

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr John Anthony Peter Davern

Considered on: Thursday, 16 February 2023

Location: Remotely via Microsoft Teams

Chair: Mrs Kate Douglas

Legal Adviser: Mr Robin Havard

Summary Reprimand

Costs payable to ACCA - £2,500

1. A Consent Order is made on the order of the Chair under the relevant regulations.

INTRODUCTION

2. The Chair had considered a draft Consent Order, signed by Mr Davern and a signatory on behalf of ACCA on 16 February 2023, together with supporting documents in a bundle numbering pages 1 to 264.
3. When reaching their decision, the Chair had been referred by the Legal Adviser to the requirements of Regulation 8 of the Complaints and Disciplinary Regulations 2014 (as amended) ("CDR8") and had accepted his advice. The Chair had also taken account of the content of ACCA's documents entitled "Consent Orders Guidance" and "Consent Orders Guidance FAQs".

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4. The Chair understood that Mr Davern was aware of the terms of the draft Consent Order and that it was being considered today.
5. The Chair also understood that Mr Davern was aware that he could withdraw his agreement to the signed draft Consent Order by confirming the withdrawal in writing. No such withdrawal had been received.

ALLEGATIONS

1. Mr John Anthony Peter Davern, an ACCA member was at all material times a director and therefore a 'specified person' in relation to the following companies being relevant firms for the purposes of ACCA's byelaws: -
 - a) Company A which entered liquidation on 04 February 2013;
 - b) Company B which entered liquidation on 05 August 2013;
 - c) Company C which entered liquidation on 07 May 2015;
 - d) Company D which entered liquidation on 07 March 2022.
2. By reason of any or all of the matters referred to in allegation 1 above, Mr Davern is liable to disciplinary action pursuant to byelaw 8(a)(vii)
3. Save in respect of Company D referred to in allegation 1 d) above, Mr Davern failed to bring promptly to the attention of ACCA or at all any of the facts or matters referred to in allegation 1 above contrary to byelaw 10(b)
4. By reason of his conduct referred to above in allegation 3 above Mr Davern is liable to disciplinary action pursuant to byelaw 8(a)(iii)

DECISION ON FACTS

- 5 The Chair noted from the report provided by ACCA that the following summary of the facts were not in dispute and therefore adopted them as their findings of fact.
- 6 Mr Davern has been a member of ACCA since 1993 and a Fellow since 1998.
- 7 ACCA received a complaint about Mr Davern in November 2021. The complainant alleged that Mr Davern had a history of avoiding paying his debts and using insolvency as a means of escaping responsibilities to his creditors. The complaint was referred for investigation in February 2022. Mr Davern provided a detailed response to these matters.
- 8 ACCA had investigated possible concerns arising from Mr Davern's conduct as a director of the various companies, which had gone into liquidation. This was a matter primarily for the Insolvency Service. The Chair noted that ACCA had taken into account that no director disqualification proceedings had been brought against Mr Davern arising from his conduct as a director of any of the companies referred to in the allegations. However, as set out below, the fact that he had been a director of those companies, which had gone into liquidation gave rise to disciplinary action in itself.

Allegation 1

- 9 ACCA's bye-law 8(a)(vii) provides that a member of ACCA becomes liable to disciplinary action if:

(vii) he ... is a specified person in relation to a relevant firm which has... entered into a voluntary arrangement, administration or liquidation, in each case where applicable under the Insolvency Act 1986.

- 10 A "specified person means, in relation to... any firm which is a body corporate a director of that firm...."

