

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Patrick Joseph Reidy

Heard on: Thursday, 01 September 2022

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

Committee: Ms Wendy Yeadon (Chair)
Mr David Horne (Accountant)
Mr Geoffrey Baines (Lay)

Legal Adviser: Mr David Mason (Legal Adviser)

**Persons present
and capacity:** Mr Benjamin Jowett (ACCA Case Presenter)
Mr Jonathan Lionel (Hearings Officer)

Outcome: Allegations 1(a) (i), (ii), (iii), (iv), 1b, 2 in relation to 1(a) and
3 in relation to 1(b) proved

Summary No further action

SERVICE

DECISION AND REASONS

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1. The Committee was provided with a Service Bundle which contained a letter sent to Mr Reidy by email on 04 August 2022 notifying him of the date, time and place of the hearing. The email address was one previously used by ACCA to communicate with Mr Reidy and was contained in his registration details.
2. Mr Jowett submitted that proper notification of the hearing had been given to Mr Reidy. The Committee accepted the advice of the Legal Adviser that the duty upon ACCA was to show proper service of the notice, not of its receipt.
3. The Committee was satisfied that proper notice of the hearing had been given in accordance with Regulations 10(7) and 22 of the Chartered Certified Accountants Complaints and Disciplinary Regulations 2014.

PROCEEDING IN ABSENCE

SUBMISSIONS

4. Mr Jowett on behalf of ACCA submitted that the Committee should proceed with the hearing in the absence of Mr Reidy. He reminded the Committee to proceed with great care and caution when considering whether to do so. Mr Jowett submitted that Mr Reidy knew of the hearing and had chosen not to attend. He further submitted that it was in the public interest to proceed.

LEGAL ADVICE

5. The Legal Adviser advised that in considering whether to proceed in the absence of Mr Reidy it should proceed with great care and caution. He referred the Committee to the cases of Jones [2003] 1 AC 1 and Adeogba v GMC [2016] EWCA 162. The Legal Adviser advised that the Committee should consider whether reasonable efforts had been made to inform Mr Reidy of the hearing. He referred the Committee to the documents in the Service Bundle.
6. The Legal Adviser advised that the case of Jones required the Committee to consider whether knowing of the date and time of the hearing or having the

means of knowing, that Mr Reidy had voluntarily absented himself from the hearing. He advised that the Committee should consider the circumstances of Mr Reidy's non-attendance and the effect of his non-attendance on the fairness of the hearing. The Legal Adviser advised that the Committee should consider whether an adjournment might result in Mr Reidy attending the hearing.

7. The Legal Adviser advised that the case of Adeogba emphasised the role of the Committee in acting to protect the public and that it was contrary to that objective to allow the process to be frustrated by members not attending hearings. He advised that there was a duty upon members to cooperate with their regulators and to maintain an effective registered address and means of communication.

DECISION OF THE COMMITTEE ON PROCEEDING IN ABSENCE

8. The Committee noted that a Health Committee had found on 12 April 2022 that Mr Reidy was fit to take part in a disciplinary hearing, based on a medical report [PRIVATE] dated 26 January 2022. This Committee also had sight of that report and there was no evidence before it to suggest that there had been any material change to suggest that Mr Reidy was now unfit to attend a hearing.
9. The Committee noted that there is confirmation in the Service Bundle that the letter of 04 August 2022 and the password to open it had been received at Mr Reidy's email address. It further noted that an email was sent to that address on 30 August 2022 asking if Mr Reidy intended to attend the hearing and that on 31 August 2022 two phone calls had been made to a phone number held by ACCA for Mr Reidy. Neither had been answered and messages had been left on his voicemail. The Committee noted that there was no evidence of any response to these communications by Mr Reidy.
10. The Committee considers that proper efforts have been made to inform Mr Reidy of this hearing and that he must be aware that these proceedings are being taken. It is satisfied that Mr Reidy has waived his right to attend this hearing. It is further satisfied that a fair hearing can take place in his absence. The Committee has taken into account its duty to protect the public. It does not

consider that an adjournment of the hearing would be likely to cause Mr Reidy to attend the hearing. The Committee has resolved that it is proportionate, fair and in the public interest for this hearing to take place in the absence of Mr Reidy, and this outweighs any potential unfairness to Mr Reidy.

