

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Charlotte Callaghan

Heard on: Tuesday, 04 August 2020 and Thursday, 20 August 2020

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

Committee: Mrs Kathryn Douglas (Chair)
Ms Andrea White (Accountant)
Ms Suzanne McCarthy (Lay)

Legal Adviser: Ms Judith Chrystie

Persons present

and capacity: Mr Philip Law (ACCA Case Presenter)
Mr Jonathan Lionel (Hearings Officer)
Mr Gerald O'Donnell (Member's Legal Representative)

Observer: Ms Michelle Terry (ACCA Case Presenter)

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PRELIMINARY MATTERS

ADJOURNMENT APPLICATIONS

1. On 31 July 2020, Miss Callaghan emailed ACCA requesting an adjournment of the hearing. ACCA made written submissions opposing the application. In accordance with Regulation 10(8)(b)(ii) of the Complaints and Disciplinary Regulations 2014 (as amended) ('the Regulations'), the Chair considered whether to grant the application. In a written determination dated 02 August 2020 she set out her reasons for refusing the application.
2. At the hearing on 04 August 2020, the Committee reconsidered the adjournment application in accordance with the requirement to do so under Regulation 10(8)(b)(ii) of the Regulations. It considered a further written submission from Miss Callaghan dated 03 August 2020 and heard further oral submissions on behalf of her and ACCA. The Committee considered whether the application to adjourn was justified in all the circumstances. In a written determination dated 04 August 2020, the Committee decided that, on balance, it should allow the adjournment. It made directions for the swift and prompt handling of the matter by way of an urgent relisting.
3. In a letter from her solicitor, Mr Gerald O'Donnell, dated 13 August 2020, Miss Callaghan made a request for a further adjournment. ACCA opposed an adjournment. The Chair refused the application in a written determination dated 18 August 2020.
4. At the hearing on 20 August 2020, Mr O'Donnell withdrew the application to adjourn on his client's behalf. As a consequence, there was no application for the Committee to reconsider.

ALLEGATIONS

5. The Committee considered the following allegations.

Miss Charlotte Callaghan, a member of the Association of Chartered Certified Accountants ('ACCA'):

1. On dates between 01 April 2019 and 18 September 2019, contrary to Global Practising Regulations 14(2) and/or 14(3) (2019), failed to provide necessary information to, and/or co-operate with, the ACCA, by not preparing and/or providing an action plan, as requested.
2. On one or more of the dates set out in Schedule A, contrary to Complaints and Disciplinary Regulation 3(1) (2020), failed to co-operate with an Investigating Officer in relation to the consideration and/or investigation of a complaint.
3. By virtue of any or all of the facts in Allegations 1 and 2, is:
 - (a) Guilty of misconduct pursuant to byelaw 8(a)(i); or, in the alternative,
 - (b) Liable to disciplinary action pursuant to byelaw 8(a)(iii).

Schedule A

Date of communication sent by Investigation Officer	Form of communication
21 February 2020	Letter sent by post
17 March 2020	Letter sent by post and email
01 April 2020	Letter sent by email

6. Miss Callaghan became a member of ACCA on 15 October 2001 and a Fellow of ACCA on 15 October 2006. She is the current holder of a practising certificate and audit qualification (Ireland and UK).
7. The Committee considered the following papers:
 - a. Main bundle pages 1 to 134;

- b. Adjournment application bundle (containing email from Miss Callaghan dated 31 July 2020, undated response from ACCA and the Chair's written decision dated 02 August 2020);
- c. Tabled additional bundle 1 pages to 1-6;
- d. Service bundle for 04 August 2020 pages 1-23;
- e. ACCA Case Presenter Powerpoint presentation for 04 August 2020;
- f. Committee's decision to adjourn and issue direction dated 04 August 2020 with pages numbered 1-4;
- g. Application to adjourn from Mr O'Donnell on behalf of Miss Callaghan dated 13 August 2020, ACCA's response dated 18 August 2020 and Chair's decision to refuse that application dated 18 August 2020;
- h. Additional bundle 2 pages 1-25;
- i. Service bundle for 20 August 2020 pages 1-11;
- j. ACCA Powerpoint presentation for hearing on 20 August 2020 pages 1-34; and
- k. Additional bundle 3 with pages 1- 7 (material from Miss Callaghan).

