

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Ms Clare Louise Jenner

Considered on: Wednesday, 12 October 2022

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

Chair: Mr Andrew Popat CBE

Legal Adviser: Mrs Sobia Hussain

Outcome: Consent Order Granted

DOCUMENTS BEFORE THE COMMITTEE

1. The Chair received a bundle of papers, numbered pages 1-187 and an assessor's bundle numbered pages 1-372 as well as a signed separate draft Consent Order.

ALLEGATIONS

2. Ms Clare Louise Jenner, an ACCA member admits the following:

Allegation 1

ACCA



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1. Pursuant to bye-law 8(a)(vii) (as applicable in 2018), Clare Louise Jenner FCCA is liable to disciplinary action in that on 14 November 2018 she was a specified person in relation to Knipe Whiting Heath & Associates Limited, a relevant firm, which entered into administration.

Allegation 2

2. Contrary to Regulation 11(2)(a) of ACCA's Global Practising Regulations (as applicable from 2017 to 2018):
 - (a) Between around August 2017 and 17 May 2018, Clare Louise Jenner FCCA did not ensure that Knipe Whiting Heath & Associates Limited had made provision for its continuity in the event of its dissolution, winding-up or liquidation;
 - (b) Between 18 May 2018 and 17 October 2018, Clare Louise Jenner FCCA did not ensure that Knipe Whiting Heath & Associates Limited had made provision for its continuity in the event of its dissolution, winding-up or liquidation, or the death or incapacity of Clare Louise Jenner FCCA;
 - (c) On 18 October 2018 and 5 November 2018, Clare Louise Jenner FCCA caused Knipe Whiting Heath & Associates Limited to enter into a continuity agreement with Clare Jenner Limited which made inadequate provision for the continuity of Knipe Whiting Heath & Associates Limited in the event of the death or incapacity of Clare Jenner FCCA.

Allegation 3

3. By reason of her conduct, Clare Louise Jenner FCCA is:
 - (a) Liable to disciplinary action in respect of any or all the matters set out at allegation 1 and 2, pursuant to bye-law 8(a)(iii).

BACKGROUND

3. Ms Jenner became a member of ACCA on 21 January 1993. She became a Fellow of ACCA on 21 January 1998.
4. In August 2017, Ms Jenner became aware that the Firm did not have a continuity agreement and she became the sole Director due to the passing of her co-director on 18 May 2018.
5. On 28 January 2004, Knipe Whiting Heath & Associates Limited was incorporated with Ms Jenner appointed as Company Secretary and a director.
6. In August 2017, Ms Jenner became aware that the Firm did not have a continuity agreement.
7. On 18 May 2018, Person A passed away. Person A was Ms Jenner's co-director at the Firm.
8. On 9 July 2018, Ms Jenner wrote to ACCA to confirm that Person A had passed away and that she was seeking to organise a new continuity agreement with a local firm. Ms Jenner also asked if there was anything else she was required to do at this juncture.
9. On 10 September 2018, Ms Jenner wrote to Humfreys & Symonds Solicitors (acting for Person A's spouse), stating that if Person A's loan to the Firm was called in then Ms Jenner would also call in the amount that she was owed by the Firm. In this letter, Ms Jenner also proposed that she would take on the bank debt of the Firm if Person A's loan was written off.
10. On 17 September 2018, Ms Jenner was appointed as a director and acquired the shareholding of Spratling Services Limited.

11. On 18 September 2018, the name of Spratling Services Limited was changed to Clare Jenner Limited (“the New Firm”).
12. On 19 September 2018, Ms Jenner sent an email to the solicitors instructed by the executors of Person A (“the Solicitors”) to request an urgent response to three points raised in her letter of 10 September 2018.
13. On 21 September 2018, Ms Jenner registered the domain name of ‘jennersacc.co.uk’ (page 80).
14. On 11 October 2018, Ms Jenner sent a letter to the Solicitors stating that the Firm’s client list was only of value to another firm of accountants *“if Miss Jenner is part of the deal to guarantee, as far as possible, the retention of what would be purchased. We can state now she will not be available to a potential third party purchaser....Miss Jenner will have to cease trading as the company will, if the loans are called in, technically be insolvent...Miss Jenner will make a formal demand for her loan to be repaid forthwith on 31 October...”*
15. On 18 October 2018, the Firm entered into a continuity agreement with the New Firm with the effect that in the event of Ms Jenner’s death or incapacity:
 - a) certain individuals/classes of individuals would request in writing to the New Firm that it manage the practice of Ms Jenner; and
 - b) the new Firm would be authorised to employ staff to assist with the running of the practice.
16. On 23 October 2018, Company A sent an email to Ms Jenner, referring to a meeting that had taken place in the previous week, stating that they had concerns about entering into a continuity agreement with the Firm as it was going to be placed into liquidation.

