

HEARING

**DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF
CHARTERED CERTIFIED ACCOUNTANTS****REASONS FOR DECISION**

In the matter of: Mr Patrick Gabriel O'Donovan

Heard on: 01 & 02 April 2025

Location: Remotely via Microsoft Teams

Committee: Mr Andrew Gell (Chair)
Ms Sue Heads (Lay)
Ms Joanne Royden-Turner (Accountant)

Legal Adviser: Ms Jane Kilgannon

**Persons present
and capacity**

Mr Patrick Gabriel O'Donovan (Member)
Mr Neil Rafter (Counsel for Mr O'Donovan)
Mr Mark Walsh (Solicitor for Mr O'Donovan)
Dr Lucie Danti (ACCA Case Presenter)
Miss Sofia Tumburi (Hearings Officer)

Observers: Ms Rudo Dhliwayo (ACCA Observer)

Summary: 'No case to answer' application refused
Abuse of process application allowed

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1. The Disciplinary Committee (the Committee) convened to consider the case of Mr Patrick Gabriel O'Donovan (Mr O'Donovan).
2. Dr Lucie Danti (Dr Danti) represented the Association of Chartered Certified Accountants (ACCA). Mr O'Donovan attended the hearing and was represented by Mr Neil Rafter (Mr Rafter).
3. The Committee had confirmed that it was not aware of any conflicts of interest in relation to the case.
4. In accordance with Regulation 11(1)(a) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 (the Regulations), the hearing was conducted in public.
5. The hearing was conducted remotely through Microsoft Teams.
6. The Committee had considered in advance the following documents:
 - a. A Hearing bundle (pages 1 to 488); and
 - b. A Service Bundle relating to today's hearing (pages 1 to 26).

PRELIMINARY MATTERS

Case management

7. Mr Rafter, on behalf of Mr O'Donovan, sought to make an application of 'no case to answer' at the outset of the hearing. Dr Danti, on behalf of ACCA, objected to the application being made at all. She referred the Committee to the directions made at the Case Management Meeting dated 27 November 2024 and specifically direction number 6 which read "*If Mr O'Donovan wishes to pursue an application of no case to answer in respect of the allegations he faces, he or his representative must serve on ACCA a skeleton argument setting out the basis for such an application, together with any supporting documentation and caselaw in a paginated bundle, not less than 28 days before the final hearing*". It was accepted by both parties that no such skeleton argument had been served by Mr O'Donovan or his representative. Dr Danti

submitted that this meant he was debarred from making the application. Mr Rafter stated that he interpreted the direction differently. It was his understanding that should a skeleton argument be relied upon, it should be served on ACCA at least 28 days before the hearing. However, if relying solely on oral submissions, no skeleton argument was needed and he was not debarred from making such an application at the hearing.

8. The Committee considered the submissions of the parties. The Committee accepted advice from the Legal Adviser, which included reference to the Committee's general case management power at Regulation 12(1) of the Regulations which provides that the Committee shall conduct the hearing "*in its discretion having regard to the interests of justice, the public, of the relevant person, and of the profession as a whole*".
9. The Committee considered that direction number 6 from the Case Management Meeting on 27 November 2024 was clear and unequivocal. If Mr O'Donovan wished to make an application of 'no case to answer', he was required to serve a skeleton argument along with supporting documentation 28 days before the hearing. The language used was mandatory, "*must*". There was no alternative route provided for, whereby Mr O'Donovan could make the application only by reference to oral submissions and avoid the 28-day deadline for providing ACCA with written notice of the intention to make the application and the intended basis for that application. Given that it was agreed that no such skeleton argument had been served and yet Mr Rafter sought to make an application of 'no case to answer' on behalf of Mr O'Donovan, the Committee found that Mr O'Donovan had failed to comply with direction number 6. The Committee also found that Mr O'Donovan had failed to comply with direction number 4 of the same Case Management Hearing as no Statement of Defence had been served.
10. Despite this non-compliance by Mr O'Donovan, the Committee considered it to be appropriate to permit Mr Rafter to make an application of 'no case to answer' on Mr O'Donovan's behalf. To do otherwise, particularly in the circumstances in which his representative appeared to have misunderstood the requirement imposed by direction 6, would, in the Committee's view, be unfair to Mr O'Donovan.

11. The Committee decided that the appropriate time to hear such an application would be at the close of ACCA's evidence – the 'half-time' point. At that point, both the Committee and Mr O'Donovan would have heard the evidence that ACCA seeks to rely upon as well as ACCA's opening submissions. In that way, Mr Rafter would be in a position to address the Committee in full on what he submits are any shortcomings in ACCA's case against Mr O'Donovan that might justify a finding of 'no case to answer'. Therefore, the Committee gave Mr Rafter permission to make an application of 'no case to answer' following the close of ACCA's evidence.
12. Given that ACCA could be disadvantaged by not having the intended notice of Mr Rafter's arguments, the Committee indicated that it would be sympathetic to any application from ACCA for a short adjournment immediately following Mr Rafter's application. That would enable Dr Danti to obtain instructions and prepare ACCA's response.

