

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Brendan John Fitzpatrick

Heard on: Tuesday, 24 November 2020

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

Committee: Mrs Valerie Paterson (Chair),
Mr David Horne (Accountant)
Mr Colin Childs (Lay Member)

Legal Adviser: Mr Richard Ferry-Swainson

**Persons present
and capacity:** Ms Michelle Terry (ACCA Case Presenter)
Miss Geraldine Murray (Hearings Officer)

Observers: None

Summary: Allegations found proved. Member severely
reprimanded

Costs: £5000.00

ACCA



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INTRODUCTION/SERVICE OF PAPERS

1. The Disciplinary Committee (“the Committee”) convened to consider an Allegation against Mr Fitzpatrick, who did not attend and was not represented.
2. The papers before the Committee were in a bundle numbered 1 to 180, together with a tabled additional bundle, numbered 1 to 13. There was a service bundle numbered 1 to 18 and a costs bundle numbered 1 to 4.
3. Ms Terry made an application to proceed in the absence of Mr Fitzpatrick.

PROCEEDING IN ABSENCE

4. The Committee first considered whether the appropriate documents had been served in accordance with the Complaints and Disciplinary Regulations (“the Regulations”). The Committee took into account the submissions made by Ms Terry on behalf of ACCA and also took into account the advice of the Legal Adviser.
5. Included within the service bundle was the Notice of Hearing dated 27 October 2020, thereby satisfying the 28-day notice requirement, and emailed to Mr Fitzpatrick at his email address as it appears in the ACCA register. The Notice included details about the time, date and remote nature of the hearing in light of the COVID-19 pandemic. The Notice also detailed Mr Fitzpatrick’s right to attend the hearing remotely and to be represented, if he so wished. In addition, the Notice provided details about applying for an adjournment and the Committee’s power to proceed in Mr Fitzpatrick’s absence, if considered appropriate.
6. The Committee was satisfied that the Notice had been served in accordance with the Regulations. Having so determined, the Committee then considered whether to proceed in Mr Fitzpatrick’s absence. The Committee bore in mind that although it had a discretion to proceed in the absence of Mr Fitzpatrick, it should exercise that discretion with the utmost care and caution, particularly as Mr Fitzpatrick was unrepresented.

7. The Committee noted that Mr Fitzpatrick faced serious allegations and considered there was a clear public interest in the matter being dealt with expeditiously. On 05 November 2020, Mr Fitzpatrick completed a Case Management Form relating to this hearing. In that form he indicated that he would not be represented, nor would he be attending the hearing. Furthermore, he indicated that he consented to the case proceeding in his absence. He did not request an adjournment. In an email, also dated 05 November 2020, in response to the Notice of hearing, Mr Fitzpatrick repeated that he would not be attending the hearing and that he was agreeable to the hearing going ahead in his absence. He attached a statement of his means and a brief letter explaining the circumstances that led to his actions, which he asked be taken into account. In all the circumstances, the Committee concluded that he had voluntarily absented himself from the hearing and thereby waived his right to be present and to be represented at the hearing.
8. Accordingly, the Committee decided that it was in the interests of justice that the matter should proceed, notwithstanding the absence of Mr Fitzpatrick. In proceeding in his absence, the Committee would take into account any material within the papers provided that supported his case, including the letter referred to above.

APPLICATION TO AMEND

9. Ms Terry made an application to amend one of the allegations. She submitted that the amendment was minor in nature and only consisted of changing the date that the Company B accounts were signed by Mr Fitzpatrick. The date in Allegation 1(c)(ii) was 20 May 2014. This, in fact, was the date the Directors signed the accounts, whereas Mr Fitzpatrick signed as auditor five days later on 25 May 2014. Ms Terry thus applied to change the date to reflect the date on which Mr Fitzpatrick signed the accounts.
10. The Committee heard and accepted the Legal Adviser's advice and was content to allow the proposed amendment. It was minor in nature and an obvious error which did not change the gravamen or substance of the matters

alleged. The Committee noted that Mr Fitzpatrick was not aware of this application but could not perceive of any unfairness in allowing the application to amend. The Committee was satisfied that allowing the amendment would not cause any injustice.

