

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mrs Karen Elizabeth Hays

Heard on: Thursday, 9 November 2023

Location: Remotely using Microsoft Teams

Committee: Mr Martin Winter (Chair)
Ms Fiona MacNamara (Accountant)
Ms Rachel O'Connell (Lay)

Legal Adviser: Mr David Marshall

Persons present

and capacity: Mr Adam Slack (ACCA Case Presenter)
Miss Nicole Boateng (Hearings Officer)

Summary: Facts found proved
Excluded from membership with immediate effect
Not permitted to re-apply for 5 years.

Costs: £10,232

1. The Committee heard an Allegation of misconduct against Mrs Hays. Mr Slack appeared for ACCA. Mrs Hays was not present and not represented.
2. The Committee had a Main Bundle of papers containing 265 pages and a Service Bundle containing 20 pages.

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PROCEEDING IN ABSENCE

3. The Committee was satisfied that Mrs Hays had been served with the documents required by Regulation 10(7) of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 in accordance with Regulation 22. The required documents were contained in the papers before the Committee. There was evidence that they were sent by email on 12 October 2023 to an email address notified by Mrs Hays to ACCA as an address for all correspondence.
4. The Allegations in this case were serious and the Committee considered that they should be dealt with without undue delay. The Committee saw correspondence from Mrs Hays which showed that she was aware of today's hearing but did not intend to be present. Her most recent email was sent yesterday. She said, *'I will not be attending the hearing due to work commitments and I confirm that I agree the meeting continues without me.'* The Committee concluded that Mrs Hays did not wish to exercise her right to be present and that it would be fair to proceed in her absence. The Committee would take into account all written representations from her.

ALLEGATIONS/BRIEF BACKGROUND

5. In March 2022 the North Wales Police notified ACCA that they were investigating a report of a fraud from a charity alleging that the Treasurer (Mrs Hays) had over a period of 5 years taken from the accounts of the charity a little over £117,000.00. The investigation concluded with Mrs Hays signing a conditional caution on 28 June 2022. In this caution she admitted the fraud and agreed to repay the money taken, which she did.
6. During the course of the investigation ACCA formed the view that Mrs Hays had been engaging in public practice since 2000 without declaring this and without having a practising certificate.
7. Mrs Hays faced the following Allegations, as set out in the papers served with the Notice of Hearing:

1. On 28 June 2022 Mrs Karen Elizabeth Hays signed a conditional caution where she accepted that between 2016 and 2021 while Treasurer of Charity A she dishonestly abused that position intending thereby to make a gain, namely £111,700.00 for herself contrary to Sections 1 and 4 of the Fraud Act 2006.
2. Her conduct at Allegation 1:
 - a) Was dishonest; or in the alternative
 - b) Demonstrated a lack of integrity
3. Mrs Karen Elizabeth Hays submitted CPD Declarations to ACCA on dates between 2014 and 2020 in which she declared she had not engaged in public practice activities without holding an ACCA practising certificate.
4. Mrs Karen Elizabeth Hays conduct at allegation 3 was reckless in that she failed to have any or any proper regard as to the accuracy of the declaration she signed in the CPD forms submitted by her between 2014 and 2020.
5. Mrs Karen Elizabeth Hays has never held an ACCA Practising Certificate, and from 14 July 2000:
 - a) Has been in/or has held herself out as being available to undertake public practice activities, contrary to Regulation 3(1)(a) of the Global Practising Regulations;
 - b) Has been a Director of Accountsmith Ltd, a firm in / or holding itself out as being available to undertake public practice activities, contrary to Regulation 3(2)(a) of the Global Practising Regulations;
 - c) Held rights which in effect put her in the position of principal of Accountsmith Ltd, a firm in which public practice was being carried on in the name of the firm, contrary to Regulation 3(2)(b) of the Global Practising Regulations;
6. Mrs Karen Elizabeth Hays failed to co-operate with the investigation of a complaint, in that she failed to respond to any or all of ACCA's

correspondence on 22 June 2022, 07 July 2022 and 22 July 2022 contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations.