Hearsay application

13. Mr Rafter raised a concern that ACCA was not planning to call Mr A to give live evidence. Mr Rafter asserted that the documentation in the Hearing Bundle that had been created by Mr A was hearsay evidence and should not be considered by the Committee because of the potential prejudice to Mr O'Donovan in not being able to cross-examine Mr A in order to test and challenge Mr A's version of events. In response, Dr Danti confirmed that ACCA did not intend to rely on any hearsay statements from Mr A. She invited the Committee to disregard any documents in the Hearing Bundle that were hearsay statements created by Mr A.
14. Mr Rafter raised a concern that ACCA was not planning to call Mr A's solicitors to give live evidence. Mr Rafter asserted that the documentation in the Hearing Bundle that had been created by Mr A's solicitors was hearsay evidence and should not be considered by the Committee because of the potential prejudice to Mr O'Donovan in not being able to cross-examine Mr A's solicitors in order to test and challenge their version of events.
15. In response, Dr Danti confirmed that ACCA sought to rely upon documentation created by Mr A's solicitors. She drew the Committee's attention to particular

letters within the hearing bundle that were letters sent by Mr A's solicitors to Mr O'Donovan between 25 May 2017 and 16 May 2018, and a further letter sent by Mr A's solicitors to ACCA dated 14 June 2019. Initially, Dr Danti sought only to rely on the fact of the letters being sent by Mr A's solicitors on the dates stated. However, she later changed that position and indicated that ACCA wished also to rely on the contents of those letters.

16. Following that change, and at the invitation of the Committee, Dr Danti made a formal application to rely on the content of those documents created by Mr A's solicitors as hearsay evidence. Dr Danti submitted that the documents were relevant to factual allegations that were in dispute, namely the matters set out at Allegations 1a and 1b. She submitted that it would not be prejudicial or unfair to Mr O'Donovan to admit those documents. She stated that Mr O'Donovan had been on notice of ACCA's reliance on those documents since at the latest when the matter was referred to the Independent Assessor (which was communicated to Mr O'Donovan on 24 May 2021), and at no point had he or his representative indicated that they required Mr A's solicitors to be called to give live evidence. On that basis, Dr Danti submitted that there was a good reason for Mr A's solicitors not being in attendance at the hearing. As there had been no indication that they would be needed for cross-examination, Dr Danti submitted that it would have been disproportionate for ACCA to have made efforts to secure their attendance.
17. Mr Rafter opposed the application. He drew the Committee's attention to an email from Mr A's solicitors dated 14 June 2019 in which they stated "*I just want to confirm I am happy to assist in providing my communications to this accountant. However, can you confirm that I will not be asked to give evidence against this accountant if there is a disciplinary process? I am happy to assist but I generally would like to stay out of this complaint*". If the Committee were to decide to admit for consideration the letters from Mr A's solicitors, Mr Rafter urged the Committee to give them little weight because those solicitors did not want to be involved in the complaint and clearly did not want to attend to give evidence at the hearing.
18. The Committee considered the submissions of the parties. The Committee accepted advice from the Legal Adviser, which included reference to Regulation 12(2) of the Regulations and the associated requirements of

relevance and fairness, along with the guidance set out in the case of *Thorneycroft v Nursing and Midwifery Council* [2014] EWHC 1565 (Admin).

19. The Committee decided that it would admit the documents in question (that is, the documents in the bundle that had been created by Mr A's solicitors) for its consideration in respect of the allegations facing Mr O'Donovan.
20. The Committee considered that this documentation was relevant to the allegations set out at Allegations 1a and 1b because some of the documents potentially established that letters were sent by Mr A's solicitors to Mr O'Donovan on the dates set out in those allegations. The Committee noted that those letters included one dated 14 June 2019 which was relevant to Allegations 1a and 1b because it contained a statement by Mr A's solicitors as follows: "*I confirm that the accountant failed to revert to me on a number of occasions*". That had the potential to assist the Committee in its assessment of whether Mr O'Donovan had responded to the letters listed in Allegations 1a and 1b.
21. Finding that it would be fair to admit the documents, the Committee had particular regard to the following matters:
 - a. The Committee considered that much of the documentation from Mr A's solicitors had not been prepared for these proceedings, but had been prepared in the course of Mr A's solicitors' business.
 - b. The Committee found that the documentation was not the sole or decisive evidence relied upon in support of Allegations 1a and 1b (or any other allegation) because there was other important evidence in the hearing bundle. For example, the letters from Mr O'Donovan to Mr A's solicitors dated 24 May 2018 and 29 May 2018.
 - c. There was no evidence that Mr O'Donovan had challenged the existence of these letters or the contents of them. For example, there had been no suggestion that the letters had not been sent by Mr A's solicitors and received by Mr O'Donovan, nor any suggestion that the letters had been fabricated or that the contents of the letters had been created for any reason other than to properly request information from Mr O'Donovan on

behalf of Mr A. If Mr O'Donovan were to challenge the content of the letters when giving evidence himself or when submissions were made on his behalf later in the hearing, the Committee considered that it could properly take those matters into account when deciding what weight to attach to the content of the letters.

- d. The Committee acknowledged that Mr O'Donovan was facing allegations of misconduct and that adverse findings in these proceedings could have a negative impact on Mr O'Donovan's professional standing and career.
- e. The Committee considered that there was a good reason for the non-attendance of Mr A's solicitors at the hearing. That is, they had not been called to give evidence because Mr O'Donovan had not indicated to ACCA that he required them to give evidence so that he could cross-examine them. The Committee agreed with Dr Danti's submission that, in those circumstances, it would have been disproportionate for ACCA to have made efforts to secure the attendance of Mr A's solicitors at the hearing.

The allegations

- 22. The Legal Adviser queried whether the Schedule of Allegations was sufficiently clear in respect of Allegations 1b, 2 and 3b where "*sections*" of a document were referred to without specifying the name of that document. Dr Danti confirmed that the references were to sections of the ACCA Code of Ethics and Conduct. She was neutral on whether the allegations should be amended to make that clear. Mr Rafter confirmed that he and Mr O'Donovan had understood the references to be to the ACCA Code of Ethics and Conduct and so there was no ambiguity. His view was that making an amendment to the allegations would cause an unnecessary delay in making progress with the hearing. On the basis that neither party sought an amendment of the allegations to clarify this point, the Committee decided not to amend the Schedule of Allegations.

