

CONSENT ORDERS HEARING

CONSENT ORDERS COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Peter McDonnell
Considered on:	Monday, 22 February 2021
Location:	Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU
Chair:	HH Suzan Matthews QC
Legal Adviser:	Mr Andrew Granville Stafford
Outcome	Consent order approved Member reprimanded
Costs:	£1709.00

INTRODUCTION

1. This matter has been referred to the Consent Orders Committee of ACCA ('the Committee') pursuant to Regulation 8(8) of the Complaints and Disciplinary Regulations ('CDR') for the Committee to determine on the basis of the evidence before it whether to approve the draft Consent Order.
2. The Committee had before it a bundle of 160 pages, a Consent Order Draft Agreement and a service bundle.

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CONSTITUTION OF THE COMMITTEE

3. Regulation 5(7) of The Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014 states:

'(7) The Consent Orders Committee shall consist of either a Chairman and a Legal Adviser, or an Assessor and a Legal Adviser.'

4. For avoidance of doubt, the Legal Adviser is an independent barrister or solicitor; the meaning of a Legal Adviser is as generally set out in ACCA's Regulations. The Committee proceeds on the basis that the Legal Adviser's role is advisory only. The Legal Adviser is not a voting member of the Committee as this would be a departure from the function of a Legal Adviser. Therefore, this is the determination of the Chair alone.

CONSENT ORDER DRAFT AGREEMENT

5. The Consent Order Draft Agreement was signed by Mr McDonnell on 27 January 2021 and by a representative of ACCA on 29 January 2021. It reads as follows.

'Association of Chartered Certified Accountants (ACCA) and Mr McDonnell (the parties), agree as follows:

Allegations, sanction and costs

Mr McDonnell admits the following allegations:

1. *Mr McDonnell, a Fellow member of ACCA and principal of Peter McDonnell & Co:*
 - 1.1 *Did not respond in a timely manner or at all to communications from Person A in 2015 and 2017-2018, contrary to the fundamental principle of professional behaviour;*
 - 1.2 *Did not file tax returns with Revenue on behalf of persons B, C, D and business E in a timely manner in 2017-2020, contrary to the fundamental principle of professional competence and due care;*

- 1.3 *Did not obtain an engagement letter with persons C, D or business E, contrary to section 89(5) of ACCA's Code of Ethics and Conduct (2016-2020).*
2. *By reason of the facts in 1 above, Mr McDonnell is guilty of misconduct pursuant to byelaw 8(a)(i).*
 - 2.1 *Mr McDonnell shall be reprimanded and shall pay costs to ACCA in the sum of £1,709.00.'*
6. The background and facts are set out in an appendix to the agreement which reads as follows:

'Relevant facts, failings and/or breaches

5. *ACCA's Investigating Officer has conducted an investigation into the allegations against Mr McDonnell in accordance with Complaints and Disciplinary Regulation 8(1)(a) and is satisfied that:*
 - a. *They have conducted the appropriate level of investigation as evidenced by the enclosed evidence bundle, and determined that there is a case to answer against Mr McDonnell and there is a real prospect of a reasonable tribunal finding the allegations proved;*
And
 - b. *The proposed allegations would be unlikely to result in exclusion from membership.*
6. *The relevant facts, failings and/or breaches have been agreed between the parties and are set out in the detailed allegations above, together with the proposed sanction and costs.*
7. *A summary of key facts is below:*

Background

- *Mr McDonnell acted - as engagement partner at S McRory & Co, an*

ICAEW firm - for person B and his business, business E, until person B's death on 06 August 2001. The executors of person B's estate, persons C and D, retained Mr McDonnell thereafter to deal with outstanding pre-death tax matters as well as tax matters relating to the administration of the estate. This included filing tax returns on behalf of persons C and D and business E which they continued to run until 02 February 2010 (page 72).

- *Mr McDonnell ceased to be a partner at S MacRory & Co on 31 December 2015 and started his own sole practitioner firm, Peter McDonnell & Co, on 01 January 2016 (page 103). All client files which Mr McDonnell was in charge of as partner at S MacRory & Co were transferred to Peter McDonnell & Co (page 103).*
- *Person A has acted for persons C and D since 2002 (page 72) and complained to ACCA on their behalf (pages 9-11).*

Allegation 1.1

- *On 16 April 2015, Person A wrote to Mr McDonnell with a number of questions (pages 83-84). However, Mr McDonnell did not answer these until 15 December 2015 (pages 89-90) and he advised Person A 'I regret the delay in dealing with these matters' (page 89).*
- *Person A and Mr McDonnell corresponded further between 2017 and 2018 about tax filings required to be made to Revenue (pages 13-41), but there were a number of delays and failures by Mr McDonnell to respond. Following person A's complaint to ACCA, Mr McDonnell advised him '... I wish to apologise most profusely for ... my lack of engagement with yourself...' (page 43).*

Allegation 1.2

Pre-death tax return

- *On 18 July 2017, Person A advised Mr McDonnell that a tax return needed to be filed with Revenue in respect of Person B covering the period 06 April 2001 to 06 August 2001 before Revenue could issue pre-*

death clearance (page 23). However, Mr McDonnell did not file this return with Revenue until 2019 (pages 68-69).