APPLICATION FOR PART OF THE HEARING TO BE IN PRIVATE

11. At the outset of the hearing, Ms Terry informed the Committee that there was information within the papers relating to the health and private life of Mr Fitzpatrick and she applied, on behalf of Mr Fitzpatrick, that in the event that such matters were referred to they should be done so in private.
12. The Committee heard and accepted the advice of the Legal Adviser, who indicated that the default position is that these hearings are heard in public so that the public are aware of the functions being carried out by the Regulator. However, the Regulations do allow for the hearing, or part of the hearing, to be in held in private where the particular circumstances of the case outweigh the need for the hearing to be in public. The Committee was satisfied that it was appropriate to go into private session if and when any reference was made to the health and/or private life of Mr Fitzpatrick.

ADMISSIONS

13. In the aforementioned Case Management Form, Mr Fitzpatrick admitted all the matters alleged against him. These admissions were repeated in his letter, dated 05 November 2020, to the Committee explaining the circumstances that led to his actions. In accordance with Discipline Regulation 12(3)(b) and (c), the Chair announced that Allegations 1(a), 1(b), 1(c)(i) and (ii), 2(a), 2(b), 2(c), 3(a), 3(b) and 4 were proved, based on these unequivocal admissions.

ALLEGATIONS/BRIEF BACKGROUND

14. It is alleged that Mr Fitzpatrick is liable to disciplinary action on the basis of the following Allegations (as amended):

1. Did not comply with a Regulatory Assessor's decision dated 28 January 2014 in that he:
 - (a) Did not provide Governance-Practice Monitoring with a current list of audit clients within six weeks of written notification of the decision; and/or
 - (b) Did not provide Governance-Practice Monitoring with the identity of a proposed training company to conduct reviews within six weeks of written notification of the decision; and/or
 - (c) Signed audit reports without Governance-Practice Monitoring being aware of the audit clients and/or without a review by an approved training company for:
 - (i) Company A on 01 April 2014; and/or
 - (ii) Company B on 25 May 2014.
2. Did not supply requested information and/or did not adequately co-operate with Governance-Practice Monitoring's requests for information on:
 - (a) 06 June 2014; and/or
 - (b) 17 July 2014; and/or
 - (c) 05 August 2014.
3. By virtue of any or all of the facts in Allegations 1 and/or 2:
 - (a) Breached the fundamental principle of integrity (2014); and/or
 - (b) Breached Global Practising Regulations 14(2) and/or (3) (2014).
4. In relation to the signed audit reports for Companies A and B in Allegation 1(c), has not retained his working paper files for a minimum of seven years in accordance with paragraph 5 of Section B6 of ACCA's Code of Ethics and Conduct (2014-2020);

5. By virtue of any or all of the facts in allegations 1, 2, 3 and/or 4:
 - (a) Is guilty of misconduct pursuant to byelaw 8(a)(i); or
 - (b) Is liable to disciplinary action pursuant to byelaw 8(a)(iii).

15. Mr Fitzpatrick has been a member of ACCA since 05 November 1992 and a Fellow since 05 November 1997. He is the sole proprietor of Fitzpatrick & Co. He has an ACCA Practising Certificate and audit qualification - Ireland and his firm has an audit certificate.

16. On 09 October 2019, a Senior Compliance Officer in ACCA's Practice Monitoring Department ("PMD") visited Fitzpatrick & Co to carry out an audit monitoring visit. The outcome of the previous monitoring visit in 2013 on the conduct of audit work had been unsatisfactory and Mr Fitzpatrick and the firm had been referred on that occasion to the Regulatory Assessor.

