

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Patrick Gerard Rice

Heard on: Tuesday, 02 April 2019

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

Committee: Mrs Judith Way (Chairman)
Mrs Andrea White (Accountant)
Dr Hazel Bentall (Lay)

Legal Adviser: Mr Leighton Hughes (Legal Adviser)

Persons present

and capacity: Mr Benjamin Jowett (ACCA Case Presenter)
Miss Rachael Davis (Hearings Officer)

Observers: None

Summary Allegations 1(a), 1(b), 1(c), 1(e)(ii), 2(a) and 2(b)(i) proved by
way of admission;
Allegations 1(d)(i), 1(d)(ii) and 1(e)(i) found proven;
Exclusion from membership;

Costs: £5,000

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1. The Committee had before it hearing bundles paginated A-S and 1-159, and 160-186, together with service bundles paginated 1-39 and 40-44. The Committee was also provided with costs schedules at the conclusion of the fact-finding stage, paginated 187-193. References hereafter to numbered pages are references to numbered pages in the hearing bundle.
2. ACCA was represented by Mr Jowett. Mr Rice was unrepresented, but participated in the proceedings by way of telephone link.

THE ALLEGATIONS

Allegation 1

It is alleged that Mr Patrick Gerard Rice breached Global Practising Regulations by virtue of not holding a valid practising certificate and/or auditing certificate issued by the Association, with regards to any or all of the following:

- (a) From 01 January 2018, he carried on public practice, in particular he signed an audit report for Company A on 26 April 2018, contrary to paragraph 3(1)(a) of the Global Practising Regulations (as applicable in 2018).
- (b) From 01 January 2018, he has been a partner at 'E Rice & Co', a firm in and holding itself out to be in public practice, contrary to paragraph 3(2)(a) of the Global Practising Regulations (as applicable in 2018);
- (c) From 01 January 2016, he was a partner of 'E Rice & Co', and accepted appointments as an auditor as set out by Schedule A, contrary to paragraph 3(2) of Annex 1 of the Global Practising Regulations (as applicable in 2016) and paragraph (2)(1) of Annex 1, Appendix 1 of the Global Practising Regulations (as applicable in 2017 - 2018).
- (d) Mr Patrick Gerard Rice's conduct in respect of any or all of the matters set out by Allegations 1(a) – 1(c) is:

- (i) Dishonest;
 - (ii) Contrary to the Fundamental Principle of Integrity.
- (e) By reason of his conduct in respect of any or all of the matters set out at 1(a) to 1(d) above, Mr Patrick Gerard Rice is:
- (i) Guilty of misconduct pursuant to bye-law 8(a)(i); or
 - (ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii).

Allegation 2

- (a) Contrary to Complaints & Disciplinary Regulations 3(1) (as applicable in 2018), Mr Patrick Gerard Rice has failed to co-operate fully with the investigation of a complaint in that he failed to respond to any or all of ACCA's correspondence as set out in Schedule B.
- (b) By reason of his conduct at 2(a) above, Mr Patrick Gerard Rice is:
- (i) Guilty of misconduct pursuant to bye-law 8(a)(i); or
 - (ii) Liable to disciplinary action pursuant to bye-law 8(a)(iii).
3. At the outset of the hearing, Mr Rice admitted Allegations 1(a), 1(b), 1(c), 1(e)(ii), 2(a) and 2(b)(i). The committee found these allegations proved by way of admission.

THE BACKGROUND AND ACCA'S CASE

4. Mr Rice was admitted as a member of ACCA on 4 October 1990, and admitted as a Fellow of the Association on 4 October 1995. At all times material to these proceedings, he was a partner of E. Rice and Co, Belfast ("the firm"). Mr Rice has held an ACCA Practising Certificate with Audit ("PCA") since 1998, but notwithstanding repeated reminders, he failed to submit an application to renew this prior to its expiry on 31 December 2017. The firm held a Firm's Audit

Certificate ("FAC") from 06 December 1993 to 31 December 2015, but has not held one since then.

5. Between November 2017 and March 2018, ACCA's Authorisations department sent Mr Rice eight emails regarding the renewal of his PCA. Mr Rice did not respond to any of those emails. The final reminder stated:

"Please note that you are not currently eligible to undertake audit or any other type of work that falls within ACCA's definition of public practice. / You are required to resign audit appointments formally by letter. Please provide, by 11 April 2018, copies of the letters to your clients confirming that you have resigned as auditor or confirm that you no longer have any audit clients. / I would stress that it is a criminal offence to conduct audit work, or other work reserved for registered auditors, if not properly authorised to do so."