Post-death tax return

- On 04 October 2010, Mr McDonnell requested missing bank statements from Person C so that he could prepare cessation accounts of business E (page 113). After a long delay, Person A provided information to Mr McDonnell and business E's bank for this purpose in February 2016 (pages 118-121). In May 2017, Person A informed Mr McDonnell that he had contacted Revenue and been informed that tax returns for 2003 to 2017 had to be filed and any tax paid (page 14). Mr McDonnell subsequently reactivated the tax number for Person B's estate so that the required tax returns could be filed (page 16). Person A subsequently sent numerous communications to Mr McDonnell about the tax returns required to be filed with Revenue (pages 17-41), but without success, and this led him to complain to ACCA (pages 9-11). Following the complaint, Mr McDonnell advised Person A 'I wish to apologise most profusely for my lack of action on bringing the taxation matters of the Estate to a timely conclusion ... ' (page 43).
- Mr McDonnell ultimately made all required filings of tax returns with Revenue, with the last filings being made and Revenue clearance issued in or around September/October 2020 (pages 150-151).

Allegation 1.3

- When asked by ACCA to provide copies of engagement letters, Mr McDonnell advised that there were no engagement letters (page 103).

Sanction

8. The appropriate sanction is reprimand.
9. In considering this to be the most appropriate sanction, ACCA's Guidance for Disciplinary Sanctions has been considered, in particular Sections C3.1 to C3.5, and the key principles.

One of the key principles is that of the public interest, which includes the following:

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

Another key principle is that of proportionality, that is, balancing the member's own interests against the public interest.

10. *Further the aggravating and mitigating features of the case have been considered:*

Aggravating factors

- *The delays by Mr McDonnell in responding to communications and making requested tax filings covered a considerable period of time;*

Mitigating factors

- *A significant time passed after the death of Person B (06 August 2001) and the cessation of trade of business E (February 2010) before Person A wrote to Mr McDonnell and pressed him about the relevant tax affairs/returns. This appears to have been due a delay in probate being granted. ACCA has not received any evidence that Persons C or D pressed Mr McDonnell in the meantime. In the intervening period, Mr McDonnell also left S MacRory & Co and began his own firm;*
- *Mr McDonnell has admitted that he delayed in responding to person A's communications and dealing with the tax returns;*
- *Mr McDonnell has apologised to Person A for the above;*

- *The delays by Mr McDonnell appear to have been isolated to this particular case. ACCA has not received any other complaints alleging similar delays by Mr McDonnell in responding to communications or making tax filings;*
- *Mr McDonnell ultimately liaised directly with Revenue as necessary and made all required tax filings, after which clearance was issued. It appears that some of the later returns were required by Revenue only because the tax code of person B's estate had been reactivated to allow the filing of earlier returns;*
- *No evidence has been provided to ACCA of financial loss having been suffered as a result of conduct by Mr McDonnell;*
- *Mr McDonnell has co-operated with ACCA's investigation.*

11. *ACCA has considered the other available sanctions and is of the view that they are not appropriate. A reprimand proportionately reflects Mr McDonnell's conduct and the public policy considerations which ACCA must consider in deciding on the appropriate sanction.'*

DECISION

7. The powers available to this Committee are to:
- (a) Approve the draft Consent Order, in which case the findings on the allegations and the orders contained in it become formal findings and orders (CDR 8(11) and 8(14));
 - (b) Reject the draft Consent Order, which it may only do if it is of the view that the admitted breaches would more likely than not result in exclusion from membership (CDR 8(12));
 - (c) Recommend amendments to the draft Consent Order, if it satisfied it is appropriate to deal with the complaint by way of consent but wishes the terms of the draft order to be amended (CDR 8(13)).
8. The Committee was satisfied it was appropriate to make a Consent Order in

the terms agreed between the parties.

9. The Committee was satisfied that the relevant facts are accurately set out in the agreed background and support the allegations which Mr McDonnell has admitted. The Committee noted that it had taken nearly 20 years following the deceased's passing to deal with his tax affairs and, whilst accepting there were some complexities in this matter, that length of time is on any view inordinate. The Committee also noted the extensive efforts made by Mr A over a long period of time to get Mr McDonnell to progress this matter.
10. Failing to deal with his professional obligations over a very lengthy period was, in the Committee's view, clearly an aggravating factor in this case. Nor did it consider that was there much by way of apology from Mr McDonnell.
11. However, the Committee accepted that this was, on the information before it, an isolated incident. Moreover, the situation has now been resolved. The Committee notes that ACCA has accepted there is no evidence of financial loss and that Mr McDonnell has co-operated with its investigation. Mr McDonnell has said he has learnt from the experience.
12. The Committee accepted that a more severe sanction was not, in this case, necessary to protect the public. It was satisfied that a reprimand was the appropriate and proportionate sanction. Mr McDonnell has agreed to pay the costs in the sum of £1,709 and this burden should clearly fall on his shoulders rather than that of the membership at large.

ORDER

13. The Committee made the following order:
 - i. The draft Consent Order is approved;
 - ii. Allegations 1 and 2 are proved in their entirety by admission;
 - iii. Mr McDonnell is reprimanded;
 - iv. Mr McDonnell is ordered to pay costs to ACCA in the sum of £1,709.

14. Under CDR 8(17) there is no right of appeal against this order. Therefore, this order comes into effect immediately.

HH Suzan Matthews QC
Chair
22 February 2021