

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

- In the matter of:** Mr Andrew Searle
- Heard on:** Wednesday, 11 March 2020
- Location:** ACCA, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU
- Committee:** Mr Maurice Cohen (Chair)
Mrs Andrea White (Accountant)
Mr Martin Winter (Lay)
- Legal Adviser:** Miss Juliet Gibbon (Legal Adviser)
- Persons present
and capacity:** Ms Georgina Luscombe (ACCA Case Presenter)
Ms Anna Packowska (Hearings Officer)
Mr Andrew Searle (Member)
- Outcome:** **An order that Mr Searle be excluded from membership
and pay costs to ACCA in the sum of £4,000**

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PRELIMINARY

1. The Disciplinary Committee (“the Committee”) convened to consider allegations made against Mr Andrew Searle. It had a bundle of papers, numbered pages 1-244, a bundle of documents provided by Mr Searle, numbered pages 1-64, a costs bundle, numbered pages 1-5, and a service bundle, numbered pages 1-21.
2. ACCA was represented by Ms Georgina Luscombe. Mr Searle attended the hearing, but was not represented.
3. Mr Searle became an Affiliate of ACCA on 01 February 2013. He was appointed sole director and shareholder of the Firm on 02 November 2015. Mr Searle subsequently became a member of ACCA on 15 January 2016. He has never applied for or been issued with a Practising Certificate (“PC”) by ACCA.

ALLEGATIONS

1. It is alleged that between 15 January 2016 and 20 February 2019, while Mr Searle was a Member but did not hold a valid practising certificate issued by the Association:
 - a. He carried on in public practice, in particular he prepared accounts for the firms listed in Schedule 1 contrary to Regulation 3(1)(a) of the Global Practising Regulations (2016-2019);
 - b. He was Director of the Firm, where public practice was carried on in the name of the firm, contrary to Regulation 3(2)(a) of the Global Practising Regulations (2016-2019);
 - c. He held 100% of the shares of the Firm, which put him in the position of Principal in that company, which carried on public practice in the name of the Firm, contrary to Regulation 3(2)(b) of the Global Practising Regulations (2016-19).

2. Mr Andrew Searle submitted:
 - a. A Declaration on 15 January 2016 with his application for membership in which he accepted that if he engaged in any public practice activities, he would need to hold an ACCA practising certificate; and
 - b. CPD Declarations in 2017 and 2018 which declared that he had not engaged in public practice activities in the previous 12 months.

3. Mr Andrew Searle's conduct in respect of any or all of the matters set out at 2 above was:
 - a. Dishonest, in that he submitted declarations to ACCA which he knew to be false; or in the alternative
 - b. Contrary to the Fundamental Principle of Integrity (2015-2019) in that such conduct demonstrates a failure to be straightforward and honest.

4. By reason of his conduct in respect of any or all of the matters set out at 1 to 3 above, Mr Andrew Searle is:
 - a. Guilty of misconduct pursuant to bye-law 8(a)(i);
 - b. In the alternative, in respect of allegations 1 and 2, liable to disciplinary action pursuant to bye-law 8(a)(iii).

SCHEDULE ONE

Company Name	Dates Accounts Filed
Company A	31/12/2017
Company B	31/12/2017
Company C	21/12/2017

Company D	30/11/2017
Company E	31/03/2018
Company F	28/02/2018
Company G	31/12/2017
Company H	30/11/2017
Company I	31/07/2018
Company J	31/12/2017
Company K	31/05/2018
Company L	31/12/2017
Company M	30/09/2017
Company N	31/12/2018
Company O	31/01/2019
Company P	31/05/2018
Company Q	31/05/2018
The Firm	31/10/2018
Company R	28/02/2018
Company S	30/04/2018
Company T	30/04/2018
Company U	31/07/2018
Company V	31/07/2017
The Firm B	31/01/2018
Company W	30/09/2017
Company X	31/03/2018
Company Y	31/05/2018
Company Z	30/09/2018

APPLICATION TO AMEND ALLEGATIONS

- Ms Luscombe made an application to amend the allegations to delete Allegation 2(a). The application was made on the basis that whilst the facts as set out in Allegation 2(a) were correct, there was no evidence that Mr Searle was carrying on public practice when he signed his application for membership.