6. Mr Rice submitted his CPD Declarations online from 2014–2016, and during this process he would have understood that, if he engaged in public practice activities, he would need to hold an ACCA Practising Certificate.
7. ACCA's investigation had found the following information concerning Mr Rice and the firm:
 - (a) Mr Rice's PCA renewals in 2015 (pages 44 - 45) and 2016 (pages 46 - 47) stated that he was a 'Partner' in the firm;
 - (b) Google Searches found Mr Rice's name appeared with the designation 'Accountant' on its results page, and at online websites advertising the firm - on *yelp*, *accountantdb* and *best accountants* (pages 49 - 51);
 - (c) The online advertisement on *www.accountantdb.com* states that the firm carries out 'Accountancy and/or Bookkeeping services in Belfast' (page 52);

- (d) Mr Rice has a *LinkedIn* page which states he is a '*Partner at E Rice & Co*' (page 55);
- (e) A search on FAME, the Company information database, (pages 102 - 108), showed Mr Rice had signed three audit reports as follows:
 - (i) On 08 August 2016 for Company B (pages 109 - 112) ('Audit Report 1');
 - (ii) On 01 August 2017 for Company B (pages 113 - 122) ('Audit Report 2');
 - (iii) On 26 April 2018 for Company A (pages 123 - 154) ('Audit Report 3').

8. The Audit Reports contained the following evidence in respect of the breaches set out in Allegation 1:

Audit Report 1 shows:

- (i) At page 110, the signatory is named as Mr Rice. His name and firm address are shown alongside the descriptions 'Senior Statutory Auditor/ For and on behalf of E Rice & Co / Accountants and Statutory Auditors'. The report is dated 08 August 2016.

Audit Report 2 shows:

- (i) At page 117, the signatory is named as Mr Rice. His name is shown alongside the descriptions 'Senior Statutory Auditor/ For and on behalf of E Rice & Company/ Accountants and Statutory Auditors'. The report is dated 01 August 2017.

Audit Report 3 shows:

- (i) At page 135, the signatory is named as Mr Rice. His name is shown alongside the descriptions 'Senior Statutory Auditor/ For and on behalf of E Rice & Company - Registered Auditors'. It states 'This report was signed on 26 April 2018'.
9. On 3 May 2018, an ACCA Investigations Officer telephoned Mr Rice (page 58) to notify him of the investigation into the above matters. Mr Rice stated that he had been unwell in the previous six months, and had been unable to respond to correspondence.
10. On 9 May 2018, the ACCA Investigations Officer wrote to Mr Rice, requesting a response to the matters under investigation. The letter pointed out that while Mr Rice had stated he had recovered from his ill health, he should notify ACCA if, at any stage, he had concerns about his ability to participate in the investigation due, for instance to his health. Mr Rice subsequently confirmed receipt of the letter, and did not, at any stage, notify ACCA that he was unable to participate in its procedures.
11. When a response to the Investigations Officer's initial letter was not received from Mr Rice, ACCA contacted Mr Rice as follows to request his response to the complaint:

Communication	Date	Details	Page
ACCA telephone call to Mr Rice	16 May 2018	Mr Rice confirmed receipt of ACCA's initial letter and that he was aware he must regularise his position by 20 June 2018	84
ACCA telephone call to Mr Rice	31 May 2018	Mr Rice stated that he had posted his response to ACCA's initial letter. This response remains outstanding. He also stated that he has not taken any steps to regularise his position	85
ACCA letter to Mr Rice	31 May 2018	ACCA's 1st failure to co-operate warning to Mr Rice	86

ACCA telephone call to Mr Rice	05 June 2018	Mr Rice confirmed receipt of ACCA's letter and said that he would respond to the complaint that night. This response remains outstanding. He stated he has not taken steps to regularise his position.	88
ACCA telephone call to Mr Rice	06 June 2018	Mr Rice stated he will send his response that day or the next. This response has not to date been received by ACCA.	89
ACCA Email to Mr Rice	06 June 2018	ACCA confirmed the understanding that Mr Rice would provide his response by 07 June 2018 and reminded him that he must regularise by 20 June 2018	90
ACCA letter to Mr Rice	14 June 2018	ACCA's 2nd failure to co-operate warning to Mr Rice	94
ACCA letter to Mr Rice	22 June 2018	Notification to Mr Rice that an allegation under Complaints & Disciplinary Regulation 3(1) would be raised against him	97
ACCA letter to Mr Rice	17 August 2018	ACCA notified Mr Rice that a report of disciplinary allegations was being prepared and requested further information regarding his audit work	99 - 101

