

## HEARING

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

#### REASONS FOR DECISION

**In the matter of:** Miss Louise Marie Carey FCCA

**Heard on:** Monday, 25 January 2021

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

**Committee:** Mr Maurice Cohen (Chair)  
Mrs Sue Gallone (Accountant)  
Mrs Diane Meikle (Lay)

**Legal Adviser:** Mr Sanjay Lal (Legal Adviser)

**Persons present**

**and capacity:** Ms Michelle Terry (ACCA Case Presenter)  
Ms Louise Marie Carey  
Mr Eamon Dillon, Solicitor for Ms Carey  
Ms Geraldine Murray (Hearings Officer)

**Observers:** Ms Anna Alli  
Mr James Walker

**Summary:** Reasonable excuse existed  
  
No sanction or costs imposed

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## **PRELIMINARY APPLICATIONS/SERVICE OF PAPERS**

1. The Committee had before it a Main Bundle, pages 1-122, a Tabled Additional Bundle, pages 1-12, and a Service Bundle, pages 1-16.
2. At the outset of the hearing, Ms Terry applied for Allegation 2, as notified in the Notice of Hearing, to be withdrawn under the provisions of Rule 9(6) of the Complaints and Disciplinary Regulations 2020 (the "Rules") on the basis that there is no real prospect of a reasonable tribunal finding the matter being proved. She submitted that the judgement debt was in the name of the firm rather than Ms Carey.
3. Mr Dillon did not oppose this.
4. The Committee consented to the application to withdraw Allegation 2. It determined that Allegation 2, which related to Ms Carey's conduct, was not relevant to this case as it related to a judgment debt in respect of the liability of the firm of which Ms Carey was the Director. The Committee was satisfied that Allegation 2 ought to be withdrawn
5. Mr Dillon then made his own application to have the matter stayed generally as an abuse of process. This was on the basis that the main witness for the Defence, and indeed the original complainant in this case, had both passed away. He submitted that it would be unreasonable, unsafe and grossly prejudicial for the matter to proceed. He submitted that there would be prejudice to Ms Carey were the matter to proceed and a breach of her Article 6 rights to a fair hearing. He highlighted that he had always asked for the presence of the complainant to give evidence.
6. Ms Terry opposed this, stating that there was no explicit power within the Rules to stay the proceedings at this stage. She submitted that the real issue in this case was namely whether Ms Carey has a reasonable excuse for non-payment of the judgement debt.

7. The Committee determined that a stay on the grounds of an abuse of process would be an exceptional course of action. The Committee determined that there were no explicit powers in the Rules to stay proceedings. These are proceedings brought by ACCA in order to protect the public, uphold professional standards and maintain confidence in the profession. The Committee was satisfied it could determine the matter fairly and justly and attach such weight as it deemed appropriate to witnesses who are unavailable for cross examination as was explicitly provided for by the Rules.
8. Ms Terry then raised an additional matter relating to a witness for the defence. She submitted the witness for the defence had produced an undated witness statement only last week.
9. Mr Dillon submitted this was wholly incorrect, and the statement of his witness was produced in 2017, when he had physically attended a previous adjourned hearing on 02 May 2017 in London. He stated that his witness was available to give evidence and, therefore, he could be asked questions.

#### **ALLEGATION(S)/BRIEF BACKGROUND**

##### Allegation 1: (as amended)

- a. On 31 May 2016, judgement was entered against L.M. Carey & Co Limited in the sum of 1750 euros.
  - b. By reason of its failure to satisfy the judgement debt referred to in 1(a), above, within two months, without reasonable excuse, L.M Carey & Co Limited is liable to disciplinary action pursuant to byelaw 8(a) (viii).
10. Mr Dillon accepted on behalf of Ms Carey that Allegation 1(a) was admitted, but Allegation 1(b) was denied on the basis of reasonable excuse.
  11. On 31 May 2016, civil proceedings were heard at the Tralee Circuit Court, in which Ms A sought damages for breach of contract and unlawful termination of contract from L.M Carey & Co Ltd.

