

APPLICATION ON PAPERS

CONSENT ORDERS CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Ms Angela Tuohy
Considered on:	Thursday, 21 September 2023
Location:	Remotely via Microsoft Teams
Chair:	Ms Carolyn Tetlow
Legal Adviser:	Mr Robin Havard
Summary:	Reprimand
Costs:	£1,499.58

CONSTITUTION OF THE COMMITTEE

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 on 13 September 2023 by Ms Tuohy and a signatory on behalf of ACCA, together with supporting

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documents in a bundle (pages 1 to 80), a detailed costs schedule (pages 1 to 2), and a simple costs schedule (page 1).

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 their advice. The Chair had also taken account of the content of ACCA's documents entitled "Consent Orders Guidance" and "Consent Orders Guidance FAQs".
4. The Chair understood that Ms Tuohy was aware of the terms of the draft Consent Order and that it was being considered today.
5. The Chair also understood that Ms Tuohy was aware that she could withdraw her agreement to the signed draft Consent Order by confirming the withdrawal in writing. No such withdrawal had been received.

ALLEGATIONS

6. Angela Tuohy, an ACCA student, admits the following:

Allegation 1

From about December 2016 to May 2023 was a director of Company A where public practice was carried on in the name of the firm, contrary to Membership Regulation 8(2)(a)(iii).

Allegation 2

From about December 2016 to May 2023 held rights in Company A where public practice was carried on in the name of the firm, which in effect put her in the position of principal of the firm, contrary to Membership Regulation 8(2)(a)(iv).

Allegation 3

Between about September 2020 and April 2023 failed to seek registration for supervision in relation to bookkeeping from the Anti-Money Laundering Compliance Unit (AMLC), Department of Justice, or its predecessor bodies, as defined by sections 60 and 61 of the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2021, contrary to Membership Regulation 8(2)(k)

Allegation 4

By reason of the conduct set out in Allegations 1 to 3 above, Angela Tuohy is guilty of misconduct pursuant to byelaw 8(a)(i).

DECISION ON FACTS

- 7 The Chair noted from the report provided by ACCA that the following summary of the facts was not in dispute and therefore adopted them as their findings of fact.

Allegations 1 and 2

- 8 Membership Regulation 8(2)(a), as applicable between 2016 and 2023

(2) *Permitted activities of ACCA students*

(a) *ACCA students may not:*

(iii) *be, or hold themselves out to be, a partner or director of a firm, or a member of a limited liability partnership, where public practice is carried on in the name of the firm, or otherwise in the course of the firm's business; or*

(iv) *hold rights in a firm where public practice is carried on in the name of the firm, or otherwise in the course of the firm's*

business, which in effect put the ACCA student in the position of a principal of the firm.

- 9 Angela Tuohy has been an ACCA student since 4 August 2016, based in the Republic of Ireland.
- 10 On 14 December 2016, Company A was incorporated with Angela Tuohy and her husband Person A as co-directors with each holding 50% of the shares.
- 11 Company A is a firm carrying on public practice. In particular its website states “*We can provide annual trading accounts and the associated tax returns for all business entities, sole traders, partnerships or companies,*”. These services come within the definition of public practice as per Global Practising Regulation 4.
- 12 ACCA has been advised by Person A, an ACCA member, that the fee income of Company A for the last three years has been 2020 – [Private]. Person A has advised that about [Private] per year relates to bookkeeping with the remainder relating to public practice.
- 13 Angela Tuohy has responded to this complaint. As part of that response Angela Tuohy has advised she has not carried out any public practice herself, and there is no evidence which suggests otherwise.
- 14 Also in her response, Angela Tuohy has advised she is responsible for the firm’s bookkeeping, which, as an ACCA student, she is permitted to undertake.
- 15 Mrs Tuohy has regularised her position by resigning as director of Company A and disposing of her shares.

Allegation 3

- 16 Membership Regulation 8(2)(k) as applicable in 2018 to 2022

- (k) *For anti-money laundering purposes in the Republic of Ireland, ACCA students who provide accountancy services within the terms of the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2018 by way of business will be subject to supervision for compliance with the anti- money laundering provisions under the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2018 [2021]. In such cases, ACCA students should seek registration for supervision from the Minister for Justice, Equality and Law Reform or the relevant competent authority for the time being, as defined by sections 60 and 61 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010.*
- 17 Membership Regulation 8(2)(k) as applicable in 2023
- (k) *For anti-money laundering purposes in the Republic of Ireland, ACCA students who provide accountancy services within the terms of the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2021 by way of business will be subject to supervision for compliance with the anti-money laundering provisions under the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2021. In such cases, ACCA students should seek registration for supervision from the Anti- Money Laundering Compliance Unit (AMLC), Department of Justice or the relevant competent authority for the time being, as defined by sections 60 and 61 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended.*
- 18 In an email to ACCA dated 19 April 2023, Angela Tuohy stated that ‘*Company A is not registered with an Anti-money laundering body*’.
- 19 Angela Tuohy’s co-director, Person A, has since provided evidence to ACCA that, as of April 2023, the firm is registered with the Anti-Money Laundering Compliance Unit (AMLC). As such the bookkeeping work undertaken by Angela Tuohy is now under the supervision of the AMLC.

