

## HEARING

### DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

#### REASONS FOR DECISION

**In the matter of:** Mr Neil Andrew Lukins

**Heard on:** Wednesday, 21 August 2019

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

**Committee:** HH Suzan Matthews QC (Chairman)  
Mr Jonathan Beckerlegge (Accountant)  
Mrs Suzanne McCarthy (Lay)

**Legal Adviser:** Mr Leighton Hughes

**Persons present**

**and capacity:** Mr Benjamin Jowett (ACCA Case Presenter)  
Mr Richard Lorkin (Hearings Officer)

**Observers:** None

**Summary:** **Allegations 1(a), 1(b)(i), 1(b)(ii), 2, 3, 4(d) proved by way of admission.**

**Allegations 4(b), 4(e) found proved**

**Allegation 5(a)(i) found proved in respect of allegation 1**

**Allegation 5(a)(ii) found in respect of allegations 2, 3, 4(b),(d) and (e).**

**Sanction: Severe Reprimand**

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**Costs: £7390.00**

**Effective date of order: Upon the expiry of the appeal period**

1. ACCA was represented by Mr Jowett. Mr Lukins was present but not represented.
2. The Committee had before it a Hearing Bundle, numbered pages 1-,167 together with additional bundles, numbered pages 1-19 and 1-6. The Committee also had sight of a service bundle, paginated 1-25.

#### **APPLICATION TO AMEND THE ALLEGATION**

3. At the outset of the hearing Mr Jowett applied to amend the allegation of which Mr Lukins had been given notice, by changing the 'end' date in Allegation 2 from *"21 August 2018"* to *"31 December 2017"* and the words *"as applicable from 2013 to 2018"* to *"as applicable from 2013 to 2017"*.
4. Mr Jowett's application was made pursuant to Regulation 10(5)(a) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 ("the Regulations"). He submitted that the proposed amendment could be made without prejudice, as it was made both to reflect the evidence and the fact that Mr Lukins did not hold a practising certificate after 31 December 2017, and therefore did not need to have a continuity agreement in place after that date.
5. Mr Lukins did not object to the proposed amendments.
6. The Committee granted the application, having been satisfied that the amendments could be made without prejudice to Mr Lukins. In the following allegation deleted words are scored through and in bold, and additional words are underlined and in bold.

## **THE ALLEGATION (AS AMENDED)**

### **Allegation 1**

- (a) On or around the dates set out in Schedule A, Mr Neil Andrew Lukins, an ACCA member, submitted a practising certificate application or renewal stating that he had in place a continuity agreement when, in fact, he did not;
- (b) Mr Neil Andrew Lukins conduct in respect of 1(a) was:
- (i) Dishonest, in that he knew the information he was providing to ACCA was false or in the alternative;
  - (ii) Contrary to the Fundamental Principle of Integrity Section 110.2 (as applicable from 2013 to 2018) in that he believed the practising certificate application or renewal contained a materially false or misleading statement or statements or information furnished recklessly;

### **Allegation 2**

Between 1 September 2013 and ~~21 August 2018~~ 31 December 2017 Mr Neil Andrew Lukins, an ACCA member, failed to enter into a written agreement with another individual or firm making provision for the continuity of his practice in the event of his death or incapacity, contrary to Global Practising Regulations 11(1)(a) (as applicable from 2013 to ~~2018~~ 2017)

### **Allegation 3**

Mr Neil Andrew Lukins, an ACCA member, failed to provide all or any of his clients with engagement letters before or soon as practicable after the engagements commenced, contrary to paragraph 5 of section B9 of ACCA's Code of Ethics and Conduct (as applicable from 2013 to 2018)

