

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

### **REASONS FOR DECISION**

<b>In the matter of:</b>	<b>Mr Nicholas Burton</b>
<b>Heard on:</b>	<b>Tuesday, 01 December 2020</b>
<b>Location:</b>	<b>Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU</b>
<b>Committee:</b>	<b>Mr Andrew Gell (Chair) Ms Wanda Rossiter (Accountant) Ms Jackie Alexander (Lay)</b>
<b>Legal Adviser:</b>	<b>Mr David Marshall</b>
<b>Persons present</b>	
<b>And capacity:</b>	<b>Mr Phillip Law (ACCA Case Presenter) Mr Jonathan Lionel (Hearings Officer)</b>
<b>Summary:</b>	<b>Excluded from membership with immediate effect No application for re-admission considered for 3 years</b>
<b>Costs:</b>	<b>£10,000</b>

1. The Committee heard an allegation of misconduct against Mr Burton. Mr Law appeared for ACCA. Mr Burton was present and represented himself.

#### **ACCA**



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## **ALLEGATION(S)/BRIEF BACKGROUND**

2. Mr Burton has been a member of ACCA since 2010 and a Fellow since 2015. He has never held a practising certificate, but he was employed by a firm of accountants, Company 1, as a client manager from November 2012 to 07 March 2019. It is alleged that in February 2019, an internal review at Company 1 revealed that Mr Burton had been doing accountancy work on his own account for one of the clients of his employer. It is alleged that further investigations revealed a number of dishonest or improper actions by Mr Burton.
  
3. Mr Burton faced the following Allegations:

### **Schedule of Allegations**

Nicholas Burton, ACCA member,

1. Between approximately April 2016 and February 2019 improperly provided services as specified below for reward to a company ('the Company'), when at all material times the Company was a client of his employer (a firm of Chartered Certified Accountants).

The services provided by Mr Burton to the Company comprised:

- 1.1. Payroll / wages
  - 1.2. Preparation and submission of VAT returns
  - 1.3. Preparation of Management reports
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2. Mr Burton's conduct at 1 above was:
    - 2.1 Dishonest, in that he used his position as an employee to secure a financial gain for himself at the expense of his employer, which as a firm of Chartered Certified Accountants was able to provide the services referred to at paragraphs 1.1 to 1.3 above;
    - 2.2 Or, in the alternative, contrary to the Fundamental Principle of

Integrity as applicable 2016 to 2019 in that such conduct demonstrates a failure to be straightforward and honest.

3. Mr Burton signed declarations at the request of his employer on the dates set out in Schedule A below which were not true in the following regard:

3.1 He did not have a business relationship with a client of [his employer] or with the management of a client;

3.2 That he had not worked for a client of [his employer] in the last two years.

**Schedule A**

21 November 2016

21 February 2018

12 February 2019

4. Mr Burton's conduct at 3 above was:

4.1 Dishonest in that he knew that any or all of the above declarations were untrue;

4.2 Or, in the alternative, contrary to the Fundamental Principle of Integrity as applicable 2016 to 2019 in that such conduct demonstrates a failure to be straightforward and honest.

5. In relation to the services provided to the Company as referred to in paragraphs 1.1 to 1.3 above:

5.1 Failed to declare in his personal income tax return year ending April 2017 income of approximately £4,492 received in respect of such services;

5.2 Failed to declare in his personal income tax return year ending April 2018 income of approximately £5,500 received in respect of such services.

6. Mr Burton's conduct at 5 above was:

- 6.1 Dishonest, in that he knew he should have declared such income in his personal tax returns referred to;
- 6.2 Or, in the alternative, contrary to the Fundamental Principle of Integrity as applicable 2018 and 2019 in that such conduct demonstrates a failure to be straightforward and honest.

7. In relation to building works carried out on his home between about October 2018 and February 2019 totalling about £52,043 plus VAT and in order to avoid liability to pay the VAT amount:

- 7.1 Arranged for the Company to pay for such works and to recover VAT on the above amount and then reimbursed the Company for the building works less the VAT amount.

8. Mr Burton's conduct at 7 above was:

- 8.1 Dishonest, in that he entered into the arrangement described above which enabled him to avoid paying VAT on building works carried out on his home;
- 8.2 Or, in the alternative, contrary to the Fundamental Principle of Integrity as applicable 2018 and 2019 in that such conduct demonstrates a failure to be straightforward and honest.