Allegations

“Schedule of allegations

It is alleged that Mr Patrick Joseph Reidy, a fellow member of ACCA,:

- (a) Caused or permitted to be filed with Companies Registration Office on or about 21 March 2017 and on or about 27 April 2017, respectively,*
 - (i) an annual return for Company A made up to 30 January 2016 containing the Auditor Registration Number of Mr B, Firm C; and/or*
 - (ii) abridged accounts for Company A for the year ended 30 April 2015 containing an audit report purportedly signed on behalf of Firm C as Accountants and Statutory Auditors.*

And accordingly he:

- (iii) wrongly represented that Firm C was the auditor of Company A when that Firm was not Company A’s auditor; and/or*
 - (iv) wrongly represented that Firm C had purportedly audited the above accounts.*
- (b) Failed to co-operate with ACCA’s investigation of a complaint, in that he failed to respond fully or at all to any or all of ACCA’s correspondence dated:*
 - (i) 09 January 2018;*
 - (ii) 13 February 2018;*

- (iii) 15 February 2018;
- (iv) 12 March 2018;
- (v) 04 April 2018;
- (vi) 13 April 2018.

2. *In light of any or all of the facts set out at allegation 1(a), Mr Reidy's conduct was contrary to the fundamental principle of professional competence and due care (as applicable in 2017).*
3. *In light of the facts set out at allegation 1(b), Mr Reidy's conduct was contrary to Complaints and Disciplinary Regulation 3(1).*
4. *In light of any or all of the facts set out in allegations 1(a) and/or 1(b), Mr Reidy is guilty of misconduct contrary to bye-law 8(a)(i); and/or*
5. *In light of any or all of the facts set out above in allegations 1(a) and/or 1(b), Mr Reidy is liable to disciplinary action pursuant to bye-law 8(a)(iii)."*

BACKGROUND

11. ACCA records show that:

- Mr Reidy has been a fellow member of ACCA:

From 31 December 2006 to 2 July 2016; and

From 2 August 2017 to date.

- Mr Reidy has held a practising certificate and audit qualification with ACCA:

From 23 February 2007 to 24 August 2011; and

From 06 September 2011 to 31 December 2015; and

From 03 August 2017 to 2020.

- Loughran Reidy & Co has held a firm's auditing certificate with ACCA:

From 23 February 2007 to 31 December 2008; and
From 28 October 2011 to 31 December 2015; and
From 03 August 2017 to 2020

12. The Allegations arise from a letter received by ACCA from the Office of the Director of Corporate Enforcement (the ODCE) in the Republic of Ireland, dated 01 December 2017, concerning annual returns and abridged accounts for Company A filed with the Companies Registration Office (the CRO) in the Irish Republic on or around 21 March 2017 and 27 April 2017 respectively.
13. It is alleged that the annual return named Loughran Reidy & Co as the Presenter. The Auditor Registration Number (ARN) belonged to Mr B of Firm C. In relation to the abridged accounts, the audit report was signed in the name of Firm C.
14. It is alleged that on the dates of presentation of the annual return and abridged accounts, Mr Reidy was not a member of ACCA and did not hold an ACCA practising certificate. It is also alleged that Loughran Reidy and Co did not hold an ACCA firm's auditing certificate on those dates. Firm C, it is alleged, informed ODCE that they had never accepted instructions to act as auditors for Company A.
15. On or about 03 October 2017, a Voluntary Revision of Defective Financial Statements and revised abridged statements for Company A were filed at the CRO naming Loughran Reidy & Co as Presenter and bearing that firm's Auditor Registration Number. Revised abridged statements were filed and signed by Mr Reidy. By this time Mr Reidy held an ACCA practising certificate and audit qualification and Loughran Reidy & Co held an ACCA firm's auditing certificate.
16. The contents of the letter were investigated by ACCA. In the course of the investigation it is alleged that ACCA sent correspondence to Mr Reidy on the following dates:
 - (i) 09 January 2018;
 - (ii) 13 February 2018;

- (iii) 15 February 2018;
 - (iv) 12 March 2018;
 - (v) 04 April 2018;
 - (vi) 13 April 2018.
17. It is alleged that Mr Reidy has failed to respond to these communications.
18. The Committee had before it medical evidence showing that from December 2016, a date predating the subject of these allegations, Mr Reidy had been receiving medical treatment for [PRIVATE] medical report of January 2022 indicates that Mr Reidy had improved considerably after a long period of treatment.