17. On 14 January 2014, the Assessor made a decision that the firm was required to have all future audit work on two clients selected by Practice Monitoring reviewed by a training company. In reaching this decision, the Assessor made the following findings of fact:
 - a. The firm and its principal have had three monitoring visits;

 - b. All visits had unsatisfactory outcomes;

 - c. There was some improvement to the standard of audit work at the second visit, but no further improvement had been made by the third visit and many deficiencies reported at the second visit remained;

 - d. The firm's work on its solicitor client at previous visits was satisfactory; it had no solicitors clients at this visit;

 - e. The firm has failed to achieve a satisfactory outcome in spite of the advice and warning given at previous visits;

- f. The firm has prepared a comprehensive action plan to improve the standard of audit work.
18. Mr Fitzpatrick was to provide Governance-Practice Monitoring (“GPM”) with a current list of audit clients within six weeks of written notification of the decision. No such list was provided. Mr Fitzpatrick was also to provide GPM with the identity of a proposed training company to conduct reviews within six weeks of written notification of the decision. This was not done either. In addition, the firm was to have a follow up visit by 31 December 2016.
19. On 06 February 2014, an Administration Officer (“AO”) wrote to Mr Fitzpatrick with the Regulatory Assessor’s decision and advised him that a failure to comply may render him liable to disciplinary action. The AO asked Mr Fitzpatrick, if he accepted the Regulatory Assessor’s decision, to provide within six weeks of the date of this letter, the name of the training company he had appointed to carry out ‘hot’ reviews and a list of his audit clients so that PMD could select and inform him of the clients whose files should be subject to ‘hot’ review. The AO enclosed a copy of PMD’s guidance on ‘hot’ reviews, and the list of approved training companies, and advised Mr Fitzpatrick to contact her if he required any further information.
20. By the six-week deadline, Mr Fitzpatrick failed to provide PMD with the name of a training company he had appointed to carry out ‘hot’ reviews, or a list of his audit clients.
21. On 01 April 2014, Mr Fitzpatrick signed an audit report in respect of the accounts of Company A for the year ended 31 July 2013.
22. On 03 April 2014, the above accounts were stamped as received by Companies Registration Office.
23. On 21 May 2014, the AO wrote to Mr Fitzpatrick again, enclosing copies of her previous letter of 06 February 2014 and the Regulatory Assessor’s decision, and advised:

“...It appears that you have not complied with part (iii) of the Assessor’s decision, which states that you should notify ACCA within six weeks of the date of written notification of this decision of the identity of the training company and provide a current list of all audit and regulated clients. If, however, you have replied, please let me know by return; and send or fax me a copy of the letter.

Please note that a failure to comply with a decision of the Regulatory Assessor may render you liable to disciplinary action. You should therefore provide me with the name of your nominated reviewer without delay...I shall expect a reply by 06 June 2014.”

24. On 25 May 2014, Mr Fitzpatrick signed an audit report in respect of the accounts of Company B for the year ended 31 December 2013.

25. On 31 May 2014, Mr Fitzpatrick replied saying:

“Please note that I am resigning my auditor status of today and I will not be renewing my audit certificate for the foreseeable future. Trusting this will clarify matters and please contact me should you have any queries on the above.”

26. On 06 June 2014, the AO replied:

“Thank you for your letter of 31 May 2014 stating your intention to resign your audit registration.

As the decision of the Regulatory Assessor came into effect on 11 March 2014, please can you confirm whether you have signed off any audit reports since that date and identify the audit clients concerned.

Please note that the conditions remain in place in the event that you decide to reapply for an audit certificate in future. You should therefore contact Practice Monitoring to select the files to be ‘hot’ reviewed at the time you reapply.”

27. Mr Fitzpatrick did not respond to this letter.

28. On 17 July 2014, the AO wrote to Mr Fitzpatrick again and advised:

“I refer to my letter of 06 June 2014 (enclosed) and note that according to ACCA’s database as at today’s date your firm still holds audit registration in Ireland.

As you are aware from my letter of 06 February 2014 the decision of the Regulatory Assessor required you to:

- (i) Have all future audit work on two clients, selected by Governance Practice Monitoring, reviewed by a training company before reports are signed, such training company being subject to ACCA approval;*
- (ii) Within six weeks of the date of written notification of this decision, notify ACCA of the identity of the training company referred to in (i) above and provide a current list of all audit and regulatory clients;*

My letter also required you to submit within six weeks a list of your audit clients so that Practice Monitoring can select and inform you of the clients whose files should be subject to ‘hot’ review. It appears that you are now in breach of this requirement.

