

## DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

### REASONS FOR DECISION

- In the matter of:** Mr David Gerard McSharry
- Heard on:** Tuesday, 8 October 2019 – Thursday, 10 October 2019
- Location:** The Adelphi, 1-11 John Adam Street, London WC2N 6AU
- Committee:** Mr Michael Cann (Chairman)  
Mr Peter Douglas (Accountant)  
Mrs Eileen Skinner (Lay)
- Legal Adviser:** Mr David Marshall
- Persons present and capacity:** Mr Barnaby Hone (ACCA Case Presenter)  
Miss Rachael Davies (Hearings Officer)  
Mr David McSharry (Member)
- Observers:** Mr Jonathan Lionel (Hearings Officer – in training) (09 October only)  
Ms Geraldine Murray (Hearings Officer – in training) (09 October only)

1. The Committee heard an allegation of misconduct against Mr McSharry. Mr Hone appeared for ACCA. Mr McSharry was present, and represented himself.

## **ALLEGATIONS/BRIEF BACKGROUND**

2. Mr McSharry has been a member of ACCA since 1998. He has held a practising certificate with audit qualification since January 2013. His company, McSharry Accountancy Services Limited has held an auditing certificate (Ireland) for the same period.
3. ACCA scheduled an audit monitoring visit for 17 January 2018 to be conducted by a Senior Compliance Officer, Witness 1. In preparation for that visit she conducted a computer search on official company records to identify all the companies that had recently filed accounts with audit reports signed by Mr McSharry or his firm. At ACCA's request, Mr McSharry independently provided a list of companies he had audited. ACCA alleges that Mr McSharry's list omitted 7 company names.
4. Mr McSharry provided documents in relation to six of the seven missing companies. (ACCA does not take any issue about the fact that one file was not provided.) Of these files, Witness 1 said that she could not find any evidence of any audit work having been done on five of the files. She also said that Mr McSharry had signed two audit reports in respect of his own company, McSharry Accountancy Services Limited.
5. Mr McSharry accordingly faced the following allegations:

### **Allegation 1**

- (a) On 17 January 2018 David Gerard McSharry failed to disclose any or all of the audit clients set out in Schedule A to ACCA's compliance officer, contrary to Global Practising Regulation 14(2) (as applicable in 2018).
- (b) On one or more of the dates set out in Schedule B, David Gerard McSharry signed an audit report to the accounts of one or more of the clients set out in Schedule B certifying that he had undertaken the audit work identified in the report in accordance with the International Standards on Auditing (UK and Ireland), when he had not undertaken that work sufficiently or at all, contrary to Global Practising Regulation 13 (1) (b) Annex 2, Appendix 1.

- (c) On one or more of the dates set out in Schedule C, David Gerard McSharry signed an audit report to the accounts of the client set out in Schedule C, contrary to Section 290.104 of ACCA's Code of Ethics and Conduct (as applicable in 2016).
- (d) David Gerard McSharry's conduct in respect of 1(a) and/or 1(b) was:
  - (i) Dishonest in respect of 1(a) above, in that he knew the information he provided to ACCA's compliance officer regarding McSharry & Co's audit clients was false; and/or
  - (ii) Dishonest, in respect of 1(b) above in that he knew what he was certifying in relation to any or all of the audit reports at Schedule B was false; and/or
  - (iii) Contrary to the Fundamental Principle of Integrity (as applicable from 2016 to 2018);
  - (iv) Contrary to Section 130.1(b) of the Fundamental Principle of Professional Competence and Due Care in respect of 1(b) only;
- (e) By reason of his conduct Mr David Gerard McSharry is:
  - (i) Guilty of misconduct in respect of any or all of the matters set out at 1(a), 1(b), 1(c) and/or 1(d), pursuant to bye-law 8(a)(i); or
  - (ii) Liable to disciplinary action in respect of any or all of the matters set out at 1(a), 1(b), 1(c), 1(d)(iii) and/or 1(d)(iv), pursuant to bye-law 8(a)(iii).

#### **DECISION ON FACTS/ALLEGATION(S) AND REASONS**

6. At the start of the hearing, Mr McSharry admitted the facts of Allegation 1(a). **The Committee found Allegation 1(a) proved.**
7. Mr McSharry also admitted the facts of Allegation 1(c). **The Committee found Allegation 1(c) proved.** His explanation was that his company had such a small turnover – one invoice issued per month – that he did not

consider it necessary to have an audit by an independent auditor. He said he made a judgement between the complexity of the company's affairs and the need for independence. He now accepted that his position was quite wrong and that 'independence must always win'.