9. Between about May 2018 and February 2019, in order to acquire an Audi Q7 vehicle for his personal use, caused or permitted the Company to acquire the vehicle under a lease agreement in order to avoid paying VAT in respect of the lease payments.

10 Mr Burton's conduct at 9 above was:

- 10.1 Dishonest, in that he knew the above arrangement was improper because the vehicle was not a company acquisition and, therefore, VAT was not recoverable;
- 10.2 Or, in the alternative, contrary to the Fundamental Principle of

Integrity as applicable 2018 and 2019 in that such conduct demonstrates a failure to be straightforward and honest.

11. Prepared and caused to be submitted the Company's VAT return for February 2019, seeking to recover VAT of £41 in respect of payment of an ACCA annual membership subscription fee when no VAT had, in fact, been due or paid.

12. Mr Burton's conduct at 11 above was:

12.1 Dishonest, in that he knew an ACCA annual membership subscription fee would not have attracted VAT and, therefore, there was no VAT to recover;

12.2 Or, in the alternative, contrary to the Fundamental Principle of Integrity as applicable in 2019 in that such conduct demonstrates a failure to be straightforward and honest.

13 Between about April 2018 and October 2019:

13.1 Carried on public practice without holding an ACCA practising certificate, contrary to Global Practising Regulation 3(i)(a);

13.2 Was a director and principal of FCD Associates Ltd which carried on public practice, contrary to Global Practising Regulation 3(2)(a) and 3(2)(b) respectively.

14 In light of any or all of the facts set out at 1 to 13 above, Nicholas Burton is:

14.1 Guilty of misconduct pursuant to byelaw 8(a)(i);

14.2 In respect of Allegation 13, and in the alternative to misconduct as alleged, liable to disciplinary action pursuant to byelaw 8(a)(iii).

#### **DECISION ON FACTS/ALLEGATION(S) AND REASONS**

4. At the start of the hearing, Mr Burton admitted all the facts alleged in Allegations

1 to 13 (including dishonesty). The Chair announced that **Allegations 1 to 13 were found proved.**

5. The Committee went on to consider the issue of misconduct under Allegation 14(1). The Committee had no doubt that the series of dishonest actions set out in Allegations 1 to 12, both individually and collectively, amounted to misconduct. They were serious and sustained breaches of the standards expected of accountants and, indeed, of the general public also. For an accountant to act in such a way undermines public confidence in the profession. Mr Burton had also admitted misconduct.
6. Allegation 13 did not involve dishonesty, but to carry on practice without a practising certificate exposed his client(s) to risk and subverted the system of regulation. The Committee considered that fellow accountants would regard his conduct as deplorable. The Committee found that his actions in this respect also amounted to misconduct. Again, Mr Burton had admitted misconduct.
7. **The Committee therefore found Allegation 14.1 proved.** As Allegation 14.2 was in the alternative, it was not necessary to consider it.

### **SANCTION(S) AND REASONS**

8. Having found misconduct, the Committee went on to consider what sanction, if any, to impose. The Committee took into account ACCA's Guidance for Disciplinary Sanctions. It heard evidence from Mr Burton, some of which was given in private because it related to sensitive issues concerning health and family life. It accepted that Mr Burton was under significant financial pressure at the time of his misconduct. It also noted that, to his credit, Mr Burton did not use this to excuse his misconduct. The Committee also heard, and accepted, that he currently faced unusually difficult personal circumstances. These had largely arisen after the misconduct but were relevant to his current position. Mr Burton also informed the Committee that he was now employed by the Company referred to in the Allegations.
9. Although Mr Burton had admitted allegations of acting dishonestly and also

without integrity, the Committee disregarded the integrity allegations since they were in the alternative and did not add to the seriousness of the case.

10. The Committee first considered whether there were any mitigating or aggravating factors.

11. Mr Burton's actions in practising without a practising certificate were aggravated by the period of time over which this occurred.

12. Findings of dishonesty are always very serious, but were aggravated in this case by the following factors:

- Mr Burton took advantage of a position of trust;
- His misconduct was continued over a period of about three years;
- The dishonesty took a variety of forms including tax evasion and depriving his employer of income;
- It was deliberate and planned;
- It was carried out for personal financial advantage and significant sums were obtained.

13. Mitigating factors included these:

- Mr Burton has no previous findings against him;
- He made early and full admissions and co-operated fully with ACCA's investigation, enabling the hearing to be much shorter than it otherwise would have been;
- He has taken steps to rectify the consequences of his misconduct. He has repaid, or has made arrangements to repay, all the sums obtained. He is winding up the affairs of his company and has referred his former clients to regulated accountancy practices;
- By these actions, and in his evidence to the Committee, Mr Burton demonstrated a level of insight and remorse. The Committee accepted that this was genuine but had to take into account that Mr Burton did not cease his misconduct voluntarily; he was found out.

