

## HEARING

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

#### REASONS FOR DECISION

**In the matter of:** Mr Julian Kevin John Sweetman

**Heard on:** Tuesday, 11 February 2020

**Location:** ACCA, The Adelphi, 1-11 John Adam Street, London,  
WC2N 6AU

**Committee:** HH Graham White (Chair)  
Mr Trevor Faulkner (Accountant)  
Mr Neil Dalton (Lay)

**Legal Adviser:** Mr Robin Havard (Legal Adviser)

**Persons present  
and capacity:** Ms Georgia Luscombe (Case Presenter on behalf of  
ACCA)  
Mr Jonathan Lionel (Hearings Officer)  
Mr Alan Jenkins (Counsel for Mr Sweetman)  
Mr Julian Sweetman (Member)

**Observers:** None

**Summary** Exclusion from membership

**Costs:** £5,000

#### ACCA



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## **PRELIMINARY APPLICATIONS**

### **Amendment**

1. Ms Luscombe applied on behalf of ACCA for the words "and overstated the expenditure" to be removed from Allegation 1(a) and the second row in the schedule which relates to expenditure. There was no objection to the application, and therefore the application was granted.

## **ALLEGATIONS**

### **Allegation 1**

- (a) Between 1 December 2013 and 31 August 2017, Mr Julian Sweetman, Sole Director of Acts Ltd ("the Firm"), submitted incorrect VAT returns to HMRC, which under-declared the turnover of the Firm as particularised in Schedule 1 below.
- (b) Mr Julian Sweetman's conduct in respect of 1(a) above was:
  - (i) Dishonest, in that he knew that the VAT returns submitted to HMRC were false; or in the alternative
  - (ii) Contrary to the Fundamental Principle of Integrity (as applicable between 2013 – 2017) in that such conduct demonstrates a failure to be straightforward and honest.
- (c) By reason of his conduct in respect of 1(a) and/or 1(b) above, Mr Julian Sweetman is guilty of misconduct pursuant to bye-law 8(a)(i).

### Schedule 1

<u>Year</u>	<u>Tax Paid</u>	<u>Total</u>
01 December 2013 –	Output Tax	£6,710
31 August 2017	under-declared on VAT returns	

### **BRIEF BACKGROUND**

2. Mr Julian Sweetman first registered as an ACCA member on 18 July 1985. He became an ACCA Fellow on 18 July 1990.
3. Mr Sweetman is the sole Director of Acts Ltd (“the Firm”).
4. ACCA received a complaint from HMRC, dated 21 March 2019, in relation to the conduct of Mr Sweetman. The complaint stated that Mr Sweetman had been submitting incorrect VAT returns to HMRC, understating the turnover and overstating the expenditure of the Firm, resulting in the Firm being issued with penalties.
5. An investigation ensued, leading to the current proceedings.

### **DECISION ON FACTS/ALLEGATIONS**

#### Allegation 1(a)

6. The Committee had been provided with a bundle (pages 1 to 92), tabled additional (1) (pages 1 to 40), and a service bundle (pages 1 to 18).
7. Mr Sweetman admitted the facts of the Allegation and, therefore, in accordance with Regulation 12(3) of the Complaints and Disciplinary Regulations 2014 as amended, the Committee found the facts of the Allegation proved.
8. On 08 January 2018, HMRC had opened a VAT enquiry into the Firm. The HMRC enquiry established that the Firm had only recorded 50.10% of their sales, and that output Tax had been under-declared as a direct result of Mr

Sweetman's failure to record the correct level of sales. The amount of output Tax which had been under-declared totalled £6,710.

9. HMRC confirmed that, in a meeting on 08 January 2018, Mr Sweetman had said that he had not declared all of his sales because he had cash flow problems and outstanding Corporation Tax debts. A deliberate penalty notice had been issued and, as a result, the Firm was put on HMRC's Managing Serious Defaulters Programme.
10. As stated, on 21 March 2019, HMRC submitted to ACCA a complaint against Mr Sweetman. ACCA wrote to the member on 22 May 2019, in order to ask for his response to what had been alleged against him.
11. On 12 June 2019, Mr Sweetman provided a response in which he admitted to under-declaring the output tax on his VAT returns, stating that *"this was primarily because of cash flow problems (for a number of years there were large gaps between contracts) and I sincerely apologise for this. My genuine intention was to pay the VAT back (contracts have been a lot better in the last 18 months or so."* The total amount that Mr Sweetman admitted to under-declaring is £6,710.
12. Mr Sweetman had broken down in a series of tables the declaration of output tax. These were included in the documents before the Committee.
13. The Committee accepted that Mr Sweetman has paid back all VAT to HMRC, together with financial penalties, and that no further sums are owing. It was also noted that Mr Sweetman's Corporation Returns appeared to have been correctly completed where his company's income was correctly declared.
14. On this basis, the Committee found the facts of Allegation 1(a) proved.