12. As to Allegation 1(a), Mr Jowett told the Committee that, in the absence of a Practising Certificate since 31 December 2017, Regulation 3(1)(a) of the Global Practising Regulations ("GPR") (2018) prohibited Mr Rice being in, or holding himself out to be, in public practice and that therefore, the Regulation had been breached by Mr Rice carrying out public practice by:

- (i) Signing Audit Report 3 on 26 April 2018 for Company A;

- (ii) Referring to himself as an '*Accountant*' in online advertisements; and
 - (iii) Describing his services as '*Accountancy and/or Bookkeeping...*' in online advertisements.
13. As to Allegation 1(b), Regulation 3(2)(a) of the GPR (2018) prohibited Mr Rice from being a partner of a firm where public practice is carried on, and accordingly, Mr Jowett submitted that he had breached the regulation by referring to himself as a 'Partner' on his LinkedIn Account, when the firm was clearly carrying out public practice.
14. As to Allegation 1(c), Mr Jowett told the Committee that this related to Mr Rice having accepted appointments as an auditor, and subsequently signing the three audit reports in Schedule A while a Partner of the firm, when it had not held a FAC since 31 December 2015.
15. Allegation 2 concerned Mr Rice's failure to co-operate with the investigation into the matters in Allegation 1. Mr Jowett directed the Committee's attention to the history of communication and, in particular, the correspondence in Schedule B.
16. Turning to the allegations that had been denied by Mr Rice, Mr Jowett submitted that Mr Rice's conduct, as set out in Allegations 1(a) - 1(c) was dishonest, in that:
- a) The conduct concerned in each of these allegations would be viewed as dishonest according to the ordinary standards of ordinary decent people, in that it creates a false and misleading impression to members of the public in respect of Mr Rice's authorised status;
 - b) Mr Rice would have known he did not hold a PC, but continued to offer and conduct public practice;

- c) As a fellow of ACCA, who had held a PCA for nearly two decades, Mr Rice would have known that a PCA was required in order to conduct public practice, hold the position of Partner of a public practice firm, and accept appointments as an auditor;
 - d) Mr Rice was reminded by ACCA from November 2017 that he required a PC, in order to act as a Partner of a firm and carry out public practice, but took no action to regularise his position; and
 - e) Mr Rice would have been aware, and was reminded by the Authorisation department on 29 March 2018, that it was a criminal offence to conduct audit work without being properly authorised to do so. Notwithstanding this reminder, Mr Rice signed Audit Report 3 on 26 April 2018.
17. Mr Jowett submitted that acting dishonestly also breached ACCA's Fundamental Principle of Integrity.

MR RICE'S CASE

18. The Committee ruled that all matters relating to Mr Rice's health would be heard in private session, and that any transcript and promulgation of this determination should reflect this.
19. Mr Rice told the Committee that his failings giving rise to each of the admitted allegations was attributable to two periods of serious ill health. [REDACTED]
20. Mr Rice accepted that he acted wrongly, but told the Committee that the ill health had caused him to be distracted from work, and "take his eye off the ball" for a significant period. [REDACTED] He denied acting dishonestly and said that he did not believe that his PCA and the firm's FAC had not been renewed. There had been an issue regarding the firm's application for 2016 that had been made by his brother in 2015. Mr Rice had contacted ACCA, and in due course he

assumed that the FAC had been renewed and was continuing. In relation to the FAC for 2017, Mr Rice confirmed he had not made an application for that year. He stated he had forgotten to do so, and that this was probably due to the pressure of work.

21. Mr Rice told the Committee that he had been a member of ACCA for almost 30 years, that he had not been the subject of any previous referral to his regulator, and that he had always been active in the professional community.

THE COMMITTEE'S DECISION ON THE ALLEGATIONS

22. The Committee bore in mind that ACCA had brought these allegations and the burden remained upon ACCA to prove its case. Mr Rice did not have to prove anything. The standard of proof was the balance of probabilities, but the Committee was mindful that it had to look for cogent evidence when considering an allegation of dishonesty. It acknowledged Mr Rice's positive good character, and that this needed to be weighed in his favour in two ways. First, it should take it into account when considering whether the Committee accepts what he told the Committee. Second, the fact that Mr Rice had not been the subject of charges or professional criticism in the past, may make it less likely that he acted as is now alleged.
23. In making its findings of fact, the Committee carefully considered all of the evidence in the hearing bundles, and the oral evidence given by Mr Rice, assessing which evidence it accepted and which evidence it rejected.
24. The Committee first considered Allegation 1(d)(i), and whether any of Mr Rice's admitted actions, giving rise to Allegations 1(a), 1(b) and 1(c), was dishonest.
25. The Committee rejected Mr Rice's evidence that he did not know he had no PCA after 1 January 2018. It acknowledged his serious ill health, but noted that he had been sent repeated reminders to renew his PCA between November 2017 and March 2018. The Committee bore in mind that it had not been provided with any