Allegation 1

- 8. On 26 February 2019, ACCA conducted a monitoring visit. The overall visit outcome was considered satisfactory. However, one of the files inspected was unsatisfactory.
- 9. On 01 March 2019, ACCA's Compliance Officer wrote to Miss Callaghan to confirm the outcome of the visit and to require her to complete a template action

- plan of future improvements in response to the findings of the monitoring visit by 01 April 2019.
10. ACCA sent further correspondence to Miss Callaghan seeking the action plan on 03 April 2019 and 18 April 2019.
 11. On 30 April 2019 Miss Callaghan sent an email to ACCA, in which she:
 - a. Apologised for not replying sooner;
 - b. Advised she had been unwell;
 - c. Stated that she would “*definitely*” respond by the end of the week and that she was, “*doing my utmost given my circumstances to get a reply to you.*”
 12. In the absence of the action plan, on 17 September 2019 ACCA’s Compliance Officer sent an email to Miss Callaghan asking her to provide her action plan by the close of business the following day in default of which she would be referred to Assessment. No action plan was received and the referral was made on 27 January 2020.
 13. At the hearing on 04 August 2020, Miss Callaghan stated that she had now completed the action plan and would submit it to ACCA. The Committee made a direction that the action plan should be submitted by noon on 05 August. Miss Callaghan submitted the plan on 07 August 2020.

Allegation 2

14. On 21 February 2020, ACCA’s Investigating Officer wrote to Miss Callaghan seeking answers to a number of questions by 13 March 2020 and identifying her duty to co-operate with ACCA’s Investigation.
15. In the absence of any response, the Investigating Officer sent further letters to Miss Callaghan on 17 March 2020 and 01 April 2020.

16. On 15 April 2020, ACCA's Investigating Officer wrote to Miss Callaghan to advise that she had not received any reply and that a report of disciplinary allegations would therefore be prepared.

Submissions

17. On behalf of ACCA, the Case Presenter argued that Miss Callaghan's conduct was both serious and deplorable in that she:
 - a. Had ignored requests for action to be taken to address deficiencies in her practice identified at the monitoring visit in 2019;
 - b. Continued to audit clients despite the fact that she had not engaged with her regulator and created a risk to the public in doing so;
 - c. Had exacerbated the matter by failing to cooperate with the disciplinary investigation;
 - d. Had disregarded the regulations to which she was bound thereby undermining public confidence in the regulatory process; and
 - e. Brought discredit to herself, the profession and ACCA through her actions.
18. At the hearing on 20 August 2020, Mr O'Donnell advised that Miss Callaghan admitted factual allegations 1 and 2. He submitted that his client had undoubtedly fallen short of the behaviour expected of an accountancy professional and she fully accepted that she had been wrong. He put it to the Committee that her conduct was not at the serious end of the misconduct spectrum and that no member of the public had been placed at risk.
19. In mitigation, Mr O'Donnell said that Miss Callaghan:
 - a. Had put her head in the sand which had resulted in her being before the Committee – the need for a hearing was of her own making;

- b. Fully accepted that she was wrong and that she should have submitted the action plan and engaged with ACCA as required;
 - c. Had sought help in producing the action plan, and there should be no future difficulties;
 - d. Had learned lessons – and the costs incurred in the case provided a significant lesson caused by her omission to act that underscored that one paid the price for a failure to comply;
 - e. Confirmed there would be no repetition; and
 - f. Apologised to ACCA and to the Committee for the inconvenience.
20. Mr O'Donnell submitted that whilst there was no justification for her conduct, there were difficulties that caused her distraction and stress:
- a. A close family member had been ill, which had impacted on Miss Callaghan, particularly given her significant family responsibilities; and
 - b. She had a small but busy practice of which she was the sole practitioner. Owing to staff illness and maternity leave, four members left the practice and she had struggled to find suitable replacements in a geographical area of Ireland without a significant pool of suitably experienced staff

21. Mr O'Donnell argued that the Committee should exercise its discretion to impose no disciplinary order or one of admonishment.

