

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS


REASONS FOR DECISION

In the matter of:	Mr Frans Phiri
Heard on:	Wednesday, 06 November 2019
Location:	ACCA, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU
Committee:	Mr John Wilson (Chairman) Mr Jonathan Broad (Lay) Dr Hazel Bentall (Lay)
Legal Adviser:	Mr Robin Havard (Legal Adviser)
Persons present and capacity:	Ms Sarah Cawley-Wilkinson (ACCA Case Presenter) Mr Jonathan Lionel (Hearings Officer)
Observers:	Mr George Wood (ACCA Committee Member)
Summary	Removed from the student register with immediate effect
Costs:	£8,800.00

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PRELIMINARY APPLICATIONS

1. ACCA was represented by Ms Cawley-Wilkinson. Mr Phiri did not attend and was not represented. The Committee had before it electronic versions of the following: a bundle of papers (pages 1 – 197), a Service Bundle (1) dated 06 November 2019 (pages 1–8), a Service Bundle (2) dated 06 November 2019 (pages 1–4), and a Service Bundle (3) dated 6 November 2019 (pages 1–7).
2. Once the Committee's findings on the allegations had been announced, it was provided with a bundle Tabled Additional 1, (pages 1 - 6), containing details of ACCA's claim for costs.

SERVICE OF PAPERS

3. Notice of proceedings was contained in a letter, dated 04 October 2019, from ACCA to Mr Phiri. The letter was sent to him on that day by email only. It was sent on two occasions. Whilst there was no electronic confirmation that the email had been sent effectively, the Committee had seen the email itself, and had also heard from the sender of the email, Person A, who confirmed that he had not received any indication that the email had not been sent effectively. He also confirmed that he had learned that, in respect of icloud email addresses, it was not automatic that a read receipt would be sent. The Committee was, therefore, satisfied that the letter of 04 October 2019 had been sent by email to Mr Phiri, in accordance with regulation 22(7) of the Complaints and Disciplinary Regulations 2014, as amended ("CDR"). It also contained the necessary information in accordance with CDR 10. Consequently, the Committee decided that Mr Phiri had been properly served with proceedings.

PROCEEDING IN ABSENCE

4. Having found that ACCA had served Mr Phiri with the proceedings in accordance with the CDR, the Committee was satisfied that Mr Phiri had received the email of 04 October 2019 containing Notice of Proceedings.

The email address is the same as that used by Mr Phiri to communicate with ACCA when he provided his responses on 18 October 2018.

5. The Committee noted that the Hearings Officer, Mr Lionel, had sent a further email to Mr Phiri on 1 November 2019, asking whether he intended to participate in the hearing, but Mr Phiri had not responded. Further, Mr Lionel had attempted to contact Mr Phiri by telephone on 01 and 05 November 2019, but there was no response on either occasion.
6. The Committee decided that Mr Phiri had voluntarily absented himself from the hearing, which he could have joined by telephone or video link if it was not possible for him to attend in person. He had waived his right to attend.
7. The Committee was also satisfied that, taking account of the seriousness of the allegations, it was in the public interest to proceed. The Committee did not consider that any benefit would be derived from adjourning the hearing, and no such application had been made. Finally, the Committee considered that it was in a position to reach proper findings of fact on the evidence presented to it, to include the representations made by Mr Phiri in October 2018.
8. The Committee ordered that the hearing should proceed in the absence of Mr Phiri.

AMENDMENT

9. Ms Cawley-Wilkinson requested the Committee to allow an amendment to Allegation 1(a), by changing the dates between which it was alleged that Mr Phiri had held himself out in public practice.
10. When the matter had been referred by the Assessor to the Committee, the period stipulated was from 23 May 2017 to 26 April 2019, but the allegation currently alleged that the conduct took place between 23 May 2017 and 26 September 2019.

11. Ms Cawley-Wilkinson was not aware of the reason why the date had changed, but applied for the date to be amended to coincide with date specified by the assessor and, in doing so, no prejudice would be suffered by Mr Phiri.
- Indeed, if anything, such an amendment was beneficial to Mr Phiri, as it shortened the period during which the conduct was alleged.

