

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Shane Tuohy

Heard on: Friday, 15 March 2024

Location: Remote via Microsoft Teams

Committee: Ms Ilana Tessler (Chair)
Ms Andrea White (Accountant)
Ms Jackie Alexander (Lay)

Legal Adviser: Mr Charles Apthorp

**Persons present
and capacity:** Mr Elaine Skittrell (Case Presenter)
Ms Anna Packowska (Hearings Officer)

Summary: Allegations 1(a) – (c), 2, 3(a) – (e), 4(a) and 6(l), (ii) found proved

Sanction Exclusion from Membership, to take effect immediately
Interim order rescinded. Costs £6500.

1. The Committee confirmed that it was not aware of any conflicts of interest in relation to the case.
2. In accordance with Regulation 11(1)(a) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 ("the Regulations"), the hearing was conducted in public.
3. The hearing was conducted remotely through Microsoft Teams.
4. The Committee had considered the following documents: a Memorandum and Agenda (pages 1 to 2); a Hearing Bundle (pages 1 to 225); and a Service Bundle (pages 1 to 16).

SERVICE OF PAPERS

5. The Committee considered whether the appropriate documents had been served on Mr Tuohy in accordance with the Regulations.
6. The Committee was satisfied that the email address provided was the email address held by ACCA for Mr Tuohy throughout the relevant period.
7. The Committee noted the written notice of the hearing that had been sent by electronic mail ("email") to Mr Tuohy's registered email address on 16 February 2024. As the notice of hearing was sent by email, the Committee noted that service may be proved by confirmation of delivery of the notice, which had been provided to the Committee, and that the notice would be deemed as having been served on the day that it was sent, that is, 16 February 2024. The Committee was therefore satisfied that the notice of hearing had been served on Mr Tuohy 28 days before the date of today's hearing.
8. The Committee noted the contents of the notice of hearing and was satisfied that it contained all the information required by the Regulations.

9. The Committee accepted the advice of the Legal Adviser, who referred it to Regulations 10 and 22 of the Regulations, and in particular the requirement that notice of the hearing must be served no later than 28 days before the date of the hearing unless there are exceptional circumstances.
10. The Committee found that service of the notice of hearing had been effected in accordance with Regulations 10 and 22 of the Regulations.

PROCEEDING IN ABSENCE

11. Ms Skittrell made an application to proceed in the absence of Mr Tuohy.
12. The Committee, having satisfied itself that the requirements of Regulations 10 and 22 of the Regulations had been complied with, went on to consider whether to proceed in the absence of Mr Tuohy.
13. The Committee took into account the submissions of Ms Skittrell. The Committee accepted and noted the advice of the Legal Adviser, who referred it to Regulation 10(7) of the Regulations, the ACCA document 'Guidance for Disciplinary Committee hearings and the relevant principles from the cases of *R v Jones* [2002] UKHL 5, and *GMC v Adeogba and GMC v Visvardis* [2016] EWCA Civ 162.
14. The Committee bore in mind that its discretion to proceed in the absence of Mr Tuohy must be exercised with the utmost care and caution.
15. The Committee noted that ACCA had sent a notice of hearing and further correspondence to Mr Tuohy at his registered email address. It also noted that ACCA had made attempts to contact Mr Tuohy by telephone about the hearing, using his registered telephone number, but the calls have not been answered.
16. On the basis of the evidence set out above, the Committee was satisfied that ACCA had made reasonable efforts to notify Mr Tuohy about today's hearing and

that Mr Tuohy knew or ought to know about the hearing. The Committee noted that Mr Tuohy had not applied for an adjournment of today's hearing and there was no indication that such an adjournment would secure his attendance on another date. The Committee was mindful that there is a public interest in dealing with regulatory matters expeditiously.

17. Having balanced the public interest with Mr Tuohy's own interests, the Committee decided that it was fair and in the interests of justice to proceed in his absence.

ALLEGATIONS

Mr Shane Tuohy, a member of the Association of Chartered Certified Accountants ('ACCA'):

1. From about 14 December 2016 to 24 September 2020 and 10 December 2021 to 23 August 2023 in not holding an ACCA Practising Certificate breached Global Practising Regulations (as applicable from 2016 to 2023) by virtue of one or more of the following:
 - a) Carried on public practice contrary to Global Practising Regulation 3(1)(a);
 - b) Was a director of Firm A, a firm which carried on public practice, contrary to Global Practising Regulation 3(2)(a);
 - c) Held rights in Firm A, which in effect put him in the position of principal of a firm which carried on public practice, contrary to Global Practising Regulation 3(2)(b).
2. Between 11 January 2018 and 17 December 2021, submitted annual CPD returns to ACCA as further detailed in Schedule 1, in which he declared he had not engaged in public practice without holding a practising certificate or words to that effect (as defined by The Chartered Certified Accountants' Global

Practising Regulations 3 and 4).

3. In an application for reinstatement to ACCA's Membership Register dated 4 December 2021,
 - a) Stated he worked in 'industry' for Firm B, either or both of which was not true.
 - b) As required by that application, failed to submit an application for a practising certificate given he was in public practice as a principal of Firm A.
 - c) Declared 'I understand that if I engage in any public practice activities ...I will need to hold an ACCA practising certificate.' but thereafter engaged in public practice without an ACCA practising certificate.
 - d) In response to 'Are you in either full or spare time practice?', answered 'No' which was not true.
 - e) Declared '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' in that between 14 December 2016 and 24 September 2020 he had engaged in public practice without a practising certificate and accordingly that declaration was not true.
4. Shane Tuohy's conduct in respect of Allegations 2 and / or 3 above,
 - a) Was dishonest in that, save for the period he was not an ACCA member between 25 September 2020 and 9 December 2021, he knew he was engaging in and had engaged in public practice and that he did not hold a practising certificate and accordingly the declarations referred to in Allegations 2 and or 3 above were in such respects false; in the alternative such conduct,

b) Demonstrates a lack of integrity.