12. On that date, Judge T O'Sullivan ordered that Ms A recover from L.M Carey & Co Ltd a sum of €1,750.00 and costs of the proceedings. The Court order states the following:

*“The Defendant having been duly served with the Ordinary Civil Bill and the same coming for hearing before the Court this day. WHEREUPON and on reading the pleadings and documents filed herein and on hearing the evidence adduced and what was offered by Ms. C. Brick BL of Counsel for the Plaintiff (instructed by Firm A) and of Counsel for the Defendant (instructed by Thomas J. O'Halloran, Solicitor).*

1. *That the Plaintiff do recover from the Defendant the sum of €1, 750.00*
  2. *That the Plaintiff do recover from the Defendants the Costs of the Proceedings, including any Reserved Costs, on the lowest Circuit Court Scale to be taxed in default of agreement.”*
13. On 08 August 2016, Firm A, representing Ms A, complained to ACCA that the court ordered judgment of €1,750.00 had not been discharged by L.M Carey & Co Ltd.
  14. On 18 August 2016, Firm A submitted a further complaint form and supporting documentation, including the Court Order and correspondence to L.M Carey's solicitors, to ACCA.
  15. On 31 August 2016, ACCA sent a letter to Miss Louise Carey, Director of L.M Carey & Co Ltd, requesting that she comment on the allegation.
  16. On 06 September 2016, Miss Carey provided a response to ACCA regarding the allegation. Miss Carey informed ACCA on 06 September 2016 that the matter was subject to further court proceedings regarding the taxation of costs and other documents produced in court being queried.

17. On 21 September 2016, Miss Carey informed ACCA that the fees had been reduced at a hearing which took place before the Circuit Court on 19 September 2016.
18. On 07 November 2016, Mr A of Firm A informed ACCA that there was a matter regarding costs outstanding which was to be clarified by Judge O'Sullivan; a date for that hearing was to be fixed. Mr A informed ACCA that "*Miss Carey owes our client pursuant to Court Order the sum of €1,750.00 and that judgment remains undischarged*". Mr A provided copies of correspondence between himself, Miss Carey and Miss Carey's solicitors.
19. On 02 May 2017, Ms Carey served submissions, advancing the defence of reasonable excuse for her failure to settle the judgment debt at issue within the stipulated two-month time frame.
20. On 23 June 2017, Mr A provided a Witness Statement asserting that he had not received a cheque from Ms Carey on 26 September 2016, which Ms Carey maintains was hand-delivered on that date to Mr A's offices.
21. On 20 July 2017, Ms Carey communicated to both ACCA and the Complainant's Representative that she still had not received the final Certificate of Taxation in relation to the costs dispute.
22. Ms Terry did not call any live witnesses as Mr A was now deceased. Instead she submitted Ms Carey would have realised the cheque had not been cashed after the alleged delivery on 26 September 2016. She referred to the witness statement of Mr A, dated 22 June 2017, in which he stated that no cheque was received by hand delivery in September 2016.
23. Mr Dillon highlighted the unfortunate professional history between Mr A and Ms Carey. They had previous commercial and legal dealings which remain the subject of legal dispute. He submitted Ms Carey had instructed her legal representatives to appeal when judgement had been given against her. He submitted she was under the reasonable belief that she should not pay the judgement debt until the appeal was heard. He also highlighted that her solicitor

at the time was now deceased, and this was the source of some prejudice to Ms Carey, as her account could not be corroborated.

24. Ms Carey gave oral evidence to the Committee. She stated Mr A had been her solicitor for many years. She highlighted share certificates Mr A had held on behalf in trust as security for her professional practice. She highlighted the difficulties in the return of her share certificates, and this was a matter that was still ongoing and was now subject of legal proceedings against Mr A's firm.
25. She referred to her communication with Mr A in respect of her former employee who had issued proceedings against her and for whom Mr A had acted in the employment matter that resulted in the judgement debt. She stated when she returned home after the judgement, she asked her solicitor to appeal because she found additional evidence relevant to the issue. She stated she was advised to appeal, and her solicitor was appealing. She said she was told not to pay the judgement debt because of the appeal. She said that was her legal advice.
26. She said that subsequently she found out her solicitor had become ill and unfortunately passed away, and she also found out the appeal had not been lodged and, upon inquiry, the appeal costs would be prohibitive. She stated that she found this out in September 2016 and then gave the cheque to an employee, who took the cheque to Mr A and delivered it to his secretary. She did not see whether the cheque had been cashed as she would not reconcile her accounts until the end of the year.
27. Under cross examination, Ms Carey accepted she was obliged to adhere to the relevant byelaws and regulations. She confirmed she received correspondence in August 2016 from ACCA in relation to the complaint and her subsequent response on 06 September 2016. She maintained she was chasing the appeal with her solicitor over the telephone. In September 2016, she found out that the appeal had not been lodged. She accepted the first time she raised with ACCA the issue of an appeal was in May 2017. She maintained the cheque must have been received as it had been hand delivered so she presumed it had been cashed. She resent the payment in May 2017 via the Law Society. She