8. Mr McSharry made other, partial, admissions but the Committee treated the remaining allegations as not admitted.
9. With regard to Allegation 1(b), it was not in dispute that Mr McSharry signed the audit reports listed in Schedule B. It was not in dispute that those reports certified that he had undertaken the audit work identified in the report, in accordance with the International Standards on Auditing (UK and Ireland). The issue was whether, in relation to each of the five companies, he had failed to carry out sufficient work to justify those certificates.
10. Witness 1's evidence was initially given in the form of a detailed witness statement with extensive exhibits. She set out her findings on the files that she had inspected at the visit. Of the audit clients that had not been identified in advance (Schedule A), one file (Company A) was satisfactory and one (Company E) was not available. For the other five files, her conclusion was that there was no evidence on file that audit work had been done.
11. On the day of the visit, Mr McSharry set out, in an email, the work which he said he had done for the audit. He accepted that his work had not been adequately documented, but he said it had been done, and was sufficient to justify his audit opinions. At that stage, he did not state that the files were incomplete.
12. On or about 30 April 2018, Mr McSharry provided to ACCA's Investigation Officer copies of what he said were 'the six files inspected by the Compliance Officer on the 17th January 2018'. However, Witness 1 said in her witness statement that, when she inspected these, she found documents which had not been in the files she inspected. There were also documents she had seen, but which now contained annotations that she had not seen previously.

13. In his oral evidence, Mr McSharry was questioned at length about these documents. He said that his practice at the time was to keep working papers on USB sticks. For the three files which he knew would be inspected at the monitoring visit, he ensured that everything on the memory sticks was printed off and put in the files. For the five files which he produced on the day, he handed over the paper files only. Mr McSharry accepted that his filing system was quite inadequate, and said that it was partly due to the fact that he did not regard these companies as audit clients, since they were basically audit-exempt. Mr McSharry said that he had revised his practice so all papers were now filed together. He was not able to explain why he had not told Witness 1 that these files were incomplete, nor why he did not look for further documents at the time.
14. He said that later he conducted a search, and produced further documents which he said had only existed in electronic form. He also included hand-written documents and annotations from other sources, such as from amongst working papers and in files for subsequent years. These were the files that he had sent to ACCA after the visit. He said the files included documents on which he had added explanatory notes to assist ACCA with understanding his work. However, his correspondence did not make clear that some documents were not contemporaneous.
15. Towards the end of the first day, Mr Hone had applied for, and was granted, a short adjournment so he could interpose Witness 1 as a witness during the course of Mr McSharry's evidence. Witness 1 said that she had made notes of the documents she had inspected on 17 January 2018, although she did not take copies. She said she deliberately set out to make notes of anything related to audit, but she would not necessarily have noted purely accountancy matters. She agreed with Mr McSharry that annotations referring to nominal codes and other purely accounting details might have been on the documents she saw. She was confident that there was no evidence of audit.
16. Witness 1 was asked if her opinion would have been different if, at the time of her visit, the files had contained the documents that were present in the later versions. She said it was difficult to say without conducting a full

analysis, but her conclusion might have been different. Some of those clients were very small and low risk. She said there was no doubt that Mr McSharry knew how to audit, since two of the three pre-disclosed files she examined were satisfactory. The third file, although unsatisfactory, showed clear evidence of audit. However the five files in Schedule B did not.

17. The Committee accepted Witness 1's evidence in full. It found her fair and helpful, and she made appropriate concessions when questioned.
18. The Committee found Mr McSharry's evidence unsatisfactory. His account of events was inconsistent, implausible and changed over time. The Committee did not accept that the files, as delivered to ACCA in April 2018, contained only documents that existed prior to Witness 1's visit. Indeed, to some extent, Mr McSharry accepted that they did not. In summary, Mr McSharry's evidence amounted to an assertion that he knew the affairs of these companies intimately, and therefore could be satisfied that the published accounts were accurate. However, that is not evidence of a properly conducted audit. The Committee found no reason to doubt the evidence of Witness 1 that a proper audit was not carried out.
19. **The Committee found Allegation 1(b) proved.**
20. With regard to Allegation 1(d)(i), Mr McSharry said that his failure to disclose Company A as an audit client was an oversight. The Committee was prepared to accept this. It appeared to be in a separate category from the others.
21. With regard to the other six companies, Mr McSharry's case was that they were audit exempt, although he had, on occasions, had to perform one-off audits for them. He said that under Irish company law, when an audit-exempt company misses a filing deadline, it is required to file an audit for the following year. He said that because the companies were basically exempt from auditing, he had not thought of them as audit clients. However, he was not able to give a satisfactory explanation for why he had disclosed at least one audit-exempt client to ACCA before the visit.
22. The Committee noted that ACCA wrote to Mr McSharry on 25 October 2017

