

## HEARING

### DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

#### REASONS FOR DECISION

<b>In the matter of:</b>	<b>Mr Brendan Neil Fitzpatrick</b>
<b>Heard on:</b>	<b>Wednesday, 02 October 2024</b>
<b>Location:</b>	<b>Held remotely by video conference</b>
<b>Committee:</b>	<b>Mr Andrew Popat CBE (Chair) Ms Andrea White (Accountant) Ms Yvonne Walsh (Lay)</b>
<b>Legal Adviser:</b>	<b>Mr Andrew Granville Stafford</b>
<b>Persons present and capacity:</b>	<b>Mr Brendan Fitzpatrick (Member) Mr Kamran Khan (ACCA Case Presenter) Ms Anna Packowska (Hearings Officer)</b>
<b>Outcome:</b>	<b>Allegations 1(a), 1(b), 1(c), 2(a) and 3(a) proved Severe reprimand Costs of £6,000</b>

#### ACCA



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## **INTRODUCTION AND PRELIMINARY MATTERS**

1. The Disciplinary Committee of ACCA ('the Committee') convened to consider a report concerning Mr Brendan Neil Fitzpatrick. The Committee was provided with a report and bundle (113 pages), a Case Management Form (10 pages) completed and signed by Mr Fitzpatrick on 27 June 2024, and a service bundle (16 pages).

## **ALLEGATIONS AND ACCA's CASE**

2. At the start of the hearing, Mr Khan made an application to amend the allegations by removing a stray bracket that had been inserted into Allegation 2(c). There was no objection to the application and the Committee was satisfied that, as it was in the nature of correcting a typographical error, it ought to be allowed.
3. The allegations faced by Mr Fitzpatrick, as amended, were as follows.
  1. Failed to co-operate with an investigation into a complaint, contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended), in that he failed to respond to any or all of ACCA's correspondence dated:
    - a. 09 October 2023;
    - b. 17 October 2023; and/or
    - c. 23 October 2023.
  2. In accordance with paragraph 5 of Section B9 of the ACCA's Code of Ethics and Conduct then in force:
    - a) Failed to record in writing and send to Client A, a signed of letter of engagement letter setting out the terms under which he had agreed to be engaged by that client, before any work was undertaken or at all.
    - b) Failed to ensure Client A returned to him a counter-signed copy of that

letter of engagement denoting that Client A had agreed to those terms of engagement.

- c) Failed to ensure he retained a copy of the letter of engagement referred to above duly signed by Client A.

3. By reason of his conduct, is:

- a) Guilty of misconduct pursuant to bye-law 8(a)(i), or in the alternative;
- b) Liable to disciplinary action pursuant to bye-law 8(a)(iii).

4. Mr Fitzpatrick was admitted as a member of ACCA in 2001 and as a fellow in 2006. At the relevant times he was in practice as an accountant with James Scott Chartered Certified Accountants.

5. In May 2021, ACCA received a complaint relating to Mr Fitzpatrick from the new accountant of a former client of his ('Client A'). The matter was referred for investigation, and on 12 May 2022, Mr Fitzpatrick was informed by an email from an ACCA Senior Investigations Officer ('SIO') that a formal investigation had been opened.

6. Mr Fitzpatrick was asked to provide, amongst other information, a copy of his letter of engagement with Client A, setting out the terms of the work that was to be undertaken.

7. Mr Fitzpatrick confirmed by email to the SIO on 14 September 2023 that he had not been able to locate the engagement letter. He said:

*'Do not know why (or if) no engagement letter was sent to [Client A] or why we do not have one on file. As you will be aware from our practice reviews we do have good systems in place for this.'*

8. ACCA's alleged that this constitutes a breach of paragraph 5 of section B9 of the Code of Ethics and Conduct, which states:

*'A professional accountant shall record in writing and send to their client a letter of engagement which sets out the terms under which they are agreeing to be*

*engaged by their client before any work is undertaken or, if this is not possible, as soon as practicable after the engagement commences. The professional accountant shall ensure that at the time he/she agrees to perform certain work for the client a letter of engagement is prepared which clearly defines the scope of his/her responsibilities and the terms of his/her contract with his/her client. The letter of engagement shall set out in detail the actual services to be performed, the fees to be charged, or the basis upon which fees are calculated, and the terms of the engagement should be accepted by the client so as to minimise the risk of disputes regarding the duties assumed. Accordingly, the professional accountant shall ensure they retain a copy of the engagement letter which has been signed by the client.'*