BACKGROUND

23. Mr O'Donovan became a member of ACCA on 15 April 1998 and was admitted as a Fellow on 19 March 2004. He currently holds a practising certificate for Ireland, which was issued on 16 February 2016.
24. Mr A ran a business transporting vehicles and motor parts to and from the UK. This included transporting some goods for Mr O'Donovan.
25. On 09 December 2016 Mr O'Donovan's firm sent a letter of engagement to Mr A.
26. Mr A was involved in a road traffic collision. He was injured and sought the assistance of solicitors in preparing a personal injury claim. To ascertain Mr A's financial position, Mr A's solicitors contacted Mr O'Donovan. On 25 May 2017 Mr A's solicitors sent a letter to Mr O'Donovan's firm to request information in respect of any personal losses suffered by Mr A.
27. On 18 December 2017 Mr A's solicitors sent a letter to Mr O'Donovan's firm to request a report and/or letter distinguishing between Mr A's personal losses and those of his company.
28. On 09 January 2018 Mr A's solicitors wrote to Mr O'Donovan's firm referring to their previous correspondence and requested that they revert with a report and/or letter distinguishing between Mr A's personal losses and those of his company.
29. On 16 March 2018 Mr A's solicitors wrote to Mr O'Donovan's firm referring to their previous correspondence and requested an account of their client's personal losses.
30. On 11 April 2018 Mr O'Donovan's firm sent a letter of engagement to Mr A.
31. On 14 May 2018 Mr A's solicitors wrote to Mr O'Donovan's firm referring to their previous correspondence and requested an account of their client's personal losses.

32. On 21 May 2018 Mr A's solicitors wrote to Mr O'Donovan's firm referring to their previous correspondence and requested an account of their client's personal losses.
33. On 24 May 2018 Mr O'Donovan sent a letter to Mr A's solicitors confirming the personal losses suffered by Mr A.
34. On 29 May 2018 Mr O'Donovan sent a letter to Mr A's solicitors confirming the personal losses suffered by Mr A.
35. On 07 August 2018 Mr O'Donovan sent a letter to Mr A's solicitors confirming that, due to Mr A's inability to work, his company had ceased to trade and that there were creditors of approximately €36,630 remaining. In a separate letter also dated 07 August 2018 Mr O'Donovan wrote to Mr A's solicitors confirming the extent of Mr A's personal losses and personal debts.
36. On 22 August 2018 Mr A's solicitors wrote to Mr O'Donovan seeking a more detailed report regarding Mr A's losses, for the purposes of preparing a schedule of loss for a personal injury claim being prepared by Mr A.
37. On 02 November 2018 Mr A's solicitors wrote to Mr O'Donovan seeking a full breakdown of Mr O'Donovan's costs to date, outlining the work undertaken on behalf of Mr A, so that they could prepare an undertaking in relation to Mr O'Donovan's outstanding bill.
38. On 04 December 2018 Mr O'Donovan sent an email to Mr A that included the following: "*You might grow up and stop acting like a petulant child...now you are sulking*".
39. On 05 December 2018 Mr O'Donovan sent an email to Mr A that included the following: "*Grow up and stop acting like a child*".
40. On 15 January 2019 Mr O'Donovan sent a text message to Mr A that included the following: "*Are you losing the plot*".
41. On 15 January 2019 Mr O'Donovan sent another text message to Mr A that included the following: "*I don't have time to deal with your madness*".

42. Mr A submitted a complaint against Mr O'Donovan to ACCA dated 09 April 2019.

43. On 30 September 2019, in a letter to his solicitors (and provided to ACCA) and addressing the concerns raised by ACCA, Mr O'Donovan stated:

"I have attached the replies issued to [Mr A's solicitors]. Prior to any reply, we met with [Mr A]. We met [Mr A] on 8th of May 2018 and then issued a reply".

"I was being constantly contacted outside of office hours. No obscene language was used on my part. These are two-way conversations and are taken out of context when extracted".

"On the 28/11/2015, a credit note was issued of €430.50 (Motor Bike). On the 18/04/2017, a cheque was issued to [Mr A] amounting to €430.00 (Car). On the 29/09/2017. A credit notes was issued against his account for €430.50 (Car). I believe that 3 vehicles were transported. I appreciated [Mr A's] efforts regarding all of the above. As you can see services requested were in fact paid for".

"[Mr A] had agreed to assist, in collecting goods. I was hoping that this could still be achieved...no conflict of interested had occurred".

"I am disappointed that this case is still active as I feel that this is simply a fee dispute".

44. On 09 December 2019, in a letter to ACCA, Mr O'Donovan stated:

"I had discussed the losses with [Ms C]... there was no apparent consequential losses, personally or otherwise. This was explained to both [Mr A] and [Ms C]"

"[Mr A] did not sell bikes or cars to me. He did however collect some vehicles for me which he received credit or a reduction in fees...I sent some car parts to a yard in the UK on or about June of 2018 mainly car parts, with [Mr A] agreement on the understanding that he would bring them to Ireland for me. If he had told me that he was not able to collect them I would have used a pallet company, as I did not many previous occasions. I never withheld services for the loss of these goods".

"[Mr A] received an invoice dated 28th November 2015 on it the credit for €350.00 plus vat was listed as a negative amount, in respect of the haulage of a Honda CBF1000...[Mr A] received a payment of €430 on the 18th April 2017 in respect of the haulage of a BMW car... On the 29th September 2017 a contra was entered on to his account of €430".

