely volunteered the information regarding the further 14 audit opinions he had issued with little, or no audit work, which form the basis of allegation
- Mr Kiely acknowledged his failings from the outset
- The period during which the shortcomings had manifested themselves coincided with the illness suffered by Mr Kiely.

- The pressures he was under at the time of the misconduct no longer exist.
- Further, he has since put in place a, "continuity of practice" arrangement to support him should he fall ill again.
- His misconduct appears to have arisen from a lapse of judgment occasioned by his poor health and did not cause direct or indirect harm.
- Mr Kiely has had conditions imposed upon his practising certificate, as a result of a hearing before the Admissions and Licensing Committee on 19 June 2018.

33. The Admissions and Licensing Committee made an order pursuant to Authorisation Regulations 5(2)(f) that Mr Kiely and his firm be required to:

- i) provide Governance – Practice Monitoring within 30 days of the date of written notification of this decision with a list of current audit clients, identifying any Public Interest Entity (PIE) audits and with formal documentary confirmation of the continuity of practice arrangements he has made;
- ii) promptly notify Governance – Practice Monitoring if the firm accepts any new PIE audit appointments or if any of the PIE audits identified in i above ceases to be an audit client at any time in the future while this decision remains in effect;
- iii) have all future audit work on all PIE audit clients identified in i and ii above and confirmed by Governance – Practice Monitoring reviewed by a training company before audit reports are signed, such training company being subject to ACCA approval;

- iv) notify ACCA of the identity of the training company referred to in iii above within 14 days of the date of Governance – Practice Monitoring confirming the PIE audit clients to be subject to review in accordance with i and/or ii above;
- v) submit all reports prepared by the nominated training company (including details of how the firm has addressed the points raised by the reviewer) pursuant to ii above to Governance – Practice Monitoring within seven days of signing the audit report;
- vi) be subject to an accelerated monitoring visit before 31 July 2019 at a cost to the firm of £1,000 and £400 for each additional audit qualified principal;
- vii) note that failure to make the necessary improvements in the level of compliance with auditing standards and with the requirements of any regulators by that time will jeopardise his and his firm's continuing audit registration.

34. The Committee was satisfied that the conditions imposed by the Admissions and Licensing Committee were sufficient to protect the public, in respect of Mr Kiely's future practice.
35. It considered that taking no further action in this matter would not be appropriate or proportionate, and would not adequately address the misconduct or the public interest in this case.
36. It further decided that an admonishment was not appropriate, as this sanction is applicable for cases at the lower end of the spectrum of misconduct, and Mr Kiely's conduct is of a serious nature.
37. It decided that a reprimand was not considered appropriate, as this sanction is applicable for cases where conduct is of a minor nature. Therefore, it is not appropriate to consider imposing a reprimand on Mr Kiely.

38. It further considered that exclusion from membership would be disproportionate in all the circumstances of this case, as this is not the only sanction which will be sufficient to protect the public.

39. The Committee also took into account the ill-health of Mr Kiely.

40. The Committee decided that a severe reprimand was a sufficient sanction to uphold the public interest. It considered that this sanction was appropriate when balancing the aggravating and mitigating factors, and in seeking to impose a proportionate sanction. It therefore approved the draft consent order and ordered that Mr Kiely be severely reprimanded.

COSTS

41. The Committee considered that ACCA was entitled to its costs, and that the amount claimed, which was agreed, was reasonable.

42. It noted that Mr Kiely agreed to pay ACCA's costs as part of the draft consent agreement.

43. It therefore ordered that Mr Kiely pay ACCA £2500 in costs.

Mr Michael Cann
Chairman
25 July 2019