I also note that you have not yet confirmed whether you have signed any audit reports since 11 March 2014. Global Practising Regulation 14(2) requires you to supply ACCA with all the information necessary to enable it to complete its monitoring process efficiently.

Failure to provide all of the required information by return may therefore result in this matter being referred to Professional Conduct.”

29. On 25 July 2014, Mr Fitzpatrick replied:

“I am writing in reply to your letter dated 17th July 2014 and I can confirm that I have no audit clients and will not require the audit registration. I contacted the

Companies Registration Office today and they said that there were still two listings for my firm on the auditing list..... and I asked the nice lady how do I remove these listings and she said that the ACCA update the list on a weekly basis. Do I need to contact a particular department in ACCA or can you deal with this?"

30. Mr Fitzpatrick made no mention of the two audit reports he had signed for Companies A and B in April and May 2014.

31. On 05 August 2014, the AO replied:

"Thank you for your letter of 25 July 2014. I note that you no longer have any audit clients.

However, as stated in my letters of 06 June and 17 July I require your confirmation whether you signed off any audit reports since the Regulatory Assessor's decision came into effect on 11 March 2014.

*In view of the requirements of Global Practising Regulation 14 I must ask you to provide your written confirmation **by return**. Failure to do so will result in the matter being referred to Professional Conduct to consider disciplinary action. No further reminders will be sent.*

To resign your audit registration you will need to return both your practising certificate with audit qualification and your firm's auditing certificate to...ACCA...Once received you will be removed from the audit register and reissued with a practising certificate without audit qualification."

32. No reply was received from Mr Fitzpatrick. However, PMD did not make a referral about the matter to Professional Conduct.

33. On 23 December 2014, a Compliance Manager in PMD wrote to Mr Fitzpatrick with regard to the Regulatory Assessor's decision and advised that ACCA had decided to remove the routine requirement for 'hot' reviews except firms holding PIE (Public Interest Entity) appointments. The Compliance Manager advised

that Mr Fitzpatrick was therefore no longer required, as of that date, to submit any of his non-PIE audit and/or regulated clients' files to his nominated training company for review before issuing audit reports.

34. Mr Fitzpatrick did not renew his practising certificate and audit qualification (and therefore his firm's audit certificate) for 2015. Therefore, Mr Fitzpatrick held a general practising certificate with effect from 01 January 2015. This meant that Mr Fitzpatrick and Fitzpatrick & Co were no longer authorised to carry out audits by ACCA.
35. On 10 December 2015, Mr Fitzpatrick requested a practising certificate and audit qualification in his practising certificate renewal form for 2016.
36. On 10 February 2016, the accounts of Company B for year ending 31 December 2013 and associated annual return were stamped as received by Companies Registration Office.
37. Between 03 and 04 May 2016, there was an internal email exchange between ACCA's Authorisations and Monitoring departments. Authorisations advised Monitoring that Mr Fitzpatrick had applied for a practising certificate and audit qualification for 2016 and asked if there were any matters to be taken into consideration prior to awarding the audit certificate. Monitoring replied and advised, *inter alia*, that ACCA could not refuse to issue an audit certificate to Mr Fitzpatrick, but that he should be reminded that he was still subject to the 'regulatory order' but 'hot' reviews were not required unless a client was a PIE, and "*also that ACCA recommends that he continue to engage with his nominated training company in order to obtain advice and guidance on improving and maintaining audit quality.*"
38. On 13 September 2016, Mr Fitzpatrick complained to ACCA's CEO about the delay in his application for a practicing certificate and audit qualification for 2016.
39. On 28 September 2016, ACCA issued a practicing certificate and audit qualification to Mr Fitzpatrick and a firm's auditing certificate to Fitzpatrick & Co.