45. On 19 July 2021 ACCA sent a Case Management Form to Mr O'Donovan for completion. Mr O'Donovan completed and signed that Case Management Form on 31 August 2021. He indicated an intention to attend the substantive hearing and to be represented. In relation to the factual allegations, he referred the reader to previous correspondence. In relation to the allegation of misconduct, he indicated a denial and also referred the reader to previous correspondence. In relation to witness requirements, he referred the reader to an attached memo. However, the Committee did not appear to have been provided with a copy of that memo in the hearing bundle, so were not aware whether it existed and, if so, what it contained.

46. A Case Management Meeting was held on 07 October 2022. Mr O'Donovan made an application that his substantive hearing be held in person rather than remotely. The request was made on the basis that Mr O'Donovan would wish to cross-examine the ACCA witnesses and that an in person hearing would offer the "*gold standard*" for cross-examination because it would minimise the risk that a witness would have inappropriate contact with their own legal team when giving evidence. ACCA resisted the application on the basis that most disciplinary hearings are held remotely and that there was nothing exceptional about Mr O'Donovan's case that would justify taking a different approach. The Chair refused the application on the basis that it would not be unfair to Mr O'Donovan for the hearing to be held remotely. They did not accept that remote hearings created a greater risk of inappropriate behaviour by witnesses than in person hearings. The Chair gave weight to the importance of the case being dealt with expeditiously and considered holding the hearing remotely would make it more likely that it could be scheduled quickly. The Chair made directions for the parties including direction number 2 as follows: "*ACCA will provide witness statements for any witness it wishes to call to be sent with the notice of hearing in accordance within the timeframe provided by Rule 10 of the Complaints and Disciplinary Regulations 2014*".

47. In relation to direction number 2, on 23 January 2023, Mr O'Donovan's solicitor wrote to ACCA and requested the relevant witness statements.
48. On 27 January 2023 ACCA responded to Mr O'Donovan's solicitor stating that ACCA did not intend to call any witnesses or furnish any witness statements should the matter proceed to a substantive hearing.
49. On 19 February 2024 Mr O'Donovan's solicitor wrote to ACCA again requesting the relevant witness statements.
50. On 09 August 2024 ACCA responded to Mr O'Donovan's solicitor confirming that ACCA was unable to obtain a witness statement from Mr A.
51. A further Case Management Meeting was held on 27 November 2024. At this meeting, ACCA confirmed that it did not intend to rely on any witness statements at the substantive hearing (including from the complainant, Mr A) but would be relying only on the documentary evidence already disclosed to the Independent Assessor. Mr O'Donovan indicated that, in those circumstances, he may wish to make an application of no case to answer at the substantive hearing. This was on the basis that without ACCA calling any witnesses to give evidence, there was no-one to "prove" the documents on which ACCA relied and no-one available for him to cross-examine. The Chair made directions, which were agreed by the parties.

ALLEGATIONS

- 1(a) Mr O'Donovan did not respond to written correspondence from solicitors representing Mr A, a client of his firm, dated 25 May 2017, 18 December 2017, 9 January 2018, 15 March 2018, 10 May 2018 and/or 16 May 2018, until 24 May 2018.
- (b) Mr O'Donovan's conduct in respect of 1(a) above was contrary to Section 150.1 and/or 150.3 (Professional behaviour) (as applicable in 2018).
- 2 Between 04 December 2018 and 15 January 2019, Mr O'Donovan behaved in a manner towards Mr A, a client of his firm, which displayed a lack of courtesy and consideration, as detailed in Schedule A, contrary

to Section 150.3 (as applicable in 2018) and Section 115.3 (as applicable in 2019) (Professional Behaviour).

3(a) On 04 December 2018 and 05 December 2018, Mr O'Donovan sent correspondence to Mr A, a client of his firm, concerning payment of fees for accountancy services which referred to issues arising from a separate personal arrangement that he had entered into with Mr A.

(b) Mr O'Donovan's conduct in respect of 3(a) above was contrary to:

(i) Section 120.2 (Objectivity) (as applicable in 2018); or in the alternative

(ii) Section 150.3 (Professional Behaviour) (as applicable in 2018).

4. By reason of his conduct, Mr O'Donovan is:

(a) Guilty of misconduct in respect of any or all the matters set out at allegations 1, 2 and/or 3, pursuant to bye-law 8(a)(i); or, in the alternative

(b) Liable to disciplinary action in respect of any or all the matters set out at allegations 1, 2 and/or 3, pursuant to bye-law 8(a)(iii).

Schedule A

Date	Description	Relevant Extract
04 December 2018	Email from Mr O'Donovan to Mr A	<i>'You might grow up and stop acting like a petulant child...now you are sulking'</i>
05 December 2018	Email from Mr O'Donovan to Mr A	<i>'Grow up and stop acting like a child'.</i>
15 January 2019	Text Message from Mr O'Donovan to Mr A	<i>'Are you losing the plot'</i>

15 January 2019	Text Message from Mr O'Donovan to Mr A	<i>'I don't have time to deal with your madness'</i>
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CONSIDERATION OF THE ALLEGATIONS

Admissions

52. There were no formal admissions, so ACCA was required to prove all of the matters set out in the Schedule of Allegations.