5. Mr Searle did not oppose the application.
6. The Committee accepted the advice of the Legal Adviser who referred it to Regulation 10(5) of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014, as amended ("the Regulations"). The Committee considered that the proposed amendment would not prejudice Mr Searle in the conduct of his defence, and it allowed ACCA's application to amend.

AMENDED ALLEGATIONS

1. It is alleged that between 15 January 2016 and 20 February 2019, while Mr Searle was a Member but did not hold a valid practising certificate issued by the Association:
 - a. He carried on in public practice, in particular he prepared accounts for the firms listed in Schedule 1 contrary to Regulation 3(1)(a) of the Global Practising Regulations (2016-2019);
 - b. He was Director of the Firm, where public practice was carried on in the name of the firm, contrary to Regulation 3(2)(a) of the Global Practising Regulations (2016-2019);
 - c. He held 100% of the shares of the Firm, which put him in the position of Principal in that company, which carried on public practice in the name of the Firm, contrary to Regulation 3(2)(b) of the Global Practising Regulations (2016-19).
2. Mr Andrew Searle submitted CPD Declarations in 2017 and 2018 which declared that he had not engaged in public practice activities in the previous 12 months.
3. Mr Andrew Searle's conduct in respect of any or all of the matters set out at 2 above was:

- a. Dishonest, in that he submitted declarations to ACCA which he knew to be false; or in the alternative;
- b. Contrary to the Fundamental Principle of Integrity (2015-2019) in that such conduct demonstrates a failure to be straightforward and honest.

4. By reason of his conduct in respect of any or all of the matters set out at 1 to 3 above, Mr Andrew Searle is:

- a. Guilty of misconduct pursuant to bye-law 8(a)(i);
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Company P	31/05/2018
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The Firm	31/10/2018
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Company S	30/04/2018
Company T	30/04/2018
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BRIEF BACKGROUND

7. A complaint was received by ACCA from an anonymous complainant. Checks made by ACCA revealed that Mr Searle was a director of a firm (the Firm) which appeared to be providing services of a public practice nature although Mr Searle had never held a PC. As such he was not authorised by ACCA to carry out / hold himself out as available to carry out public practice or act as a director of a firm holding itself out as a public practice firm.
8. ACCA investigated the complaint and found the following:
 - a. A Google search resulted in links to Mr Searle's LinkedIn profile and the Firm's website. Mr Searle's LinkedIn profile showed that Mr Searle referred to himself as a 'Managing Director' and 'Accountant' at the Firm.
 - b. The Firm's website advertised the Firm as a '*... modern, London based accountancy, tax and business advisory business run by chartered accountants ...*' providing tax and accountancy services. Mr Searle's profile on the firm's website showed that he displayed the ACCA designation after

his name. It went on to say that he was *'the founder of the Firm [and] a qualified accountant'*

c. Companies House records revealed that:

i. the Firm had been incorporated on 02 November 2015 and Mr Searle had been appointed the sole director and shareholder.

ii. The nature of the Firm's business was registered as "accounting and auditing activities" and "Tax Consultancy" which are public practice activities.

iii. Mr Searle' occupation was recorded as 'Accountant'.

d. Searches of the FAME database of financial information showed the Firm had acted as accountant for 26 companies.

e. A search on 26 February 2019 found that Mr Andrew Searle had prepared accounts for 28 companies. Schedule 1 sets out a list of 28 companies which Mr Searle had prepared accounts for prior to 20 February 2019, following which he regularised his position.