5. In the further alternative the conduct referred to in Allegations 2 and or 3 above was reckless in that Shane Tuohy failed to have any or sufficient regard for the need to ensure that the declarations referred to in Allegations 2 and or 3 were accurate and true.

6. By reason of his conduct described above, Shane Tuohy is,

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

ii) Liable to disciplinary action pursuant to byelaw 8(a)(iii) in respect of Allegation 1 only.

SCHEDULE 1	
CPD return – public practice declaration	Date of submission
2017 – online Declaration	11 January 2018
2018 – online Declaration	10 January 2019
2019 – online Declaration	17 December 2021
2020 – paper Declaration	8 December 2021
2021 – online Declaration	17 December 2021

DECISION ON FACTS, ALLEGATIONS AND REASONS

18. The Committee had considered the following documents: a Hearing Bundle (pages 1 to 225), and a Service Bundle (pages 1 to 16). Mr Tuohy's firm is referred to as Firm A and Firm B is the firm Mr Tuohy claimed to be working for during the period of his reinstatement.

Background

19. Mr Shane Tuohy is based in the Republic of Ireland. He was admitted to the

ACCA's membership register on 12 November 2015. On 24 September 2020 he was removed from that register due to failure to pay his annual subscription.

20. On 4 December 2021 Mr Tuohy applied for reinstatement to ACCA's membership register, and he was reinstated as a member on 10 December 2021. The application for reinstatement was dealt with administratively and not considered by the ACCA's Admissions and Licensing Committee.
21. Mr Tuohy has never held an ACCA practising certificate. It is the ACCA case that he has never been authorised by the ACCA to carry out public practice.

Relevant bye-laws, fundamental principles, and Regulations

22. The Committee were provided with relevant extracts of Bye-Law 8(a)(i) and 8(c), Global Practising Regulation 3 and 4(4) of the Global Practising Regulations ("GPR") 2016 – 2016 and Regulation 3(3) of Annex 2 GPR effective January 2017 to December 2022.

Facts of the Case – Allegation 1(a), (b) and (c)

23. In May 2022 ACCA checked records held by Companies Registration Office in Ireland (CRO) for Firm A Ltd. The Annual Return for Firm A made up to 14 June 2021 records that Shane Tuohy and Angela Tuohy (his wife) were the sole Directors, each holding 50% of the shares.
24. Angela Tuohy resigned as director of Firm A on 26 May 2023 and disposed of her shares. The bundle contains a copy of Form B10 submitted to the CRO. Mr Tuohy is therefore currently the sole director and shareholder of Firm A.
25. Further evidence included:
 - (i) The Annual Return for Firm A submitted to CRO for the financial year to 31

December 2022 made up to 1 June 2023. This records that Shane Tuohy is the sole shareholder with Angela Tuohy having transferred her 50% shareholding to him on 27 May 2023.

- (ii) The Application to Incorporate Firm A Ltd dated 2 December 2016. Mr Tuohy and Mrs Tuohy are recorded as the directors, with each holding 50% of the shares. The application has been signed by both Mr and Mrs Tuohy.
- (iii) The Certificate of Incorporation for Firm A dated 14 December 2016.
- (iv) The Annual Returns for Firm A from 2017 to 2023 record that Mr Tuohy as remaining a director and shareholder of Firm A since incorporation. These also record that the firm's name has remained unchanged since incorporation.
- (v) Firm A's current website contains a page headed 'Services', which was created on the 4 November 2017. This includes the following,

Trading Accounts

We can provide annual trading accounts and the associated tax returns for all business entities, sole traders, partnerships or companies, this service allows the business owners to concentrate on running their business in the knowledge that they are Revenue compliant.

- (vi) Mr Tuohy's LinkedIn account as of 25 July 2023. This refers to him being a 'Director & Accountant' at 'Firm A' from 'January 2017 to Present'. His biography states,

'As a member of the Association of Chartered Certified Accountants I have worked in both practice and industry... .. The provision of bookkeeping services [which ACCA accepts is not public practice], production of year end accounts and the submission of tax returns remain the core service I provide to clients, this has resulted in my clients referring friends and colleagues ...'

Member's Response – Allegation 1(a)

26. Upon ACCA becoming aware of this matter, it was referred to ACCA's investigations team. An investigating officer from that team notified Mr Tuohy of the complaint in a letter emailed to him on 28 March 2023. Mr Tuohy was advised in that letter that it appeared he was in public practice without holding an ACCA practising certificate. The email went on to include questions to which he was required to respond.

27. By email on the 14 April 2023 Mr Tuohy attached his responses together with a copy of his firm's letterhead. In relation to questions relevant to Allegation 1, below are the investigating officer's questions followed by Mr Tuohy's responses in italic.

- (i) As a director and 50% shareholder of accountancy practice Firm A Ltd, you are required to hold an ACCA practising certificate. However, ACCA's records show you have never held such a certificate and you would therefore appear to be in breach of GPR 3, as referred to above. Please advise me whether you were aware of this apparent breach.

"I wasn't aware of this breach – I was under the impression if I used no ACCA logos or made no reference to the ACCA I was doing nothing wrong."