- 20 The above Membership Regulation relates to '*ACCA students who provide accountancy services*' within the terms of the CJAs 2010 to 2021 and that such students '*should seek registration from the AMLC*'.
- 21 The AMLC has published online advice relating to '*Tax Advisers/external Accountants (i.e. bookkeepers)*'. This states '*accountancy services*' as referred to, but not defined in, the CJAs, includes bookkeeping.
- 22 The AMLC's online advice states in particular, '*... Section 60 of the Act [being the CJA 2010 as amended] determines who is the Competent Authority for anti-money laundering (AML) supervision of Designated Persons engaged in the supply of accountancy / book-keeping services in the State. It provides that if you are a member of a designated accountancy body then you are supervised by that designated accountancy body for the purposes of AML compliance...*'
- 23 One of the designated accountancy bodies listed is the ACCA. However, given (i) Angela Tuohy is not an ACCA member and (ii) her sole co-director Person A is an ACCA member but not one holding a practising certificate, ACCA is not the designated accountancy body for Company A and therefore not the designated accountancy body for Angela Tuohy's work as a bookkeeper.
- 24 The AMLC's online advice goes on to state the following, '*... If you provide any of the following services and are not already regulated by a designated competent authority for anti-money laundering purposes you fall to the supervision of the Anti-Money Laundering Compliance Unit of the Department of Justice (AMLCU)...*'
- 25 One of the four services listed includes '*Book-keeping*'.
- 26 AMLC's online advice was first published in September 2020. The AMLC's current online advice remains unchanged. Accordingly, Angela Tuohy failed to seek registration for supervision from the Anti-Money Laundering Compliance Unit as she was required to do from the date the AMLC advice was first

published in September 2020 to the date Company A became registered for AML supervision in April 2023.

DECISION ON ALLEGATIONS AND REASONS

- 27 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 removal from student membership.
- 28 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.
- 29 The Chair considered the bundle of evidence and, on the basis of the admissions of the allegations by Ms Tuohy, found the facts of the allegations proved. On the basis of such facts, the Chair found that Ms Tuohy acted contrary to the Membership Regulations as alleged. She was also guilty of misconduct as such conduct brought discredit to Ms Tuohy, ACCA, and the accountancy profession.

SANCTION AND REASONS

- 30 In deciding whether to approve the proposed sanction of a reprimand, and for Ms Tuohy to pay ACCA's costs in the sum of £1,499.58, 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.
- 31 In reaching their decision, the Chair had noted the following aggravating features, as identified by ACCA:

- The conduct which led to Angela Tuohy being the subject of disciplinary action as set out in this order fell below the standards expected of an ACCA student. As such her conduct has brought discredit upon herself, ACCA and the accountancy profession.
 - As an ACCA student Angela Tuohy was continuously in breach of Membership Regulation 8(2)(a) for over six years during the period she was a director and principal of a public practice firm. Only an ACCA member who has obtained the necessary experience is permitted to be a director and principal of a public practice firm.
 - As an ACCA student carrying on bookkeeping, Angela Tuohy was continuously in breach of Membership Regulation 8(2)(k) for a period of about two and half years in that she had failed to seek registration for AML supervision.
- 32 The Chair accepted the second and third feature identified by ACCA. However, the Chair did not consider the first to amount to an aggravating feature. First, it is not identified as such in the Guidance. Secondly, it already formed the basis of allegation 4 which has been admitted.
- 33 In deciding that a reprimand was the most suitable sanction, paragraphs C3.1 to C3.5 of ACCA's Guidance had been considered and the following mitigating factors had been identified by ACCA:
- Upon registering as an ACCA student in August 2016, Angela Tuohy would have signed a declaration confirming she was not a director and/or principal of a public practice firm. Her declaration would have been correct at that date as she did not become a director and shareholder of Company A until December 2016, being four months after she had signed the declaration.
 - The only declaration Angela Tuohy has given to ACCA that she was not a director or shareholder of a public practice firm would have been upon her registering as an ACCA student in August 2016.

- Upon being made aware of the breach which is the subject matter of Allegations 1 and 2 of this order, Angela Tuohy has shown insight by promptly regularising her position by resigning as director and disposing of her shareholding.
 - In relation to her failure to seek registration for AML supervision as a bookkeeper as per Allegation 3, ACCA notified Angela Tuohy and Person A of this requirement which the latter promptly regularised by registering Company A with the AMLC thereby ensuring the bookkeeping carried out by Angela Tuohy through this firm is now subject to AML supervision.
 - There is no evidence Angela Tuohy's conduct as set out in this order was dishonest or a deliberate breach of ACCA's Membership Regulations. Rather, based on her response to the complaint, it would appear to have been inadvertent.
 - There is no evidence that the consequences of Angela Tuohy's conduct has caused material distress, inconvenience or loss to any clients.
- 34 Overall, the Chair was satisfied that Ms Tuohy realised the seriousness of her actions, sincerely regretted them and would be very unlikely to repeat them in the future.
- 35 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 Ms Tuohy's conduct.
- 36 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 Ms Tuohy.
- 37 In all the circumstances, the Chair was satisfied that the sanction of a reprimand was appropriate, proportionate, and sufficient.

COSTS AND REASONS

- 38 ACCA was entitled to its costs in bringing these proceedings. The claim for costs in the sum of £1,499.58, which had been agreed by Ms Tuohy, appeared appropriate.

ORDER

- 39 Accordingly, the Chair approved the terms of the attached Consent Order. In summary:

- a) Ms Tuohy shall be reprimanded; and
- b) Ms Tuohy shall pay costs of £1,499.58 to ACCA.

Ms Carolyn Tetlow
Chair
21 September 2023