

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr John Gregory Swarbrick
Heard on:	Wednesday, 24 August 2022
Location:	Remotely via Microsoft Teams
Committee:	Mr Andrew Gell (Chair) Mr David Horne (Accountant) Mr Colin Childs (Lay)
Legal Adviser:	Mr Robin Havard (Legal Adviser)
Persons present and capacity:	Mr Benjamin Jowett (ACCA Case Presenter) Ms Nikita Apostol (Hearings Officer) Mr John Gregory Swarbrick (Member)
Summary	Severe Reprimand and a Fine of £1,323
Costs:	£9,617

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PRELIMINARY APPLICATIONS

APPLICATION FOR HEARING TO TAKE PLACE IN PRIVATE

1. Mr Swarbrick had applied for the entire hearing to be held in private. The basis of his application was that he would need to make reference to his personal circumstances during the material time leading up to, during, and since the period covered by the allegations, to include details regarding his health.
2. Mr Jowett confirmed that he objected to the entirety of the hearing taking place in private as there was a public interest in allegations of this sort being considered in public. However, he did not object to the hearing taking place in private when Mr Swarbrick's personal circumstances, to include his health, were discussed.
3. The Committee noted that it had power under Regulation 11 of the Complaints and Disciplinary Regulations 2014 as amended to order that all or part of a hearing should be conducted in private.
4. The Committee concluded that it was in the public interest that all hearings should take place in public unless there was good reason for ordering that all or part of a hearing should take place in private. One such reason related to sensitive information regarding a person's individual circumstances, and also details surrounding a person's health.
5. The Committee decided that the hearing shall take place in public save where it related to sensitive personal information relating to Mr Swarbrick's personal and family circumstances and/or details relating to his health. Evidence and submissions relating to such information would be heard in private.

AMENDMENT

6. At the outset of proceedings, a discussion was held with regard to the wording of allegation 2 and whether it accurately reflected the conduct alleged.

7. Following a short adjournment, Mr Jowett confirmed that he had discussed the matter with Mr Swarbrick. It was proposed by Mr Jowett that, in order to clarify the position, the heading of allegation 2 should now read as follows:
8. *"Mr Swarbrick completed his annual CPD (continuous professional development) returns on-line on or about the following dates where he declared **or acknowledged** that he had not engaged in public practice without holding an ACCA practising certificate:"*
9. This led to consequential amendments to allegation 3.2 which should read, *"...certified **or acknowledged**..."*, and allegation 3.4, which should read, *"...declarations **or acknowledgements**...."*
10. Mr Swarbrick confirmed that he did not object to the amendments being made.
11. In the circumstances, the Committee granted the application.

ALLEGATIONS AS AMENDED

1. Between 01 January 2016 and 27 June 2019, Mr John Gregory Swarbrick, ACCA member breached the Global Practising Regulations (as applicable in 2016 to 2019) by virtue of not holding a valid practising certificate with regards any or all of the following:
 - 1.1 Carried on in public practice in the UK without an ACCA practising certificate contrary to Paragraph 3(1)(a) of the Global Practice Regulations (as applicable in 2016, 2017, 2018 and 2019);
 - 1.2 Was a director of Whalley Swarbrick Ltd which carried out public practice contrary to Paragraph 3(2)(a) of the Global Practice Regulations (as applicable in 2016, 2017, 2018 and 2019);
 - 1.3 Held rights, which in effect put him in the position of a principal,

namely he owned 100% shares, in Whalley Swarbrick Ltd which carried out public practice contrary to Paragraph 3(2)(b) of the Global Practice Regulations (as applicable in 2016, 2017, 2018 and 2019).

2. Mr Swarbrick completed his annual CPD (continuous professional development) returns on-line on or about the following dates where he declared or acknowledged that he had not engaged in public practice without holding an ACCA practising certificate:

CPD year	Date CPD declaration submitted
2016	31 December 2016
2017	31 December 2017
2018	15 January 2019

3. Mr Swarbrick's conduct was:
 - 3.1 As regards the matters referred to in paragraph 1, contrary to the Fundamental Principle of Integrity, in that he failed to renew his ACCA practising certificate knowing one was required and such conduct demonstrates a failure to be straightforward and honest;
 - 3.2 As regards the matters referred to in paragraph 2, dishonest in that for a succession of years (2016, 2017 and 2018), Mr Swarbrick falsely certified or acknowledged in his 2016, 2017 and 2018 CPD returns or any one of them, that he had not engaged in public practice; or in the alternative;
 - 3.3 Contrary to the Fundamental Principle of Integrity, in that such conduct demonstrates a failure to be straightforward and honest;
 - 3.4 In the further alternative as regards the matters referred to in paragraph 2 above was reckless in that Mr Swarbrick failed to have any or any proper regard as to whether the declarations or

acknowledgements he gave in all or any of the 2016, 2017 and 2018 CPD returns that he had not engaged in public practice were true.