- (ii) Please confirm what practising certificates you hold with any other professional body. I should add that even if you have a practising certificate with another body, you are still required to hold one with ACCA in order to comply with Global Practising Regulation 3

"No practicing certificates".

- (iii) Your LinkedIn account states you are a 'registered Tax Advisor'. Please advise me as to which body you are registered as a tax advisor and provide evidence of that registration.

"I have a Tax Advisor Identification Number (TAIN) with Revenue Ireland."

- (iv) Is your role at Firm A a full-time job? If not, please tell me your role(s) elsewhere.

"Firm A is my sole income source."

- (v) Please set out full details of your role at Firm A and describe in detail the services that you and the firm have carried out since it was incorporated, including whether or not you have ever acted as auditor.

"My role is to provide bookkeeping & accounting services, we don't or never have provided audit & assurance services, in general we complete yearend accounts for sole traders a few small companies, we complete the associated Revenue returns".

- (vi) What has been the total fee income for Firm A for each of the last three years?

[PRIVATE]

- (vii) Of the fee income for each of the last three years, please provide me with an estimate as to how much relates to public practice. In that regard, I would refer you to the meaning of public practice in GPR 4 including in the attached factsheet

"I can confirm that included in the turnover there would be circa. [PRIVATE] per year solely related to bookkeeping services for clients where we would not prepare the year end accounts."

- (viii) Please tell me about your role in signing off accounts or reports on accounts, conducting audit work or taxation work. If you do not sign off the above, please tell me who in the firm is responsible for this.

"I prepare trading accounts for sole traders & 6 or 7 small companies, I don't conduct any audit work, the abridged accounts would be sent to the companies' registration office on behalf of the client, the accountants name is not required to be shown on abridged accounts."

- (ix) Please describe Firm A, including its size, the number of employees and the number of professionally qualified persons in the firm, including all those who hold practising certificate from ACCA or any other accountancy body.

“Firm A is made up of myself and my wife (Angela Tuohy) – Angela is a qualified accounts technician [PRIVATE] there is no practicing cert as indicated in answer to question 1.”

- (x) Please confirm whether or not you use the ACCA logo or designatory letters ‘ACCA/FCCA’ to promote yourself or Firm A? Please provide a copy of the letterhead and any business card for Firm A.

“I don’t use the ACCA logo or refer to the ACCA on anything to promote myself or Firm A, see attached letterhead.”

- (xi) Please confirm that Firm A holds up to date professional indemnity insurance and has done since you became a director. Please provide me with a copy of the current schedule and policy.

[PRIVATE]

- (xii) Please provide details of which body Firm A is registered with, in relation to Anti- money laundering supervision. If the firm is not currently subject to anti- money laundering supervision and provides bookkeeping and/ or accountancy services, you must take steps immediately to register with the Department of Justice using the following link <https://www.amlcompliance.ie/taxadvisers-external-accountants/>

“Firm A is not registered with any anti-money laundering body currently”

28. The investigating officer’s email provided Mr Tuohy with a number of options to regularise his position, including applying for a practising certificate, ceasing public

practice or, subject to ACCA's agreement, resigning as an ACCA member. In an email of 19 April 2023 Mr Tuohy advised he wished to resign.

29. ACCA's investigating officer advised Mr Tuohy it might be possible for the matter to be disposed of by Consent Order but that his resignation could only be accepted after any Consent Order had been granted.
30. However, following a review, it was decided the matter was not suitable for disposal by Consent Order and a report of disciplinary allegations should be drafted with a view to referral to a hearing before ACCA's Disciplinary Committee. Mr Tuohy was notified of this decision in an email dated 16 June 2023. The email went on to request that he cease public practice.
31. In a further email dated 30 June 2023, Mr Tuohy was notified that the investigating officer had since become aware of Mr Tuohy's successful application for reinstatement in December 2021 to the member's register in which he had repeatedly failed to disclose he was in public practice, being the subject matter of Allegation 3.
32. In an email from Mr Tuohy dated 30 June 2023 Mr Tuohy stated,
'The income from Firm A [PRIVATE]
33. In this email Mr Tuohy went on to state that he would 'cease correspondence' given the investigation officer had since advised him that it was no longer possible to dispose of the matter by Consent Order.

ACCA Submissions - Allegation 1(a)

34. Ms Skittrell made the following submissions. The ACCA's investigating officer reminded Mr Tuohy of ACCA's definition of public practice as contained in Global Practising Regulation 4, and Mr Tuohy was asked to provide an estimate of his firm's income from public practice over the last three years.

35. Mr Tuohy responded by advising that Firm A's income for 2020 was [PRIVATE] Apart from [PRIVATE] for each year relating to bookkeeping, the remainder of the income was from public practice.
36. Mr Tuohy has admitted that he completes '*year-end accounts for sole traders, a few small companies, [for which] we complete the associated tax returns*'. Similarly, he admits to preparing 'trading accounts for sole traders & 6 or 7 small companies'. These services are also referred to in his LinkedIn account and his firm's website.
37. Preparing accounts and tax returns is public practice given Global Practising Regulation 4(1)(b) defines public practice as including '... producing any accounts or report or certificate or tax return'
38. It is submitted that the extent of the public practice carried on by Mr Tuohy based on Firm A's income for the years 2020, 2021 and 2022 was [PRIVATE].
39. Mr Tuohy has admitted that he continues to carry on public practice [PRIVATE]. He has therefore continued to carry on public practice during 2023.
40. The definition of public practice within GPR4 not only includes producing accounts or tax returns as per Global Practising Regulation 4(1)(b), but also, as per GPR4(1)(c), 'holding oneself or itself [relating to a firm] as being available to undertake' public practice and 'allowing oneself to be known as a, or a firm of, Accountant(s)'.
 1. Since incorporation of Firm A in December 2016 with Mr Tuohy appointed as
41. It is submitted Mr Tuohy has been holding out as being available to undertake public practice work as defined by GPR4(1)(c) since December 2016 based on the following,
 1. Since incorporation of Firm A in December 2016 with Mr Tuohy appointed as

director on the same date, the firm's name has included the word 'Accountants' in its title.