DECISION OF THE COMMITTEE ON FACTS AND MISCONDUCT

SUBMISSIONS

19. On behalf of ACCA Mr Jowett referred the Committee to the evidence before it, including that relating to the allegations and to the medical evidence. He referred to the system in the Irish Republic for company registration by the CRO and the role of the ODCE.
20. Mr Jowett in relation to allegation 1a referred the Committee to the evidence showing that an annual return and abridged accounts for Company A had been filed with the CRO bearing a ARN which referred to Firm C, not Mr Reidy or his firm. He referred to Mr Reidy having admitted that this had occurred in error and arose from a misunderstanding of an employee who had filed the documents with the mistaken belief that Firm C would carry out the audit. Mr Jowett referred to the medical evidence which showed at the time Mr Reidy was suffering from [PRIVATE]. He also referred the Committee to the evidence showing that the error had been corrected.
21. Mr Jowett referred the Committee to the evidence related to allegation 1b which showed, he submitted, that the communications listed in the allegation had been sent by email and letter to Mr Reidy and were related to ACCA's

investigation into the subject of allegation 1a. He submitted that the various communications required a response which had not been forthcoming from Mr Reidy. He submitted that Mr Reidy had, during the little contact he did have with ACCA, stated he had difficulty responding to ACCA due to his [PRIVATE] health condition.

22. Mr Jowett submitted that there was evidence sufficient to amount to misconduct, as it showed a serious falling below the standard required by ACCA. He submitted that in the alternative, if the Committee did not find misconduct, it should find that Mr Reidy was subject to disciplinary proceedings because of the technical breaches of what was required of him as a member of ACCA.

LEGAL ADVICE

23. The Legal Adviser advised in relation to the consideration of the facts, that the burden of proving the allegations brought against Mr Reidy lay upon ACCA. He advised that the standard of proof is the civil standard, that is on a balance of probabilities.
24. The Legal Adviser advised the Committee that it should consider each of the heads of allegation separately and provide reasons for its decisions. He advised that as Mr Reidy was not present the Committee should take fully into account any matters in the evidence which were in his favour so that he had a fair hearing in his absence.
25. In relation to misconduct, the Legal Adviser advised that this referred to a falling below the standard which would be expected in the circumstances.

DECISION OF THE COMMITTEE ON THE FACTS

26. The Committee took fully into account the submissions made on behalf of ACCA and all of the documentary evidence provided to it. It accepted the advice of the Legal Adviser.

27. The Committee considered each of the heads of allegation individually. It did, however, throughout its deliberations take full account of the medical evidence it had before it. The Committee accepted that Mr Reidy had suffered from a [PRIVATE] condition from a time prior to the events leading to this hearing, which had required lengthy medical intervention. It took into account the possible effects which this had upon Mr Reidy in relation to his professional activities.
28. The Committee noted that whilst Mr Reidy had made no formal admissions in this hearing, he had in the course of ACCA's investigation conceded that an annual return and accounts in relation to Company A had been filed with CRO which indicated that Firm C had carried out an audit which it had not undertaken. The Committee noted the steps taken by Mr Reidy to correct the error. It also noted that Mr Reidy had conceded to ACCA that he had failed to respond to its communications in the course of its investigation due to his [PRIVATE] condition.
29. In relation to the individual heads of the allegations, the Committee found:

1a(i) and (ii)

Proved

The Committee found these heads proved on the basis of the evidence submitted by ACCA including Mr Reidy's letter in response to the ODCE. The Committee noted that in his letter, Mr Reidy had apologised, and said he had taken steps to rectify the situation and given an undertaking not to make the same mistake again.

