

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Zwelithini Ncube FCCA
Heard on:	Friday 22 July 2022
Location:	Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU
Committee:	Mrs Wendy Yeadon (Chair) Mr Trevor Faulkner (Accountant) Mr Geoff Baines (Lay)
Legal Adviser:	Mr Andrew Granville Stafford
Persons present and capacity:	Ms Michelle Terry (ACCA Case Presenter) Mr Jonathan Lionel (Hearings Officer)
Outcome:	Allegations 1.1.1, 1.1.2, 1.1.3, 1.2, 1.3.1 and 1.4.1 proved. Excluded from membership
Costs:	£11,325

INTRODUCTION AND PRELIMINARY MATTERS

1. The Disciplinary Committee of ACCA ('the Committee') convened to consider a report concerning Mr Zwelithini Ncube FCCA.

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

2. The Committee had before it a bundle of documents (582 pages) and a service bundle (13 pages) and two schedules (Schedule A: Schedule of pseudonymisation and Schedule B: Mr Ncube's Companies).

PROCEEDING IN ABSENCE

3. Mr Ncube did not attend the hearing and was not represented.
4. Notice of today's hearing was sent by email to Mr Ncube on 24 June 2022. The notice was sent to his registered email address. The Committee was provided with a delivery receipt confirming that the email had been delivered at 16.20 on 24 June 2022. A further email was sent to Mr Ncube by the Hearings Officer on 19 July 2022 asking Mr Ncube to confirm whether he intended to attend the hearing. There has been no reply from Mr Ncube to either email.
5. The Committee was informed that the Hearings Officer made a telephone call to Mr Ncube on the day before the hearing but it had not been answered.
6. The Committee noted that Mr Ncube had emailed ACCA on 26 October 2021 in relation to earlier correspondence about the case. He said *'I do not think attending the hearing will be of any help to me and my future career progression. I would like to resign as an ACCA member and move on with my life. The hearing will be too stressful and a distraction to my schedule.'* He was informed that pursuant to the Membership Regulations, his resignation could not be accepted whilst disciplinary allegations were outstanding.
7. The Committee was satisfied that the requirements of Regulations 10(1) and 22(5) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations ('CDR') as to service had been complied with.
8. Having satisfied itself that service had been effected in accordance with the regulations, the Committee went on to consider whether to proceed in the absence of Mr Ncube. The Committee bore in mind that the discretion to do so must be exercised with the utmost care and caution.
9. The Committee considered that no useful purpose would be served by an adjournment. Mr Ncube had made it clear in his email of 26 October 2021 that he had no intention of taking part in the hearing. There had been no engagement from Mr Ncube since that email. The allegations, in this case, are serious and an adjournment would not be in the public interest. The Committee, therefore, decided to proceed in Mr Ncube's absence.

AMENDMENT

10. Ms Terry on behalf of ACCA applied to amend the allegations by correcting a mistake in the numbering of Allegation 1.4. The Committee was satisfied that this was no more than a typing error and that it was appropriate to exercise its discretion under Regulation 10(5) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 ('CDR') to allow this amendment.

ALLEGATIONS AND BRIEF BACKGROUND

11. The allegations faced by Mr Ncube, as amended, were as follows.

- 1 Mr Zwelithini Ncube, a Fellow of the Association of Chartered Certified Accountants ('FCCA'):

- 1.1 On dates after 27 April 2010:

- 1.1.1 Held himself out to be in public practice, in that he allowed himself to be referred to as an 'Accountant' and a 'Chartered Certified Account' (GPR 4) when he did not hold an ACCA practising certificate, contrary to Regulation 3(1)(a) of the Global Practising Regulations (2010 - 2020);

- 1.1.2 Was a Director of one or more of the firms listed in Schedule B, which held itself out to be in public practice, contrary to Regulation 3(2)(a) of the Global Practising Regulations (2010- 2020);

- 1.1.3 Held rights in one or more of the firms listed in Schedule B, which in effect put him in the position of principal of the firm, which held itself out to be in public practice, contrary to Regulation 3(2)(b) of the Global Practising Regulations (2010- 2020).

- 1.2 Declared in a CPD declaration to ACCA that he had not engaged in public practice without holding an ACCA practising certificate (GPR 3&4) when he had, on or about:

1.2.1 07 March 2018; and/ or,

1.2.2 29 January 2019; and/ or,

1.2.3 26 February 2020.