2. The website for Firm A has stated continuously since November 2017 that the firm has been available to carry on public practice.
3. Mr Tuohy's LinkedIn Account refers to him being a member of ACCA, a director of Firm A since January 2017, and that he has been carrying out public practice since that date.

42. Ms Skittrell submitted that GPR 3(1)(a) requires an ACCA member to hold an ACCA practising certificate in order to carry on public practice. She also submitted that given Mr Tuohy has never held an ACCA practising certificate authorising him to carry on public practice, that since December 2016, he has been in breach of GPR 3(1)a, save for the period he was not an ACCA member between 25 September 2020 and 9 December 2021.

43. In addition, had Mr Tuohy held an ACCA practising certificate;

1. He would have been required by GPR 9, to hold professional indemnity insurance Mr Tuohy has admitted he has never held such insurance.
2. He would have been subject to supervision by ACCA for compliance with the anti-money laundering provisions under the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2021, as per Annex 2 of the GPRs response to ACCA's investigating officer Mr Tuohy has stated:

'Firm A is not registered with any anti-money laundering body currently'. It is submitted that he has therefore avoided being subject to anti-money laundering supervision in relation to public practice work, until his registration with the Anti-Money Laundering Compliance Unit of the Department of Justice on 26 April 2023.

44. It was submitted on behalf of the ACCA that both of the above are aggravating factors to

allegation 1.

ACCA Submissions - Allegation 1(b)

45. Ms Skittrell submitted that the CRO records show Mr Tuohy applied to incorporate Firm A on 2 December 2016 with himself and his wife as directors. The certificate of incorporation for Firm A is dated 14 December 2016. Mr Tuohy's appointment as director therefore took effect from that date.
46. The first annual return filed by Firm A dated 14 June 2017 records Mr Tuohy as director as do all subsequent annual returns.
47. GPR 3(2)(a) requires an ACCA member who is a director of a public practice firm to hold an ACCA practising certificate. Given Mr Tuohy (i) has been a director of a public practice firm since December 2016 carrying on public practice and (ii) has never held an ACCA practising certificate, it is submitted that since December 2016 he has been in breach of GPR 3(2)(a) save for the period he was not an ACCA member between 25 September 2020 and 9 December 2021.

ACCA Submissions - Allegation 1(c)

48. Ms Skittrell submitted the following:
 - (i) That the CRO records show Mr Tuohy applied to incorporate Firm A on 2 December 2016 himself and Mrs Tuohy as the only subscribers for shares.
 - (ii) The first annual return filed by Firm A made up to 14 June 2017 records Mr Tuohy as 50% shareholder, as do all subsequent annual returns save for the most recent annual return of June 2023, which records he holds 100% of the firm's shares. Mr Tuohy has therefore been principal of Firm A since incorporation.

(iii) GPR 3(2)(b) requires an ACCA member who is a principal of a public practice firm to hold an ACCA practising certificate.

(iv) Mr Tuohy (i) has been a principal of a public practice firm since December 2016 carrying on public practice and (ii) has never held an ACCA practising certificate, he was since December 2016 he has been in breach of GPR 3(2)(b), save for the period he was not an ACCA member between 25 September 2020 and 9 December 2021.

49. Ms Skittrell submitted that allegations 1, a, b and c should be found proved.

Fact of the Case - Allegation 2

50. For the purposes of this investigation PERSON A a Professional Development manager at ACCA, has provided a statement.

51. In summary PERSON A states,

1. All ACCA members are required to complete an annual declaration for the preceding calendar year confirming they have complied with ACCA's Continuing Professional Development requirements (CPD).
2. Mr Tuohy completed his annual CPD declarations, being those that are the subject of Allegation 2, on the following dates

Declaration	Date submitted to ACCA
2017 – online Declaration	11 January 2018
2018 – online Declaration	10 January 2019
2019 – online Declaration	17 December 2021
2020 – paper Declaration	8 December 2021
2021 – online Declaration	17 December 2021

3. Evidence of Mr Tuohy having provided the above declarations is exhibited in PERSON A's statement.
4. PERSON A also refers to Mr Tuohy completing his CPD declaration for 2016 on 13 December 2016. Given this was one day prior to the incorporation of Firm A and Mr Tuohy being appointed director, this CPD declaration is not the subject of Allegation 2 as there is no evidence he had carried on public practice on or prior to that date.
5. The reason for 2019 and 2020 CPD declarations being signed about a year and two years late respectively was because Mr Tuohy was removed from the register of members on 24 September 2020 due to non-payment of his annual ACCA subscription. He was re-instated just over a year later on 10 December 2021 having made outstanding payments. Exhibited in PERSON A's statement is an extract from ACCA's database recording his removal and subsequent reinstatement.
6. As part of Mr Tuohy's reinstatement, he was required to complete his outstanding CPD declarations for 2019 and 2020 and hence why they are dated a year and two years late.
7. CPD declarations include a confirmation to the effect the member has not engaged in public practice as defined in Global Practising Regulations 3 and 4 without holding an ACCA practising certificate.
8. PERSON A states 'There is no record Mr Tuohy has ever advised ACCA he was in public practice'.
9. Exhibited in PERSON A's statement are the associated instructions and guidance notes in place for the years in question. These all refer to the fact that if the member is engaged in public practice as defined by GPRs 3 and 4 they are required to hold an ACCA practising certificate. The instructions and

guidance notes then go on to provide the link to a fact sheet outlining what is and what is not public practice.