of the specific reminders sent before 20 March 2018, but was satisfied that the generic reminders relied upon by ACCA (pages 9-17) were acceptable evidence. Mr Rice had not suggested that his ill health had prevented him from working for all of that period. In particular, the Committee bore in mind the final reminder email sent to Mr Rice on 29 March 2018, specifically, set out that he was to resign all audit appointments, and that to conduct audit work when not authorised to do so was a criminal offence. It was 28 days later that Mr Rice signed the audit report for Belfast Building Trust, on 26 April 2018.

26. Accordingly, the Committee was satisfied that, when Mr Rice signed the Audit report on 26 April 2018, he knew that he was doing something he was prohibited from doing, and that since 1 January 2018, he knew he had been carrying on public practice without a practising certificate. Having ascertained Mr Rice's subjective state of mind, it went on to consider whether ordinary, decent people would consider that acting as he did was dishonest. The Committee was satisfied that this was the case. It bore in mind the importance of the integrity of the regulated accountancy profession and, in particular, the audit process, the expectation that an accountant would not be party to a misleading document. The Committee also bore in mind Mr Rice's declaration in the audit report *"we confirm that we are eligible under part 42 of the Companies Act 2006 to conduct this audit, and that this report is a report in respect of an audit carried out under the act and in accordance with the related regulations."* The report was then signed by Mr Rice as a *"Senior Statutory Auditor"* (page 11). The Committee therefore found that Mr Rice had been acting dishonestly when carrying on public practice and signing an audit report, after 1 January 2018.
27. The Committee was also satisfied that, as a fellow of ACCA who had held a practising certificate for many years, Mr Rice would have known that he had to have a practising certificate in order to be a partner of a public practice firm. It was also satisfied that, as a partner in the firm, Mr Rice would have known that the firm was holding itself out, online and elsewhere, as being in public practice. In line with its finding in relation to dishonesty and Allegation 1(a), the Committee was satisfied that Mr Rice's conduct in Allegation 1(b) was dishonest; his

conduct involved knowingly deceiving others as to his professional status. The Committee determined that ordinary, decent people would consider acting in such a way to be dishonest.

28. In light of the Committee's finding in relation to dishonesty, and Allegations 1(a) and 1(b), it followed that the Committee similarly rejected Mr Rice's account as to not knowing that the firm had no FAC after 1 January 2016. Adopting the same reasoning, the Committee found that ordinary, decent people would consider the acceptance of appointments as an auditor, when Mr Rice knew that the firm no longer had a FAC, to be dishonest.
29. The Committee, therefore, was satisfied that Allegation 1(d)(i) was found proved, and that Mr Rice's conduct in respect of the matters set out in Allegations 1(a), 1(b) and 1(c) was dishonest.
30. Furthermore, the Committee was in no doubt that he had acted in clear breach of ACCA's Fundamental Principle of Integrity, in that Mr Rice was being neither straightforward nor honest. Accordingly, the Committee found Allegation 1(d)(ii) proved.
31. The Committee was satisfied that Mr Rice's dishonest behaviour was morally culpable, and discreditable to himself, ACCA and the Accountancy Profession. The Committee considered the overall conduct to be a significant departure from the high standards expected of an ACCA member, and conduct that brought ACCA, and the profession, into disrepute. Accordingly, the Committee was in no doubt that the behaviour found proved amounted to misconduct. To characterise it as other than misconduct would fail to uphold proper professional standards, and would undermine public confidence in the profession and in the regulatory function of ACCA.
32. The Committee therefore found Allegation 1(e)(i) proved. Allegation 1(e)(ii) had been pleaded as an alternative, and so the Committee did not need to consider it.