maintains she only found out the “September 2016” cheque had not been cashed when she was contacted by the Law Society in April 2017 in relation to the shares matter, when they informed her about the judgement debt. She maintained her understanding that the judgement debt was stayed by the appeal.

28. The Committee then heard from Witness 1 called on behalf of Ms Carey. He stated he remembered the summer of 2016, when he was on work experience at Ms Carey’s firm from June to end September 2016. He returned to college after this. On the last day of work, 26 September 2016, at around 4-4:30pm, he was asked to deliver a letter to Mr A’s firm. He saw the cheque being placed in the envelope by Ms Carey. The cheque was stapled to the top of the letter. He clarified that Ms Carey took out the cheque, wrote the cheque and put it in to the envelope. He walked up to Mr A’s firm, which was nearby, and entered the reception area. He handed the letter over to a member of staff for Mr A’s firm whom he recognised. She was positioned behind a reception area. She told him Mr A was in court. This was the only letter he had delivered to Mr A’s firm. It was the only letter he had in his hand. He thought he made his witness statement the following year.

#### **DECISION ON FACTS/ALLEGATION(S) AND REASONS**

29. The Committee was satisfied that the judgement debt was incurred on 31 May 2016. This was admitted at the outset. The Committee gave careful consideration to the respective submissions of both representatives. The Committee noted that Allegation 1 a was admitted at the outset and, therefore, it finds this Allegation proved.
30. The only issue for the Committee was whether Ms Carey has established a reasonable excuse not to satisfy the judgement debt under Allegation 1 (b). The Committee noted the burden rests on Ms Carey to the civil standard of a balance of probabilities. The Committee considered all the evidence before it and it had the benefit of hearing from Ms Carey and her witness. The Committee did not hear from Mr A as he was deceased and, therefore, has

attached such weight as was appropriate to his evidence contained in his witness statement, mindful that he was unable to be cross examined on it.

31. On balance, the Committee was satisfied Ms Carey has established on the facts that her explanation not to discharge the judgement debt was credible. The Committee accepted she was advised not to pay the judgement debt because the matter was under appeal and this was the legal advice she received at the time. Unfortunately, her solicitor at the time is now deceased. The Committee accepted that acting on legal advice in this case did establish a reasonable excuse for not discharging the judgement debt. The Committee noted the letter dated 06 September 2016 confirms her oral account that she thought the matter was under appeal and she did not have to pay the judgement debt.
32. In any event, it accepted her evidence and that of her witness that when she did find out the appeal was not progressing any further, she instructed her witness to physically take the cheque to Mr A's office. The Committee found the account of what happened on 26 September 2016 to be a credible one. The Committee accepted that the issuing of a cheque and hand delivering it to Mr A's office was reasonable in all the circumstances.
33. The Committee, therefore, found Allegation 1 (b) not proved. In light of its findings, the Committee did not consider the issue of sanction, as the matter effectively concludes in light of its decision above.

#### **COSTS AND REASON(S)**

34. In light of the findings above, Mr Dillon applied to the Committee for costs. He highlighted the huge stress that had been caused to Ms Carey. He accepted the right of ACCA to bring the case. However, he highlighted that from the moment Mr A had passed away in November 2019, ACCA should have terminated proceedings. He submitted that Allegation 1 (a), which was found proved, was a mere recital of the facts and the criticism which was contained in Allegation 1 (b) was found not proved. He advocated a sum in the region of



10-11 000 Euros to reflect the history of the matter although he had no schedule to provide to the Committee.

35. Ms Terry submitted that this was a right and proper case to bring in light of the judgement debt and ACCA have acted with all due expedition. She also highlighted the admission in respect of Allegation 1 (a).
36. The Committee having had regard to the Guidance on Costs, determined that there be no order for costs. The matter was clearly a right and proper case to bring in light of the judgement debt.

**Mr Maurice Cohen**  
**Chair**  
**25 January 2021**