17. During the period of 24 October 2018 to 1 November 2018, Ms Jenner sought advice from ACCA's Technical Advisory Department. On 14 November 2018, the Firm was placed into Administration.
18. On 30 November 2018, the New Firm entered into an agreement with the Administrators of the Firm to purchase its assets, namely the property, title and rights in the client files and database for £5,000 plus VAT.

MS JENNER'S SUBMISSIONS

19. Ms Jenner has responded to the Allegation. In her letter to ACCA of 13 February 2019, Ms Jenner states: That she was a "*Director and majority shareholder*" in the Old Firm. That she purchased Spratling Services Limited as a "*... ready-created company which would provide continuity for clients should it be required*".
20. The New Firm began trading on 1 December 2018. "*I tried to find another practice to act as continuity partner but was declined because of the complexities in the situation. I needed to be sure I had a valid entity to undertake those services to ensure clients had continuity.*" "*I purchased the IPR to data to enable me as the Member to provide the necessary support to clients as part of the continuity agreement. A full legal contract is available in relation to this.*"
21. In her letter to ACCA of 26 April 2019, Ms Jenner states: "*Three factors contributed to change the solvency position: firstly [Person A's] contribution as a fee earner stopped but because he had not been drawing from the main company the overheads did not reduce, secondly the director's loan became a liability beyond the control of the remaining director and thirdly I was advised I could no longer draw down my own director's loan and instead would have to be remunerated through the PAYE system which increased the company's costs considerably.*" "*With hindsight I can now see that the company would never be able to repay the loan in its entirety. I hoped there might be some means of reaching a compromise which would make that possible...*" "[Person A] always told me not to worry about his loan balance because he didn't need

the money. [Person A] told me his wife was more than adequately provided for. I therefore expected the balance of the loan account would be left to me on his death.” “In the end time ran out. I was not able to continue operating the company on a going concern basis without any assurances from the widow or the solicitors as to the loan and the shares...I chose to follow the advice of the IP and commence a period of administration.” “It would appear now that in satisfying the Insolvency Act I fall foul of the ACCAs regulations.

22. She goes on to state in the same letter that *“In satisfying the ACCAs rules I fall foul of the Insolvency Act.” “I had two meetings to discuss everything. Their advice then was to go for administration and they would attempt to sell the business as a going concern but this would be without me as I had told them I didn’t wish to become an employee for the larger firm.” “...a continuity agreement which Clare Jenner Limited entered into with KWHAL. This became necessary once Company D had referred my request for them to act to national board level and it was rejected due to the precarious situation with [Person A’s] Estate and inherent uncertainties. My solution was that I could offer continuity...” “When [Person A] was alive we each thought that was sufficient since the continuity was provided by the other director in the event of one or other dying/leaving/being sick for a period of time. We had an ACCA review in February 2018 which highlighted we couldn’t do that...[Private] said he would try and sort out meetings with a couple of local firms...but he didn’t get around to doing this. It became a pressing issue after [Person A’s] death.” “...the first part asked whether I have transferred clients from KWHAL to CJL and the answer is no...some clients of KWHAL have gone to new agents other than CJL...”*
23. Ms Jenner further states *“Given the very unusual circumstances where I would end up signing off clearances to myself, ACCA’s regulations, specifically ACCA Regulations Part A 210-11C, appears to cover this situation adequately.” “I discussed clearance with the administrator who admitted he would not be able to deal with the requests having no practising certificate not any knowledge of the clients and I would need to handle them for him...there have been no clearance requests to myself or letters sent to myself requesting this.” “I was*

not aware of this byelaw. I acted on the advice given to me by the ACCA technical department. They did not highlight this risk to me when they have me guidance.” [in respect of bye-law 8(a)(vii)].

