

## HEARING

### DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

#### REASONS FOR DECISION

**In the matter of:** Mr Charles Edward Moriarty

**Heard on:** Thursday, 21 February 2019 and Tuesday, 26 March 2019

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

**Committee:** Mr Maurice Cohen (Chairman)  
Mr Robert Clarke (Accountant)  
Mr Alastair Papps (Lay)

**Legal Adviser:** Mr Michael Conor Heaney (Legal Adviser)

#### Persons present

**and capacity:** Mr Benjamin Jowett (ACCA Case Presenter)  
Ms Pamella Ramphal (Hearings Officer)

**OUTCOME:** **Severe Reprimand**  
**Fines of £1000 and Costs of £12000 awarded against Mr**  
**Moriarty**

1. The Committee convened to consider Allegations of misconduct against Mr Charles Edward Moriarty. ACCA was represented by Mr Benjamin Jowett. Mr Moriarty was present via telephone link and represented himself. The Committee had a bundle of documents numbering pages A - L and 1 - 1296. The Committee also had an additional bundle (1) numbering pages 1303-1313

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and an additional bundle (2) numbering pages 1314 -1354. In addition, the Committee had an additional bundle (3), a transcript of the first day of the hearing numbering pages 1355-1417. The Committee also had an additional bundle (4), ACCA's written submission on the facts numbering pages 1418-1423 and a submission from Mr Moriarty comprising three unnumbered pages.

## **ALLEGATIONS**

Mr Moriarty faced the following Schedule of Allegations:

1. It is alleged that Mr Charles Edward Moriarty, a fellow member of ACCA, signed any or all of the audit reports set out in Schedule A on behalf of Charles Moriarty & Company stating that Charles Moriarty & Company had conducted an audit, when he and Charles Moriarty & Company had not done so:
  - a. sufficiently or at all; and/or
  - b. in accordance with International Standards on Auditing.
2. In light of any or all of the facts set out at allegation 1, Mr Moriarty's conduct was:
  - a. Dishonest, in that he knew that he/his firm had not undertaken the audit work sufficiently or at all; and
  - b. Contrary to the Fundamental Principle of Integrity (applicable 2016-2017)
  - c. Contrary to Global Practising Regulation (Annex 2) 16(1)(a) (applicable 2016 – 30 June 2017) and/or Global Practising Regulation (Annex 2, Appendix 1) 13(a)(ii) (applicable 1 July 2017 onwards).
  - d. Contrary to the fundamental principle of professional competence and due care (2016-2017).
3. In light of any or all of the facts set out in allegations 1 and/or 2, Mr Moriarty is guilty of misconduct contrary to bye-law 8(a)(i); or

4. In light of any or all of the facts set out above in allegations 1 and/or 2(c) and/or 2(d), Mr Moriarty is liable to disciplinary action pursuant to bye-law 8(a)(iii).

**Schedule A:**

	<b>Name of client</b>	<b>Year-end date</b>	<b>Date of audit report</b>
1	Company A	10.2.2017	17.5.2017
2	Company B	31.5.2016	12.12.2017
3	Company C	31.12.2016	10.5.2017
4	Company D	30.6.2016	16.12.2016
5	Company E	31.8.2016	31.7.2017
6	Company F	30.6.2016	29.11.2016
7	Company G	31.1.2016	30.11.2016
8	Company H	24.6.2016	12.10.2016
9	Company I	30.6.2016	27.1.2017
10	Company J	30.10.2016	27.1.2017
11	Company K	31.12.2016	31.5.2017
12	Company L	31.12.2015	15.12.2016
13	Company M	30.11.2016	5.5.2017
14	Company N	18.9.2016	27.10.2016
15	Company O	31.12.2016	30.8.2017

2. Mr Moriarty has been a member of ACCA since 16 August 1999. He has been a Fellow of the Association since 16 August 2004. He is the sole principal of Charles Moriarty and Company ('the firm'). Between 2 March 2012 and 27 March 2018, Mr Moriarty held a practising certificate with audit qualification (Ireland) and, between the same dates, his firm held an auditing certificate. Following the relinquishing by Mr Moriarty of his audit qualification and the firm's audit certificate he has, since 27 March 2018, held a general practising certificate with ACCA.
3. On 9 January 2018, the firm had a scheduled monitoring visit to confirm that it was in compliance with the applicable statutory requirements and to ensure proper adherence to the International Standards on Auditing ('ISA'). The visit was the firm's second, the first monitoring visit having taken place on 23 June 2015.