Evidence and submissions of ACCA

53. Dr Danti provided written and oral submissions on behalf of ACCA.
54. She took the Committee to the relevant documents within the hearing bundle, which included letters from Mr A's solicitors to Mr O'Donovan, and copies of emails and text messages from Mr O'Donovan to Mr A. She took the Committee through her written submissions.
55. In relation to Allegation 1, Dr Danti submitted that the dates and content of the letters from Mr A's solicitors and Mr O'Donovan's replies from 24 May 2018 onwards, were sufficient for the Committee to be satisfied that Mr O'Donovan had failed to respond to Mr A's solicitors requests for information relating to Mr A's personal losses arising from the road traffic incident until 24 May 2018. She submitted that the delay in replying meant that Mr O'Donovan had failed to behave with courtesy and consideration towards Mr A's solicitors, contrary to the requirements of Sections 150.1 and/or 150.3 of the ACCA Code of Ethics and Conduct, which relates to professional behaviour.
56. In relation to Allegation 2, Dr Danti submitted that the content of relevant emails and text messages from Mr O'Donovan to Mr A were unprofessional. She submitted that they showed a lack of courtesy and consideration to Mr A such that Mr O'Donovan's conduct was contrary to Sections 150.3 and 115.3 of the relevant versions of the ACCA Code of Ethics and Conduct, which relate to professional behaviour.

57. In relation to Allegation 3, Dr Danti submitted that the relevant correspondence from Mr O'Donovan to Mr A shows Mr O'Donovan dealing with both professional and personal matters in the same correspondence. She submitted that the overlapping way in which Mr O'Donovan has dealt with these professional and personal matters with Mr A, gives rise to a concern about conflict of interest or bias and a lack of courtesy such that Mr O'Donovan's conduct was contrary to Sections 120.2, 150.1 and 150.3 of the ACCA Code of Ethics and Conduct, which relate to objectivity and professional behaviour.
58. In relation to Allegation 4, Dr Danti submitted that Mr O'Donovan's conduct set out at Allegations 1, 2 and 3 was serious enough to amount to professional misconduct or, in the alternative, was nevertheless a breach of ACCA professional standards such that he was liable to disciplinary action.

Mr O'Donovan's application for 'No Case to Answer'

59. Following the conclusion of ACCA's evidence, Mr Rafter made an application that there was no case for Mr O'Donovan to answer. In summary, he submitted that:
- a. The evidence in relation to Allegation 1 was weak because the Committee had not been furnished with information as to other communications between Mr O'Donovan and Mr A's solicitors at the relevant times. He submitted that the letter from Mr A's solicitor to ACCA on 14 June 2019, and in particular a reference to a signed undertaking should be interpreted as suggesting that there had been other communication between Mr O'Donovan and Mr A's solicitor, albeit not necessarily in written form. Furthermore, he drew the Committee's attention to the fact that Mr A's solicitors had indicated that they did not want to be involved in the disciplinary proceedings.
 - b. The evidence in relation to Allegation 2 was weak because, without live evidence or a witness statement from Mr A, the Committee had no proper way of coming to a view as the context of the communications between Mr O'Donovan and Mr A. Without that context, he submitted that it would be impossible to assess whether the alleged conduct had breached the relevant professional standards, or indeed had concerned the

accountancy services provided by Mr O'Donovan to Mr A in any way. Therefore, Mr Rafter raised a concern that this was an overreach by the regulator, potentially seeking to police personal correspondence which was outside of the scope of Mr O'Donovan's role as a professional accountant.

- c. Allegation 3 was vague and the evidence in support of it was weak, appearing to simply be a limited number of emails in which Mr O'Donovan is alleged to have referenced both personal and professional matters. Furthermore, he submitted that the mischief of the allegation was unclear because the relevant correspondence related to interactions between Mr O'Donovan and Mr A's company, rather than Mr A himself, and ACCA had not received any complaint from Mr A's company. Mr Rafter submitted that if the issue was simply that Mr O'Donovan should not have referred to professional and personal matters in the same email, that was insufficiently serious conduct to amount to serious professional misconduct.

60. Dr Danti opposed the application. In summary, she submitted that:

- a. The evidence in relation to Allegation 1 was reliable because it consists of solicitors' letters produced in the course of business. The letters were contemporaneous to the matters that the Committee is asked to consider and were not created with these proceedings in mind. Dr Danti submitted that the letters show that information was requested of Mr O'Donovan and not provided until numerous requests had been made. She submitted, therefore, that the evidence was not in any way weak, vague, inconsistent or tenuous.
- b. The evidence in relation to Allegation 2 was not weak because there was no dispute that the relevant messages had been sent by Mr O'Donovan to Mr A. The tone of the messages was unprofessional and rude, whatever the context of the communications or the relationship between Mr O'Donovan and Mr A.
- c. The evidence in relation to Allegation 3 was not weak. She submitted that it was irrelevant that no complaint had been received by ACCA from Mr

A's company, or that Mr A and his company were separate legal entities. She submitted that Mr O'Donovan is a registered professional and it is the role of the regulator to ensure that proper professional standards are maintained by registered professionals. She submitted that the professional emails about company accounts, in which Mr O'Donovan also references his personal arrangements with Mr A in relation to the movement of goods, are sufficient evidence for the Committee to be able to have concerns as to Mr O'Donovan's objectivity and professional behaviour.