ALLEGATIONS

Allegation 1

It is alleged that Mr Frans Phiri breached Membership Regulations with regards to any or all of the following:

- (a) From 23 May 2017 to 26 April 2019, he has held himself out as being in public practice, contrary to paragraph 8(2)(a)(ii) of the Membership Regulations (as applicable 2017 - 2019);
- (b) From 23 May 2017 to 26 April 2019, he has held himself out to be director of 'Company 1', and/or 'Company 2' firms in and/or holding as being available to undertake public practice, contrary to paragraph 8(2)(a)(iii) of the Membership Regulations (as applicable 2017 - 2019);
- (c) By reason of his conduct in respect of any or all of the matters set out at 1(a) to 1(b) above, Mr Frans Phiri 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 2019), Mr Frans Phiri 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 A;

(b)By reason of his conduct at 2(a) above, Mr Frans Phiri 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).

BACKGROUND

12. Mr Phiri became a registered student of ACCA on 23 May 2017.
13. He was referred for investigation, following receipt of an anonymous enquiry requesting confirmation of his membership status. The enquiry attached an online advertisement for 'Company 2', which appeared to show the company holding itself out as an 'Accountants – inc.member of ACCA'.
14. As a student, Mr Phiri is not permitted by ACCA to be in, or hold out to be in, public practice. He was referred for investigation into this matter.
15. During the course of the investigation, further evidence was obtained, which suggested that Mr Phiri was holding himself out to be in public practice, and was holding himself out to be a director of a firm where public practice work was carried out.

DECISIONS ON FACT

Allegations 1(a) & (b)

16. The circumstances giving rise to Allegations 1(a) and (b) were closely linked and therefore, the Committee combined its findings of fact.

17. In ACCA's investigation, the first company to be investigated chronologically, and Mr Phiri's role within it, has been anonymised as Company 2.
18. Whilst the Committee did not consider it was appropriate to rely on it in isolation, it noted that, in the ACCA Qualification Initial Application form completed by Mr Phiri, and dated 12 May 2017, he described his job title as 'Accountant' at Company 2. He also ticked a box on the form confirming that he was employed in 'Public Practice'.
19. A *Google* search, dated 16 October 2018, returned results which included links to Mr Phiri's profiles on *LinkedIn*, *Facebook* and *Twitter*. The Committee was satisfied that the websites reached via these links showed evidence, as set out below, of public practice being undertaken at the firm in which Mr Phiri held himself out as an accountant.
20. The 'Experience' section of his *LinkedIn* page, as at 16 October 2018, showed Mr Phiri referring to himself as an 'Accountant' at Company 2.
21. A search of Company 2's *Facebook* page, as at 16 October 2018, showed Company 2 as a company providing '...*accounting services*'.
22. Mr Phiri's *Twitter* page, as at 16 October 2018, showed the firm describing itself as 'Registered Accounting officers and Tax Practitioners'. The firm's banner at the top of the page stated the firm offered 'Taxation/ Accounting/ Auditing'.
23. On 17 October 2018, ACCA wrote to Mr Phiri requesting his comments in response to the complaint regarding his practice. The letter set out the evidence that Company 2 was engaged in public practice, and that he described himself as an accountant working at Company 2.
24. On 18 October 2018, Mr Phiri contacted ACCA by telephone and email, responding to the complaint. Mr Phiri confirmed his accountancy practice

had been operating before he became an ACCA student. He indicated that he would resign as an ACCA student, in order to regularise his position.