Member's Response – Allegation 2

52. The ACCA's investigating officer raised the following question in their letter to Mr Tuohy as follows.

For a number of years, the wording in ACCA's annual continuing professional development (CPD) return which you would have completed each year states,

'... 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; ...'

Attached to the CPD declaration for each year would have been guidance notes including a heading 'Engaged in Public Practice Activities' and a link to ACCA's factsheet, 'Am I public practice', referred to above.

Please comment on how you interpreted that part of the declaration when you made your CPD returns.

53. Mr Tuohy responded,
- '... – I was interpreting this as engaging in public practice advertising Firm A as ACCA – which I was not doing'.*

ACCA Submissions - Allegation 2

54. Ms Skittrell submitted the following:
- (i) Mr Tuohy was removed from ACCA's register of members from 24 September 2020 and not reinstated until 10 December 2021 during which period he could, and did, carry on public practice as an unregulated accountant.

- (ii) In terms of his CPD declaration for 2020 of 8 December 2021, it is submitted Mr Tuohy was declaring he had not carried on public practice up to and including the date of his removal from the member's register on 24 September 2020.
- (iii) For 2021, Mr Tuohy was readmitted on 10 December 2021 and provided his CPD declaration on 17 December 2021.
- (iv) It is submitted Mr Tuohy was declaring he had not carried on public practice since his reinstatement.
- (v) However, for both these periods it is apparent Mr Tuohy had been carrying on public practice.
- (vi) She submitted that this allegation should be found proved.

Facts of the Case - Allegation 3 a, b, c, d and e.

- 55. As referred to by PERSON A in her statement, Mr Tuohy was removed from the register of members on 24 September 2020 due to non-payment of his annual ACCA subscription. He was re-instated just over a year later on 10 December 2021 having made outstanding payments.
- 56. The bundle contained a summary of the correspondence between ACCA and Mr Tuohy in relation to his application for reinstatement.

Date	Document
24 11 21	Email from Mr Tuohy to ACCA advising he had been locked out of his account for 'non-compliance /fees' and advising this was due to ill health.

25 11 21	<p>Email ACCA to Mr Tuohy advising he had been removed from the membership register due to outstanding subscription fees and non-compliance with CPD.</p> <p>The email advised Mr Tuohy he would be required to complete a reinstatement form, hyperlinked in the email, should he wish to be reinstated as a member.</p> <p>The email also advised Mr Tuohy he would be required to satisfy the CPD requirements for the 'previous year'. The email provided a hyperlink to CPD resources which he was recommended to use.</p>
4 12 21	<p>Email Mr Tuohy to ACCA stating, 'please find attached completed forms as requested for your review'.</p> <p>There were two forms attached. The first was the reinstatement form and the second was a CPD waiver application. Both forms were dated 4 December 2021.</p>
7 12 21	<p>Email from ACCA to Mr Tuohy confirming receipt of the above email but advising his reinstatement application could not be processed as 'unfortunately a standard CPD waiver can only be considered on the basis of 1 month of absence from employment' and without any supporting documents the standard waiver could not be applied.</p> <p>Instead, he was advised that a 'unit' route declaration confirming he had met the applicable CPD requirements was required.</p> <p>The email provided Mr Tuohy with guidance on this 'unit' route, and he was advised that if, having read this guidance, he considered he had achieved the CPD requirement then he should 'complete and return the attached CPD declaration'.</p>
8 12 21	<p>Email Mr Tuohy to ACCA attaching the completed CPD declaration for this 'unit' route.</p> <p>A copy of the signed CPD declaration is on</p>

10 12 21	Email ACCA to Mr Tuohy accepting his CPD declaration and activating his account thereby allowing him to pay his reinstatement fees online.
10 12 21	Email Mr Tuohy to ACCA advising he had paid, being the date of his reinstatement.
13 12 21	Email ACCA to Mr Tuohy confirming receipt of payment.

57. In the Application for Reinstatement (the Application) completed and signed by Mr Tuohy and attached to his email to ACCA on 4 December 2021, there were numerous references to the requirement for a member to hold an ACCA practising certificate should they be in public practice.
58. The Application also referred to his firm name being 'Firm B' where his 'Job title' was 'Accountant'. The ACCA had not previously been made aware of his connection to this firm, although his LinkedIn account does refer to him being the 'Accounts Manager' for Hybrid Technology Partners' from March 2009 to September 2017, being 8 years 7 months. His application for reinstatement makes no reference to Firm A Ltd.
59. The references to public practice in the application and Mr Tuohy's responses to questions in that application relating to public practice are as follows:

On the front page there is a subheading 'Members in public practice' which states,

'An applicant for reinstatement who is in public practice (whether on a full time or spare time basis) as the principal of a firm in a designated territory or in a country of jurisdiction that, according to local legislative and / or regulatory requirements requires an ACCA practising certificate [which would include an ACCA member in the UK or Ireland], must submit an application for a practising certificate with this form...'
 [no such form was attached].