9. In his 2016 membership application Mr Searle declared that he had read and understood GPR 3 and 4.

10. Mr Searle submitted CPD Declarations in 2017 and 2018. The Declarations stated:

"I have not engaged in public practice activities (as defined by the Chartered Certified Accountants' Global Practising Regulations 3 and 4), without holding an ACCA practising certificate; I have read and understand the guidance overleaf before signing".

11. The accompanying guidance notes for the declaration gave the following information:

“Engaging in public practice activities.

If you engage in public practice activities, as defined by the Chartered Certified Accountants’ Global Practising Regulations 3 and 4, you are required to hold an ACCA practising certificate. Please refer to the factsheet Do I need a practising certificate available online ...”.

12. ACCA asked Mr Searle to comment on the evidence it had that suggested that Mr Searle had been engaging in public practice. Mr Searle responded admitting that he had been aware he had acted knowing he was in breach of the Regulations. In an email dated 17 January 2019 he stated:

“I refer to your letter dated 4 January received last week in relation to a complaint that I have been carrying out public practice activities without a practising certificate and respond ... as follows.
a) I am aware that I could be in breach of ACCA’s regulations in respect of carrying out public practice activities ...I intend to carry out public practice work going forward since it is the only way I can financially survive.... I did not undertake public practice activities lightly and without consideration of the ACCA Regulations”.

13. In a subsequent telephone conversation on 03 June 2019 to clarify this comment, ACCA recorded that Mr Searle had repeated the admission that he had been aware he was acting in breach of the Regulations. ACCA emailed Mr Searle to confirm the record of the call:

“During our call, I note that you confirmed you had knowingly signed CPD Declarations saying you had not engaged in public practice, although you were aware that you were the Director and Principal of a firm in and holding itself out to be in public practice. You explained that made these false Declarations to ‘buy more time’ so that you could find someone to take over your practice and comply with ACCA Regulations.” (sic).

14. Mr Searle responded in an email to ACCA dated 04 June 2019. He stated:

“I explained to you on the telephone and in previous correspondence that I did not undertake ANY public practice activities lightly but I had to as a matter of financial necessity. ...The public practice activities were not declared as I expected regularisation to have been achieved before end of 2017 and then again in 2018. Unfortunately, it was not until early 2019 when this was finally achieved. Clearly I did not wish to attract attention to the fact that I had carried out some public practice activities despite these being a minority of the total work activity.” (sic).

15. When asked by ACCA to confirm that he had prepared the annual accounts for the companies shown in Schedule One, Mr Searle stated in an email dated 04 July 2019:

“I confirm that I have provided public practice services to the 29 companies that you submitted to me from some database that you referred to, specifically that I prepared statutory accounts of those companies as stated. I would however state that two of the companies that you referred to in that list included two companies that I own/ed and I was/is 100% shareholder, so I had every right to prepare and submit those statutory accounts. I would also state that despite being in breach of the ACCA rules relating to public practice activities, I have been preparing statutory accounts for various companies since 1990 in some capacity - ie for the last 29 years, ie, since I began my initial training as a chartered accountant under an ICAEW training contract in 1990!”.

16. In his oral evidence Mr Searle admitted carrying on public practice work for each of the companies listed in Schedule 1, but not necessarily on the specific year end dates provided in the schedule.

17. ACCA also asked Mr Searle to confirm what proportion of the firm’s annual turnover was from public practice work. In emails to ACCA dated 04 and 08 July 2019, Mr Searle stated:

“... in the first year to end October 2016, the total amount of public practice

activity billed by the Firm was £1,200 out of £4,989 of total fee income representing 25% of total fees billed; and in the year to 31 October 2017 the total amount of public practice fees billed was £6,384 out of a total of £37,249 billed for the whole year, representing 17.13% of total fees billed by The Firm ... regarding public practice activities conducted by the Firm during the last financial year. I confirm that the amount of services provided deemed to be public practice in nature totalled £19,225 representing 23.54% of the total fee income for the year to the end of October 2018”.