DECISION ON FACTS/ALLEGATIONS AND REASONS

22. Through her representative at the hearing, Miss Callaghan admitted the factual allegations set out in Allegations 1 and 2. In accordance with Regulation

12(3)(c) of the Complaints and Disciplinary Regulations 2014 (as amended), the Chair announced that those facts were found proved.

23. Having made findings that Allegations 1 and 2 were proved, the Committee considered whether they amounted to misconduct.
24. In respect of Allegation 1, the Committee recognised that Regulation 14(2) and/or 14(3) of the Global Practising Regulations (GPR) required the member to:
 - a. Supply ACCA with all the information necessary to enable the Association to complete its monitoring process efficiently; and
 - b. Ensure (insofar as they are able) that all persons associated with them shall, co-operate with the Association in its monitoring and enforcement of compliance with these regulations and with the byelaws.
25. Miss Callaghan had submitted her action plan on 07 August 2019 – 16 months after ACCA's deadline. Whilst the delay in providing the action plan extended beyond the timeframe contained in Allegation 1, the Committee considered only the failure to comply with the GPR for the period 01 April to 18 September 2020 in judging whether or not the conduct fell far short of the standards expected of an accountant such that it amounted to misconduct.
26. In respect of Allegation 2. the Committee noted that Regulation 3(1) of the Regulations placed a duty on the member to *co-operate with any investigating officer in relation to the consideration and investigation of any complaint, including promptly providing information, books, papers or records.*
27. The Committee was satisfied that both jointly and independently the conduct found proved at Allegations 1 and 2 amounted to misconduct. Miss Callaghan's failures brought discredit to herself and to ACCA and the accountancy profession. This had the potential to undermine public confidence in the accountancy profession and its regulation.

28. Miss Callaghan was repeatedly reminded that her regulator required her to submit an action plan demonstrating how she intended to remedy deficiencies in her practice. She admitted that she 'stuck her head in the sand' but, in doing so, this was a deliberate choice to ignore her regulator's requests for a plan and, subsequently, in default of action from her, the investigation process. The Committee judged that such prolonged and repeated failures, in breach of the GPR and the Regulations, were seriously deficient. Her failures were compounded by the fact that on 30 April 2019, she made a commitment to her regulator to supply the action plan. This commitment was not fulfilled until August 2020, in the midst of a disciplinary process.
29. Throughout this time Miss Callaghan was representing to the public that she was regulated and compliant with her regulator. She completed audit reports having not submitted the action plan to address the unsatisfactory elements of her practice putting the public potentially at risk. She took action to maintain her practising certificate with ACCA whilst ignoring correspondence about the action plan and investigative process. It is entirely unacceptable for members to pick and choose the elements of the regulatory regime with which they wish to comply; they cannot engage with the benefits whilst ignoring the obligations and duties.
30. The Committee concluded Miss Callaghan's conduct fell seriously below the standards expected of an accountant such that she was guilty of misconduct.

SANCTION AND REASONS

31. The Committee had regard to the Guidance for Disciplinary sanctions ('the Guidance'). It also considered whether the Statutory Auditors and Third Country Auditors Regulations 2016 or Statutory Auditors and Third Country Auditors Regulations 2016 for the Republic of Ireland applied. It accepted the advice of the Legal Adviser and the submissions of both parties in concluding that they did not.