25. In his correspondence with ACCA, Mr Phiri provided the following information:

(a) *'[In] 2016 I did register for ACCA cause I wanted to Practice outside RSA unfortunately the exemption I received was not satisfactory, that's why I did not push to complete . But I do have qualifications that allow me to practice in RSA. Even in my office or any documents I never market to be ACCA member not at all' (sic);*

(b) *'I have been in a Public practice since 2013, as I was not aware that when you are ACCA Student you need to resign as Accountant in Practice even though you hold membership of another Accounting Body, and it allows you to Practice....Was not a Member of ACCA was merely walk in student who visited their office in Johannesburg and inquire about ACCA and student advisor encouraged me to register so that I may see how many exemption I can get to see if I may qualify to practice as ACCA member in future. ... I thought I went to inquire about information and once exemption were received that when I was going to decide to be student or not depend on how many exemption were allowed.'* (sic);

(c) Mr Phiri provided evidence from the 'Companies and Intellectual Property Commission' (CIPC), the South African equivalent of Companies House. It showed that, on 04 July 2017, Company 2's name was changed to 'Company 3' ('Company 3'). Mr Phiri explained he *'sold [Company 2]...they changed name to [Company 3]...and they have hired to be their Campus manager/ Principal until now'*. (sic) He added *'...I was employed by [Company 2]...soon changed their name to [Company 3]...This can*

be confirmed by CIPC as I was no longer director of the company’.
(sic);

(d)Mr Phiri accepted the evidence ACCA had found online that Company 2 was in/holding out to be, in public practice. He said that, *‘information posted were never taken down...’.* (sic) and that he had, *‘hired someone to take that [Facebook] page down’.* However, searches on 07 January 2019 and 06 March 2019, showed the page still remained active.

26. Mr Phiri confirmed that his Twitter page, which had been holding Company 2 out as ‘Registered Accounting officers and Tax Practitioners’ *‘is also true because that what I have been for seven (7) years now.’*
27. Mr Phiri confirmed that, when Company 2 was active, it had *‘Ten (10) Employees six of them were CIMA Graduate, as Company 2 was CIMA Training and Development Partners.’*
28. Company 2’s clients were comprised from industries including *‘engineering, constructions, NGOs, Retail, Import and export & Export companies’* (sic).
29. In his response of 18 October 2018, Mr Phiri stated that he was,

‘not aware that I could be in breach of ACCA regulations/ Since that Company [Company 2] is sold I don’t think they will be any problem I will carry on with studying ACCA Qualification, the challenge is information that is out there especially google as I really don’t know how to take that info down. The name Company 2 no longer exists with CIPC as the entity changed their name to Company 3. It only exists on social media, because by then we used to do pro on social media. This I really trust you to help me to take those ones down.’
(sic)

30. He said *'I do work as a tutor now'*. Mr Phiri also said *'I am Business Accountants in Practice Member BAP (SA) 1806 for Southern Africa Institute of Business Accountants (SAIBA).'*
31. Despite suggesting that he was taking steps to remove information relating to Company 2's activities from *Google* and *Facebook*, and despite his assertion that he was not aware of the fact that he had breached ACCA's regulations, a search via *Google*, carried out on 26 April 2019 for Mr Phiri and Company 2, found that he continued to hold himself out as the Director of Company 2, and the firm was holding itself out as available to carry out public practice work.
32. Company 2's *Facebook* page, as at 26 April 2019, defined itself as providing *'Bookkeeping and accounting Services, all your start up procedures, compliance with relevant statutory bodies. Management consulting, Internal audits.'* (sic) A recommendation dated 13 July 2018 also stated *'These guys know their job. I am impressed. Wow'*, suggesting the firm was still active.
33. Mr Phiri's *LinkedIn* page described him as 'Management Accountant/MD' of the firm. His experience at Company 2 included a claim that he *'Interact with internal and external auditors in completing audits'*.
34. Mr Phiri's response to ACCA relating to Company 2, and his role within it, was written on letter-headed paper for 'Company 1', and displayed Mr Phiri's title as 'Managing Director'. It also used the description 'Registered Accountants and Tax Practitioners', which the Committee was satisfied represented public practice activities. Although he stated *'...please note this is my old letterhead'*, he does not explain why he had been using, or continued to use, old stationery, which held out both himself and Company 1 as being available to undertake public practice.
35. Mr Phiri also provided a copy of his business card for Company 1, which showed the firm was carrying out 'ACCOUNTING, TAX & AUDITING' and that he was referring to himself as an 'Accountant in Practice'.