- d. In relation to Allegations 1, 2 and 3, Dr Danti also submitted that, taking ACCA's evidence at its highest, it was not the case that no reasonable Committee could conclude that Mr O'Donovan's relevant conduct could amount to a breach of the relevant standards and misconduct.
61. The Committee considered the submissions of the parties. The Committee accepted advice from the Legal Adviser, which included reference to paragraphs 70 to 74 of the ACCA Guidance for Disciplinary Committee Hearings and the application of the relevant test from *R v Galbraith* [1981] 1 WLR 1039 in these disciplinary proceedings – that is, whether there is 'no real prospect' of ACCA proving/establishing the matters alleged.
 62. In relation to Allegation 1a, the Committee considered that there was some evidence in support of the allegation, namely the letters from Mr A's solicitors to Mr O'Donovan between 25 May 2017 and 16 May 2018, and Mr O'Donovan's letters in response from 24 May 2018 onwards. The Committee did not consider that evidence to be tenuous. The dates of the letters were clear, as was the content of the letters. They included requests for information from Mr O'Donovan and, in the responses, provision of information by Mr O'Donovan. There was no obvious inconsistency with other evidence, including the later letter from Mr A's solicitors referring to an undertaking to make payment for work done. The Committee did not consider that it was clear that that letter meant that Mr O'Donovan had responded appropriately to the correspondence in question sooner than 24 May 2018. As such, the Committee found that there was some evidence in support of Allegation 1a but the strength or weakness of that evidence would depend upon its assessment of all of the evidence in the case, including Mr O'Donovan's evidence, which it had yet to hear. The

Committee therefore found that there was a case to answer in respect of Allegation 1a.

63. In relation to Allegation 1b, the Committee considered that if the matters set out at Allegation 1a were proven, there was a realistic prospect of ACCA being able to establish that the conduct found proved amounted to unprofessional behaviour. It considered that there was more than a remote or fanciful possibility that a committee could find a failure to respond to the letters from Mr A's solicitors during the relevant timeframe was a breach of the requirements for professional behaviour.
64. In relation to Allegation 2, the Committee noted that Mr A was a client of Mr O'Donovan and therefore, whatever the context that might become apparent when it hears evidence from Mr O'Donovan, there was a professional relationship between the two individuals. The Committee noted the content and tone of the relevant text messages and email messages and considered that they clearly amounted to some evidence in support of the allegation of a lack of courtesy and consideration. That evidence was not obviously tenuous, vague, inherently weak or inconsistent with other evidence in the hearing bundle. As such, the Committee found that there was some evidence in support of Allegation 2 but the strength or weakness of that evidence may depend upon its assessment of all of the evidence in the case, including Mr O'Donovan's evidence, which it had yet to hear. Furthermore, the Committee considered that if the email correspondence were proven to amount to a lack of courtesy and consideration, there was clearly a realistic prospect of ACCA being able to establish that the conduct found proved amounted to unprofessional behaviour. It considered that there was more than a remote or fanciful possibility that a committee could find that emails to a client displaying a lack of courtesy and consideration amounted to a breach of the requirements for professional behaviour. The Committee therefore found that there was a case to answer in respect of Allegation 2.
65. In relation to Allegation 3a, the Committee considered that there was some evidence in support of the allegation, namely the correspondence from Mr O'Donovan to Mr A dated 04 December 2018 and 05 December 2018. The Committee did not consider that evidence to be tenuous. The dates of the emails were clear and the content of the emails was clear. The correspondence

included reference to the payment of fees for accountancy services and, separately, a personal arrangement relating to the movement of goods. There was no obvious inconsistency with other evidence. As such, the Committee found that there was some evidence in support of Allegation 3a but the strength or weakness of that evidence may depend upon its assessment of all of the evidence in the case, including Mr O'Donovan's evidence, which it had yet to hear. The Committee therefore found that there was a case to answer in respect of Allegation 3a.

66. In relation to Allegation 3b, the Committee considered that if the matters set out at Allegation 3a were proven, there was a realistic prospect of ACCA being able to establish that the conduct found proved amounted to a lack of objectivity and unprofessional behaviour. It considered that there was more than a remote or fanciful possibility that a committee could find Mr O'Donovan's conduct amounted to a lack of objectivity and unprofessional behaviour because there was some evidence that professional and personal matters were potentially being referred to in the same correspondence, which may have indicated some inappropriate conflict of interest in the relationship. The Committee therefore found that there was a case to answer in respect of Allegation 3b.

Mr O'Donovan's application for a stay on the basis of an abuse of process

67. Mr Rafter, on behalf of Mr O'Donovan, made an application that the case against Mr O'Donovan be stayed (stopped). In outline, he submitted that there had been an unreasonable delay in the progress of the proceedings which had resulted in serious prejudice and unfairness to Mr O'Donovan, such that allowing the proceedings to continue at this stage would amount to an abuse of process.
68. Mr Rafter asserted that there had been an eight-year delay in this case without any explanation or justification from ACCA. He submitted that it was not until the Case Management Hearing on 27 November 2024 that it became clear that ACCA would not be calling Mr A or any other witnesses to give live evidence. Up until that point, Mr O'Donovan had been preparing to defend his case on the basis that he could test and challenge the evidence of Mr A and other witnesses by way of cross-examination. Given that late change of circumstances in the way that the case was being pursued by ACCA, Mr Rafter

submitted that Mr O'Donovan had been put at a serious disadvantage in preparing his defence. He asserted that, had the case progressed to this stage sooner, he would have had the opportunity to ask two employees to give evidence to provide context as to the professional relationship between Mr O'Donovan and Mr A. However, given the passage of time those two employees have now moved on to other places of work and, in any event, their and others' memories of this narrow set of events will have undoubtedly faded. He submitted that there is no action that the Committee could take that could adequately address or correct the prejudice and unfairness that has resulted from the unreasonable delay.