14. In view of the findings of dishonesty, the Committee was quite satisfied that a sanction was required. It went through the available sanctions in order of seriousness.
15. It was clear from the guidance that the sanctions of admonishment and reprimand were not sufficient to mark the seriousness of the misconduct in this case. The guidance for reprimand says that the '*sanction would usually be applied in situations where the conduct is of a minor nature*'. The factors listed were not present. The misconduct was not the result of misfortune. It was in deliberate disregard of professional obligations and continued for a substantial time.
16. The Committee next considered the sanction of severe reprimand, possibly combined with a fine. The Guidance says that '*This sanction would usually be applied in situations where the conduct is of a serious nature but there are particular circumstances of the case or mitigation advanced which satisfy the Committee that there is no continuing risk to the public*'. Some of the factors mentioned in the guidance were present but the misconduct was intentional and continued until discovered. It caused direct harm. It was not an isolated incident. No references were submitted. The Committee accepted that Mr Burton was now genuinely remorseful and had taken steps to rectify some of the consequences of his actions. However, he had not been able to demonstrate a sustained period of honest behaviour in a position of trust.
17. More importantly, the Committee did not consider that this sanction, even if combined with a fine, would be sufficient to mark the seriousness of the sustained dishonesty in this case or to ensure that the public would be protected in future. The Committee considered that Mr Burton's dishonest abuse of his position of trust, and his disregard of the system of regulation, were fundamentally incompatible with being a member of ACCA. It took account of Mr Burton's current circumstances but concluded that these could not detract from the seriousness of his past actions. The Committee, therefore, concluded that the minimum sanction it could impose was exclusion from membership.



18. The Committee noted that it had a power to impose a fine in addition to the sanction of exclusion but decided that there was no justification for doing so in this case. It might have been appropriate if Mr Burton had retained the money he obtained by his dishonesty, but he has not. The sanction of exclusion was sufficient to mark the seriousness of his misconduct, uphold public confidence and protect the public. It was proportionate to the misconduct found.
19. Mr Law reminded the Committee of its power to make a compensation order. However, the Committee noted that this power was limited to compensating for '*inconvenience*'. It had not received any information to suggest that such an order was appropriate.
20. The Committee considered whether it was necessary to make an order extending the period before which Mr Burton could apply for re-admission as a member of ACCA. It decided that it was necessary. This was a deliberate course of dishonesty carried on over a sustained period which only ceased when it was discovered. If Mr Burton is able to rehabilitate himself it will require a significant amount of time. The Committee decided that the minimum time necessary to achieve this was a period of three years, during which Mr Burton would not be allowed to apply for readmission.

### **COSTS AND REASONS**

21. Mr Law applied for costs of £11,577. Mr Burton did not oppose costs in principle but referred to the evidence he had given in private about his current circumstances.
22. The Committee was satisfied that, in principle, ACCA was entitled to an order for costs. These proceedings were properly brought. The Committee considered that the sum claimed was reasonable except that, as Mr Law had pointed out, the hearing would occupy less time than estimated.
23. Mr Burton provided a statement of means. He had a significant income. The total household income was about £5,100 per month and outgoings about £4,600. There were significant assets and savings. The Committee also took

into account Mr Burton's current personal situation which would impose pressing demands on him. Weighing these factors, the Committee determined that Mr Burton should pay the sum of £10,000 to ACCA as a contribution to its costs.

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

24. The Committee considered whether it should exercise its power to direct that the order for exclusion should have immediate effect. Such a power can only be exercised in the interests of the public. In this case, Mr Burton had been found to be serially dishonest while on ACCA's register and had not yet been able to demonstrate that he could be trusted to enjoy the benefits of registration. There was a risk to the public. The Committee determined that it was necessary for the order to have immediate effect.

#### **ORDER**

25. The Committee ordered as follows:
- (a) Nicholas Burton be excluded from membership of ACCA;
  - (b) No application for readmission may be considered until the expiry of a period of three years after the effective date of this order;
  - (c) Mr Burton shall make a contribution to ACCA's costs of £10,000;
  - (d) This order shall have immediate effect.

**Mr Andrew Gell**  
**Chair**  
**01 December 2020**