#### **Allegation 4**

- (a) Between 1 September 2013 and 1 October 2018 Mr Neil Andrew Lukins, an ACCA member, failed to appoint a Money Laundering Reporting Officer, contrary to B2.8 of ACCA's Code of Ethics and Conduct (as applicable from 2013 to 2018)
- (b) Between 1 September 2013 and 1 October 2018 Mr Neil Andrew Lukins, an ACCA member, failed to verify the identity of any or all his clients by reliable and independent means, contrary to B2.9 of ACCA's Code of Ethics and Conduct (as applicable from 2013 to 2018)
- (c) Between 1 September 2013 and 1 October 2018 Mr Neil Andrew Lukins, an ACCA member, failed to regularly review the history of any or all his client relationships to satisfy himself that the work or transactions being carried out were consistent with his clients' usual activities, contrary to B2.16 of ACCA's Code of Ethics and Conduct (as applicable from 2013 to 2018)
- (d) Between 1 September 2013 and 1 October 2018 Mr Neil Andrew Lukins, an ACCA member, failed to retain client identification records, relating to any or all of his clients for 5 years after the end of the client relationship contrary to B2.17 of ACCA's Code of Ethics and Conduct (as applicable from 2013 to 2018)
- (e) Mr Neil Andrew Lukins conduct in respect of any or all of 4(a), 4(b), 4(c) or 4(d) was further contrary to Section 150.1 of the Fundamental Principle of Behavior (as applicable from 2013 to 2018) in that he failed to comply with the requirements of the Money Laundering Regulations then in force.

### **Allegation 5**

(a) By reason of his conduct Mr Neil Andrew Lukins is:

- (i) Guilty of misconduct in respect of any or all of the matters set out in Allegations 1-4 pursuant to bye-law 8(a)(i); or
- (ii) Liable to disciplinary action in respect of any or all of the matters set out in allegations 2-4, pursuant to bye-law 8(a)(iii).

### **MR LUKINS' RESPONSE TO THE ALLEGATIONS**

7. At the outset of the hearing Mr Lukins answered the allegations as follows:

Allegation 1(a): Admitted

Allegation 1(b)(i): Admitted

Allegation 1(b)(ii): Admitted

Allegation 2: Admitted

Allegation 3: Admitted

Allegation 4(a): Denied

Allegation 4(b): Denied

Allegation 4(c): Denied

Allegation 4(d): Admitted

Allegation 4(e): Denied

Allegation 5 (a)(i): Denied

Allegation 5 (a)(ii): Denied

8. The Committee found the admitted allegations proved by way of those admissions, in accordance with Regulation 12(3)(c).

### **THE BACKGROUND AND ACCA'S CASE**

9. Mr Lukins was admitted as a member of ACCA on 28 February 2002, and became a Fellow of the Association on 29 February 2007. Until 31 December

2017, he was the holder of an ACCA practising certificate without audit qualification.

### **Allegations 1 & 2**

10. Mr Lukins applied for a practising certificate on 4 July 2013, stating that he had made arrangements with a local firm (“a continuity agreement”) for the continuity of his practice in the event of his death or incapacity.
11. Mr Lukins subsequently renewed his practising certificate stating that he had a continuity agreement, this time with Firm A on:
  - (i) 30 October 2014;
  - (ii) 10 November 2015;
  - (iii) 25 November 2016.
12. On 27 October 2017, Mr Lukins returned ACCA’s Compliance Review questionnaire, in which he stated that he did not have a continuity agreement. In his covering email he said: *“It would appear I do not have a continuance procedure in place, although I have contacted practices I have not received feed back or confirmation”*
13. In his initial response to Investigations on 20 November 2017, Mr Lukins said:

*“When initially I applied for a licence I contacted a local firm by email but did not receive a reply. I took the opinion that I had a continuity plan as I ensured my clients had the relevant information they would need if someone else was required to submit their next year's return... Having reviewed the ACCA'S continuity practice requirements I appreciate I have fallen short of the ACCA's requirements. Whilst not my intention to mislead, I have stated on annual renewal forms I have had Continuity - This was wrong and I wish to apologise. In this aspect I have fallen short of expected professional standards. It is has never been my intention to be dis-honest but in this aspect I have to accept the charges levied.”*