9. The SIO's letter of 12 May 2022 set out four matters that they were investigating and asked for Mr Fitzpatrick's response. Mr Fitzpatrick replied on 26 May 2022 (a copy of which was not provided to the Committee).
10. The SIO sent a further email to Mr Fitzpatrick on 24 June 2022. They thanked him for his response and the documents he had provided, but said they needed a response to each of the questions asked. A deadline was set of 1 July 2022 for his reply.
11. Mr Fitzpatrick asked for an extension of this deadline, due to diary commitments. On 06 July 2022, the SIO informed him that he had until 08 July 2022. In the absence of a response, the SIO warned Mr Fitzpatrick on 14 July 2022 that a failure to fully co-operate with the investigation could result in disciplinary action being taken against him.
12. Mr Fitzpatrick replied on 27 July 2022, explaining that he had been off work due to illness. He gave a detailed response to the four matters being investigated. He said that he hoped that this, coupled with the information previously given, would enable the SIO to conclude their investigation.
13. On 23 December 2022 the SIO wrote to Mr Fitzpatrick by email saying:

*'I write further to your email of 27 July 2022 providing your full response to the complaints. Please accept my apologies for the delayed progress on my review of your responses. I have diarised my review to be completed and am*

*aiming to have provided you with the decision if I have all the information I require in January.'*

14. The SIO wrote again on 7 February 2023, saying that progress reviewing the complaint had been delayed but that a substantive update should be provided in three to four weeks. On 21 March 2023, the SIO wrote again to Mr Fitzpatrick and said that they were aiming to provide an update in four weeks.
15. The SIO next wrote on 8 August 2023, apologising for the delay, and setting out eight numbered questions which they required Mr Fitzpatrick to respond to. A deadline of 21 August 2023 was given but subsequently extended by agreement to 8 September 2023.
16. No response was received by 8 September 2023, and on 12 September 2023 the SIO again warned Mr Fitzpatrick that an allegation of failing to co-operate may be raised against him.
17. Mr Fitzpatrick provided his reply to the eight questions by email on 14 September 2023.
18. The SIO responded by raising further queries on 9 October 2023. The SIO requested, amongst other things, clarity on matters relating to the accounts prepared for Client A for the years ending 5 April 2018 and 5 April 2019.
19. Chaser emails were sent on 17 and 23 October 2023. No response was received, and on 2 January 2024 Mr Fitzpatrick was informed that a disciplinary allegation had been referred to the independent assessor.
20. ACCA alleged that, in failing to respond to the requests of the investigating officer, Mr Fitzpatrick has breached Regulation 3(1) of the Complaints & Disciplinary Regulations ('CDR') which states:  
  
*'(a) Every relevant person is under a duty to co-operate with any investigating officer and any assessor in relation to the consideration and investigation of any complaint.'*

*(b) The duty to co-operate includes providing promptly such information, books, papers or records as the investigating officer or assessor may from time to time require.*

*(c) A failure or partial failure to co-operate fully with the consideration or investigation of a complaint shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.'*

- a. ACCA's case was that the above matters amount to misconduct or, in the alternative, a breach of ACCA rules or regulations.

### **MEMBER'S CASE**

21. In his Case Management Form, in response to a question asking him whether he admitted the allegations, Mr Fitzpatrick wrote:

*'We were unable to locate the letter of engagement on our system so therefore no letter in place.*

*With regards to non/late responses to correspondence, towards the end of the over two-year process then yes. However, there were significant and longer delays by ACCA at the start of the case.'*

22. At the outset of the hearing, Mr Fitzpatrick formally admitted Allegation 1 in full and Allegation 2(c).
23. Mr Fitzpatrick gave oral evidence to the Committee.
24. In relation to Allegation 1, Mr Fitzpatrick did not dispute that he had not replied to the request for information sent on 9, 17 and 23 October 2023. In mitigation, he pointed out that this request had come at the end of an extended period of correspondence with ACCA.
25. In particular, he pointed out that he had provided a detailed response to ACCA's enquiries by email on 27 July 2022. ACCA had taken six months to reply to that email, and over a year to provide a substantive response to those representations. He said it was inherently unfair for ACCA to bring him to a disciplinary hearing for failing to respond to its requests for information in a

timely manner when it had itself failed to deal with correspondence for many months.

26. In relation to Allegation 2, Mr Fitzpatrick accepted that he was unable to locate a copy of a client engagement letter sent to Client A. On that basis he admitted Allegation 2(c), because a copy of the letter had clearly not been retained.
27. However, Mr Fitzpatrick told the Committee that the Firm would have produced an engagement letter and sent it out as a matter of course. At the time this had been the responsibility of the office secretary, although it was now done automatically by the firm's software system.
28. Although he could not locate a copy of this particular letter, he could not say for definite that it was never sent, nor indeed that it was never signed and returned by the client. Therefore, he could not admit Allegations 2(a) and 2(b).