with a list of information he was required to provide before the visit on 17 January 2018. This included a 'List of clients on which the firm has issued any form of audit report ... within the 24 months prior to the monitoring visit, whether or not the firm still holds the appointment, ...'. This information had to be provided at least two weeks before the scheduled date, so Mr McSharry had more than two months to assemble the information. As an experienced auditor, Mr McSharry can have had no difficulty in understanding this request.

23. Mr McSharry said that his filing system was deficient at the time, with files for normally audit-exempt clients stored separately from his normal audit clients. When asked, he said that he had about 120 client files, of which 18 were audit files. The Committee found it incredible that he could have overlooked 7 of them when preparing for the monitoring visit.
24. The Committee regarded it as highly significant that at least five of the files not disclosed contained no evidence of audit work done. The Committee was satisfied, on the balance of probabilities, that Mr McSharry had chosen not to disclose these clients because he knew the files would not stand up to an inspection. He chose to conceal them. Such behaviour would be regarded as dishonest by the standards of ordinary decent people.
25. **The Committee found Allegation 1(d)(i) proved.**
26. With regard to Allegation 1(d)(ii), the Committee has already dealt with Mr McSharry's credibility. He was perfectly capable of conducting a satisfactory audit. It found that when Mr McSharry signed each audit report, he knew that he had not carried out the work to justify the audit. He nevertheless signed reports which can only have been intended to deceive. **The Committee found Allegation 1(d)(ii) proved.**
27. With regard to Allegation 1(d)(iii), in view of the Committee's findings of dishonesty, it was clear that he failed to act with integrity. **The Committee found Allegation 1(d)(iii) proved.**
28. With regard to Allegation 1(d)(iv), the Committee found that Mr McSharry had failed to act with competence and due care. As an experienced auditor,

he clearly knew what information he had to disclose before the monitoring visit and what work was required to complete a proper audit. **The Committee found Allegation 1(d)(iv) proved.**

29. With regard to Allegation 1(e)(i), the Committee was satisfied that Mr McSharry was guilty of misconduct in respect of the matters found proved. Dishonesty, in particular, is one of the most serious findings that can be made against an accountant. His failures brought discredit to Mr McSharry and his firm, to the Association, and to the accountancy profession. They would be regarded as deplorable by fellow practitioners. **The Committee found Allegation 1(e)(i) proved.**
30. In view of this decision, the Committee did not have to consider Allegation 1(e)(ii).

#### **SANCTION(S) AND REASONS**

31. Having found the facts proved, the Committee considered what sanction, if any, to impose, having regard to ACCA's Guidance for disciplinary sanctions.
32. The Committee first sought to identify any aggravating or mitigating factors. The findings of dishonesty make this case a serious one, but the Committee did not identify any factors which make this case more serious than others of its kind.
33. There was considerable mitigation in this case. Mr McSharry had a previous unblemished record. He produced five outstanding references from persons of standing in his community: a Hospital Consultant, a Financial Adviser, a Chartered Accountant, a Solicitor and a Sergeant of the Garda. These references were submitted overnight, and the referees were aware that the Committee had made findings of dishonesty against Mr McSharry yesterday. The referees spoke highly of Mr McSharry's past professionalism and integrity. The Committee was satisfied that Mr McSharry's actions were wholly out of character. While this was not a single incident of misconduct, it was a defined episode arising out of a period between about mid-2016 and mid-2017. Mr McSharry addressed the Committee about the circumstances in which his misconduct originated. His submissions were made in a

dignified and measured way. He fully accepted the findings of the Committee, and fully accepted responsibility while providing factual information about the circumstances in which his misconduct took place. Much of this evidence was heard in private to protect the private life of others.