14. In a further response to Investigations, Mr Lukins said that he could not find a copy of the email to the local firm in relation to a continuity agreement, and that he had no recollection of ever reading the Global Practising Regulations. He set out:

*“...I don't believe I had correspondence with [Firm A]. I guess I intended to but never did. In summary, I made a half hearted effort to engage with another firm when this did not materialise I entered a name of another firm (who I don't believe I contacted). I realise this was unprofessional, something I am not proud of.”*

15. ACCA's case was that Mr Lukins was dishonest when he completed, and submitted, the practising certificate application or renewals to ACCA, because he knew that he did not have any continuity agreement with Firm A or any other firm, having never even discussed the possibility of entering into such an agreement. Such conduct was also contrary to the Fundamental Principle of Integrity.

### **Allegation 3**

16. In completing the Compliance Review, Mr Lukins was unable to provide any examples of engagement letters sent to his clients. In a subsequent response to Investigations, Mr Lukins said:

*“Due to the nature of my client base and limited services provided, I have always been able to deal with this on an informal basis which has suited all parties. I appreciate Letters of Engagement are a good way to communicate services and responsibilities. I must confess I did not realise this was a requirement. I will review templates and issue engagement letters in future and consider retrospectively issuing if appropriate.”*

### **Allegation 4(a) – 4(e)**

17. In responding to questions about Money Laundering in the Compliance Review questionnaire, Mr Lukins said:

- i. A Money Laundering Reporting Officer (MLRO) had not been formally appointed;
- ii. He had not established and recorded any internal controls to ensure that anyone within his firm who suspects money laundering knows how and who to report to;
- iii. He had no procedures in place to carry out 'customer due diligence' to monitor the business relationships, and to keep his knowledge of clients up to date;
- iv. He did not keep records of training on MLR issues;
- v. He did not keep records of confirmation of client identities;
- vi. He did not keep records of customer due diligence; and
- vii. He did not keep records of Internal reports to the MLRO.

18. In a response to Investigations regarding money laundering matters, Mr Lukins said:

*"I appreciate the need to be aware of Money Laundering and the relevant processes required. I have registered with HMRC and will continue to review and develop procedures, I have a documented procedure attached and I will continue to assess the risk attached to my clients. I have always taken this issue seriously and rather regret the flippant response within section 2 of the ACCA compliance review questionnaire ... I realise that the size of a practice and a limited scope of operations does not mitigate the need of individuals/companies to uphold the ACCA's rules and high standards but I guess I have considered myself as offering an informal service to friends and family rather than operating a practice (I appreciate this relaxed attitude was wrong and has caused the problems in the deficiency of ... and certain procedures)."*

19. In a response to Investigations dated 1 October 2018, Mr Lukins clarified that he had only registered with HMRC after the ACCA Compliance Review. Additionally he said:

*“I would have carried out a risk assessment when asked to act on behalf of a client. Based on such criteria as - Did I already know the individual? Was I aware of their business and personal circumstances beforehand? What type of business and transactions? ... The nature of my small client base and my prior knowledge of the individuals meant the identification and verification of individuals was straight forward and they were deemed to be a low risk of being involved in ML or criminal activities. A reference would be obtained from previous accountant and id provided by client... If an unknown individual came to myself posing a higher risk, I would have taken measures to understand better the background, and financial situation of potential client. If client had a higher risk element due to the nature of his/her business/transactions then there would be an increase in the monitoring of the business relationship and greater scrutiny of transactions. This would have always been a policy (although not documented until October/November [2017] when prompted). Again, I appreciate my documentation should have been better but that is not to say I did not appreciate the seriousness of ML implications.”*

20. ACCA's case was that Mr Lukins' acts or omissions set out in Allegations 1-4 were sufficiently serious as to amount to misconduct or, in the alternative, such as to render him liable to disciplinary action pursuant to ACCA's bye-law 8(a)(iii).