1.3 Mr Ncube's conduct at Allegation 1.2 was:

1.3.1 Dishonest, in that he knew he had engaged in public practice and/or that the declaration was inaccurate; or, in the alternative

1.3.2 Conduct, that demonstrates a lack of integrity.

1.4 By reason of his conduct is:

1.4.1 Guilty of misconduct pursuant to Bye-law 8(a)(i) in respect of any or all of the matters set out at Allegations 1.1 to 1.3; or in the alternative

1.4.2 Liable to disciplinary action pursuant to bye-law 8(a)(iii), in respect of Allegation 1.1.

Schedule B

Firm A

Firm B

Firm C

Firm D

Firm E

Firm F

Firm G

Firm H

Firm I

12. Mr Ncube was admitted as a member of ACCA in 2009 and as a fellow in 2014. He has never held an ACCA practising certificate ('PC').
13. Regulation 3(1)(a) of the Global Practising Regulations ('GPR') prohibits a member from carrying on public practice unless he holds a PC. Public practice

- is defined in GPR 4. It includes signing or producing any accounts or report or certificate or tax return concerning any person's financial affairs in circumstances where reliance is likely to be placed on such by any other person. It also includes holding oneself out as being available to undertake such activities or allowing oneself to be known as an '*Accountant*' or a '*Chartered Certified Accountant*'.
14. GPR 3 also prohibits a member who does not hold a PC from being a Director of a firm where public practice is carried on in the name of the firm. It also prohibits such a member from holding rights in such a firm which in effect put him in the position of a principal.
 15. ACCA's case was that, on dates since 27 April 2010, Mr Ncube had engaged in public practice. ACCA alleged that he had allowed himself to be known as an '*Accountant*' and a '*Chartered Certified Accountant*' (Allegation 1.1.1). ACCA further alleged that he had been a Director of Firms A, B, C, D, E and F and that he had held rights in Firms A and C which had engaged in public practice (Allegations 1.1.2 and 1.1.3). ACCA relied on the following.
 16. Companies House records showed that Mr Ncube was appointed a Director of Firm A on 27 April 2010, and his occupation was listed as '*Accountant*'. He had a shareholding in the company equal to or greater than 50%. The company's Standard Industrial Classification ('SIC') code was '*69202 Bookkeeping activities*'.
 17. A Google search on Firm A's name revealed a website describing it under the banner '*Accountancy in Basildon, Essex*'. The website described the firm as '*an independent accountancy and tax consulting firm*'. Further searches revealed another 12 websites advertising Firm A as providing accountancy and tax consulting services, including Daily Motion, Digital Journal, My Local Services, Twitter, Pinterest, YouTube and Blogspot.
 18. For example, on the Digital Journal website under the banner '*[Firm A] Fulfilling the Accounting Needs of the healthcare sector*,' it stated '*It may be beneficial to outsource accounting services to a separate and experienced firm. [Firm A] seeks to be this firm. For many healthcare professionals requiring accountancy, Essex. [Firm A] is an independent firm for tax consultancy and accountancy, Basildon. ... Allowing a company like [Firm A] to handle their accounting enables healthcare professionals to continue to focus on what they do best . . .*'
 19. A FAME (Financial Analysis Made Easy) database search revealed that 161 companies submitted annual reports to Companies House which had been

prepared by Firm A. A sample of financial statements for 32 of these companies was obtained from Companies House and included in the Committee's bundle.