- 11 Mr Davern is a member of ACCA and holds ACCA practising certificates for the UK and Ireland.
- 12 Mr Davern was a director of Company A Ltd. Company A Ltd was wound-up by the Companies Court on 04 February 2013 after a petition by HMRC.
- 13 Mr Davern was, at the material time, a director of Company B. Company B was wound-up by the Companies Court on 05 August 2013 after a petition by HRMC. In a Statement of Affairs signed by Mr Davern, Company B had an estimated total deficiency as regards its creditors of £292,208 including unsecured creditors of £265,943.
- 14 Mr Davern was, at the material time, a director of Company C. Company C entered voluntary liquidation on 07 May 2015 with an estimated deficiency of £119,844 including £24,174 owed to trade creditors, £21,784 owed to HMRC in respect of PAYE and £29,421 owed to HMRC in respect of VAT. According to its website, Company C specialised in preparing limited company accounts for small businesses and in preparing accounts and tax returns for all self-employed sectors.
- 15 Mr Davern was, at the material time, a director of Company D. Company D entered voluntary liquidation on 07 March 2022 with an estimated deficiency as regards its creditors of £365,780 including £86,015 owed to Trade & Expense Creditors. According to its website, Company D was a forensic accountancy business.
- 16 Prior to its liquidation, a complainant issued a Winding-Up Petition in respect of Company D on 08 November 2021 claiming an unpaid judgment debt of £13,250.
- 17 According to its accounts filed at Companies House, Company D had net liabilities of £35,144 in the year to 31 March 2020 which had increased to £134,741 in the year to 31 March 2021.

Allegation 3

- 18 ACCA's byelaw 10(b) provides that, subject to any legislative or other legal obligation to the contrary, it shall be for every ACCA member to bring promptly to the attention of the ACCA any facts or matters indicating that a member or relevant firm or registered student may have become liable to disciplinary action (including any facts or matters relating to himself or itself).
- 19 Mr Davern failed to inform ACCA about the insolvency of any of the accountancy firms of which he was a director. In January 2022 he did contact ACCA to submit a "Practice change of details notification" form in respect of Accounts Tax Group Ltd's email address and telephone number.

The Member's Response

- 20 In his response, Mr Davern said: -

Until I received your communications during February, I was unaware that I had an obligation to report to the ACCA the liquidation of companies in which I was a director. I apologise unreservedly to the ACCA for this error on my part. I also acknowledge that the ACCA view this matter seriously, as I do.

I respectfully point out that the liquidations have been on the public record since February 2013. This information was not hidden by me, nor could it have been.

I also entered an IVA on 3rd October 2013 which has been successfully completed and discharged. I reported my entry into an IVA to the ACCA shortly after it was approved. I note that you have made no mention of my IVA in your letter and for this reason I disclose it to you now.

It may appear on first reading that the liquidation of The Company A Ltd, Company B and Company C, and my IVA were isolated events. In fact, all of these events were intrinsically interconnected. They are not isolated events.

The link between all liquidations and my IVA relates to the criminal conduct of a former contractor who was in a position of trust. In February 2014 I discovered

that this contractor had previously stolen a valuable database and was, since at least 2012, diverting our clients to a tax refund businesses which their relatives had set up. This person had initially started working for The Company A Ltd in 2006 and subsequently worked for Company B and Company C until October 2013.

Having discovered the problem in February 2014 the extent and impact of the criminal conduct on my businesses was not fully clear to me at the time.

I had spent 18 years of my working life between September 1995 and 2013 building up a significant tax refund business. Over that period, I spent almost £2,000,000 in advertising and marketing costs in building the business. The business was effectively destroyed over 12 months by this criminal conduct.

At no time was I found to have done anything wrong by the Insolvency Service or the liquidator. I always cooperated with the Insolvency Service and the liquidator and delivered up all records documents and information that was required of me. I also attended interviews as required.

[Private]

The first year of trading through Covid presented challenges for Company D as it did for many businesses in the UK.

Specifically, during the year ended 31st March 2021:

Fees reduced by £104,000.

Bad debts incurred of £38,000

Whilst trading condition were difficult, and notwithstanding the dismissal of the winding up order by the High Court on 4th February 2022, the freezing of the company bank account in November 2021, together with a Court hearing set down for more than 6 months later, created an impossible position.

It was the freezing of the company bank account by the landlord which caused me to take steps to place Company D into liquidation on 10th March

21 With regard to Company D, Mr Davern stated in his representations that:

“It is not disputed that company D was placed in liquidation on 7th March 2022.