36. The Committee found that ACCA searches represented evidence that, on 05 January 2019 and 27 March 2019, Company 1 was holding itself out as available to carry out public practice. A website for Company 1 stated that it was a 'Registered Accountants & Tax Practitioners' and its services include 'Accounting, Audit and Assurance'.
37. The Committee accepted the records obtained by ACCA from the CIPC, which provided information concerning Company 2 and Company 1.
38. On this basis, the Committee was satisfied that the facts it had found represented breaches of paragraph 8(2)(a)(ii) and (iii) of the Membership Regulations, (as applicable 2017 - 2019), and that such breaches persisted between 23 May 2017 and 26 April 2019. The Committee, therefore, found the facts of Allegations 1(a) and (b) to have been proved.

Allegation 1(c)(i)

39. The Committee had regard to the definition of misconduct in bye-law 8(c), and was satisfied that Mr Phiri's actions, proved in Allegation 1(a) and 1(b), individually and together, brought discredit on him, the Association, and the accountancy profession. It was satisfied that holding himself out as a person qualified to conduct public practice, and holding the position of director in firms which held themselves out as available to undertake public practice, was deplorable conduct, and reached the threshold for misconduct. Indeed, in reaching its decision, the Committee took into consideration that, well after he became aware of ACCA's investigation, Mr Phiri allowed companies in which he had an involvement, to continue to hold themselves, and thereby himself, out as being able to conduct public practice.
40. The requirements of the regulations relating to conducting public practice were designed to protect the public, by ensuring that only those properly qualified are able to do so. It is of critical importance that there is strict

adherence to the regulations, in order to provide reassurance to the public, that those carrying out such work are competent to do so.

41. On this basis, the Committee found Allegation 1(c)(i) proved.

Allegation 1(c)(ii)

42. Having found Allegation 1c(i) proved, the Committee made no separate finding in respect of Allegation 1c(ii).

Allegation 2(a)

43. On 07 January 2019, ACCA wrote to Mr Phiri asking for further information with regards to his other practice, Company 2.
44. When a response to ACCA's email was not received from Mr Phiri, ACCA attempted to contact him by email, post and telephone as follows:

Communication	Date	Details
ACCA email to Mr Phiri	11 January 2019	ACCA request to acknowledge receipt of the email dated 07 January 2019
ACCA telephone call to Mr Phiri	14 January 2019	ACCA used the telephone numbers Mr Phiri had registered with ACCA, the numbers on Company 1's letterhead and EIT without success
ACCA email to Mr Phiri	15 January 2019	ACCA warning that a reply to its questions were outstanding
ACCA correspondence to Mr Phiri	23 January 2019	ACCA's first failure to co-operate warning to Mr Phiri
ACCA correspondence to Mr Phiri	15 February 2019	ACCA's second failure to co-operate warning to Mr Phiri
ACCA correspondence to Mr Phiri	04 March 2019	Notification to Mr Phiri that allegation under Complaints & Disciplinary Regulation 3(1) would be raised against him
ACCA email to Mr Phiri's FPI email address	26 March 2019	ACCA requested Mr Phiri contact the Investigations Officer as a matter of urgency
ACCA correspondence to Mr Phiri	27 March 2019	ACCA requested further information concerning Company 1 and warned him of his duty to co-operate with the investigation

45. Mr Phiri had failed to respond to any of the emails, letters or telephone calls from ACCA. In failing to do so, he failed to cooperate with ACCA. The Committee, therefore, found the facts of Allegation 2(a) proved.

Allegation 2(b)(i)

46. Every professional, to include student members, had an obligation to co-operate fully with their professional body, and to engage with it when any complaints were raised against the individual. There was also an obligation

to ensure that a professional body is able to communicate appropriately with its members. Such co-operation was fundamental to the regulator being able to discharge its obligations, of ensuring protection of the public, upholding the reputation of the profession, and maintaining proper standards of conduct. The Committee was satisfied that Mr Phiri's failures brought discredit to himself and ACCA. In the circumstances, they were sufficiently serious so as to reach the threshold of misconduct.