20. Mr Ncube was appointed Director of Firm B on 02 September 2016. The company's SIC codes were '*Accounting and auditing activities*' and '*Tax consultancy*', although its last filed accounts showed it as dormant.
21. Mr Ncube was a Director of Firm C from 08 December 2014 and a 50% shareholder. The company's SIC codes were '*Accounting and auditing activities*' and '*Tax consultancy*' and '*Bookkeeping activities.*'
22. The Companies House search also revealed that Mr Ncube has been a Director of Firm D since 29 December 2016. Its SIC code was '*Management consultancy activities*'. His occupation was given as '*Accountant*'.
23. Internet searches revealed that Firm D's website included a page headed '*Our Services*' which stated '*We provide a full range of professional, personal, effective solutions to all of your day-to-day accounting, auditing and taxation needs . . .*'
24. The Facebook page for Firm D stated '*We are an accountancy and tax consultancy firm*'.
25. Mr Ncube was appointed as Director of Firm E on 18 April 2019 and his occupation was recorded as '*Accountant*'.
26. Mr Ncube was appointed as Director of Firm F on 18 April 2019 and his occupation was recorded as '*Accountant*'
27. Firm G advertised itself as '*Delivering a broad spectrum of accounting and consulting services.*' Mr Ncube told ACCA that he worked for Firm G and his job was to source clients for them on a commission basis. Mr Ncube's name and photograph appeared on Firm G's website and he was described as '*Chartered Certified Accountant, qualified with ACCA*'.
28. ACCA members are required to submit an annual CPD declaration in accordance with Membership Regulations 4(4). CPD declarations must be signed and submitted by 01 January. The CPD declaration form also includes a declaration relating to engagement in public practice.
29. The wording of the declaration has changed over time. However, at all material times, the declaration has required the member to confirm that they have not engaged in public practice activities.

30. ACCA's case was that Mr Ncube had completed his CPD declarations for the years 2010 to 2019 inclusive, confirming on each that he had not engaged in public practice. ACCA relied in particular on the declarations for the years 2017, 2018 and 2019 which were submitted online on, respectively, 07 March 2018, 29 January 2019 and 26 February 2020. ACCA alleged that Mr Ncube had acted dishonestly in that he was aware when making those declarations that he was engaging in public practice and the declarations were accordingly inaccurate.
31. In a letter dated 01 March 2019, the Investigations Officer wrote to Mr Ncube notifying him that it had come to ACCA's attention that he appeared to be practising without a PC and detailed the matters being investigated.
32. Mr Ncube provided his response by letter dated 11 April 2019. He stated that none of his *'businesses provide services that fall within the definition of a public practice'*. In particular, he stated that *'[Firm A] only provides some bookkeeping, payroll and healthcare consultancy services.'* He said that his other businesses in the UK also provide services that are not regulated by ACCA. He went on to say that none of the businesses of which he was a Director or majority shareholder will be offering any services that are deemed as public practice. Mr Ncube said in his letter that he had updated Companies House records to reflect the fact that his firms were not in the business of auditing and accounting services. He did not address the questions regarding his CPD declarations.
33. The Investigations Officer sent Mr Ncube an email on 17 June 2019 requiring further explanation in relation to his response. The Officer pointed out that, of Mr Ncube's eight Directorships he held in active companies, seven of them listed his occupation as *'Accountant'*. Mr Ncube was asked to comment on this in light of GPR 4(1)(c) which states that allowing oneself to be known as an *'Accountant'* in the context of the practitioner's business shall be regarded as an example of holding out.
34. Mr Ncube replied on 01 July 2019, saying that he would change his occupation on the Companies House records from *'Accountant'* to *'business person'* with immediate effect.
35. After further correspondence with the Investigations Department, Mr Ncube provided a further response to the allegations on 30 October 2020. He provided copies of Companies House records to show that he was no longer referring to himself as an accountant, nor were the companies described as *'accounting and auditing activities'* or *'tax consultancy'*. Further, Mr Ncube stated that he

has removed all online material that could be construed as advertising that he is in public practice. Mr Ncube again stated that none of these firms provides services that could be taken as public practice. He said that they were mostly umbrella payroll companies or healthcare sector businesses.

36. Mr Ncube explained that he set up Firm A with the intention of supplying payroll and bookkeeping services to small businesses in Essex and to his contacts, focussing on healthcare and umbrella employment services. However, he said that during 2017 the firm was overwhelmed with enquiries from new bookkeeping clients, some of which requested the preparation of full accounts. He stated:

'We advertently [sic] did this to retain our clients but with the aim that in the short-term we will find a licensed partner to collaborate with on these new opportunities. I realised that this would be against the provisions of the ACCA code of practice then started to actively seek the assistance of a firm that had a practicing license.'

37. Mr Ncube also explained that any accounts that were submitted to Companies House after January 2018 which were signed by Firm A as the accountants should have been signed by Firm G. He said he presumed this mistake happened because the software used had the name of Firm A as the accountants.