1a(iii) and (iv)

Proved

The Committee found these heads of allegation proved. Mr Reidy accepted in his response to ODCE that he had wrongly represented that Firm C was the

auditor of Company A and had purportedly audited its accounts. However, he explained, this was not deliberate but had resulted from his [PRIVATE] health state and a misunderstanding by a member of his staff. The matter had been rectified as soon as it had been brought to his attention

1b

Proved

The Committee found these heads proved both on the basis of the evidence submitted by ACCA and by the concessions made by Mr Reidy to ACCA in the course of its investigation. It took into account the significant medical evidence predating, during and post-dating the time of the allegations. It also accepted Mr Reidy's explanations as to his [PRIVATE] which meant he was unable to respond to ACCA in a timely manner.

2 in relation to 1a

Proved

The Committee found this head of allegation proved on the basis that it follows from its findings of heads 1a (i) to (iv). It relates to misrepresentation in a public document and Mr Reidy's actions in allowing the error to occur were not consistent with the standards expected of ACCA members. The Committee found that although this was a one-off event, it was serious. It was expected that members would properly supervise those to whom tasks were delegated and to ensure that those persons were competent. The Committee found, however, that although found proved, the events were not a reflection of Mr Reidy's work over the time in which he has been in practice and do not represent a fair sample of his work.

The Committee noted that no allegation of dishonesty had been made against Mr Reidy. The Committee finds that what occurred was a single, but serious, error committed by Mr Reidy

3 in relation to 1b

Proved

The Committee found this proved on the basis that it follows from its findings under 1b. It found that there is a duty upon members to cooperate with ACCA in its investigations and to respond to communications about them. The Committee found this head proved, although taking into account the medical and other evidence showing that Mr Reidy at the time was suffering from a [PRIVATE] condition.

4 in relation to 1a and 1b

Not proved

The Committee determined in all the circumstances that its findings of fact did not reach the necessary threshold for a finding of misconduct. Whilst Mr Reidy's actions were serious, they concerned a single company on one occasion with immediate acceptance that an error had been made. There were no attempts to conceal the error and Mr Reidy took action to rectify the situation as soon as he became aware of it. The Committee gave significant emphasis to the medical evidence to Mr Reidy's [PRIVATE] condition as outlined in the medical evidence and gave due consideration as to how that condition may have impacted on Mr Reidy's actions.

The Committee is satisfied that the events found proved in 1a and 1b related significantly to Mr Reidy's [PRIVATE] health condition, were not deliberate and appeared to be an isolated single error which was promptly rectified.

5 in relation to 1a and 1b

Not proved

The Committee noted the submission made on behalf of ACCA that if the facts found proved did not amount to misconduct, they did render Mr Reidy liable to disciplinary action under bye-law 8(a)(iii).

The Committee considered the contents of that bye-law. It noted that at 8(a) the bye-law says:

8. (a) A member, relevant firm or registered student shall, subject to bye-law 11, be liable to disciplinary action if:

.....

(iii) he or it has committed any breach of these bye-laws or of any regulations made under them in respect of which he or it is bound.

The Committee considered bye-law 8(d), the relevant part of which reads:

(d) For the purposes of bye-law 8(a), in considering the conduct alleged (which may consist of one or more acts or omissions), regard may be had to the following:

.....

(iii) the nature, extent or degree of a breach of any code of practice, ethical or technical, adopted by the Council, and to any regulation affecting members, relevant firms or registered students laid down or approved by Council.

The Committee considered the “*nature, extent or degree of a breach*” in these circumstances. In light of its determination that there was no misconduct, no deliberate act, that this was a single isolated incident which was rectified promptly and which caused no loss to any person or body, the Committee concluded it would be unfair and disproportionate to take any further disciplinary proceedings beyond this hearing.

In the light of its findings, the Committee finds there is no requirement for it to consider sanctions and this hearing is therefore concluded.

Ms Wendy Yeadon
Chair
01 September 2022