47. The Committee therefore found Allegation 2b(i) proved.

Allegation 2(b)(ii)

48. Having found Allegation 2(b)(i) proved, the Committee made no separate finding in respect of Allegation 2(b)(ii).

SANCTIONS AND REASONS

49. 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 (January 2019), and the principle of proportionality. It had also listened to legal advice from the Legal Adviser, which it accepted.
50. The Committee considered the available sanctions in increasing order of severity, having decided that it was not appropriate to conclude the case with no order.
51. 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.
52. The Committee considered whether any mitigating or aggravating factors featured in this case.

53. The Committee had not been told of any previous findings against Mr Phiri. The Committee also noted that Mr Phiri had initially engaged in the investigation process, and had made admissions as to his conduct.
54. Having decided not to engage in the process, Mr Phiri had not provided any other material, such as written references or testimonials, for the Committee to consider.
55. The Committee considered that the following aggravating features applied:
56. On the basis of its findings, the Committee noted that Mr Phiri had been given the opportunity to resolve and rectify the breaches, which had been found to exist in the course of ACCA's investigation, but he had failed to do so.
57. Due to his lack of engagement, once the matter had been referred to this Committee, there was no evidence of any insight, or contrition, on the part of Mr Phiri.
58. There had been a pattern of misconduct relating to Allegation 1, extended over a period of years, and therefore, it could not be said that this represented an isolated lapse or event.
59. Furthermore, the failure to co-operate with ACCA, which formed the basis of Allegation 2, also extended over a period of months.
60. The Committee concluded that neither an admonishment, nor a reprimand, would adequately reflect the seriousness of the Committee's findings.
61. The Committee then considered whether a severe reprimand would be an appropriate sanction. Again, taking account of the complete absence of any insight or contrition, together with the seriousness of its findings, the Committee did not consider that a severe reprimand would be sufficient or proportionate.

62. As stated, the misconduct of Mr Phiri persisted until as late as April 2019. This was despite the fact that, in or about October 2018, he was given the opportunity to rectify the breaches. Indeed, the Committee did not accept Mr Phiri's account that he had tried, or did not know how, to remove the entries on the various websites which had brought him in breach of the regulations. The breaches of the regulations continued until April 2019.
63. Such breaches carried with them the risk of harm to the public, and also put at risk the reputation of ACCA and the profession. Mr Phiri's failure to engage with the disciplinary process meant that the Committee could not be satisfied that the risk of repetition of such behaviour had been reduced to an acceptable level.
64. This was conduct which was fundamentally incompatible with being a student member of ACCA.
65. The Committee had considered whether there were any exceptional reasons why the Committee should consider that it would not be necessary to remove Mr Phiri from the student register, but could find none.
66. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Mr Phiri shall be removed from the student register.

COSTS AND REASONS

67. The Committee considered the documents containing details of ACCA's claim for costs (Tabled Additional (1)).
68. The Committee concluded that ACCA was entitled to be awarded costs against Mr Phiri. The amount of costs for which ACCA applied was £9,063.00. All parts of the allegations had been found proved. The Committee noted that it was appropriate to discount slightly the total claim, in respect of the Case Presenter and Hearings Officer, to reflect the fact

that the hearing had been shorter than the estimated time. Otherwise, the Committee did not consider that the claim was unreasonable.

69. In the absence of any information from Mr Phiri as to his means, the Committee approached its deliberations on the basis that he was able to pay any amount awarded against him.
70. In the circumstances, the Committee ordered Mr Phiri to pay the costs of ACCA in the sum of £8,800.00.

EFFECTIVE DATE OF ORDER

71. Taking account of its findings, the Committee considered that it was in the interests of the public for this order to take immediate effect.

Mr John Wilson
Chairman
06 November 2019