4. By reason of his conduct in respect of the matters set out above, Mr Swarbrick is:

- 4.1 Guilty of misconduct pursuant to bye-law 8(a)(i);

- 4.2 In the alternative in respect of allegation 1 only, liable to disciplinary action pursuant to bye-law 8(a)(iii).

BRIEF BACKGROUND

12. Mr Swarbrick is an ACCA fellow. He was admitted as an ACCA member on 03 June 1993 and was made a fellow on 03 June 1998 (page 16 to 17).
13. Following an enquiry by ACCA regarding Mr Swarbrick's current practising status, he contacted ACCA and notified ACCA that he carried on public practice at a time when he did not have an ACCA practising certificate ("PC") in place. ACCA treated this as a self-referral and opened an investigation file for Mr Swarbrick.

DECISION ON FACTS, ALLEGATIONS AND REASONS

Allegation 1

14. In reaching its findings in respect of Allegation 1, the Committee had read the following documents: a Hearing Bundle Amended (pages 1 to 183); a Supplementary Bundle (2) (pages 1 to 20); a document entitled ACCA's Outline Submissions submitted by Mr Jowett on behalf of ACCA and dated 22 June 2021 (pages 1 to 5); a Tabled Additional Bundle (pages 1 to 8), and a Service Bundle (pages 1 to 19). In addition, the Committee had considered the oral

evidence provided by Mr Swarbrick and the submissions made by him and Mr Jowett in the course of the hearing.

15. Allegation 1, to include each of its particulars at paragraphs 1.1, 1.2 and 1.3, was admitted by Mr Swarbrick and the Committee found the facts of allegation 1 and its particulars proved.
16. The Committee made the following additional findings of fact.
17. Global Practising Regulation ("GPR") 3(1)(a), which had remained unchanged during the material time, states as follows:

"3. Restrictions on carrying on public practice

(1) Members

- (a) No member shall carry on public practice in a designated territory or in a country or jurisdiction that, according to local legislative and/or regulatory requirements, requires a practising certificate issued by the Association, unless the member holds a practising certificate which authorises the carrying on of the activity in question".*

18. GPR3(2) states as follows:

"(2) Members and firms

- (a) No member shall be a sole proprietor, partner or director of a firm, or member of a limited liability partnership, where public practice is carried on in the name of the firm, or otherwise in the course of the firm's business, unless the member is in compliance with this Regulation 3.*
- (b) No member shall hold rights in a firm where public practice is carried on in the name of the firm, or otherwise in the course of the*

firm's business, which in effect put the member in the position of a principal of the firm, unless the member is in compliance with this Regulation 3".

19. GPR4(1) states as follows:

"4. Meaning of public practice

(1) Activities

Subject to Regulations 4(2), 4(3) and 4(5), public practice, which may be carried on by an individual or a firm (the "practitioner"), means:

- (a) accepting an appointment as an auditor; and/or*
- (b) signing or producing any accounts or report or certificate or tax return concerning any person's financial affairs, whether an individual sole-trader, an unincorporated body or a firm, in circumstances where reliance is likely to be placed on such accounts or report or certificate or tax return by any other person (the "third party"), or doing any other thing which may lead the third party to believe that the accounts or report or certificate or tax return concerning the financial affairs of such a person have been prepared, approved or reviewed by the practitioner; and/or*
- (c) holding oneself or itself out, or allowing oneself or itself to be held out, as being available to undertake the activities referred to in (a) and (b) above (and allowing oneself to be known as a, or a firm of "Chartered Certified Accountant(s)", "Certified Accountant(s)", "Chartered Accountant(s)", "Accountant(s)" or "Auditor(s)" or any similar description or designation standing for any such description in the context of the practitioner's business shall be regarded as an example of such a holding out); and/or*