24. In her letter to ACCA of 10 June 2019, Ms Jenner states: *“I was neither dead nor incapacitated and I was [Person A’s] designated ‘individual’ for the purpose of continuity. The regulations do not state the alternative has to be an individual of another firm. The COP agreement is clearly intended to cover situations where the only individual with a practising certificate can no longer practice or take care of the firm’s clients. In my situation I was able to take care of them but not using the KWHAL company.” “[Person A] and I discussed this and [Person A] said he would contact some of the firms in Hereford that might be happy to sign a COP agreement with us...that was in August 2017.” “Once he said he was taking the task on I left him to it and was busy with all the other aspects of the business.” “...I believe that the continuity for the clients of the Old Firm was as adequate as it could be, in the circumstances.” “The COP agreement is drawn in such a way that it only applies if I am incapacitated medically and that was not the case...The need for continuity arose out of the appointment of the administrator...ACCA’s suggested wording for COP agreements doesn’t refer to administration periods.”*
25. Ms Jenner goes on to state *“The reference to moving over to the new firm was made in haste and not with the intention of implying clients had to move to Jenner’s.” “The objective of the emails on 26 November 2018 was to reassure clients their files and data were safe and any urgent or time sensitive work was being dealt with by me, as the ACCA member, and to assure them of a smooth transfer to whichever practice they chose to act for them.” “I accept the wording should have stated that a letter of engagement would be sent to those clients who chose Jenner’s to act for them. The syntax was wrong but that was what was in my mind.”*
26. In her letter to ACCA of 24 June 2019, Ms Jenner states: *“I was instructed by the Administrator that I should not contact any clients to inform them as to the situation until such time he had concluded his attempts to sell the business.”*

“...approximately 190.” [in response to a query as to how many clients the email of 26 November 2018 was sent to] “I was told by the ACCA I had to look after the clients. “...since I was responsible for giving professional clearance it would be inappropriate for me to give clearance to myself...” “The email from the Administrator’s solicitor of 26 November...indicating an asset sale agreement was ready...meant, in my mind, I could act in order to allay any fears clients had regarding urgent work and what their choices were in the future.” “I handled each stage in accordance with my interpretations of the advice given to me by both my professional body and the Administrator.” “My conduct throughout what has been an extremely difficult predicament has, if anything, enhanced the perception of the ACCA.”

CHAIR’S DECISION

27. Under Regulation 8(8) of the Complaints and Disciplinary Regulations 2014, the Chair must determine whether, based on the evidence before them, the draft Consent Order should be approved or rejected. The Chair had regard to the Consent Orders Guidance and the Consent Orders Guidance FAQs.
28. The Chair has the power to approve the Consent Order and noted that under Regulation 8(12) they shall only reject the signed Consent Order if they are of the view that the admitted breaches would, more likely than not, result in exclusion from membership.
29. The Chair considered the seriousness of the breaches as set out and the public interest, which includes the protection of the public, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and performance. The Chair balanced this against Ms Jenner’s interests.
30. The Chair noted the list of aggravating and mitigating factors advanced in paragraphs 21 and 22 of ACCA’s summary in the bundle. The Chair also took account of Ms Jenner’s response, personal circumstances at the material times, her lack of intention to cause any harm, the efforts she made to enter

into a continuity agreement on behalf of the Firm and remedial steps taken as a consequence.

31. The Chair had regard to ACCA's Guidance for Disciplinary Sanctions. They were satisfied that there had been early and genuine acceptance of the misconduct and that the risk to the public and profession from Ms Jenner continuing as a member was low.
32. For the reasons set out above, the Chair was satisfied that the admitted breaches would be unlikely to result in exclusion from membership, and therefore there was no basis for them to reject the Consent Order under Regulation 8(12). The Chair noted the proposed Consent Order, and considering all the information before them, was satisfied that admonishment was an appropriate and proportionate disposal of this case.

ORDER

33. The Chair, pursuant to their powers under Regulation 8, made an Order in terms of the draft Consent Order and approved the draft Order made by the ACCA signed by Ms Jenner on 26 August 2022 and signed by the ACCA on 13 September 2022, namely that Ms Jenner be admonished and pay ACCA's costs of £2000.

Mr Andrew Popat CBE
Chair
12 October 2022