They were accordingly authorised to carry out audits by ACCA. In addition, the firm was allocated for an audit monitoring visit.

40. On 12 June 2019, as part of the planning for the audit monitoring visit, the SCO carried out standard pre-visit activities which included using software to obtain from the Companies Registration Office a list of companies for which the firm had filed financial statements as the auditor or accountant. In relation to the companies identified in this search, the SCO also reviewed information relating to prior years in order to identify any accounts filed by the firm as auditor or accountant covering the period from the Regulatory Assessor's decision to the date of the search. This revealed that Mr Fitzpatrick had signed the audit reports referred to above without GPM being aware of the audit clients and without a review by an approved training company.
41. In an email dated 17 October 2019, sent to the SCO, Mr Fitzpatrick said that in relation to the Company B 2013 accounts filed in 2016 he was confused, because he did not remember filing those accounts. He said that, having checked his records, he noted that he resigned from the auditor list in July 2014 and then re-applied to the ACCA's Authorisations Unit ("AU") in January 2016. However, he had great difficulty in contacting the AU. He spoke with the Dublin office of ACCA and was told there seemed to be a problem with the AU and he was advised to contact the CEO of ACCA. Mr Fitzpatrick said he was receiving complaints from clients as he was unable to complete the work he had agreed to do for them. He had also contacted his solicitor who had advised him to "*sue for loss of earnings and the stress it had caused.*" Mr Fitzpatrick said he attached the letter he had sent to the CEO and her response, which he received within three days and which "*resolved the issue*".
42. On 05 November 2019, in light of this alleged failure to comply with the Regulatory Assessor's decision, the SCO made a referral to Assessment.
43. On 20 January 2020, Mr Fitzpatrick wrote to ACCA confirming that he did complete the audit for Company B for the year to 31 December 2013. He added, "*As it was quite a long time ago I cannot remember filing the abridged accounts with the CRO, however I was going through some problems in my personal life at*

that time and I was distracted from the office for some lengthy periods and one of the staff probably filed the return.”

44. In a letter dated 18 February 2020, ACCA’s Investigating Officer (“IO”) asked Mr Fitzpatrick whether he had his audit files reviewed by a training company before he signed the audit reports dated 01 April 2014 and 20 May 2014 [sic] for Companies A and B and, if so, to provide documentary evidence. If not, the IO asked Mr Fitzpatrick to explain what thought he gave to the fact that the Regulatory Assessor had decided that he should have his future audit work on two clients reviewed by a training company before issuing the audit reports, and to provide documentary evidence.

45. Mr Fitzpatrick replied on 14 May 2020:

“...I went looking for those files relating to the companies you mention in your letter of March 2020. As you will appreciate these events happened a long time ago and as we do not retain files longer than 6 years I could not find any detail of either.

[Private]

Due to the difficulties at home I had decided to take a step back from the practice and have my manager, Damien Pluck, take over. He agreed to take over the practice including the audit function and he set about arranging to complete the requirements that are needed in order to do so. This was in early 2014 and I agreed with Damien that I would resign as auditor and he would replace me.

Around this time I met with Des O’Neill of Omnipro, the training company, and discussed my plans with him. We had an informal meeting at a CPD course in a hotel in west Dublin and he told me that ACCA were no longer interested in non-PIE audits and that as far as he knew there was no longer a requirement for non-PIE audit files to be hot-reviewed by a training company. I then spoke to Aidan Clifford of ACCA in Dublin and he confirmed this situation and agreed with Des. I therefore presumed that I was not required to have any audit files reviewed by Omnipro and as I was intending to resign my audit certificate

anyway I did not have any files reviewed. As per the attached letter I received from Andrew Teague this was the case.

As you are aware Damien did not follow through on his application for the audit certificate and it was much later that I realised he was not going to take over the practice. I then reapplied to the authorisation unit of ACCA to regain my audit certificate and it took nearly nine months to resolve the issue. There was such a delay with the authorisation unit that in frustration I contacted Aidan Clifford in ACCA Dublin and he told me to contact Helen Brand, see attached. The certificate came through shortly afterwards.