7. By reason of her conduct, Mrs Karen Elizabeth Hays is:
- a) Guilty of misconduct pursuant to byelaw 8(a)(i), in respect of any or all of the matters set out at Allegations 1 to 6 above; or in the alternative
 - b) Liable to disciplinary action pursuant to byelaw 8(a)(iii) in respect of any or all of the matters set out at Allegations 5 and 6 above.
 - c) Liable to disciplinary action pursuant to byelaw 8(a)(ix), in respect of Allegation 1 above

DECISION ON FACTS/ALLEGATIONS AND REASONS

8. At the start of the hearing the Committee considered whether there had been admissions. Mrs Hays completed and signed a Case Management form on 19 September 2023. In that form she was asked if she admitted any of the Allegations. Her answer was *'Both Allegations. All monies removed from Charity A bank account have been repaid in full.'*
9. There were six Allegations of fact, but they covered two separate areas. Allegations 1 and 2 related to fraud on the charity. Allegations 3 to 6 related to ACCA's regulation of members. The Committee interpreted Mrs Hays' admission as an admission to both these areas, i.e., Allegations 1 to 6. However, at the end of the Case Management form Mrs Hays said:

'I do refute the criticism that I have not been cooperative. Over the past fifteen months I have not delayed any of the process that you are undertaking, nor have I denied the Allegations.'

'Regarding point 6 of the Allegations, I accept that I did not respond, however historically, I did not access my personal emails on a regular basis unless I was expecting a specific email. I did not see your emails, and this is the reason that I did not see your emails around May, June and July 2022.'

10. The Committee concluded that Allegations 1 to 5 had been admitted and found them proved. It required ACCA to prove the remaining matters.

Allegation 6

11. The documents showed that ACCA had first written to Mrs Hays on 22 June 2022 requesting information about the Allegations.
12. The questions were important and relevant. For example, they requested details of the police caution(s). The letter warned Mrs Hays that she had a duty to co-operate fully with the investigation. The letter was sent to the email address in the ACCA register. There was no reply.
13. A reminder letter was emailed on 7 July 2022. Again, it set out Mrs Hays' duty to cooperate under the Regulations. A further reminder was sent on 22 July 2022. This stated that an Allegation of failure to cooperate would be raised if there was no response to ACCA's original request for information. Mrs Hays did reply to this letter by email dated 27 July 2022. She said: '*Yes I have the email and I will respond over the next couple of days*'. She did not respond within two days or at all.
14. The Committee took into account Mrs Hays' statement in the case management form quoted above. If it was true that Mrs Hays did not check her emails for a prolonged period, that was completely unacceptable. This was the email address that she had registered with her professional body as her contact address.
15. The Committee was satisfied that Mrs Hays had failed to cooperate with the investigation. Allegation 6 was found proved.

Allegation 7

16. It was proved by admission that Mrs Hays received a conditional caution from the North Wales police. The caution was in these terms:

Between 4th March 2016 and 14th June 2021 at [Private] committed fraud in that, while occupying a position, namely treasurer of Charity A in which you were expected to safeguard, or not to act against, the financial interests of Charity A you dishonestly abused that position intending thereby to make a

gain, namely £111,700.00 for yourself / contrary to sections 1 and 4 of the Fraud Act 2006

17. The conditions were that the outstanding sum be repaid (with the source of the funds notified to the police) and to write a letter of apology to the charity. The police accepted that the conditions had been complied with. Nevertheless, admitting to this offence was a very serious matter. For a member of ACCA in a position of trust as an Accountant to misappropriate client funds dishonestly is high up the scale of seriousness and the Committee had no doubt that Mrs Hays was guilty of misconduct. The facts found proved in Allegations 3 to 5 are also serious. The special trust that the public places in ACCA registered Accountants is largely based on the system of regulation enforced by ACCA. By her repeated and continued misdeclarations and failures to register for public practice this trust was undermined. These matters alone also amount to misconduct. Finally, while a failure to cooperate may sometimes be treated simply as a failure to comply with the regulations, in this case it significantly hampered ACCA in bringing these Allegations to a hearing. That too is serious enough to amount to misconduct.

SANCTIONS AND REASONS

18. Having found the Allegations proved, the Committee went on to consider what sanction, if any, to impose. In doing so it took into account ACCA's Guidance for Disciplinary Sanctions and bore in mind the principle of proportionality.
19. The Committee first sought to identify aggravating and mitigating factors.
20. Any Allegation of financial dishonesty by a professional accountant is serious, but this case was more serious than most. Aggravating factors included these:
 - (a) Mrs Hays abused a position of trust.
 - (b) The fraud went on for over five years. It started soon after she commenced her appointment as treasurer and only ended when the fraud was discovered.
 - (c) Even then, Mrs Hays did not admit the full extent of her dishonesty. That had to be established by investigation.