On the second page there is the declaration signed by Mr Tuohy on 4 December 2021. This states, in the paragraph after the final bullet point,

'...I understand that if I engage in any public practice activities (as defined by the Chartered Certified Accountants Global Practising Regulations 3 and 4) I will need to hold an ACCA practising certificate. I confirm I have read and understood the factsheet: Am I in public practice [link provided in the Application]

On the fourth page there is a sub-heading 'Members in public practice' which states,

'Any ACCA member performing work under ACCA's definition of public practice or who is a partner / director of a firm which undertakes public practice is required to hold an ACCA practising certificate. For further details of ACCA's practising certificate and licensing requirements please refer to the Practice Information at [link provided].'

Immediately below this paragraph, is the following question, *'Are you in either full or spare-time practice'*, to which Mr Tuohy has ticked the box marked 'No'.

The sixth page is headed 'BUSINESS DETAILS' and states 'PLEASE INDICATE YOUR CURRENT EMPLOYMENT CATEGORY (ONE ONLY)'. The page is divided into three columns. The first column is headed 'public practice' and if it applies goes on to request further details relating to Nature of firm, Job category and number of partners and directors. Mr Tuohy has not completed this column.

The second column is headed 'Industry / commerce'. Mr Tuohy has ticked this as applying to him and refers to his 'Business category' as 'IT / communications', the 'job category' as 'management accounting' and the 'size of organisation' as '1 – 10'.

It is therefore understood that this relates to his working for 'Firm B' as an 'accountant', being the details Mr Tuohy provided a few pages earlier in the Application, as referred to above.

The third and final column relates to 'Public sector' which Mr Tuohy has left blank.

On the eighth page is the declaration signed by Mr Tuohy, dated 4 December 2021. There are eight bullet points to the declaration. The penultimate bullet point states,

'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'.

The final bullet point states,

'I have read and understand the guidance overleaf before signing'.

The guidance includes a sub-heading 'Engaging in public practice activities' and states, *'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...*

Member's Response – Allegation 3

60. At the date of the email and attached letter notifying Mr Tuohy of the matters which are subject to Allegations 1 and 2, ACCA's investigating officer was not aware Mr Tuohy had been removed for non-payment of his ACCA subscription fee and then reinstated.
61. Once the investigating officer was aware of this and had considered his application for reinstatement, a further email was sent to Mr Tuohy dated 30 June 2023 requiring him to respond to questions relevant to Allegation 3.
62. Mr Tuohy responded but did not answer any of the questions and has not done so since.

ACCA submissions Allegations 3a, b, c, d, e

63. Ms Skittrell submitted Mr Tuohy provided the declarations for five consecutive years

confirming he had not engaged in public practice which he knew to be untrue.

64. In relation to Allegation 3(a), Mr Tuohy completed an application for reinstatement to the register of ACCA members on 4 December 2021 (the Application) which led to him being reinstated on 10 December 2021.
65. There is no reference in the Application to Firm A.
66. Mr Tuohy stated in the Application that he worked in 'Industry/ commerce' for Firm B (Firm B). This was not true given he had advised ACCA's investigating officer that his [PRIVATE] – numbered 5) and had advised that for the 2021 year, and bearing in mind the Application was dated by Mr Tuohy on 4 December 2021, the firm's income was [PRIVATE] 7) (Allegation 3a).
67. In respect of Allegation 3(b) the Application required him to apply for a practising certificate if he was in public practice. Mr Tuohy was in public practice but failed to apply for a practising certificate with the Application or thereafter.
68. In respect of allegation 3(c) Mr Tuohy declared in the Application '*I understand that if I engage in any public practice activities I will need to hold an ACCA practising certificate*' but thereafter engaged in public practice.
69. In respect of allegation 3(d) the Application included the question '*Are you in either full or spare time practice*', to which Mr Tuohy answered '*No*'. This was untrue. (Allegation 3(d)).
70. Ms Skittrell submitted that Allegation 3(e) is proved by the finding that Mr Tuohy had engaged in public practice activities without holding a practising certificate, see allegation 2 above.

ACCA Submissions – Dishonesty– Allegation 4(a)

71. Ms Skittrell referred the Committee to the case *In Ivey v Genting Casinos (UK)*

at para 74, which set out a two-stage test. She submitted that in relation to Allegation 2, Mr Tuohy provided declarations to ACCA for five consecutive years from 2017 to 2021 inclusive. For each declaration he confirmed, as an ACCA member, he had not engaged in public practice for any period during the preceding year.

72. She submitted that the instructions and guidance notes provided with each annual declaration make it clear what is and what is not public practice. She referred the Committee to Mr Tuohy's declared in the Application '*I have not engaged in public practice activities (as defined by GPRs 3 and 4) without holding a practising certificate*'. She submitted that Mr Tuohy was admitted to ACCA membership in 2015 and commenced public practice from December 2016. He was removed from the member's register in September 2020 but reinstated in December 2021. He had therefore engaged in public practice as an ACCA member without holding a practising certificate from December 2016 to September 2020. (Allegation 3(e)).
73. Ms Skittrell submitted that there are repeated references throughout the Application that an ACCA member is required to hold an ACCA practising certificate to carry on public practice, but these references also refer the applicant to the relevant ACCA guides and regulations as to the meaning of public practice.
74. She submitted Mr Tuohy claimed in his application that he worked in 'industry/commerce' which he knew to be untrue - being consistent with the annual declarations he provided to the ACCA confirming he was not in public practice.
75. Ms Skittrell submitted this conduct would be regarded as dishonest by the standards of ordinary decent people.