I hope that this helps explain any omission on my behalf and I can confirm that I did not try to intentionally mislead ACCA in any matter. As I have used Omnipro as a training company for many years after I met with Des O'Neill and having spoken with Aidan I presumed that any requirement for hot reviews of non-PIE files was no longer necessary....”

46. In response, the IO advised Mr Fitzpatrick that her understanding was that he did not have his files ‘hot’ reviewed prior to signing his audit reports and if he had anything further to add in this regard, to please do so.

47. On 05 June 2020, Mr Fitzpatrick replied:

“...I can't remember having the files hot reviewed. However, I did speak with the managing director of Omnipro, Des O'Neill, and the ACCA representative in Dublin, Aidan Clifford, and they both confirmed to me that ACCA had no interest in non-PIE files around that period. I have also sent on to you the letter I received from ACCA stating that I need not have non-PIE files hot reviewed. (see attached).”

48. The IO also asked Mr Fitzpatrick whether he accepted that he did not inform PMD, in response to their letters dated 06 June 2014 and/or 17 July 2014 and/or 05 August 2014, that he had signed the two audit reports dated 01 April 2014 and 20 May 2014 [sic] since the Regulatory Assessor's decision had come into effect. However, Mr Fitzpatrick did not specifically answer this question.

49. In accordance with paragraph 5 of Section B6 of ACCA's Code of Ethics and Conduct (2014-2020), an ACCA auditor is required to retain their working paper files for a minimum of seven years.
50. On 18 February 2020, the IO asked Mr Fitzpatrick whether he had his audit files in respect of Company A for year ended 31 July 2013 and Company B for year ended 31 December 2013 'hot' reviewed in accordance with the Assessor's decision. In a response dated 14 May 2020, Mr Fitzpatrick said that he had looked for the files and stated, "*As you will appreciate these events happened a long time ago and as we do not retain files longer than 6 years I could not find any detail of either...*"
51. On 26 May 2020, the IO drew Mr Fitzpatrick's attention to paragraph 5 of Section B6 of ACCA's Rulebook which requires:

Minimum periods for retention

5. A professional accountant shall use his/her own judgement in determining the period for which working papers should be retained. The minimum periods for which a professional accountant shall retain working papers are as follows:

Audit working papers - 7 years

52. Accordingly, the IO asked Mr Fitzpatrick to check again whether he had his audit working paper files for the two audits above and what his firm's policy was for retention of audit files.
53. On 05 June 2020, Mr Fitzpatrick responded saying:
- "...1. I have searched for those files and I have not found them.*
- 2. Those files were held in my attic of the family home in Churchtown Dublin 14. [Private] My wife decided to have a big a big clear out of the attic and this was completed when I was away on holidays. There was a large*

amount of my personal items thrown into the skip as well as the boxes of files.

3. *My firms policies are to retain all files for seven years or more sometimes as required by para 5, Section B6 of ACCAs' rule book."*
54. In a letter to the Committee dated 05 November 2020, Mr Fitzpatrick said as follows:

"Please note I have been a member of ACCA since November 1992 and this is the first time that I have been in front of any disciplinary committee.

I have admitted the allegations brought against me and accept any admonishment or penalty that the committee imposes.

I would like to bring to the attention of the committee that during the period under review, 2014/2105, I was under stress in my personal life [Private]

Because of this situation I was not fully focussed on my work and as a result I did not pay the appropriate attention to certain aspects of my profession. I should have. I did not deliberately try to mislead anybody and there was no loss to clients or the public at large.

Since 2015 I have engaged Omnipro, a training company, and have found them very helpful and informative in all aspects of the accountancy profession.

I hope this will give some context to the situation that is before you."