SUBMISSIONS ON BEHALF OF ACCA

18. In relation to Allegation 1a, it is submitted on behalf of ACCA that Mr Searle has breached Regulation 3(1)(a) of the GPRs (2016-2019) which prohibits him from being in or holding out to be in public practice without a PC. It is submitted by ACCA that Mr Searle has admitted to carrying on public practice, as set out in Schedule One, when he was not the holder of a PC and that he was, therefore in breach of the GPRs. During the course of Mr Searle’s evidence Ms Luscombe, on behalf of ACCA, conceded that there was no evidence to prove that Mr Searle or the Firm had carried on public practice between 15 January 2016 (the start date alleged in Allegation 1) and 01 August 2016 (the date Mr Searle said he had first carried on public practice).
19. In relation to Allegations 1b and 1c, it is submitted that Mr Searle was the director and principal of a firm that conducted public practice. Mr Searle has admitted to carrying on public practice activities whilst the director / principal of the Firm. It is, therefore, submitted that he was in breach of Regulations 3(2)(b) and (c) of the GPRs (2016-2019) by being the director / principal of a firm where public practice was carried on without holding a PC. Again, Ms Luscombe conceded there was no evidence that the Firm had carried on any public practice between 15 January 2016 and 01 August 2016.
20. In relation to Allegation 2, ACCA relied on Mr Searle’s admission that he had made false declarations in the 2017 and 2018 CPD forms that he was not carrying on public practice when, in fact, he had been.

21. ACCA has submitted that in making such false declarations, Mr Searle acted dishonestly or in breach of the Fundamental Principle of Integrity. ACCA also submitted that Mr Searle's conduct, as set out in Allegations 1-3 was so serious as to amount to misconduct.

MR SEARLE'S CASE

22. Mr Searle provided the Committee with a further bundle of papers, numbered pages 1-64. This included a letter from a former colleague, Person A.
23. Mr Searle gave evidence to the Committee and was questioned by Ms Luscombe and the Committee.
24. In his evidence Mr Searle gave a history of his life since university. He informed the Committee that he had joined ACCA in 2010, and had qualified as an affiliate in 2013, having studied and passed the ACCA examinations whilst living in Germany. He had tried to obtain accountancy work in Germany without success. He returned to the United Kingdom in 2014, and eventually managed to gain employment with a company. He remained with the company until the end of June 2016 when he left. Mr Searle said that he predominantly prepared accounts whilst employed by the company.
25. Mr Searle set up the Firm on 02 November 2015, but it had not been set up as an accountancy business. As a result of his association with Germany he had hoped to set up a consultancy business linking start up German companies with companies in the United Kingdom who could offer them finance. He said that he had eventually managed to regularise his position by selling the Firm to Person C on 20 February 2019.
26. Mr Searle told the Committee that the reason he carried on public practice activities was because when a client came on board, they wanted everything done in one place. He had considered himself to be competent to do what they wanted as they were small companies with no complex issues. He informed the Committee that he had a lot of experience of putting together a set of accounts as that is what he had been doing in his previous employment. Mr Searle reiterated that he would not have

done anything that he did not believe that he had the competency to do. He said that he referred work to Person A if he did not consider himself competent to do the work himself.