Notwithstanding the fact that I was unaware that I had an obligation to notify the ACCA about the liquidation of Company D, I submit that the ACCA had constructive notice of the liquidation via the complainant landlord, [Person A]. (Docs 79 to 86 in the ACCA bundle).”

22 In his witness statement, Mr Davern stated that:

“I did not report the liquidation of my firms to the ACCA. This was because I was not aware that I was required to do so. The fact that I did not separately disclose the liquidations was not because I was trying consciously to conceal these facts, as I voluntarily informed ACCA off my own IVA at the relevant time.”

23 Mr Davern had ultimately admitted to all the allegations. As a member, he should have been familiar with byelaw 8(a)(vii) and that following the liquidation of the companies, he had thereby become liable to disciplinary action.

DECISION ON ALLEGATIONS AND REASONS

24 In accordance with CDR8, the Chair has the power to approve or reject the draft Consent Order or to recommend amendments. The Chair can only reject a signed draft Consent Order if they are of the view that the admitted breaches would more likely than not result in exclusion from membership.

25 The Chair was satisfied that there was a case to answer and that it was appropriate to deal with the complaint by way of a Consent Order. The Chair considered that the Investigating Officer had followed the correct procedure.

- 26 The Chair considered the bundle of evidence and, on the basis of the admissions of the allegations by Mr Davern, found the facts of the allegations proved. They therefore justified disciplinary action under byelaw 8(a)(i).

SANCTION AND REASONS

- 27 In deciding whether to approve the proposed sanction of a reprimand, and for Mr Davern to pay ACCA's costs in the sum of £2,500, the Chair had considered the Guidance to Disciplinary Sanctions ("the Guidance"), including the key principles relating to the public interest, namely: the protection of members of the public; the maintenance of public confidence in the profession and in ACCA, and the need to uphold proper standards of conduct and performance. The Chair also considered whether the proposed sanction was appropriate, proportionate and sufficient.
- 28 In reaching their decision, the Chair had noted, and found, the following aggravating features, as identified by ACCA:
- a. The conduct which led to Mr Davern being the subject of these proceedings fell below the standards expected of an ACCA Fellow;
 - b. As an ACCA Fellow he was a director of four accountancy services firms that each entered into liquidation, over a period of 9 years, with a combined total estimated deficiency of approximately £1million;
 - c. Having failed to notify ACCA at all about any of these insolvencies;
 - d. His initial lack of understanding and insight into the seriousness of the acts/omissions and the consequences thereof.
- 29 In deciding that a reprimand was the most suitable sanction, paragraphs C4.1 to C4.5 of ACCA's Guidance have been considered and the following mitigating factors had been identified by ACCA:

- a. Mr Davern has ultimately admitted his conduct.
 - b. Mr Davern has shown insight and apologised for the conduct which led to the complaint raised against him;
- 30 The Chair considered that both the aggravating and mitigating features identified by ACCA were supported by documentary evidence and were relevant.
- 31 In the Chair's judgement, the conduct was such that the public interest would not be served by making no order, nor would an admonishment adequately reflect the seriousness of Mr Davern's conduct.
- 32 When considering the criteria set out in the Guidance, the Chair concluded that it would be proportionate and sufficient to impose a reprimand to reflect the seriousness of the findings against Mr Davern.
- 33 In all the circumstances, the Chair was satisfied that the sanction of a reprimand was appropriate, proportionate, and sufficient.

COSTS AND REASONS

- 34 ACCA was entitled to its costs in bringing these proceedings. The claim for costs in the sum of £2,500, which had been agreed by Mr Davern, appeared appropriate.

ORDER

- 35 Accordingly, the Chair approved the terms of the attached Consent Order. In summary:
- a. Mr Davern shall be reprimanded; and
 - b. Mr Davern shall pay costs of £2,500 to ACCA.

**Mrs Kate Douglas
Chair
16 February 2023**