- (d) There was financial hardship to the charity. Although money was repaid the Charity had legal and accountancy costs to bear and there was an adverse effect on its reputation when it found that it lacked funds which should have been available to it.
 - (e) The fraud was sophisticated enough to evade detection over a prolonged period despite the requirement under charity regulation for an independent examination of the charity's accounts to take place regularly.
 - (f) The incorrect declarations over a long period, the failure to comply with the requirements for public practice and the failure to cooperate with the investigation all indicated a reckless disregard for her obligations as a professional accountant.
21. As to mitigating factors, the Committee assumed she was of previous good character but took into account that some of the findings in the present case date back to 2000.
22. Mrs Hays repaid the stolen funds. However, the Committee took into account that she was required to do so under the terms of her caution. The alternative would have been a criminal prosecution which might have resulted in a prison sentence.
23. Mrs Hays wrote a letter of apology to the charity but it said only this: *'I apologise for my actions whilst holding the position of Treasure of the charity.'* This was the bare minimum necessary to comply with the conditions of the caution. It did not acknowledge what she had done. It did not display any appreciation of the seriousness of her misconduct. It did not express any genuine remorse. The charity would have been justified as regarding it as offensive in the circumstances. In addition, Mrs Hays had never given an explanation for misconduct. The Committee concluded that there was no evidence of any insight or remorse.
24. In view of the seriousness of the misconduct in this case the Committee was satisfied that it was necessary to impose a sanction.
25. The Committee considered the available sanctions in order of seriousness.

26. In relation to the sanction of admonishment few, if any, of the suggested factors were present. The same applied to the next sanction, reprimand. The Guidance stated that the sanction of reprimand would usually be applied in situations where the conduct is of a minor nature. That was not the case here whereas already stated the matters found proved were serious.
27. The Guidance stated that the next sanction, severe reprimand could be applied to serious misconduct where *'there are particular circumstances of the case or mitigation advanced which satisfy the Committee that there is no continuing risk to the public, and there is evidence of the individual's understanding and appreciation of the conduct found proved.'* In this case none of these factors were present.
28. The Committee next considered the sanction of exclusion from membership. It regarded this case as being at the very highest level of seriousness. The Committee considered that Mrs Hays' behaviour was fundamentally incompatible with registration as an ACCA member. Unusually, almost all of the factors set out in the Guidance were present. The only exception was collusion. There was no clear evidence that Mrs Hays had colluded with others although she had undoubtedly taken steps to cover up her misconduct. The Committee was satisfied that exclusion was the minimum sanction it could impose.
29. In view of the seriousness of this case, and the Committee's complete lack of confidence in Mrs Hays' probity, the Committee decided that it should extend the minimum period before she could apply to be readmitted to the maximum of five years. An incidental consequence of this decision is that the Committee's decision and reasons will continue to be published on ACCA's website for that entire period, whereas it would normally be removed after 2 years.
30. The Committee considered whether it could award compensation to the charity but the power to do this is limited. For example, compensation can only be awarded to a complainant and in this case the complainant was the police. The Committee concluded that it could not award compensation.

COSTS AND REASONS

31. Mr Slack applied for costs totalling £10,682.

32. The Committee considered that the proceedings had been properly brought and that ACCA was entitled, in principle, to a contribution to its costs. The costs included the costs of Interim Order proceedings and the Committee considered that that was entirely appropriate. The figures claimed and time spent were reasonable.
33. Mr Slack acknowledged that this hearing would take less time than had been estimated and that a reduction could be made for his time and that of the hearings officer. The Committee agreed and deducted 2 hours amounting to £450. That made the total £10,232.
34. The Committee considered Mrs Hays' ability to meet an order for costs of this amount. She had submitted a statement of means showing that her salary exceeded her expenses by a small amount. However, the Committee was not satisfied that she had made a full or proper statement of her means. No assets or dividend income were shown although as recently as February this year she was shown at Company's House as being a person with significant control over her firm The Accountsmith Ltd, having at least 75% of the shares. The Committee was not persuaded that Mrs Hays would not be able to meet an order for costs of about £10,000.

EFFECTIVE DATE OF ORDER

35. The Committee decided that its order should take effect immediately. It considered that Mrs Hays represented a significant risk to the public.

ORDER

36. The Committee ordered as follows:
- (a) Mrs Karen Elizabeth Hays shall be excluded from membership with immediate effect
 - (b) Mrs Hays shall not be entitled to apply for readmission for a period of five years
 - (c) Mrs Hays shall make a contribution to ACCA's costs in the sum of £10,232
 - (d) The current Interim Order of suspension is rescinded.

**Mr Martin Winter
Chair
9 November 2023**