27. Mr Searle accepted that he carried out public practice without a PC from 01 August 2016 when he issued an invoice for public practice work, which was done at a later date. He accepted that, by carrying on public practice without a PC, he had breached the GPRs, as alleged by ACCA, but from 01 August 2016 (not 15 January 2016 as alleged) to 20 February 2019 when he had regularised his position by selling the Firm.
28. Mr Searle repeated what he had set out in writing to ACCA. He stated that he had only undertaken public practice as a matter of financial necessity and the public practice activities were minimal and always a minority of the total work carried out by the Firm. Mr Searle stated that the public practice work was not declared to ACCA as he had expected regularisation to have been achieved before the end of 2017 and then, again, in 2018. Mr Searle stated, *“Clearly I did not wish to attract attention to the fact that I had carried out some public practice activities despite these being a minority of the total work activity”* (sic).
29. On 04 March 2019 Mr Searle had emailed ACCA confirming that he had satisfied ACCA's requirements to regularise his position in that he had resigned as a director of the Firm on 20 February 2019 and no longer held any shares in the company. Mr Searle informed ACCA that Person C had taken over as the sole director of the Firm on 20 January 2019. Person C is a member of ACCA and holds a practising certificate. She had purchased 100% of the shares in the company. Mr Searle stated that his new position in the company was that of 'Manager' and his duties consist of managing the day to day activities of client work of the firm which will be overseen by the new director.
30. Mr Searle informed ACCA during the course of the investigation that he had made a number of efforts to regularise his position over the past years without success until February 2019. He stated that the majority of the business activities carried out by the Firm have always been activities other than that of public practice in nature. When Mr Searle left his previous accountancy position in 2016 the majority of the work was the preparation of management accounts, the odd VAT return, helping with SEIS and

EIS applications, assisting with business plans, budgeting and forecasting for start-ups and small companies that had no financial director. He stated that even now the majority of the Firm's income came from carrying out a range of bookkeeping activities for a few larger companies and not public practice activities in nature. He stated that he was aware that it was important for him to obtain a practising certificate in order to expand his business and he had worked closely with Person A to try and achieve this. Mr Searle stated that the possibility of Person A's company buying the Firm had been discussed with Person A on a few occasions but that he had decided this would be too great a responsibility for him.

31. Mr Searle informed the Committee that he had never denied any of the allegations, only that the public practice work had not commenced until 01 August 2016.

DECISION AND REASONS

Allegation 1

32. The Committee noted that Mr Searle had partly admitted Allegation 1 in that he accepted that he had carried out public practice without holding a PC from 01 August 2016. The Committee also took into consideration ACCA's concession that there was no evidence to prove that Mr Searle or the Firm had carried on public practice between 15 January 2016 and 01 August 2016. In the circumstances the Committee found Allegations 1a, 1b and 1c proved on the basis Mr Searle's admission that he carried on public practice from 01 August 2016 to 02 February 2019. It did not find that Mr Searle or the Firm carried on public practice between 15 January 2016 and 31 July 2016.

Allegation 2

33. In relation to Allegation 2, Mr Searle accepted signing the two CPD forms in 2017 and 2018 in which he falsely stated in each that he had not carried on public practice the previous year when, in fact, he had. The Committee found Allegation 2 proved on the basis of Mr Searle's admission.

Allegation 3

34. The Committee considered Allegation 3a. It applied the two-stage test set out in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67 to determine whether Mr Searle had been dishonest.
35. The Committee first ascertained the actual state of the Mr Searle's knowledge or belief as to the facts. The Committee recognised that Mr Searle's knowledge or belief did not need to be reasonable but must be genuinely held. However, the Committee also appreciated that the reasonableness of Mr Searle's purported state of knowledge and belief was something it could consider in weighing and ascertaining his actual state of knowledge or belief.
36. The Committee determined that Mr Searle was fully aware when he was completing the forms that that he was making a false declaration in stating that he had not carried out public practice when he had.
37. Having found Mr Searle's actual state of mind and understanding of his knowledge and belief, the Committee considered the objective limb of the test for dishonesty, namely, whether his conduct was honest or dishonest by the standards of ordinary people. The Committee considered that it was plain that an ordinary, honest and decent member of the public would regard Mr Searle's conduct in deliberately making a false declaration as dishonest. The Committee also noted that Mr Searle had admitted that his conduct in falsely signing the forms was dishonest.
38. The Committee found Allegation 3(a) proved on the basis of Mr Searle's admission. The Committee did not go on to consider Allegation 3(b), which was pleaded in the alternative.