69. In relation to the conduct of the parties in relation to the proceedings, Mr Rafter asserted that ACCA had failed to comply with direction 2 arising from the Case Management Meeting dated 07 October 2022 – for ACCA to provide witness statements for any witness it wishes to call.
70. Referring the Committee to the case of *Haikel v General Medical Council* [2002] UKPC 37, Mr Rafter also submitted that the allegations in this case were not serious in nature and so there was no countervailing public interest, as there had been in *Haikel*, that, despite ACCA's excessive delay in bringing these matters to a hearing, the allegations should be heard and determined rather than stayed.
71. Dr Danti, on behalf of ACCA, opposed the application. Dr Danti accepted that six years had elapsed since ACCA had received the complaint from Mr A. In outline, she submitted that the delays experienced in this case were not unusual for ACCA cases, that ACCA had been going through a particularly busy period, and that the delay, although regrettable, would not prevent Mr O'Donovan from having a fair hearing. Dr Danti submitted that the delay would not have prevented Mr O'Donovan from calling any witnesses he wished to. There was nothing unusual about calling witnesses who used to be employees but have now moved onto employment for another organisation. Dr Danti submitted that Mr A's lack of attendance at the hearing has not caused any unfairness to Mr O'Donovan because ACCA is not relying on any hearsay evidence from Mr A. ACCA's case rests solely on other documentary evidence which Mr O'Donovan can comment on and challenge as he sees fit.

72. Dr Danti submitted that there was nothing in the progress of this case that would offend against the Committee's sense of justice and propriety. She asserted that Mr O'Donovan had known about the allegations for a long time, the case against him had not changed over that time, and that ACCA had complied with all of the case management directions made whereas Mr O'Donovan had not.
73. The Committee considered the submissions of the parties. The Committee accepted advice from the Legal Adviser, which included reference to the following matters:
- a. "*Stays imposed on the grounds of delay or for any other reason should only be employed in exceptional circumstances*" (*Attorney-General's Reference (No. 1 of 1990)* [1992] QB 630 at 643G);
 - b. The Committee should stop the case if (i) it will be impossible for the Member to have a fair hearing, or (ii) continuing with the case would, in all the circumstances, offend the Committee's sense of 'justice and propriety' (*R v Maxwell* [2011] 1 WLR 1837);
 - c. The Committee may find it helpful to consider the following questions:
 - i. Has there been a delay?;
 - ii. If so, does the length of the delay cause real concern such that the delay has been unreasonable (*Dyer v Watson* [2004] 1 AC 379)?
 - iii. If there is unreasonable delay, has it caused serious prejudice or unfairness to the Member (*Okeke v Nursing and Midwifery Council* [2013] EWHC 714)?
 - iv. Can the Committee and/or the parties take action to lessen or correct the prejudicial effect of the delay such that a fair hearing is still possible (*R(Gibson) v General Medical Council and another* [2004] EWHC 2781 (Admin))?

74. The Committee first considered whether there had been a delay in the progress of this case. The Committee noted that it had been told of the following dates in the procedural history of the case:
- a. ACCA received the complaint from Mr A on 09 April 2019;
 - b. On 24 May 2021 ACCA informed Mr O'Donovan that the matter would be sent to an Independent Assessor for consideration on 10 June 2021;
 - c. ACCA wrote to Mr O'Donovan on 19 July 2021 to inform him that the Independent Assessor had decided to refer the allegations to a Disciplinary Committee;
 - d. On 31 August 2021 Mr O'Donovan completed and signed the Case Management Form;
 - e. On 18 April 2022 Mr O'Donovan made an application for the final hearing to be held in person as opposed to remotely;
 - f. A Case Management Meeting was held on 07 October 2022, directing that the final hearing would be held remotely and that ACCA must serve witness statements in respect of any witnesses it plans to call to give evidence at the final hearing;
 - g. A further Case Management Meeting was held on 27 November 2024, making directions for the listing of the hearing, the service of a statement of defence, and the service of a skeleton argument if an application of 'no case to answer' would be made; and
 - h. The final hearing commenced on 01 April 2025.
75. The Committee noted that ACCA has been notified of the complaint on 09 April 2019 and that ACCA had referred the matter to an Independent Assessor on or around 24 May 2021. The Committee considered that an investigation period of approximately 09 April 2019 to 24 May 2021, a period of just over two years, was not necessarily an unusual or inappropriate length of time. The Committee noted from the hearing bundle that there had been a high volume of

correspondence between ACCA and Mr O'Donovan between 09 April 2019 and 11 December 2020. It noted that a large amount of documentation had been gathered. Furthermore, the Committee took into account that some of this period included times when ACCA's processes might understandably have been disrupted due to the Covid-19 pandemic.

76. Following the Independent Assessor's referral of the case to a final hearing to be held in June/July 2021 and Mr O'Donovan's return of a completed Case Management Form on 31 August 2021, the Committee noted that it had taken until 01 April 2025 for a final hearing to be held. That is a period of approximately three and a half years. The Committee considered that to be a considerable delay. Looking at the whole six-year period from receipt of the complaint to the holding of the final hearing, the Committee concluded that there had been a considerable delay.
77. The Committee next considered whether the length of the delay gave it real concern such that the delay was unreasonable. The Committee was unclear why the case management issues around whether the hearing would be held in person or remotely, which witnesses, if any, would be called to give evidence, and requests for a statement of defence took ACCA so long to address. The Committee took into account that the matters being investigated were discrete and not particularly complex. They related to whether correspondence had been responded to in a timely fashion, whether correspondence had lacked courtesy and consideration and a potential conflict of interest issue.
78. The Committee noted that ACCA had not made any suggestion that the Member's conduct of the case had contributed to this delay. The Committee noted that ACCA had accepted that there had been some "*regrettable*" delay but had failed to give an explanation other than to say that ACCA had been particularly busy and was working through a backlog of cases. The Committee concluded that the six year period between complaint and final hearing, and in particular the three and a half year period between the case being referred to a Disciplinary Committee and it coming to a final hearing, was an unreasonable delay. There was no proper explanation from ACCA that could justify such a lengthy delay, and therefore the Committee had a real concern that the delay was unreasonable in the circumstances. The Committee noted the observations made by the Chair of the Case Management Meeting held on 07