ACCA Submissions – Integrity – Allegation 4(b)

76. Ms Skittrell referred the Committee to the case *In Wingate and Evans v The*

Solicitors Regulation Authority. Jackson LJ expressed the matter in a way that applied to regulated professions generally and said this:

'95. Let me now turn to integrity. As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty...

96. Integrity is a more nebulous concept than honesty. Hence it is less easy to define, as a number of judges have noted.

97. In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards.

77. If the conduct of Mr Tuohy is not found to be dishonest, it was submitted, that the conduct in the alternative fails to demonstrate Integrity.

ACCA Submissions – Recklessness – Allegation 5

78. Ms Skittrell submitted in relation to Allegations 2 and or 3, in the alternative that Mr Tuohy in paying no or insufficient regard for the need to ensure he provided ACCA with accurate and truthful information amounts to recklessness and referred the Committee to the case of R v G.

ACCA Submissions – Misconduct – Allegation 6(i)

79. Ms Skittrell referred the Committee to the case of Roylance v. General Medical Council it was said:

"Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily

required to be followed by a medical practitioner in the particular circumstances.”

80. She submitted that the conduct if found to be dishonest would fall far below the standards to be expected of a member of the profession.

Misconduct – Allegation 6(ii)

81. Ms Skittrell referred the committee to Bye-law 8(c) which states,

For the purposes of bye-law 8(a), misconduct includes (but is not confined to) any act or omission which brings or is likely to bring discredit to the individual or relevant firm or to the Association or to the accountancy profession.

82. She submitted that misconduct is a matter of judgment for a professional panel, it is the ACCA's submission that misconduct is clearly made out in the event any or all of the matters set out at Allegations 1 to 5 are found proved.
83. She went on to submit that this was on the basis that during a period of six years, Mr Tuohy, as an ACCA member, has deliberately and systematically failed to disclose he was in public practice. This has resulted in him avoiding regulatory scrutiny by ACCA not only for his public practice work but also anti money laundering compliance.

Determination of allegations

84. In reaching its findings of fact in respect of allegations 1 and 2, the Committee relied on the email correspondence and documents contained in ACCA's bundle. The Committee had taken account of the submissions of Ms Skittrell and the responses of Mr Tuohy to the ACCA during the investigation. The Committee also listened to legal advice, which it accepted.

Allegation 1(a)

85. The Committee found the allegation proved. It noted Mr Tuohy had at no stage asserted that he had a practising certificate or had regard to the requirements of the Global Practising Regulation 3(1) where it requires a member carrying on public practice to have a practising certificate.
86. In reaching its decision the committee took account of the following:
- (i) Mr Tuohy had on his own account prepared and filed other documentary records.
 - (ii) Preparing annual returns and tax returns
 - (iii) His profile on LinkedIn set out the services that the firm offered.
87. The Committee had regard to the broad definition of public practice and taking all the evidence into account found allegation 1(a) proved.

Allegation 1(b)

88. The Committee found this allegation proved. There was substantial evidence from the Company records that Mr Tuohy was a director of the company and a shareholder at the relevant time. The records also show the type of business the company was engaged in since its inception. The Committee found that the firm was providing services to the public and it followed that public practice was being carried out contrary to the Global Practising Regulation 3(2)(a).

Allegation 1(c)

89. The Committee found allegation 1(c) proved. The evidence in support of this allegation was the same as Allegation 1(a) and (b) above. Mr Tuohy was a shareholder in Firm A and as such had rights in that Firm, in addition he was the principal. As found in allegation 1 (a) and (b) the firm was carrying on public practice and it followed this the allegation was found proved.

Allegation 2

90. The Committee took account of the submissions made on behalf of the ACCA and reviewed electronic records and the evidence of PERSON A, which it considered to be clear and reliable. It noted that the bundle contained a signed declaration dated 4 December 2021 which stated that Mr Tuohy was not in public practice. The Committee accepted the evidence of PERSON A and found that contrary to the declarations Mr Tuohy had made there was clear evidence that he was engaged in public practice without a practising certificate.
91. On this basis, the Committee found allegation 2 proved.

Allegation 3(a)

92. In respect of allegation 3(a) the Committee noted that the application for reinstatement submitted by Mr Tuohy made no reference to him being a shareholder or Director in Firm A. The application made reference to him being employed by Firm B. The Committee rejected this assertion noting that Mr Tuohy's LinkedIn page stated he only worked for Firm B prior to 2017 and there was no evidence of his contract with Firm B, which had been requested by the ACCA during the investigation. It therefore found this allegation proved.

Allegation 3(b)

93. In respect of allegation 3(b) the Committee took account of Mr Tuohy's response that he had not applied for a practising certificate. The Committee had previously found that he had an obligation to do so as he and his firm were engaging in public practice. The Committee found this allegation proved.

Allegation 3(c)

94. The Committee found allegation 3(c) proved. The Committee noted that it was

not in dispute by Mr Tuohy that he had declared that he understood that if he was engaged in any public practice activities he would need to hold an ACCA practising certificate. The Committee has found that he was engaged in public practice activities and had not applied for a practising certificate. It therefore followed that allegation 3(c) is found proved.

Allegation 3(d)

95. The Committee found allegation 3(d) proved. The Committee had seen a copy of the application form dated 4 December 2021 and has previously concluded that Mr Tuohy was engaged in public practice activities. Mr Tuohy was at the relevant time a Director of Firm A and in fulltime work with Firm A. The Committee found that the response was untrue.