SANCTION AND REASONS

33. Mr Jowett made no specific submission with regard to sanction, but drew to the Committee's attention ACCA's Guidance for Disciplinary Sanctions, and in particular the guidance in relation to dishonesty (section E2), and Statutory Auditors practising in Ireland (section B8).
34. Mr Rice said that a sanction could have a profound effect upon the continued viability of the firm. He worked full time and his brother, the only other qualified accountant at the firm, worked part time because of his own health issues. Mr Rice said that he, effectively, ran the firm and that it might not continue if he were no longer able to practise. The firm had approximately 500 clients, most of whom were sole traders, and that the publicity of the proceedings could lead to an exodus of those clients which, in turn, could affect the viability of the firm. He said that his own health issue had resolved. Mr Rice did not dispute the findings of the Committee, and said that he had been "very, very silly" and that the public should be able to depend on his probity. He sought to reassure the Committee that he would never act in a similar way again.
35. The Committee had regard to ACCA's Guidance for Disciplinary Sanctions. It had at the forefront of its consideration the public interest, which included not only the protection of members of the public, but also the maintenance of public confidence in the profession and in ACCA, and the declaring and upholding of proper standards of conduct and behaviour. The Committee recognised that the purpose of sanctions was not to be punitive, although a sanction may have a punitive effect.
36. The Committee found Mr Rice's misconduct was mitigated by the following features:
 - (i) His good character and the absence of previous disciplinary findings;
 - (ii) His serious ill health in 2017 and 2018, and that of his brother;

(iii) His admissions to the factual basis of Allegation 1 and to all of Allegation 2.

37. The Committee considered that there were no particular aggravating features to this serious case, save for some lack of insight on the part of Mr Rice into the seriousness of his misconduct, and the impact of his misconduct on the reputation of the profession.
38. The Committee had regard to the financial benefit that had accrued to the firm by reason of the unauthorised auditing work that had been undertaken by the firm, which the Committee assessed to be in the region of £9,000.
39. The Committee bore in mind that dishonesty on the part of an accountant is always a very serious matter. The public is entitled to expect a high degree of probity from a professional who has undertaken to abide by a code of ethics.
40. The Committee first considered taking no further action in this case. It was in no doubt that to do so would fail properly to mark the misconduct of Mr Rice, and would undermine confidence in ACCA as a regulator.
41. Having decided that it was necessary to impose a sanction in this case, it considered the question of sanction in ascending order, starting with the least restrictive.
42. The Committee first considered whether the appropriate sanction would be the admonishment of Mr Rice. The misconduct involved dishonesty, which led to a degree of gain for his firm, and thereafter a failure by him to engage with his regulator in the investigation of his wrongdoing. The Committee determined that an admonishment would not adequately reflect the nature of the misconduct in this case, and would undermine public confidence in the regulatory process.
43. For precisely the same reasons the Committee determined that neither a reprimand nor a severe reprimand was appropriate by way of sanction, and that

to impose either of these sanctions would not publicly mark the nature and seriousness of the misconduct in this case, nor would they suitably declare and uphold proper standards of conduct.

44. The Committee considered that Mr Rice's misconduct, in particular his dishonesty, represented serious departures from the standards expected of a member of ACCA. The Committee was satisfied that such dishonesty was fundamentally incompatible with being a member of ACCA, and that no sanction short of exclusion from membership was appropriate in his case. The Committee considered that a failure to exclude a dishonest member in these circumstances would fail to uphold proper standards of professional behaviour, and would seriously undermine public confidence in the profession, and in ACCA as its regulator. Accordingly the Committee ordered that Mr Rice be excluded from membership. It did not exercise its power to order that no application for readmission may be considered until the expiration of a period greater than 12 months.
45. The Committee did not impose a fine upon Mr Rice in light of his limited means, to which reference is made below in relation to issue of costs.

COSTS

46. ACCA claimed costs in the sum of £12,581.67.
47. The costs incurred included those relating to an earlier adjourned hearing on 5 March 2019, at the request of Mr Rice on the basis that he wished to participate in the hearing but he had a pre-booked holiday. Mr Jowett acknowledged that the first effective notification of that hearing was not received by Mr Rice until 20 February 2019, but he submitted that Mr Rice then failed to contact ACCA until the day before the hearing. He therefore submitted that the costs relating to that hearing had been unnecessarily incurred, as the hearing could have been vacated, had Mr Rice contacted ACCA earlier.

48. Mr Rice had provided a statement of financial position, which, the Committee accepted, demonstrated an inability to pay any substantial award of costs
49. The Committee decided that it was appropriate to award a sum of costs and that, whilst the sum claimed as fair and reasonable in principle, Mr Rice's means made a substantial award of costs disproportionate. In all the circumstances, the Committee ordered that Mr Rice should pay £5,000 to ACCA by way of costs.

EFFECTIVE DATE OF ORDER

50. This order shall take effect from the date of the expiry of the appeal period, unless Mr Rice gives notice of appeal prior to the expiry of that period, in which case it shall become effective (if at all) as described in the Appeal Regulations.

Mrs Judith Way
Chairman
02 April 2019