- (d) *holding oneself out, or allowing oneself to be held out, as a sole proprietor, partner or director of a firm, or designated member or member of a limited liability partnership, where public practice is carried on*".
20. Mr Swarbrick's ACCA records showed that his PC lapsed on 01 January 2016. Those records then showed that the next PC granted to Mr Swarbrick was on 28 June 2019. Consequently, between 01 January 2016 and 27 June 2019, Mr Swarbrick did not hold a PC.
21. Companies House records of Whalley Swarbrick ("the firm"), in the form of annual returns or confirmation statements, showed that, between 01 January 2016 and 27 June 2019, when Mr Swarbrick did not hold a PC, he remained a director and sole shareholder of the firm.
22. Pages of the firm's website retrieved by ACCA showed that Mr Swarbrick held himself out as someone entitled to carry on in public practice in the UK during the time that he did not hold a PC. He operated under the designated title: "*Managing Partner, chartered certified accountant*". Under his "*Specialisations*", it lists:
- *Business Development & Tax Planning*
 - *Accountancy*
 - *Personal & Capital Taxes*
 - *Corporate Tax*
 - *VAT & Payroll*
23. The firm also held itself out as available to undertake PC activities such as tax consultancy and accounting. Under the heading, "*Whalley Swarbrick: Our services*", it stated that the firm provided: "*auditing; tax and financial planning, and corporate finance*".

Allegation 2

24. This allegation was admitted by Mr Swarbrick and the Committee found it proved.
25. The Committee relied on the statement of ACCA Professional Development Co-Ordinator, Person A, which was not challenged, and the documents to which it referred, which detailed Mr Swarbrick's ACCA records. The Committee was satisfied that they showed Mr Swarbrick electronically completed his annual CPD (continuous professional development) on the following dates:

CPD year	Date CPD declaration submitted
2016	31 December 2016
2017	31 December 2017
2018	15 January 2019
2019	29 November 2019

26. As part of his annual CPD return, Mr Swarbrick declared that he had not engaged in public practice without holding an ACCA practising certificate.
27. Indeed, in the 2016 declarations submitted by Mr Swarbrick, he had completed Part 3 which included the words:

"I further understand that if I engage in public practice activities, I will need to hold an ACCA practising certificate".

28. In the 2017 declaration, Mr Swarbrick had completed Part 3 which included the words:

"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 understood the instructions and guidance".

29. The guidance regarding the completion of Part 3 included a section under the heading, "*Engaging in public practice activities*", which set out the need for a member to hold a PC if engaging in public practice. There was also a link to a factsheet entitled, "*Am I in public practice?*".
30. In his CPD declaration for the year 2018, Mr Swarbrick had completed Part 3 which contained the same words as the 2017 declaration.

Allegation 3.1

31. This allegation was denied.
32. The Committee was satisfied that Mr Swarbrick would have known of his obligation to renew his PC to enable him and his firm to continue to carry on in public practice. Indeed, this was not denied by Mr Swarbrick. He confirmed in his evidence that, in or about October 2016, he knew that he had not renewed his PC and had attempted to do so online but had not been successful. He took no further action but, nevertheless, continued in public practice.
33. Mr Swarbrick is a person of considerable experience, having been a member of ACCA since 1993 and a fellow since 1998. He had also been a founder member and sole shareholder of his firm since 2005.
34. The Committee had taken into consideration the information provided to it by Mr Swarbrick of his personal circumstances and the health issues with which he had to contend.
35. [PRIVATE].
36. [PRIVATE].
37. Even though he had not produced any medical evidence to support his account, Mr Swarbrick remained consistent in his outline of events and the impact that it

had upon him. Furthermore, the evidence had not been challenged. The Committee accepted his account and the inevitable turbulence that he experienced in this period of his life.

38. The Committee found that the PC fees for:

- 2016 were £421
- 2017 were £441; and
- 2018 were £461.

39. ACCA also confirmed that no reminders were sent to Mr Swarbrick for his 2016 renewal as they considered he had voluntarily surrendered his PC and audit qualifications.