Allegation 4

39. The Committee went on to determine whether the allegations that had been admitted and/or found proved amounted to misconduct. It considered that the carrying on of public practice without holding a practising certificate was discreditable conduct and amounted to misconduct. Mr Searle had knowingly breached ACCA's GPRs by both

carrying on public practice and holding himself out as an accountant authorised by ACCA to do so when he was not. The Committee noted that the Firm's clients would have paid for Mr Searle's accountancy services believing him to be authorised by ACCA to carry out such work when he was not.

40. The Committee also considered that dishonestly making false and misleading declarations was conduct that fell seriously short of the standards of behaviour expected of a professional accountant and a member of ACCA.
41. The Committee found Allegation 4(a) proved. Having done so, the Committee did not go on to consider Allegation 4(b), which was pleaded in the alternative.

SANCTION AND REASONS

42. The Committee accepted the advice of the Legal Adviser and had regard to ACCA's Guidance for Disciplinary Sanctions ('the Guidance').
43. The Committee considered the mitigating features in the case. It was advised that there was no previous disciplinary history. It noted the reference from Person A, dated 09 March 2020, provided by Mr Searle which positively attested to his good practice as an accountant and his good character. The Committee also took into account that Mr Searle had made early admissions to the allegations found proved. It also noted that he had constructively engaged and co-operated in the investigation and regulatory process.
44. In terms of the aggravating features of the case, the Committee accepted that Mr Searle had apologised and expressed regret for his conduct, but it considered that his insight, as demonstrated by him in the hearing, was limited. Further, his conduct had been deliberate and repeated misconduct.
45. Given the seriousness of the misconduct, the Committee determined that a sanction was required and that it would be wholly inappropriate to conclude this matter with an admonishment or a reprimand. Having carefully considered the specific terms of the Guidance, the Committee was satisfied that these sanctions would not

adequately reflect the gravity of the misconduct, which was dishonest, intentional, repeated and had breached ACCA's rules and regulations.

46. The Committee carefully considered whether it would be sufficient to conclude the matter with a severe reprimand. It noted that many of the factors set out in the Guidance were not applicable in this case. It concluded that such an order would not sufficiently address the seriousness of the misconduct or the damage caused to public confidence in the profession and ACCA as regulator.
47. The Committee considered the factors in the Guidance in relation to exclusion from membership. It noted that the following factors applied in this case:
 - a. This was a serious departure from relevant professional standards;
 - b. This was an abuse of trust in that Mr Searle deceived clients into believing that he was authorised to carry on public practice by ACCA;
 - c. Mr Searle had acted dishonestly in signing the two CPD forms;
 - d. This was repeated misconduct over a period of time;
 - e. There had been breaches of the GPRs.

48. In all the circumstances the Committee considered that Mr Searle's misconduct was incompatible with him remaining a member of ACCA and it determined that the appropriate and proportionate sanction was to exclude him from membership of ACCA.

ORDER

49. Mr Searle shall be excluded from membership of ACCA.
50. The order for exclusion from membership will take effect from the date of expiry of the appeal period referred to in the Appeal Regulations, being 21 days after service of the written statement of the reasons of the Committee.

COSTS

51. ACCA applied for costs in the sum of £8,898.50.

52. Mr Searle submitted that the sum of costs applied for by ACCA should be reduced to take account of the way that ACCA had investigated the case. He submitted that ACCA had clearly wasted time trying to prove that he was carrying on public practice from 15 January 2015 when there was no evidence that he had done so. He also informed the Committee that he had lost everything he had in 2008 and had not obtained employment until 2015. He said that he had no financial assets and was on a low income. Mr Searle told the Committee that he would have to take out a loan to pay any costs order awarded to ACCA.

53. The Committee took into consideration the submissions of Mr Searle and his current limited financial circumstances. It determined that in all the circumstances it was fair and reasonable to award ACCA costs in the sum of £4,000.00.

ORDER

54. Mr Searle shall pay ACCA costs in the sum of £4,000.00.

Mr Maurice Cohen
Chair
11 March 2020