#### **MR LUKINS' CASE**

21. Mr Lukins provided written responses to the allegations on 20 November 2017 (hearing bundle p.96), 21 August 2018 (p.108), 1 October 2018 (p.115), 4 February 2019 (p.126) and on 19 February 2019, by way of a Case Management Form (p.137).
22. Mr Lukins gave oral evidence to the Committee. He said he had applied for a practising certificate in 2013, as he had some free time on his hands and thought he would undertake some accounting services for [REDACTED]. He accepted that it was dishonest for him to have represented that he had a continuity agreement in place when applying for his practising certificate in

2013 and the following years, but invited the Committee to consider his failings in their proper context. He had started with two clients. He helped in the preparation of tax returns, charging £100 "or so". By 2017, his practice had extended to seven clients from the local community. He said he saw no realistic purpose in a continuity agreement or engagement letters in the circumstances, and indeed, when he contacted one local firm with a view to a continuity agreement, he received no reply. He considered this unsurprising. Mr Lukins expressed regret and remorse for his failings, which he reminded the Committee he had admitted at the first opportunity, in November 2017.

23. As to the outstanding elements of Allegation 4, Mr Lukins said that he took all money laundering regulations seriously. He said that he had worked in financial services for over 20 years, and was very familiar with the importance of all provisions aimed at addressing the risk of money laundering. However, he said that the requirements relied upon by ACCA in the allegation were artificial and inapplicable in the particular circumstances of the nature and extent of his practice, working alone and for a very small number of [REDACTED]. He stated that he did have processes that were implicitly in place, but that they had not been documented.
24. Mr Lukins sought to reassure the Committee that he was not a dishonest person, and accordingly, that Allegation 1 represented conduct that was out of character, but that he was a fallible human being who had made mistakes for which he was very sorry.

**THE COMMITTEE'S DECISION ON THE CONTESTED ALLEGATIONS  
(4(a), 4(b), 4(c), 4(e), 5(a)(i) and 5(a)(ii))**

25. The Committee bore in mind that ACCA had brought these allegations, and the burden remains, throughout, upon ACCA to prove its case. In respect of Allegations 4(a), 4(b), 4(c), 4(e) and 5(a)(ii) the standard of proof is on the balance of probabilities, but the determination of Allegation 5(a)(i) is a matter for the Committee's independent and professional judgement, with no party bearing any burden of proof. Whilst Mr Lukins gave evidence to the

Committee, in so doing, he did not adopt any burden of disproving any allegation.

26. The Committee had regard to all of the evidence before it, both oral and documentary. It carefully considered Mr Lukins' evidence in relation to Allegation 4. It accepted that his practice between 2013 and 2017 was extremely limited in both nature and extent; he was providing very basic accountancy services for modest, almost notional, payment. His client base was 2 in 2013, and rose to no more than 7 by 2017.
27. The Committee was not persuaded by ACCA's case that Section B2.8 of ACCA's Code of Ethics and Conduct ("the Code") required Mr Lukins to document who was responsible within his practice (of one) as the money laundering reporting officer. It was not satisfied that the Section required the appointment of someone outside his practice to act. It accepted Mr Lukins' evidence that he had implicitly appointed himself, and accordingly the Committee was not satisfied, on the balance of probabilities, that Allegation 4(a) was proved.
28. The Committee found Section B2.9 of the Code to be clear in its requirement of verifying the identity of clients, and that all that was required was for Mr Lukins to obtain and retain copies of passports and a proof of address. Whilst this may well have been a rather artificial step for Mr Lukins to have to take in relation to his small client base, it was nevertheless required by the Code, and accordingly the Committee found Allegation 4(b) proved.
29. The Committee found Allegation 4(c) not proved. The nature of the work undertaken by Mr Lukins for his very small close circle of clients was such that it was implicit that he would be reviewing the work and transactions of those clients, to ensure they were consistent with the client's usual activities.  
[REDACTED]
30. The Committee acknowledged that Mr Lukins' admitted, or found proved, conduct in Allegations 4(b) and 4(d) represented failures to comply with the Money Laundering Regulations. This was not in dispute. It followed therefore,

as a matter of fact, that there had been a breach of Section 150.1 of the Fundamental Principle of Behaviour. Accordingly, the Committee found Allegation 4(e) proved.