4. On 21 August 2017, ACCA emailed Mr Moriarty to confirm that the visit would take place on 9 January 2018. The email also requested that Mr Moriarty provide *'the list of audit and regulatory clients by return email, no later than two weeks prior to the visit date.'* It also stated: *'Please note that in relation to audit work you will need to have all evidence and documentation that you intend to place reliance on available for inspection at the visit. Additional documentation submitted after the visit will not be taken into consideration.'*
5. In addition, an information sheet was attached to the email, notifying Mr Moriarty of the information and documents that would need to be available for the visit. These included:

*'11. List of clients on which the firm has issued any form of audit report (or report to a regulator such as the Law Society of Ireland and the Central Bank of Ireland) **within the 24 months prior to the monitoring visit, whether or not the firm still holds the appointment**, detailing name, activities, turnover, fees and partner responsible.*

(...)

*'15. Audit and other files (including permanent notes/correspondence) relating to audit and/or regulated clients on the list produced for item 11 should be available for inspection.'* (Emphasis in the original).

6. Mr Moriarty did not provide a list of audit and regulatory clients to ACCA before the monitoring visit.
7. The visit was conducted by a Senior Compliance Officer ('the SCO') with ACCA. Prior to the visit, in accordance with usual procedures, the SCO accessed an online search engine to determine, at Companies Registration Office, the audit reports Mr Moriarty had signed off in the 24 months prior to the monitoring visit. The information indicated that the firm had provided audit opinions on nineteen audit clients.

8. At the commencement of the visit on 9 January 2018, Mr Moriarty provided a list of fifteen out of nineteen audit clients where he had given an audit opinion. The SCO asked Mr Moriarty whether he had audit files for these clients. Mr Moriarty confirmed that he had files for only four audit clients and the SCO selected three of those four files for inspection.
9. Following his discussion with Mr Moriarty, the SCO sent an email to him at 11.00am on the morning of the visit. In the email, Mr Moriarty was asked to provide certain information to the SCO by the end of the day in respect of the outstanding fifteen reports which had been issued by Mr Moriarty and his firm, so that the SCO could ascertain the extent of the audit work undertaken.
10. No response was forthcoming from Mr Moriarty in the course of the day to the SCO's email. The SCO met with Mr Moriarty at the closing meeting and asked him about a response to his email. Mr Moriarty advised that he had just opened the email and could not properly concentrate as he had been feeling unwell.
11. On 26 February 2018, the SCO referred the matter to the Assessment Department of ACCA for further investigation. The SCO raised concerns touching upon Mr Moriarty's fitness and propriety and, in particular, the fact that Mr Moriarty could not produce audit files for the fifteen clients on which he had issued audit opinions on the financial statements. On 11 April 2018, ACCA notified Mr Moriarty of the referral and, by way of letter dated 14 June 2018, posed Mr Moriarty a detailed set of questions arising out of the SCO's referral.
12. In an undated letter, in response to the letter sent to him by ACCA dated 14 June 2018, Mr Moriarty accepted that, due to illness, he had not checked his emails on the day of the monitoring visit and was not aware of it until it was raised by the SCO at the closing meeting. In respect of the provision of the outstanding audit files, Mr Moriarty stated that, *'...I did not have the time to satisfy the queries raised and although I may be mistaken, I was under the impression that if I did not provide the information on the day then to do so afterwards would be futile.'* In his response, Mr Moriarty advised that the time around the second monitoring visit had been a particularly busy period in his practice. He had been implementing new practice software against a backdrop of substantial changes in the legislative and regulatory frameworks in

the Republic of Ireland concerning audit work. He also set out that it had been a turbulent time for him personally and his family.

13. Mr Moriarty also provided documentation to ACCA, with his undated letter, in respect of the fifteen audit files. During the course of the investigation, the SCO was furnished with this documentation. In respect of each of the fifteen audit clients, the SCO highlighted deficiencies contained within the papers, which he considered rendered the audit files in breach of the International Standards on Auditing ('ISA').