40. Whilst sympathetic to Mr Swarbrick's personal circumstances, the Committee found that it could not account for the failure on his part to renew his PC over a period of some three years. He accepted that, throughout the relevant period, he knew of the requirement for a PC to enable him and his firm to continue in public practice and of the requirement to hold a PC taking account of the circumstances outlined in particulars 1.1, 1.2 and 1.3 of allegation 1. This must be so, taking account of his experience and the fact that he would have applied for a PC in previous years, and from at least 2010.

41. In the circumstances, the Committee found that Mr Swarbrick knew that he needed to hold a PC in circumstances when he continued to hold himself out as a person undertaking public practice.

42. The Committee was satisfied that Mr Swarbrick's failure to renew his ACCA practising certificate knowing one was required demonstrated a failure to be straightforward and honest. The Committee therefore found allegation 3.1 proved.

Allegation 3.2

43. This allegation was denied.
44. The Committee relied on its findings of fact under allegations 1 and 2 above.
45. Mr Swarbrick did not dispute that he had completed his annual CPD declarations for 2016, 2017 and 2018 in which he declared that he had not engaged in public activities without holding an ACCA practising certificate, when, in fact, throughout this period, he had held out both himself and his firm (of which he was sole shareholder) as conducting public practice.
46. Mr Swarbrick had apologised for his conduct. He had stated that, due to his personal circumstances and health issues as summarised above, his false declarations in his CPD submissions over three years was due to error and was not deliberate. He also suggested that, when completing the declaration, he had not read the guidance fully.
47. The Committee took into consideration not only the personal circumstances outlined by Mr Swarbrick and also that Mr Swarbrick had taken remedial action. At the prompting of ACCA, he had self-referred his conduct to ACCA. He also applied for a PC which was granted on 28 June 2019. In addition, he has renewed his PC for 2020. He has therefore, taken steps to regularise his position and is no longer in breach.
48. The Committee repeated its findings in respect of allegations 1 and 2. Mr Swarbrick was a person of very considerable experience. He was owner and managing partner of his firm, and therefore ultimately responsible for ensuring that the firm complied with its regulatory obligations. At the time of the initial breach in 2016, he had been a member for some 23 years and a fellow for approximately 18 years. He would have submitted his CPD declarations on numerous occasions in the past.

49. Mr Swarbrick was questioned, quite properly, by Mr Jowett about the fact that Mr Swarbrick had been sufficiently engaged with his professional obligations that he was able to renew his AML supervision with ACCA. He would also ensure that he was in compliance with regard to the regulatory obligations regarding the firm and Companies House. He also accepted that, on a day-to-day basis, he was continuing to conduct client work and to run the practice, to include, for example, the renewal of his professional indemnity insurance.
50. Mr Swarbrick stated that these tasks were firm-wide obligations and that he was supported by members of staff but that, when it came to his personal responsibilities to include his completion and submission of his CPD declarations, he did not give them the necessary attention and had not read carefully the forms that he had completed.
51. Mr Swarbrick apologised for his mistakes and accepted that his behaviour had been reckless, but he strongly denied that he had intentionally completed the declarations with the aim of misleading ACCA or anyone else. He considered the annual declaration to relate mainly to his continuous professional development and had not read the section relating to public practice. He stated that he had not fallen foul of the regulations in all the years prior to 2016 and his failure coincided with this traumatic period in his life.
52. The Committee had found, on the balance of probabilities, that, whilst Mr Swarbrick knew that he was engaged in public practice, he had not deliberately set out to complete the CPD declarations in a way designed to mislead or deceive anyone and that it was reckless as opposed to dishonest conduct.
53. The Committee was satisfied that, by the standards of ordinary decent people, such conduct would not be considered to be dishonest.

Allegation 3.3

54. For the same reasons as outlined in respect of its findings in relation to allegation 3.2, the Committee found allegation 3.3 not proved.

Allegation 3.4

55. The Committee relied on its findings in respect of allegation 3.2 and found that, in relation to the matters referred to in allegation 2, Mr Swarbrick acted recklessly. As a professional accountant of many years' experience, Mr Swarbrick must have realised that completing a form for submission to his Regulator without properly considering its content represented a substantial risk of providing ACCA with misleading and incorrect information, which was precisely what transpired.
56. On this basis, the Committee found allegation 3.4 proved.