38. Mr Ncube provided a further response to the allegations on 03 September 2021. In it he said:

'I agree to your findings that [Firm A] did offer accounting services, albeit from around 2015. The business started as a consultancy for nursing and business management to the healthcare sector, as implied by the company's name. As we went along, we gained a lot of clients and some of them were struggling with tax returns, accounts and booking; this lured us into helping these people but it later grew exponentially from referrals to a level that we had not anticipated. I then realised that this was going to get me into trouble with ACCA for continuing to offer accounting services without a practicing license. It is on this realization that at the end of 2016, I approached a few authorised firms to work under (or subsume my business into theirs) to align my actions with the requirements of ACCA's Code of Practice. I did this voluntarily to correct my mistake. During the same time we had a website that we were assisted to build

and some of the advertise trace still exist up to date as the web developer has failed to delete them.

The 'busyness' of my day-to-day operations led me to forget to change many of my circumstances to reflect my actual status that I was not allowed to practice as an accountant. At the time I had shown my occupation as accountant at Companies House, I casually took it as meaning my profession but not that I was practicing accountant as some of the businesses had nothing to do with accountancy. I also did not declare on my annual returns to the ACCA that I was in public practice as I thought that this will shortly fall away as the business had come into my hands unintentionally. However from the time I attained my qualification, I had been working full time in industry and commerce until early 2018. . .

I sincerely apologise to all these (sic) and know that they bring the reputation of the ACCA into disrepute. I appeal for leniency as I have since regularized my activities and all public registrations of my business that previously reflected me as an accountant in practice are no longer showing as such. I have stopped practicing as an accountant and now concentrating on my other business activities that have nothing to do with accounting.

I place great value in my membership with ACCA and the qualification I attained has led me into success in my business ventures and I had no intention of tarnishing the body that I so highly value. Losing my membership will be a big effect on my social standing and to my own self esteem.'

DECISIONS ON ALLEGATIONS AND REASONS

39. The Committee considered the documents before it, submissions of Ms Terry on behalf of ACCA and the advice of the Legal Adviser. The Committee bore in mind that the burden of proving an allegation rests on ACCA and the standard to be applied is proof on the balance of probabilities.

40. The Committee considered each of the allegations separately.

Allegation 1.1.1

41. The Committee was provided with FAME search results and evidence from the Companies House register which showed that Mr Ncube was a Director during

the relevant period of each of Firms A to F inclusive. His occupation was given in each case as *'Accountant'*.

42. The Committee was provided with a screenshot from Firm G's website which described Mr Ncube as *'Chartered Certified Accountant'*.
43. Allowing oneself to be known as either *'Accountant'* or *'Chartered Certified Accountant'* constitutes public practice, as defined by GPR 4.
44. The Committee was satisfied that Mr Ncube was in breach of GPR 3(1)(a) by using these descriptions or allowing them to be used and it, therefore, found Allegation 1.1.1 proved.

Allegation 1.1.2

45. The Committee was provided with extracts from Companies House records which showed that Mr Ncube had been a Director of Firms A to F inclusive at various times since 27 April 2010. His occupation on the register for each of these firms was given as accountant. The FAME search revealed that Firm A had signed accounts submitted to Companies House for 161 companies between 2013 and 2019. The SIC code classifications for Firms B and C were accounting and auditing activities.
46. The Committee was satisfied that Mr Ncube was a director of these firms which had held themselves out to be in public practice. It, therefore, found Allegation 1.1.2 proved.

Allegation 1.1.3

47. The Committee was provided with the evidence that Mr Ncube held a greater than 50% shareholding in Firms A and C and was also a Director of these companies.
48. A principal of a firm is regarded as a partner, sole practitioner or director. Whilst there is no definition in ACCA's Rulebook of holding rights in a firm, the Committee was satisfied that, in light of his position and shareholding in these two firms, Mr Ncube held rights in Firms A and C which put him in the position of a principal.
49. The Committee was satisfied that both these companies held themselves out to be in public practice. It noted that Firm C's SIC code classification was

accounting and auditing activities. It also noted that in his email to ACCA on 03 September 2021, Mr Ncube accepted that Firm A had offered accounting services.