Allegation 1(b)(i)

15. The Committee relied on its findings of fact at Allegation 1(a) above.

16. Mr Sweetman had admitted that he had deliberately submitted incorrect VAT returns to HMRC, which under-declared the turnover of his company, with the intention of reducing his company's obligation to pay VAT.
17. The Committee found that Mr Sweetman had repeatedly submitted VAT returns to HMRC which he knew to be false.
18. In his written submission to ACCA, Mr Sweetman had admitted that such conduct was dishonest.
19. It was the Committee's judgment that, by the standards of ordinary decent people, such conduct was dishonest.

Allegation 1(b)(ii)

20. This allegation was pleaded in the alternative to Allegation 1(b)(i). As Allegation 1(b)(i) had been found proved, the Committee made no findings in relation to this allegation.

Allegation 1(c)

21. Again, Mr Sweetman had indicated in his written submissions to ACCA that he admitted that his behaviour amounted to misconduct.
22. Taking account of its findings that Mr Sweetman had acted dishonestly, the Committee was entirely satisfied that he was guilty of misconduct, in that such conduct could properly be described as falling far below the standard expected of ACCA members. The integrity and accuracy of documents submitted to statutory bodies, and the requirement for accountants to be seen to be behaving honestly when dealing with their tax affairs, was central to the protection of the public interest and maintaining confidence in the profession. The dishonest conduct of Mr Sweetman brought discredit to himself, the Association and the accountancy profession.
23. On this basis, the Committee found Allegation 1(c) proved.

## **SANCTION AND REASONS**

24. The Committee considered what sanction, if any, to impose. It took into account all it had read in the bundle of documents, Mr Sweetman's oral evidence, Mr Jenkins' submissions on his behalf, ACCA's Guidance for Disciplinary Sanctions (January 2019) and the principle of proportionality. It had also listened to legal advice from the Legal Adviser, which it accepted.
25. The Committee considered the available sanctions in increasing order of severity, having decided that it was not appropriate to conclude the case with no order.
26. The Committee was mindful of the fact that its role was not to be punitive, and that the purpose of any sanction was to protect members of the public, maintain public confidence in the profession and in ACCA, and to declare and uphold proper standards of conduct and performance.
27. The Committee considered whether any mitigating or aggravating factors featured in this case.
28. With regard to mitigation, the Committee noted that Mr Sweetman had a good regulatory record. He had also attended the hearing, and had admitted the allegations, including dishonesty and misconduct.
29. The Committee was satisfied that Mr Sweetman had shown a degree of insight, to the extent that he had recognised what he had done was entirely wrong, although the Committee was not convinced that he fully recognised the seriousness of his actions, or that he had put in place measures to avoid the risk of any repetition. The Committee was also struck by the lack of remorse he had expressed during the hearing. However, the Committee acknowledged he had repaid the outstanding amount of VAT, together with the penalties imposed by HMRC.

30. Mr Sweetman had also been frank when answering questions from the Committee. He explained, by way of background, that he had found himself in financial difficulties in 2012-2014, as a result of not being in employment during that period. This led, in due course, to him not being able to pay the VAT which formed the subject of the allegation. He had indicated that he had thought of approaching HMRC to discuss with them a repayment arrangement, but he was aware that this was not possible.
31. Mr Sweetman informed the Committee that he had, in fact, negotiated a repayment of outstanding tax liabilities in 2012, and there had been some difficulty in maintaining the agreed repayments due to competing demands being made by other parties, including the building society with whom he had a mortgage. HMRC had told him, at that stage, that a further repayment arrangement was not available. [Private].
32. Once the HMRC had started its enquiry in January 2018, he co-operated fully, and admitted what he had done.
33. The Committee had taken into account the content of the testimonial, which had been provided by his current line manager, which was supportive, and had been prepared with full knowledge of the investigation by HMRC and the current proceedings against Mr Sweetman.
34. The Committee considered that the following aggravating features applied. On the basis of its findings, it was satisfied that Mr Sweetman's dishonest behaviour had been deliberate, calculated and repeated. It was a course of conduct pursued by Mr Sweetman as an illicit means of resolving a financial predicament when he considered there was no alternative. He told the Committee that, "*I just had to duck and dive.*"
35. Mr Sweetman had indicated that it had always been his intention to repay the outstanding amount of VAT; indeed, he had explained to the Committee a process by which he could approach HMRC to repay outstanding VAT. The Committee took account of the fact that the false returns had been submitted in the period from February to August 2015. Mr Sweetman said that it would

have been some six to nine months after the date of HMRC's visit in January 2018 that he would have been in a position to repay the outstanding sum. This meant that over three years would have elapsed since he gained a financial advantage through his dishonest conduct.