31. The Committee considered that Mr Lukins' admitted dishonest conduct was serious, even when accepting all of his evidence as to the context. Such dishonest behaviour was morally culpable, and discreditable to Mr Lukins, ACCA and the accountancy profession. It represented a number of significant departures from the high standards expected of an ACCA member, and was conduct that had the potential to bring ACCA, and the profession, into disrepute.
32. The Committee was satisfied that Mr Lukins' admitted dishonest behaviour in Allegation 1 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.
33. The Committee noted that the admitted, or found proved, conduct in Allegations 2, 3 and 4 were breaches of regulations made under ACCA's bye-laws. Accordingly they rendered him liable to disciplinary action pursuant to bye-law 8(a)(iii). However, the Committee concluded that Mr Lukins' failings in those allegations, in their proper context, were insufficiently serious to amount to misconduct. In the view of the Committee, these allegations established technical breaches rather than grave failings.
34. Accordingly, the Committee found Allegation 5(a)(i) proved in respect of Allegation 1 alone, and Allegation 5(a)(ii) proved in respect of Allegations 2, 3 and 4(b), 4(d) and 4(e).

## **SANCTION AND REASONS**

35. Mr Jowett made no specific submission in respect of the type of sanction appropriate in this case, but helpfully sought to identify mitigating factors that the Committee may wish to weigh in favour Mr Lukins. He drew the

Committee's attention to ACCA's Guidance for Disciplinary Sanctions (the guidance").

36. Mr Lukins repeated his regret and remorse for his conduct. He invited the Committee to conclude that it was wholly out of character, and not borne of any motive for personal gain. [REDACTED] .He expressed a wish to remain a member of ACCA, and said that he would strive to show a higher level of professional standards.
37. The Committee had regard to the guidance. 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.
38. The Committee found that the misconduct found in this case was aggravated by its repeated nature, and the period over which it occurred.
39. Mr Lukins had not provided any references or testimonials. However, the Committee considered the absence of any previous disciplinary findings amounted to mitigation. The Committee also found the following mitigating factors:
  - The significant admissions made by Mr Lukins as long ago as November 2017, and his admissions before the Committee;
  - Mr Lukins' engagement with the regulatory process;
  - Mr Lukins' insight into his conduct and the importance of professional regulation;
  - Genuine remorse and repeated expressions of apology;
  - The absence of any harm caused or loss occasioned;
  - The delay by ACCA in bringing this matter before the Committee, and its effect upon Mr Lukins.

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 Lukins, 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 Lukins. The misconduct involved a number of acts of dishonesty, albeit that they were inextricably linked. The Committee also bore in mind the allegations falling short of misconduct that also render him liable to disciplinary action. 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 the same reason, the Committee determined that a Reprimand was not appropriate by way of sanction, and that to impose that sanction would not adequately mark the nature and seriousness of the misconduct in this case, nor would it suitably declare and uphold proper standards of conduct.
44. The Committee considered that Mr Lukins' misconduct was a serious departure from the standards expected of a member of ACCA. However, in the particular circumstances of this case, the Committee did not conclude that his misconduct was fundamentally incompatible with being a member. His substantial insight, recognition of the important role of ACCA as a regulator, early admissions and full engagement with ACCA, and this hearing, have caused the Committee to conclude that the appropriate and proportionate sanction for Mr Lukins was a Severe Reprimand.

## **COSTS**

45. ACCA claimed costs in the sum of £7,390. Mr Lukins provided the Committee with details of his personal circumstances and income. [REDACTED]. The

Committee decided that it was appropriate to award costs and that the sum claimed was fair and reasonable. Accordingly, the Committee ordered that Mr Lukins should £7,390 to ACCA by way of costs.

#### **EFFECTIVE DATE OF ORDER**

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

**HH Suzan Matthews QC**  
**Chairman**  
**21 August 2019**