50. The Committee was therefore satisfied that Allegation 1.1.3 was proved.

Allegation 1.2

51. The Committee was provided with evidence that Mr Ncube submitted his annual returns for the years 2017, 2018 and 2019 on or about 07 March 2018, 29 January 2019 and 26 February 2020 respectively. Though the returns themselves were not available, the Committee was satisfied that the returns could not have been submitted without Mr Ncube confirming that he had not engaged in public practice without having a practising certificate.

52. Moreover, the Committee noted that in his email to ACCA on 03 September 2021 Mr Ncube made the following admission:

'I also did not declare on my annual returns to the ACCA that I was in public practice as I thought that this will shortly fall away as the business had come into my hands unintentionally.'

53. The Committee was therefore satisfied that Allegation 1.2 was proved.

Allegation 1.3.1

54. It was clear from the evidence that Mr Ncube had engaged in public practice in a number of different firms for a number of years. The Committee was in no doubt that Mr Ncube appreciated that he should not have been doing so. Indeed, he had made admissions to this effect in his email to ACCA on 03 September 2021.

55. The Committee was satisfied that he completed the annual declarations for 2017, 2018 and 2019, stating that he had not engaged in public practice, when he knew that to be false. The Committee was further satisfied that an ordinary and honest member of the public would regard this as dishonest.

56. It, therefore, found Allegation 1.3.1 proved.

Allegation 1.3.2

57. There was no need for the Committee to consider this allegation as it was alleged in the alternative to 1.3.1.

Allegation 1.4.1

58. The Committee was in no doubt that Mr Ncube's conduct, in making false declarations to his regulator and engaging in public practice knowing that he did not have a practising certificate, amounted to misconduct. It would be regarded as deplorable by fellow members of the profession.

59. It therefore found Allegation 1.4.1 proved.

Allegation 1.4.2

60. There was no need for the Committee to consider this as it was alleged in the alternative to 1.4.1.

SANCTION AND REASONS

61. The Committee considered what sanction if any, to impose taking into account ACCA's Guidance for Disciplinary Sanctions ('GDS') and the principle of proportionality. The Committee bore in mind that the purpose of sanctions was not punitive but to protect the public, maintain confidence in the profession and declare and uphold proper standards of conduct and behaviour. It took into account the submissions made by Ms Terry and the advice of the Legal Adviser.
62. The Committee took into account that no previous disciplinary findings had been made against Mr Ncube. It also considered the following to be mitigating factors. He had made some attempts to regularise the position by, for example, changing the SIC codes and his occupation status on the Companies House register. He had also engaged in correspondence with the Investigations Officer, albeit this ceased after his email of 26 October 2021.
63. The Committee considered that the fact this conduct had been carried on for a number of years and was repeated were aggravating factors.

64. Having found that Mr Ncube's actions amounted to misconduct, taking no further action was clearly not appropriate. The Committee, therefore, considered the available sanctions in ascending order of seriousness.
65. The facts found proved were far too serious to justify an admonishment or a reprimand. Given that the conduct was intentional, having regard to the guidance in the GDS, a severe reprimand was not an appropriate sanction.
66. Mr Ncube had repeatedly engaged in public practice over many years knowing that he should not have been. He had also lied to his regulator about it. The Committee considered this behaviour was fundamentally incompatible with continued membership of ACCA. Any sanction less than exclusion would not adequately protect the public.
67. Therefore, pursuant to CDR 13.1(c), the Committee ordered that Mr Ncube is excluded from membership of ACCA.

COSTS AND REASONS

68. ACCA applied for costs in the sum of £12,001.50. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing.
69. Mr Ncube had not provided the Committee with any information about his financial circumstances.
70. The Committee considered that, in principle, a costs order should be made in favour of ACCA. The Committee considered the costs sought were appropriate and had been reasonably incurred, save that some reduction should be made to reflect the fact that the hearing had not taken a full day.
71. The Committee determined that the appropriate order was that Mr Ncube pay ACCA's costs in the sum of £11,325.

EFFECTIVE DATE OF ORDER

72. The order will come into effect from the date of expiry of the appeal period, namely after 21 days from service of this written statement of the Committee's reasons for its decision unless Mr Ncube gives notice of appeal in accordance with the Appeal Regulations prior to that.

**Mrs Wendy Yeadon
Chair
22 July 2022**