October 2022, which made clear to ACCA the desirability of bringing the case to a hearing with expedition: *'... The Chair considered that it was in the interests of both parties and the public interest that this case is brought to a conclusion expeditiously. The case has been ongoing for a considerable period of time and the matter has been hanging over the head of Mr O'Donovan...'*

79. For completeness, in relation to the conduct of the parties in relation to the proceedings, Mr Rafter had asserted that ACCA had breached direction number 2 arising from the Case Management Meeting held on 07 October 2022. The Committee found that there was no evidence to support that assertion. The direction had required ACCA to serve witness statements in respect of any witnesses it intended to call to give evidence. As ACCA had decided not to call any witnesses to give evidence, there was no requirement on it to serve any witness statement. For that reason, the Committee considered this point irrelevant and therefore did not take it into account when assessing whether the delay had been unreasonable. The Committee also referred back to its earlier finding that Mr O'Donovan had breached direction 6 arising from the Case Management Meeting held on 27 November 2024. However, it found that Mr O'Donovan's failure to comply with that direction had not caused or contributed to any delay because the final hearing was able to go ahead notwithstanding the non-compliance.
80. The Committee next considered whether the unreasonable delay had caused serious prejudice or unfairness to Mr O'Donovan. The Committee inferred that, as at the 07 October 2022 Case Management Meeting, ACCA was still planning to call Mr A to give evidence at the final hearing. This is because one of the two directions from the meeting was that ACCA must serve Mr O'Donovan a copy of a witness statement in respect of any witness that was going to be called. Furthermore, correspondence in the months following the meeting indicates that Mr O'Donovan made a number of requests for ACCA to send him witness statements. It would appear to the Committee that it only became clear to ACCA around August 2024 that it would not be able to obtain a witness statement from Mr A, and then this was made clear to Mr O'Donovan at the Case Management Meeting on 27 November 2024. Therefore, before that point, the Committee accepts that Mr O'Donovan was given reason to think that the case against him would be put on the basis of evidence from Mr A, which he would be able to challenge and test by way of cross-examination.

81. The Committee considered that the unreasonable delay in getting to that point of clarity as to what ACCA's case was against Mr O'Donovan, and how ACCA was planning to put its case to the Disciplinary Committee, has had a seriously prejudicial and unfair impact on Mr O'Donovan. The Committee accepted Mr Rafter's assertion that the unreasonable delay would mean that the memory of the relevant events of both Mr O'Donovan and two of his employees from the relevant period would have inevitably faded, making it more difficult for Mr O'Donovan to gather and present his defence against the allegations. The Committee also accepted Mr Rafter's assertion that, since those two employees had now moved on to other places of work, the unreasonable delay had meant that it would be more difficult to seek the assistance of those former employees to support Mr O'Donovan with this defence. Lastly, the Committee also considered that the considerable passage of time since the events in question would mean that Mr O'Donovan would find it understandably very difficult to locate and retrieve relevant documentation in his defence.
82. The Committee next considered whether it and/or the parties could take action to lessen or correct the serious prejudice or unfairness to Mr O'Donovan such that a fair hearing was still possible. The Committee acknowledged that it was a professional panel, used to exercising independent judgement, and that it could carefully assess the appropriate weight to accord to the documentation that had been provided by ACCA, without calling any live witness to attest to the relevant contextual circumstances. However, given that Mr O'Donovan's defence to the allegations related primarily to the context of his professional and personal relationships with Mr A, the Committee considered that the unreasonable delay having caused Mr O'Donovan difficulty with gathering relevant evidence (including relevant witnesses) to speak to that context, the Committee's careful assessment of the available documentation could not adequately mitigate the serious prejudice and unfairness faced by Mr O'Donovan.
83. The Committee next considered whether continuing with the case would, in all the circumstances, offend the Committee's sense of 'justice and propriety'. The Committee accepted Mr Rafter's assertion that the allegations in this case were not so serious that there was a strong public interest that would require the case to be pursued notwithstanding an unreasonable delay causing serious prejudice and unfairness. The allegations related to an alleged delay in

providing information to a client's solicitor (but not an outright refusal or refusal to engage with that solicitor), an alleged use of an unprofessional and rude tone in four messages to a client with whom he was in dispute over fees (but no use of obscene language, and no refusal to respond or engage), and an alleged inappropriate mixing of personal and professional matters with the same client (but no allegation of dishonesty or lack of integrity). The Committee takes no issue with ACCA responding to Mr A's complaint, and then investigating and pursuing these matters at a disciplinary hearing, and considers that action by the regulator to have been entirely proper. However, the Committee considers that the public interest in continuing these matters has waned given the passage of time and the associated prejudicial impact on Mr O'Donovan's ability to conduct his defence. That impact, along with the Committee's assessment that it was not possible for the Committee to take action to adequately mitigate that impact, meant that allowing the case to continue at this stage would offend against the Committee's sense of justice and propriety.

84. The Committee concluded that this was an exceptional case in which it could not allow the proceedings to continue. In the circumstances of an unreasonable six-year delay causing serious prejudice and unfairness to Mr O'Donovan, a fair hearing was no longer possible and continuing the case would offend against the Committee's sense of justice and propriety. The Committee therefore decided to allow Mr Rafter's abuse of process application and stay the proceedings.

ORDER

85. The Committee made the following order:
- a. The ACCA proceedings against Mr O'Donovan shall be stayed.

EFFECTIVE DATE OF ORDER

86. In accordance with Regulation 20(2) of the Regulations, the order shall take effect immediately.

Mr Andrew Gell
Chair
02 April 2025