32. The Committee considered the mitigation in the case. It was advised that there was no disciplinary history; Miss Callaghan had a previous good record. The Committee acknowledged that Miss Callaghan had constructively engaged and cooperated in the disciplinary hearing itself (having failed to do so with the investigation process) and had belatedly remediated her failure to submit an action plan in respect of the monitoring visit in February 2019. (A Disciplinary Committee has no role in assessing the adequacy of the plan).
33. The Committee was satisfied that Miss Callaghan was genuinely apologetic, demonstrated insight (albeit belatedly) and was self-aware about her wrongdoing. Further, the Committee recognised that there was personal mitigation relating to a family member's illness and the loss of critical and long-serving staff over the period of the allegations. These colleagues had been difficult to replace. The Committee accepted that these series of events would have had some impact on Miss Callaghan's stress levels, the resourcing of her business and her ability to respond.
34. However, the Committee considered that there were aggravating circumstances. There was a prolonged failure to engage with her regulator, despite numerous communications from ACCA. Miss Callaghan continued to present herself as a compliant, regulated individual. She ignored her regulator, failed to comply with ACCA's regulatory obligations and continued to represent herself as being fully and properly regulated. In April 2019, Miss Callaghan made a commitment to ACCA to submit the action plan within a week and had failed to fulfil that commitment.
35. In balancing both the aggravating and the mitigating factors in the case, the Committee determined that the misconduct was serious and, as a consequence, the matter could not be concluded in the public interest by making no order or imposing an admonishment. Such an approach would not reflect the gravity of the misconduct and would fail to uphold public confidence in the regulation of the accountancy profession.
36. The Committee also considered that concluding the matter with a reprimand would be inadequate considering the public interest. Miss Callaghan's

misconduct was serious in nature; this was not a minor failing of the standards expected. She repeatedly ignored requests and advice from ACCA; her failures were not the result of misfortune but, as she accepted, were of her own making. Miss Callaghan made a choice to disregard her professional obligations; the misconduct continued for a prolonged period and was repeated given the number of reminders and communications she received from ACCA. As reflected in the allegations, Miss Callaghan did not engage in the process so made no early admission of the facts or of her misconduct; and, whilst there is no evidence that any member of the public was impacted by the misconduct, ACCA was certainly inconvenienced and had to expend significant resources on this matter.

37. The Committee considered that it was proportionate and appropriate to conclude the matter with a severe reprimand and that such an order reflected Miss Callaghan's previous good record with ACCA and her subsequent engagement with the regulatory process.
38. The Committee was satisfied that Miss Callaghan's misconduct was not fundamentally incompatible with her remaining as a member of ACCA. Whilst the Committee regarded the misconduct as serious, it believed that the risk of repetition was low. Whilst it formed the view that Miss Callaghan had been reckless, it accepted that she had not intended to cause harm. Further, the Committee was satisfied that, through the representations made on her behalf, Miss Callaghan had developed insight into her failings, had expressed a genuine apology, had belatedly remediated and corrected her failings and had cooperated and engaged with this disciplinary hearing.
39. The Committee considered whether an order for severe reprimand should be combined with any other order and determined that to do so was not necessary in the public interest.
40. The Committee ordered that Miss Callaghan be severely reprimanded.

COSTS AND REASONS

41. ACCA claimed costs in the sum of £7,834.00. Having considered the schedule submitted by ACCA, the Committee was satisfied that the costs were reasonable and had been reasonably incurred.
42. Miss Callaghan had not provided a statement of financial position which set out her income and expenditure and assets. This meant that the Committee had very limited information on which to make a judgement about her means to pay the sums claimed. Further, no submissions were made that a cost order would impose an undue hardship upon her.
43. In the absence of any detailed financial information or submissions, and given that ACCA's membership should not be responsible for paying the costs of regulatory proceedings that have been justifiably brought and the consequence of Miss Callaghan's own failures, the Committee did not consider that it was appropriate to reduce significantly the costs claimed by ACCA.
44. However, uncorroborated, but unchallenged, evidence about Miss Callaghan's gross income was made in submissions. The Committee considered her income level and her dependencies with five children would have an impact on Miss Callaghan's means to pay the total amount claimed by ACCA. The Committee was, therefore, satisfied that some discount should be made and ordered that Miss Callaghan should pay costs to ACCA in the sum of £6,500.

Mrs Kathryn Douglas
Chair
20 August 2020