36. The Committee also considered that his conduct had an adverse impact by depriving HMRC, and thereby the public, of tax he was obliged to pay. Indeed, the public would be entitled to expect a professional accountant to be honest in his dealings with all statutory bodies, including HMRC, whether personal or professional.
37. The Committee concluded that neither an admonishment nor a reprimand would adequately reflect the seriousness of the Committee's findings.
38. The Committee then considered whether a severe reprimand would be an appropriate sanction. The Committee was prepared to accept that Mr Sweetman had shown a level of insight and contrition in admitting his dishonest behaviour at an early stage, and he had not sought to blame anyone else. He had also expressed his remorse to ACCA for his actions. However, taking account of the seriousness of its findings, which involved a deliberate and repeated attempt to avoid payment of tax, the Committee did not consider that a severe reprimand would be sufficient or proportionate. Such behaviour, in the Committee's judgement, was fundamentally incompatible with that expected of an accountant and a member of ACCA.
39. The Committee had considered whether there were any exceptional reasons why the Committee should consider that it would not be necessary to exclude Mr Sweetman from membership, but could find none.
40. Reliance had been placed by Mr Sweetman's Counsel on another decision of ACCA, which had been dealt with by way of a Consent Order, where the sanction imposed was a reprimand. It involved non-payment of capital gains tax, and the amounts involved were greater than those that existed in this case. However, it was accepted that the Committee was not bound by that decision. Furthermore, the case could be distinguished as it did not include an allegation



of dishonesty, although the Committee was invited to agree that dishonesty could be inferred. Also, the member had disclosed the non-payment to HMRC, and it related to one incident of non-disclosure.

41. The Committee had noted the Guidance for Disciplinary Sanctions, and in particular sections C5 and E2 of that Guidance. The Committee noted that exclusion is likely to be considered appropriate when a member had been dishonest.
42. The Guidance confirmed that: "Dishonesty, even when it does not result in direct harm and/or loss, or is related to matters outside the professional sphere, undermines trust and confidence in the profession."
43. The Guidance also states that, in cases involving dishonesty, the Committee must consider whether any mitigation presented by Mr Sweetman is "so remarkable or exceptional that it warrants anything other than an exclusion from membership...".
44. The Committee had considered the additional guidance to be found in the judgment of Lord Justice Flaux in *SRA v James and others [2018] EWHC 3058 (Admin)*.
45. The Committee had taken a step back, and carried out an exercise which involved balancing those factors which had been outlined above, which represented aggravating factors and mitigating factors. It had looked carefully at, and focused on, the nature and extent of the dishonesty, and whether there were any remarkable or exceptional circumstances which related to Mr Sweetman's dishonest conduct. The Committee determined that it had heard nothing which could be described as either remarkable or exceptional which would entitle the Committee to deviate from a finding that a sanction other than exclusion was possible, or justified, in order to protect the interests of the public and the reputation of the profession.
46. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Mr Sweetman shall be excluded from

membership of ACCA. The Committee concluded that it was not necessary to extend the minimum period within which an application for re-admission can be made.

### **COSTS AND REASONS**

47. The Committee considered the documents containing details of ACCA's claim for costs (Tabled Additional (2), pages 1 - 4). It had also taken account of ACCA's Guidance on Costs.
48. The Committee concluded that, in principle, ACCA was entitled to be awarded costs against Mr Sweetman. The amount of costs which ACCA applied for was £7,200.50.
49. Taking account of the investigation, the preparation for the hearing, and that the hearing has taken a full day, the Committee did not consider that the claim was unreasonable. Indeed, the reasonableness of the claim had not been challenged. The Committee did not accept the submission made on behalf of Mr Sweetman that not all of the allegations had been pursued by ACCA. The Committee did not consider that the length of hearing had been affected by the amendment.
50. The Committee noted that Mr Sweetman had provided details of his financial circumstances, [Private]. Mr Sweetman's Counsel indicated that his current work would be unaffected by the Committee's decision, but that his future opportunities may be disadvantaged. Taking into account this evidence, the Committee considered that ACCA was entitled to an award of costs in the sum of £5,000.

### **EFFECTIVE DATE OF ORDER**

51. The Committee did not consider it was necessary or in the interests of the public for its order to take immediate effect.

52. The Committee decided that this order shall take effect from the date of expiry of the appeal period referred to in the Appeal Regulations.

**HH Graham White**  
**Chair**  
**11 February 2020**