Allegation 4.1

57. Taking account of its findings that Mr Swarbrick's conduct had demonstrated a breach of the Fundamental Principle of Integrity in that he had conducted himself in a way which was neither straightforward nor honest, and that he had also acted recklessly, the Committee was satisfied that he was guilty of misconduct in that such conduct could properly be described as deplorable. In the Committee's judgement, it brought discredit to Mr Swarbrick, the Association and the accountancy profession.
58. The Committee found allegation 4.1 proved.

Allegation 4.2

59. On the basis that allegation 4.2 was pleaded in the alternative to allegation 4.1, the Committee made no finding in respect of it.

SANCTIONS AND REASONS

60. The Committee considered what sanction, if any, to impose taking into account all it had read in the bundle of documents, ACCA's Guidance for Disciplinary Sanctions, and the principle of proportionality. It had heard brief submissions from Mr Jowett and Mr Swarbrick; it had also listened to legal advice from the Legal Adviser, which it accepted.
61. 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.
62. 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.
63. The Committee considered whether any mitigating or aggravating factors featured in this case.
64. In terms of mitigating factors, the Committee accepted that there were no previous findings against Mr Swarbrick. Mr Jowett also accepted, on behalf of ACCA, that Mr Swarbrick had co-operated throughout the investigation. Mr Swarbrick had also admitted the central facts of the allegations and he had apologised for his conduct. Finally, the Committee considered that Mr Swarbrick had shown a level of insight into his failings.
65. As for aggravating features, on the basis of the Committee's findings, it had been established that Mr Swarbrick's behaviour had illustrated a lack of integrity and it represented a course of conduct that extended over a period of time.
66. The Committee concluded that neither an admonishment nor a reprimand would adequately reflect the seriousness of the Committee's findings.

67. The Committee then considered whether a severe reprimand would be an appropriate sanction. Whilst the Committee concluded that Mr Swarbrick's misconduct was serious, it was satisfied that such misconduct was no longer continuing. He had also liaised with ACCA to ensure that the circumstances which had led to the investigation and his subsequent appearance before the Committee had been rectified. There was also no evidence to suggest that his conduct had caused any direct or indirect harm. Indeed, there was no evidence that his work as an accountant was a matter of concern or that he had been running the practice in an unsatisfactory manner. As stated, he had shown a level of insight into his failings and had expressed remorse. There was no evidence of a repetition and he had co-operated throughout the course of the investigation. The Committee had accepted the evidence and submissions of Mr Swarbrick that his life, and health, was now much improved and that, if he ever found himself in a similar situation again, he would immediately reach for help and support. The Committee concluded that the risk of a repetition of such behaviour was now reduced to an acceptably low level.
68. On this basis, the Committee concluded that the sanction to be imposed on Mr Swarbrick would be a severe reprimand. The Committee was satisfied that such a sanction was appropriate, proportionate and sufficient to protect the public interest.
69. In addition, taking account of the fact that Mr Swarbrick's failure to renew his PC had the effect of avoiding payment of renewal fees, it was considered appropriate to include as a sanction a fine in an amount equivalent to the fees he had not paid, which amounted to £1,323.

COSTS AND REASONS

70. The Committee had been provided with a simple costs breakdown (page 1) and a detailed costs breakdown (pages 1 and 2) related to ACCA's overall claim for costs. It had also been provided with a statement of Mr Swarbrick's finances.

71. The Committee concluded that ACCA was entitled to be awarded costs against Mr Swarbrick, the allegations, including a failure to act with integrity, having been found proved. The amount of costs for which ACCA originally applied was £12,702.00.
72. However, this case had originally been listed for two days on 16 and 17 August 2022. It had been adjourned but Mr Jowett very fairly indicated that a second day would not have been required and therefore, this reduced the amount claimed to £9,617.
73. Mr Swarbrick accepted that ACCA was entitled to its costs and also did not dispute the amount claimed. However, he asked the Committee to take account of his financial circumstances and the commitment in terms of supporting his children in the years ahead.
74. The Committee had taken note of Mr Swarbrick's submissions and also the financial information he had provided and concluded that he was in a position to pay the reduced amount of costs claimed by ACCA.
75. In all the circumstances, and in exercising its discretion, the Committee considered that it was reasonable and proportionate to award costs to ACCA in the reduced sum of £9,617.00.

EFFECTIVE DATE OF ORDER

76. This Order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

Mr Andrew Gell
Chair
24 August 2022