Allegation 3(e)

96. The Committee found allegation 3(e) proved. The allegation related to the period 14 December 2016 to 24 September 2020. Mr Tuohy signed the reinstatement application and declared he was not engaged in public practice activities. As previously determined that declaration was not true.

Allegation 4(a)

97. In reaching its determination the Committee took into account Mr Tuohy was of good character. However, the Committee found that Mr Tuohy knew he was engaging in public practice and that he had an obligation to obtain a practising certificate. Further, his responses to the ACCA investigation were not credible and he had made declarations which he was aware were untrue. He clearly knew that he was in public practice and chose not to declare it.
98. The Committee noted that the ACCA investigator offered him options to regularise his position, but he failed to engage with the ACCA when given the opportunity.

99. The Committee concluded Mr Tuohy was knowingly dishonest in respect of his application for readmission and his CPD declarations. The Committee found that by the standards of ordinary people the conduct of Mr Tuohy would be considered to be dishonest.

Allegation 4(b) and 5

100. The Committee having concluded that Mr Tuohy conduct was dishonest did not go on to consider allegation 4(b) and 5, which were alternative to Allegation 4.

Allegation 6(1)

101. The Committee found that Mr Tuohy's conduct fell far below standards of a member of the ACCA. His avoidance of regulatory supervision and money laundering regulation and his lack of professional indemnity insurance could have brought discredit on the profession. The breaches, including systematic and serious dishonesty passed the threshold of seriousness and Mr Tuohy was guilty of misconduct contrary to by bye-law 8(a) (i).

Allegation 6(ii)

102. The Committee has found that Mr Tuohy breached the Global Practising Regulations as he engaged in public practice and had no practising certificate. Allegation 6(2) was found proved.

SANCTION AND REASONS

103. 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 also listened to the submissions of Ms Skittrell, and legal advice from the Legal Adviser which it accepted.

104. The Committee considered the available sanctions in increasing order of severity having decided that it was not appropriate to conclude the case with no further action.
105. 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.
106. The Committee first considered the seriousness of the conduct of Mr Tuohy. It considered that the conduct was very serious and undermined the reputation of the profession. In its view the public expected a high degree of probity from members of the profession. The conduct of Mr Tuohy was sustained and repeated over an extensive period. In addition, he had no insight or remorse for his conduct.
107. The Committee considered whether any mitigating or aggravating factors featured in this case. The Committee accepted that there were no previous findings against Mr Tuohy. The Committee also took into consideration the fact that he had responded to the emails from ACCA regarding the investigation, but noted he had not recently engaged in these proceedings or attended the hearing.
108. As for aggravating factors, the Committee had found Mr Tuohy had failed at the outset to show an appropriate level of insight, particularly with regard to the false declarations he had made and his knowledge that he was offering services to the public by carrying on public practice without a practising certificate and was being deliberately deceitful in his responses to the ACCA.
109. The aggravating conduct also included:
- A serious departure from standards.
 - Continued public practice despite being told to cease.
 - Ongoing risk to the public by virtue of having no insurance.

- Not complying with AML provision up to 26 April 23 (When secured AMO Supervision).
- Prolonged systematic and continued dishonesty.
- No insight or remorse.
- No attempt to regularise his position.

110. On the basis of its findings, the Committee concluded that neither taking no action or an admonishment would not represent a sufficient and proportionate outcome. Such a sanction would not adequately reflect the seriousness of the Committee's findings.

111. The Committee then considered whether a reprimand would be an appropriate sanction. On balance, and reflecting on the criteria suggested in the Guidance, the Committee concluded a reprimand would not represent a sufficient and proportionate outcome.

112. The Committee considered a severe reprimand. Mr Tuohy's conduct was dishonest and deplorable, and a severe reprimand is not sufficient to protect the public or mark the conduct. The conduct was not isolated there was a systematic course of dishonest conduct and a lack of insight into his conduct.

113. The Committee determined that the appropriate sanction was exclusion from membership. The dishonesty was serious, and it potentially impacted on a number of people and there was a continuing risk to the public. The sanction was not intended to be punitive, although it may have that effect, but the dishonest conduct of Mr Tuohy would cause serious reputational damage to and a lack of confidence in the profession. The Committee concluded that the appropriate sanction was exclusion from membership.

COSTS AND REASONS

114. The Committee had been provided with a detailed Costs schedule (pages 1 to 3)

and a Simple costs schedule (pages 1 to 12) relating to ACCA's claim for costs.

115. The Committee concluded that ACCA was entitled to be awarded costs against Mr Touhy, all allegations having been found proved. The amount of costs for which ACCA applied was £7,139.33. The Committee did not consider that the claim was unreasonable, but the hearing had taken less time than estimated which needs to be reflected in the amount awarded.
116. Mr Tuohy had not provided ACCA with any documentary evidence of his means in advance of the hearing. The Committee was satisfied that, in the correspondence sent to him, Mr Tuohy had been warned at the outset of the importance of providing details of his financial circumstances and of ACCA's intention to apply for costs if any or all of the allegations were established. He had also been sent a Statement of Financial Means for him to complete and return, which he had failed to do.
117. 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 £6,500.00.

EFFECTIVE DATE OF ORDER

118. The Committee taking into account the risk of harm to the public and the reputation of the profession decided that this order shall take effect immediately.
119. The Committee determined that the Interim Order should be rescinded with immediate effect, Regulation 12(5)(6) applied.

Ms Ilana Tessler
Chair
15 March 2024