#### **DECISIONS ON ALLEGATIONS AND REASONS**

29. The Committee considered the documents before it, the oral evidence of Mr Fitzpatrick, the submissions of both parties and the advice of the Legal Adviser. The Committee bore in mind that the burden of proving an allegation rests on ACCA and the standard to be applied is proof on the balance of probabilities.

##### Allegation 1

30. Mr Fitzpatrick admitted this allegation in full and the Committee found it proved on the basis of his admission.

##### Allegation 2

31. The Committee found Allegation 2(a) proved.
32. There was no evidence before the Committee that a letter of engagement had been sent to Client A. The Committee noted that Mr Fitzpatrick had been unable not only to produce a copy of the letter itself, but he had also been unable to produce any record showing that one had been sent out.
33. Mr Fitzpatrick's denial of this allegation relied on his confidence that the system would have worked as it was intended to. However, in the Committee's view,

the lack of any evidence showing that a letter of engagement had been sent did not justify that confidence. On the balance of probabilities, the most likely explanation for being unable to produce Client A's letter of engagement was that one was never sent.

34. In light of its finding on Allegation 2(a), the Committee considered that it was not appropriate to make any separate findings on Allegations 2(b) or 2(c). As a matter of logic, if no engagement letter had been sent out, it would not have been possible for the client to sign and return it or for the Firm to retain a copy of it. The mischief here, the Committee was satisfied, was covered by Allegation 2(a), which it had found proved.

### Allegation 3

35. The Committee considered whether, in light of its findings on Allegation 1 and Allegation 2(a), Mr Fitzpatrick was guilty of misconduct.
36. Engagement letters are important documents. This is emphasised by the fact that the requirement to provide one is included in the Code of Ethics. The obligation to respond to requests made by the regulator is also an important requirement, and failure to do so constitutes a breach of ACCA's regulations.
37. Taken together, these were serious departure from the standards required of an accountant, and the Committee considered that fellow practitioners would regard this conduct as deplorable.
38. Therefore, the Committee found Allegation 3(a) proved, on the basis that the conduct in Allegation 1 and Allegation 2(a) amounted to misconduct. It was not, therefore, necessary for the Committee to consider the alternative in Allegation 3(b).

### **SANCTION AND REASONS**

39. The Committee considered what sanction, if any, to impose taking into account ACCA's Guidance for Disciplinary Sanctions ('GDS') and the principle of proportionality. The Committee bore in mind that the purpose of sanctions was not punitive but to protect the public, maintain confidence in the profession and



declare and uphold proper standards of conduct and behaviour. It took into account the submissions of the parties and the advice of the Legal Adviser.

40. The Committee took into account that no previous disciplinary findings had been made against Mr Fitzpatrick. It also considered the following to be mitigating factors. Although there are two separate allegations, they relate to one client. The allegations are therefore not indicative of serial wrongdoing, and nor has there been any repetition of conduct of this nature. Although he had not admitted the allegations in full he had made admissions to them and he had, prior to October 2023, engaged with the investigation, including providing quite lengthy responses to the requests made of him. There was no evidence that any harm had resulted from his actions and the Committee considered Mr Fitzpatrick had expressed genuine regret.
41. The allegations in this case demonstrate failings by Mr Fitzpatrick to comply with his obligations both to his client and to his regulator. However, over and above the conduct inherent allegations themselves, the Committee did not consider that there were any significant aggravating factors. Mr Fitzpatrick made it clear to the Committee that he accepted his obligation to comply with the relevant rules and standards. The Committee noted, however, that Mr Fitzpatrick seemed to consider the undoubtedly lengthy time it took ACCA to deal with his correspondence provided him with a justification for his own failures to reply, which arguably demonstrated a lack of full appreciation of the seriousness of the allegations in this case.
42. Because the proven allegations encompassed serious departures from the appropriate standards, the Committee considered that a severe reprimand was the appropriate and proportionate sanction.
43. Therefore, pursuant to CDR 13.1(b), Mr Fitzpatrick is severely reprimanded.

#### **COSTS AND REASONS**

44. ACCA applied for costs in the sum of £6,446.50. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing. Mr Fitzpatrick provided no evidence as to his financial circumstances.

45. The Committee considered that, in principle, a costs order should be made in favour of ACCA. Apart from a reduction to reflect the actual rather than estimated length of the hearing, the Committee considered that the costs claimed were reasonable and had been properly incurred.
46. The Committee determined that the appropriate order was that Mr Fitzpatrick pay ACCA's costs in the sum of £6,000.

#### **EFFECTIVE DATE OF ORDER**

47. The order will come into effect from the date of expiry of the appeal period, namely after 21 days from service of this written statement of the Committee's reasons for its decision, unless Mr Fitzpatrick gives notice of appeal in accordance with the Appeal Regulations prior to that.

**Mr Andrew Popat CBE**  
**Chair**  
**02 October 2024**