DECISION ON FACTS/ALLEGATIONS AND REASONS

55. The Committee considered with care all the evidence presented, the submissions made by Ms Terry and the written representations made by Mr Fitzpatrick. The Committee accepted the advice of the Legal Adviser and bore in mind that it was for ACCA to prove its case and to do so on the balance of probabilities. No adverse inference was drawn from Mr Fitzpatrick's absence

and the Committee took into account the documents within the bundle that dealt with his case. In particular, the Committee noted his admissions to all the facts alleged and that his behaviour amounted to misconduct.

56. As stated above, in light of his unequivocal admissions, together with the evidence adduced by ACCA, the Committee found Allegations 1(a), 1(b), 1(c)(i) and (ii), 2(a), 2(b), 2(c), 3(a), 3(b) and 4 proved.

Allegation 5

5. By virtue of any or all of the facts in allegations 1, 2, 3 and/or 4:

- (a) Is guilty of misconduct pursuant to byelaw 8(a)(i); or
- (b) Is liable to disciplinary action pursuant to byelaw 8(a)(iii).

57. The Committee considered that Mr Fitzpatrick's actions, whether considered individually or collectively, fell far below the standard expected of a professional accountant and member of ACCA. The Committee noted Mr Fitzpatrick's candid admission that his behaviour did amount to misconduct and took this into account. However, the determination of this issue remained one for the Committee to decide on the basis of the facts admitted, and thereby found proved.

58. Mr Fitzpatrick's auditing skills had been found wanting on several occasions in 2014, despite being given advice on how to improve. He had then been made subject to specific requirements by the Assessor, designed to protect the public and ensure that his auditing was meeting the requisite standards before files were submitted to the Companies Records Office. He subsequently: failed to provide the necessary list of audit clients to GPM; failed to provide GPM with the identity of a proposed training company; failed to inform GPM about Companies A and B; submitted their respective returns without having them reviewed and failed to inform GPM that this is what he had done. Thereafter, he failed to adequately respond, indeed in two of the three instances failed to respond at all, to requests by GPM for information. This meant that GPM were

unaware of the audits submitted on behalf of Companies A and B. In addition, he failed to keep his audit working papers for the requisite seven years.

59. The Committee considered that this behaviour represented a serious departure from the standards expected of a professional accountant and member of ACCA. Mr Fitzpatrick showed a disregard for his Regulator in not complying with the Assessor's decision. He showed a disregard for GPM in frustrating their efforts in carrying out their monitoring role, and he showed a disregard for the protection of his clients by not having the audits reviewed and failing to keep his working files for the requisite seven years. Such behaviour brought discredit upon Mr Fitzpatrick, the accountancy profession and ACCA. It was conduct which other members of the profession would consider to be deplorable. The Committee was in no doubt that it amounted to misconduct.
60. Having found Allegation 5(a) proved, it was not necessary to consider Allegation 5(b), which was in the alternative.

SANCTION AND REASONS

61. In reaching its decision on sanction, the Committee took into account the submissions made by Ms Terry and all matters of personal mitigation. The Committee referred to the Guidance for Disciplinary Sanctions issued by ACCA, and had in mind the fact that the purpose of sanctions was not to punish Mr Fitzpatrick, but to protect the public, maintain public confidence in the profession and maintain proper standards of conduct, and that any sanction must be proportionate. The Committee accepted the advice of the Legal Adviser.
62. When deciding on the appropriate sanction, the Committee carefully considered the aggravating and mitigating features in this case.
63. The Committee considered the following aggravating features: the conduct occurred over a significant period of time; a repeated failure to provide information requested by his Regulatory body, despite numerous opportunities to have provided answers and an explanation; potential for risk to clients, given

the purpose of the Assessor's requirements and Mr Fitzpatrick's failure to appoint a company to review the audits as required.