### **ACCA's CASE**

14. Mr Jowett, on behalf of ACCA, made a submission to the Committee. He set out the background which resulted in Mr Moriarty's referral. Mr Jowett's central submission was that the materials and papers produced by Mr Moriarty, in the course of the investigation, did not amount to audit work such as to warrant Mr Moriarty's opinion on the fifteen files. With reference to the statement provided by the SCO, Mr Jowett contended that there had been a '*wholesale failure*' by Mr Moriarty to comply with the ISAs and that he had failed to demonstrate that any audit work, in a meaningful sense, had been carried out on the files in question. In addition, the failures were not isolated and extended across a significant number of the overall number of audit appointments held by the firm. Mr Jowett contended that the applicable statutory regulations had been breached. Mr Jowett invited the Committee to infer from Mr Moriarty's actions that he had acted dishonestly and with a lack of integrity.

### **MR MORIARTY'S CASE**

15. Mr Moriarty gave evidence to the Committee. He set out the background that had resulted, in 2008, in his taking over the firm and thereafter, accepting audit appointments. Mr Moriarty told the Committee that the firms set out in Schedule A comprised three broad categories of entities: first, community employment schemes; second, companies entitled to exemption under the Companies Act 2014 and, third, entities that had ceased trading and which had undergone voluntary liquidation.

16. Mr Moriarty stated that, as a result of the limited financial opportunities realisable from the audit clients due to their size and purpose, he was under significant financial pressure to fulfil his statutory obligations as an auditor. In respect of the audit files for those companies set out in Schedule A, Mr Moriarty accepted that he did not have any files to hand over to the SCO on the day of the monitoring visit. He stated that he had intended to complete an audit pack for each client but that he was not able to complete that task in advance of the monitoring visit.
17. The Committee was also given Mr Moriarty's account of the closing meeting with the SCO. Mr Moriarty indicated that in March 2018, he had relinquished his practising certificate with audit qualification and the firm's audit qualification. Mr Moriarty said that he was given to understand by the SCO at the meeting that no useful purpose would be served by forwarding audit files after the date of the monitoring visit. Further, Mr Moriarty was given the impression by the SCO that, as a result of his inability to produce the audit files requested at the time of the visit, he would face a '*sanction*' in that regard. Mr Moriarty referred to the decision of the Regulatory Assessor dated 7 February 2019 as evidence of the sanction he had understood he had received. The decision of the Regulatory Assessor confirmed that Mr Moriarty was required to make any future application for an audit certificate to the Admissions and Licensing Committee in respect of an audit qualification and that this fact would be publicised in the local press and on ACCA's website.
18. While accepting that the standard of the work performed on the audit files was insufficient for audit purposes, Mr Moriarty did not accept that no work at all had been carried out. Further, while accepting that his actions breached the ISAs, Mr Moriarty denied that he had acted dishonestly or with a lack of integrity. However, when pressed during questioning, Mr Moriarty accepted that, adopting a '*legalistic*' approach, his actions did breach the applicable Global Practising Regulations and the principle of competence and due care.

#### **DECISION ON ALLEGATIONS AND REASONS**

19. The Committee had careful regard to all the available documentary evidence, which included written submissions on the facts that were provided by ACCA

and Mr Moriarty on the second day of the hearing. The written submissions supplemented those made orally by Mr Jowett and Mr Moriarty on the first day of the hearing. The Committee accepted the advice of the Legal Adviser.

Allegation 1: proved

20. At the outset of the proceedings, Mr Moriarty admitted the facts of Allegation 1, with the exception of that part of Allegation 1(a), '*or at all*', that alleged that Mr Moriarty did not conduct any audit work on the audit reports that he had signed in respect of the companies set out at Schedule A. The Committee found Allegation 1 proved, to the extent admitted which included his admission that he had not acted in accordance with the applicable ISAs. The Committee then considered that part of Allegation 1(a) that Mr Moriarty had not admitted. In that regard, the Committee accepted the unchallenged evidence from the SCO who had opined that the work submitted subsequently by Mr Moriarty demonstrated that no audit work had, in fact, been carried out by Mr Moriarty in respect of any of the audit files submitted. Accordingly, the Committee found Allegation 1 proved in its entirety.

