

## HEARING

# ADMISSIONS AND LICENSING COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

## REASONS FOR DECISION

**In the matter of:** Mrs Mary Elizabeth Fernyhough

**Heard on:** Wednesday, 11 January 2023

**Location:** Virtual hearing via Microsoft Teams

**Committee:** Ms Ilana Tessler (Chair)  
Ms Jo Royden-Turner (Accountant)  
Ms Rachel O'Connell (Lay)

**Legal Adviser:** Mr David Marshall

**Persons present  
and capacity:** Mr Benjamin Jowett (ACCA Case Presenter)  
Ms Nikita Apostol (Hearings Officer)

**Summary:** Application for readmission refused

**Costs:** No order

1. The Committee met to consider an application by Mrs Fernyhough for re-admission to membership of ACCA. Mr Jowett represented ACCA. Mrs Fernyhough did not attend the hearing and was not represented.
2. The Committee had a main Bundle of papers containing 120 pages, a Service Bundle containing 19 pages, a 'Tabled Additional's' Bundle containing 6 pages, and a one-page email from Mrs Fernyhough to ACCA sent yesterday.

### ACCA



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## **PROCEEDING IN ABSENCE**

3. The Committee was satisfied that Mrs Fernyhough had been given 28 days' notice of this hearing as required by the Authorisation Regulations 2014, Regulation 3(4)(b).
4. In considering whether to exercise its discretion to proceed in her absence, the Committee took into account that Mrs Fernyhough had emailed ACCA on 20 December 2022 to say she was happy for the hearing to go ahead in her absence. In response, ACCA staff had pointed out that it was her application, and it was for her to establish her suitability to be re-admitted. Attempts to contact her by telephone failed but on 10 January 2023, Mrs Fernyhough emailed ACCA saying:

*"Having re-read all the correspondence and given ACCA's position on my application, I cannot see the point of going ahead with the hearing.*

*I have nothing to add that has not already been covered in previous emails, except to state that my application for re-admission was in response to an email from ACCA, inviting me to apply and not because I was "not prepared to wait until my IVA was satisfactorily completed".*

5. The Committee considered that Mrs Fernyhough's application had to be decided and that it would not be unfair to her to take that decision in her absence as she had made it clear that she had decided not to exercise her right to attend. The Committee determined to proceed in Mrs Fernyhough's absence.

## **BRIEF BACKGROUND**

6. Mrs Fernyhough became a member of ACCA on 18 October 2007. As she explained in her re-application form: '*[PRIVATE] and allowed my membership to lapse as I was uncertain how long I would be unable to work*'. Her membership was terminated administratively on 21 April 2017.
7. After this, at a time when she was not a member of ACCA, Mrs Fernyhough got into financial difficulties and sought the assistance of an insolvency specialist. She entered into an Individual Voluntary Arrangement (IVA) on 24 October 2018. That was for a period of five years, so it is still continuing and is due to

be completed in October 2023.

8. Mrs Fernyhough applied for re-admission to ACCA on 07 April 2022. ACCA opposed the application on the basis that it was premature to apply before the IVA had been completed.

#### **DECISION ON APPLICATION AND REASONS**

9. Mr Jowett did not make any specific criticism of Mrs Fernyhough or her character. He submitted that the uncompleted IVA raised a question about Mrs Fernyhough's 'general character and suitability' to be registered, as referred to in Regulation 3 of the Membership Regulations. He submitted that it was not possible for the Committee to make a judgement at this time. He accepted that Mrs Fernyhough had complied with the IVA so far and that the Supervisor had no criticism of her. However, the IVA had nine months still to run and it was not yet clear that she would meet her obligations. He pointed out that the monthly payments were due to increase greatly in March [PRIVATE].
10. In her written submissions, Mrs Fernyhough referred to ACCA's document 'Guidance for members facing financial difficulties'. This stated:

*If a member notifies ACCA that (s)he has entered into an IVA (Individual Voluntary Arrangement) or similar, it is unlikely any further action will be taken, and membership will almost certainly be unaffected by this event taken in isolation.*
11. Mr Jowett stated that this was guidance for current members, not guidance on re-admission of former members. He accepted that an existing member might well be able to enter into an IVA without it having an adverse effect on membership but pointed out that it could result in disciplinary action if the member failed to comply with the terms of the IVA and that entering into a voluntary arrangement with creditors is in itself, one of the grounds for disciplinary action set out in the bye-laws.
12. The Committee saw some force in Mrs Fernyhough's application. When faced with financial difficulties, she appeared to have behaved responsibly, seeking professional advice, and agreeing to a comprehensive scheme to try to satisfy her creditors. It considered the annual reports that the Supervisor had provided

and noted that all the provisions of the scheme had been complied with and the level of payments had been increased regularly. ACCA asked the Supervisor “*Are you aware of any circumstances which would suggest any concerns about Mrs Fernyhough’s character and suitability to be readmitted to membership of ACCA?*” The answer was: “*I am ... not aware of any circumstances at all*”.

13. However, the issue for this Committee is not whether Mrs Fernyhough has behaved properly or improperly in the circumstances but whether the Committee is ‘satisfied as to’ Mrs Fernyhough’s ‘general character and suitability’. The existence of the uncompleted IVA throws this in doubt. Mrs Fernyhough will shortly face a very large increase in the amount she is required to pay each month. Given her exemplary performance to date, the Committee is hopeful that she will continue to meet the terms of her IVA so that it is duly completed later this year. However, if she were to fail, she would not only court insolvency proceedings but, as an ACCA member, she could be liable for disciplinary action.
14. It is unfortunate that Mrs Fernyhough did not feel able to attend the hearing to give fuller information about her circumstances and intentions. While the Committee is hopeful that things will work out well for her, it lacks the information needed to make a firm prediction. In these circumstances, the Committee cannot be satisfied as to Mrs Fernyhough’s suitability to be re-admitted at this time. She is entitled to apply again and if she does so when the IVA has been completed, the outcome may be very different.

#### **ORDER**

15. The Committee **ordered** as follows:
  - (a) Mrs Fernyhough’s application for readmission to ACCA membership is refused on this occasion.

**Ms Ilana Tessler**  
**Chair**  
**11 January 2023**