34. [IN PRIVATE]
35. Mr McSharry did not seek to use his personal circumstances as an excuse for his actions, and he did not express resentment at the demands that had been put on him. However, in the Committee's view, these matters would clearly have had a significant effect on his judgement during the period in question. The Committee concluded that, not only was Mr McSharry's misconduct an isolated episode, it was one that was behind him now. Mr McSharry set out the steps he had taken to remedy deficiencies in his practice and improve his business systems. The Committee considered that Mr McSharry had well-developed insight. It was exceptionally impressed with his attitude. He expressed appropriate remorse. The Committee had no doubts about his sincerity.
36. Other mitigating factors included the fact that Mr McSharry had made partial admissions at an early stage and had been fully co-operative with the investigation. Mr McSharry submitted that no individual had been harmed by his actions. The Committee considered that audits serve an important public purpose which must always be served. However, on the basis of the evidence it heard, it was satisfied that the company accounts which had purportedly been audited did in fact give a true and fair view of the companies' affairs, even though they had not been adequately audited.
37. In view of the seriousness of its findings, the Committee was quite satisfied that it was necessary to impose a sanction. It went through the available sanctions in increasing order of seriousness.
38. The Committee first considered the sanction of admonishment. Although some of the factors set out in the Guidance were present in this case, the findings of dishonesty were far too serious to be dealt with by an admonishment.

39. As to the sanction of reprimand, the Guidance says this would usually be applied in situations where the conduct is of a minor nature. Again, the Committee could not consider the misconduct in this case to be a minor matter, given that it involved dishonesty.
40. The Committee then considered carefully the sanction of severe reprimand, perhaps combined with a fine. The Guidance states that this sanction would usually be applied in situations where the conduct is of a serious nature, but 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. That description is, in principle, applicable to this case. The Committee was satisfied that the misconduct had been a specific episode in Mr McSharry's professional and personal life, and there was no continuing risk to the public. It noted that Mr McSharry had been permitted to continue in practice throughout the period of the investigation.
41. The Committee went through the specific factors referred to in the Guidance. In this case, the misconduct must be regarded as intentional, although it arose in particular circumstances which would have clouded Mr McSharry's judgement and are unlikely to recur. The misconduct is not continuing. There was evidence that his conduct would not have produced direct harm, although it is important to uphold the principles of audit regardless of direct harm. Mr McSharry has excellent insight. He made genuine expressions of regret and he apologised. He had a previous good record. There has been no repetition. This was not an isolated incident: there were five audits and there were dishonest statements concerning audit clients. However, it was a confined episode which is most unlikely to be repeated. Mr McSharry has taken extensive rehabilitative and corrective steps over a period of time. He provided compelling references. He co-operated during the investigation, although he did not make full admissions.
42. Although most of the factors relating to the sanction of severe reprimand were present, this is a case of dishonesty. As the Guidance makes clear, dishonesty, even when it does not result in direct harm and/or loss, undermines trust and confidence in the profession. It is one of the most

serious findings that can be made against an accountant, as Mr McSharry freely acknowledged. An accountant found guilty of dishonesty must expect exclusion from membership as a likely outcome.

43. The Guidance indicates that exclusion is likely to be appropriate when the behaviour is fundamentally incompatible with being a member. The Committee did not find that principle applicable in this case. Nevertheless, it was necessary to mark the seriousness of the finding of dishonesty.
44. The Committee concluded that in the exceptional circumstances of this case, a sanction of severe reprimand combined with a significant fine would be sufficient to mark the seriousness of the misconduct, and uphold proper standards of professional conduct. Having regard to Mr McSharry's means, the Committee concluded that the fine should be £10,000.

#### **COSTS AND REASONS**

45. Mr Hone applied for costs totalling £21,488.17.
46. The Committee was satisfied that the case had been properly brought and that, in principle, ACCA was entitled to an order for costs.
47. As to the amount, the Committee was satisfied that the sums claimed were broadly reasonable in relation to the time allowed. The claim was for three full days but the case would be completed in two and a half days, and some time was lost. A proportionate reduction should be made. The Committee assessed the costs at £20,000.
48. The Committee considered Mr McSharry's statement of means. He accepted that he could meet an order for costs, with difficulty. The Committee appreciated that the fine will impose an additional burden on him. Nevertheless, it did not consider it appropriate to make a reduction on the basis of Mr McSharry's means. The Committee trusts that ACCA will be able to agree payment over a period.
49. The Committee determined that Mr McSharry should make a contribution to ACCA's costs of £20,000.

**Mr Michael Cann  
Chairman  
10 October 2019**