Allegation 2: proved

21. The Committee then turned to consider whether Mr Moriarty was guilty of dishonesty, alternatively, lack of integrity, when he signed the audit reports. The Committee noted that Mr Moriarty did not produce any of the audit files for inspection by the SCO at the monitoring visit. In his evidence, Mr Moriarty stated that he had been unwell in the run up to and on the day of the monitoring visit. When pressed further, Mr Moriarty, in his evidence, accepted that there were no files to deliver up to the SCO on the date of the monitoring visit and that his intention would have been to put them together subsequently. Mr Moriarty blamed deficiencies in the implementation of a new audit pack in that regard. The Committee considered as implausible Mr Moriarty's account that, although he had acted with a lack of attention, he had not acted dishonestly. Mr Moriarty had accepted that, in fact, the files were not assembled on the date of the visit and should have been put together afterwards. He had had ample notice of the monitoring visit and had been afforded an ample opportunity to have the audit files ready for inspection for the SCO.

22. Mr Moriarty, on signing the audit reports in respect of each company in Schedule A, certified as auditor to the financial statements that they gave a true and fair view of the financial position of the company and that they had been properly prepared in accordance with the relevant financial reporting framework. Manifestly this was untrue. Further, Mr Moriarty in signing the audit reports for the companies set out in Schedule A had made statements as an auditor which he knew to be untrue. He had done so over a prolonged period in respect of a significant number of audit appointments. The Committee had no hesitation in finding that Mr Moriarty had been dishonest in acting as he did and that such conduct would be regarded as being dishonest according to the standards of ordinary and decent people. The Committee also found proved that, by his actions, Mr Moriarty had acted with a lack of integrity.
23. Global Practising Regulation ('GPR') 16(1)(a) (applicable 2016 – 30 June 2017) required that *'In the conduct of audit work holders of an audit qualification and firms holding an auditing certificate shall comply with...the International Standards on Auditing...issued by the Financial Reporting Council.'* Further, the Committee noted that GPR 13(a)(ii) (applicable 1 July 2017 onwards) required auditors, in the conduct of audit work for those audits of financial periods beginning on or after 17 June 2016, to comply with the ISAs (Ireland) and ISAs (UK and Ireland). Although formally denied at the outset of the proceedings, Mr Moriarty accepted in the course of his evidence that an admission (as contained in Allegation 1) that he had acted otherwise in accordance with the applicable ISAs meant that he had acted in breach of the GPRs in force at the time. Further, and on the same basis, Mr Moriarty accepted that his admission to having acted in breach of the ISA, also rendered him in breach of the fundamental principle of professional competence and due care (2016-2017). The Committee considered that these admissions were well founded and in accordance with the evidence.
24. Accordingly, the Committee found Allegation 2 proved in its entirety.

Allegation 3: proved

25. In relation to Allegation 3, the Committee was satisfied that in respect of Allegations 1 and 2 Mr Moriarty's conduct was serious, brought discredit on him,

the accountancy profession and ACCA and amounted to misconduct. The alternative charge of being liable to disciplinary action as set out in Allegation 4 fell away as a consequence.

## **SANCTION AND REASONS**

26. The Committee heard a submission from Mr Jowett on the question of sanction. The Committee was informed that Mr Moriarty had no previous disciplinary findings against him. Mr Jowett outlined to the Committee that Mr Moriarty had charged approximately €10,000 in fees for audit reports submitted and that the Committee should have regard to that matter when deciding on the appropriate sanction. Otherwise, he left the question of sanction to the Committee's judgement.
27. Mr Moriarty made a submission to the Committee. He stated that he felt '*aggrieved*' at the proceedings brought against him. Mr Moriarty stated that he had relinquished his and his firm's audit certificates on the basis of an understanding which, he said, had been given to him by ACCA that such a step would bring an end to the matter. Mr Moriarty further stated that he considered that he had already been sanctioned by the Regulatory Assessor and had his details widely publicised. The proceedings had also been stressful for him and his family.
28. The Committee accepted the advice of the Legal Adviser and considered ACCA's Guidance for Disciplinary Sanctions, with effect from 1 January 2019 ('the Guidance'). In considering what sanction to impose, the Committee had regard to the principle of proportionality and the need to balance the public interest against Mr Moriarty's interests. The Committee also bore in mind that the purpose of a sanction was not to be punitive but to protect members of the public, maintain public confidence in the profession and ACCA and to declare and uphold proper standards of conduct and performance.
29. At the outset and on the basis of Mr Moriarty's audit status in the Republic of Ireland, the Committee had regard to section B8 of the Guidance. It noted that Mr Moriarty, in his evidence, had stated that the flat fee charged by him to his audit clients encompassed both audit work and services of a more general