64. The Committee considered the following mitigating factors: previous long and unblemished career; some personal matters which Mr Fitzpatrick said meant that he was not fully focused on his professional obligations; some insight as demonstrated by his admissions to all the facts (albeit at a late stage) and an acceptance that his behaviour amounted to misconduct; no evidence to show loss to any clients.
65. The Committee did not think it appropriate to take no further action, admonish or reprimand in a case where a member had failed to comply with the decision of a Regulatory Assessor and failed to cooperate with ACCA's monitoring and compliance department. The Committee was cognisant of the guidance and the seriousness of such findings. Although there was no evidence of any continuing risk to the public, the Committee did not consider the misconduct in this case to be of a minor nature. The Committee did not, therefore, consider the public interest would be met by any of these sanctions.
66. The Committee then considered whether a severe reprimand would adequately reflect the seriousness of the case. The guidance indicates that such a sanction would usually be applied in situations where the conduct is of a serious nature but where 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. The Committee considered these criteria to be largely met. The Association provides specific guidance on factors relevant to seriousness in specific case types. Failure to co-operate with ACCA's monitoring process is considered to be in the "very serious" category. The guidance adds that a severe reprimand may be appropriate where most of the following factors are present:
 - The misconduct was not intentional and is no longer continuing, though the member may have acted recklessly;

- Evidence that the conduct would not have caused direct or indirect harm;
 - Insight into failings;
 - Genuine expression of regret/apologies;
 - Previous good record;
 - No repetition of failure/conduct - it was an isolated incident;
 - Rehabilitative/corrective steps taken to cure the conduct and ensure future errors do not occur;
 - Relevant and appropriate references;
 - Co-operation during the investigation stage.
67. The Committee was satisfied that a significant number of these factors were indeed present in this case and, after careful consideration, concluded that a severe reprimand was a sufficient and proportionate sanction to mark the seriousness of Mr Fitzpatrick's conduct, and to uphold standards and maintain confidence in the profession. Mr Fitzpatrick chose to ignore the decision of the Assessor and did not comply with the requirements placed upon him. Instead, he decided to withdraw from auditing and to avoid mention of the two companies he had signed audits for, thereby avoiding the 'hot' reviews the Assessor had deemed were necessary. Those reviews were necessary because Mr Fitzpatrick and his firm had received three unsatisfactory monitoring visits in 2014 and there was an understandable concern that his auditing skills were somewhat lacking at that time. Without those reviews it was not known if the audits for Companies A and B met the requisite standard. He compounded that failure by not responding at all to two letters from GPM and only partially responding to the third. These failures were further compounded by his failure to keep the relevant audit working papers for the requisite seven years. ACCA's monitoring process is there to protect the public and can only be effective if members co-operate and comply with decisions made by its Regulatory Assessors and Investigators. The Committee considered it important that professional accountants be aware that they should not behave in this way and the importance of the duty to comply with directions and requests emanating from their Regulatory body.

68. The Committee looked at the guidance for exclusion but considered such a sanction would be disproportionate in this case in light of the nature of the misconduct and the mitigation. Whilst undoubtedly serious, this was not the worst case of misconduct. Although not an isolated incident, the Committee did consider Mr Fitzpatrick's behaviour consisted of a single chain of events, albeit one that continued for some significant time. He had demonstrated some insight into his conduct by his admissions, and the Committee felt able to infer some regret and remorse, even though this was not expressly stated. The Committee noted that Mr Fitzpatrick had a previously long and discipline free history with ACCA, that his misconduct occurred some time ago and that there was no evidence of a repeat of his behaviour. The Committee also took into account the personal circumstances which Mr Fitzpatrick said had affected his professional obligations at the time.
69. The Committee, therefore, ordered that Mr Fitzpatrick be severely reprimanded.

COSTS AND REASONS

70. ACCA applied for costs in the sum of £6,880.00. The Committee was provided with a schedule of costs.
71. The Committee was satisfied that the costs claimed were appropriate and reasonable. Mr Fitzpatrick provided a completed statement of means form which indicated a monthly disposable income of £450 and savings of £9,000. The Committee considered the current uncertain financial climate due to the Covid-19 pandemic and considered it would be appropriate to reduce the figure requested by ACCA to reflect this.
72. In light of its observations above, the Committee reduced the amount requested and made an order in the sum of £5,000.

EFFECTIVE DATE OF ORDER

73. This order will take effect on the expiry of the appeal period.

Mrs Valerie Paterson
Chair
24 November 2020