accountancy nature. As a result, the Committee could not accurately determine the extent of any profit made by Mr Moriarty for audit work specifically in relation to the overall fees charged to the firm's clients. In addition, the Committee did not consider that any of the provisions applied, as set out in section B8 that would prevent details of Mr Moriarty's case being publicised.

30. The Committee considered the mitigating factors. It noted Mr Moriarty's clear disciplinary record and his evidence that, at the time, he was experiencing a degree of personal and professional difficulty at the time of the Allegations. He had made partial admissions to the Allegations at the hearing and had surrendered his audit certificate and that of the firm subsequent to the monitoring visit. He had also engaged and cooperated in the regulatory investigation, following the monitoring visit, into his conduct.
31. Set against this, however, was Mr Moriarty's limited insight into his conduct. He had failed to properly understand the role and function of the Regulatory Assessor and that his determination related to any application by Mr Moriarty or his firm for an audit certificate in the future. In his submissions, Mr Moriarty had also failed to acknowledge how his actions could undermine trust and confidence in the accountancy profession. He had engaged, over a prolonged period, in making dishonest statements as an auditor in respect of the financial statements of the companies set out in Schedule A. There was a heavy responsibility, to the Committee's mind, on an auditor to ensure that such statements gave an honest and clear account of the company's affairs which could, and would, be relied upon by third parties. Upon listening to the careful questioning of Mr Moriarty in this regard, it seemed clear to the Committee that he struggled to fully come to terms with that concept.
32. Having regard to its findings of fact, Mr Moriarty's limited insight and the serious nature of the misconduct made out, the Committee did not consider that the public interest would be upheld or protected by taking no further action against Mr Moriarty or imposing an Admonishment or Reprimand as a sanction.
33. Mr Moriarty had acted, over a significant period, in a wilful and intentional manner in a way that undermined the trust and confidence which the public placed in the accountancy profession and ACCA in its regulatory function.

Despite its finding of dishonesty, however, it was noted that there was no evidence that direct or indirect harm had been caused by his actions. Mr Moriarty had demonstrated limited insight and taken corrective steps to avoid a repeat of the behaviour complained of by relinquishing his and his firm's audit certificates. He had also cooperated and engaged at all stages in respect of the regulatory investigation undertaken by ACCA. For these reasons, the Committee decided that it was appropriate and proportionate to impose a Severe Reprimand. The Committee noted that it had made a finding of dishonesty which struck at the bedrock of the accountancy profession. While the Committee considered, on balance, that exclusion from membership was disproportionate, it considered that the public interest could only be adequately upheld and maintained by imposing a fine of £1,000 in conjunction with a Severe Reprimand.

#### **COSTS AND REASONS**

34. ACCA tabled an additional bundle (1) numbering pages 1297-1299 and an additional bundle (2) numbering pages 1300-1302 on the question of costs. Mr Jowett submitted that ACCA's case had been wholly successful and applied for costs against Mr Moriarty in the sum of £13,969.30.
35. Mr Moriarty made a submission to the Committee. He set out his financial position and commitments. Mr Moriarty stated that he would face a heavy financial burden if he was ordered to pay the costs sought by ACCA.
36. ACCA had been successful in the proceedings and so was entitled to its costs. It noted that the proceedings had finished somewhat ahead of schedule on the second day. The Committee also considered that the 14 hours claimed by ACCA for the completion of the SCO's statement by a Senior Investigations Officer could not be sustained. As a result, it was considered that some downward revision of costs was warranted. The Committee therefore ordered that Mr Moriarty should pay the sum of £12,000 in costs to ACCA.

**Maurice Cohen**

**Chairman**

**26 March 2019**