

# HEARING

## DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

### REASONS FOR DECISION

**In the matter of:** Ms Mansura Mammadova

**Heard on:** Thursday, 02 May 2019

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

**Committee:** Mr Maurice Cohen (Chairman)  
Mr Trevor Faulkner (Accountant)  
Mr Alastair Papps (Lay)

**Legal Adviser:** Mr Alastair McFarlane (Legal Adviser)

### Persons present

**and capacity:** Mrs Emily Healy-Howell (ACCA Case Presenter)  
Ms Pamela Ramphal (Hearings Officer)

**OUTCOME:** **Removal from the Student Register**  
**Costs of £6000.00 awarded against Ms Mammadova**

### ACCA



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1. ACCA was represented by Mrs Healy-Howell. Ms Mammadova did not attend and was not represented. The Committee had before it a bundle of papers, numbered pages 1 – 88, and a service bundle numbered pages 1-18 and tabled additional, numbered pages 89-92.

### **SERVICE/ PROCEEDING IN ABSENCE**

2. Having considered the service bundle, the Committee was satisfied that notice of the hearing was served on Ms Mammadova in accordance with the Complaints and Disciplinary Regulations 2014 (“CDR”).
3. The Committee next considered whether it was in the interests of justice to proceed in Ms Mammadova’s absence. The Committee accepted the advice of the Legal Adviser. The Committee was mindful that Ms Mammadova had a right to attend the hearing and to participate and that the discretion to proceed in her absence must be exercised with the utmost care and caution.
4. The Committee noted that ACCA’s notice dated 28 March 2019, sent to Ms Mammadova’s registered e-mail address, offered her the opportunity of attending via video or telephone link, with the costs being met by ACCA. Ms Mammadova had not availed herself of this opportunity or made any communication with ACCA about attending this hearing. She had not engaged with ACCA about the case since July 2018. The Hearings Officer had sent further emails to Ms Mammadova’s email address chasing her position as to whether she would be attending and attempted to telephone her without success. The Committee was satisfied that all reasonable attempts had been made to secure Ms Mammadova’s attendance at the hearing. The Committee was not persuaded that any adjournment would increase the chance of Ms Mammadova participating further in the case. On the information before it and bearing in mind its duty to ensure the expeditious conduct of its business and the wider public interest, the Committee was satisfied that it was in the interests of justice to proceed in

the absence of Ms Mammadova. The Committee reminded itself that her absence added nothing to ACCA's case and was not indicative of guilt.

#### Allegation 1

- a) During a DipIFR examination on 08 June 2018, Ms Mansura Mammadova was in possession of unauthorised materials, which she had at her desk, contrary to Examination Regulation 4 and/or 5.
- b) Ms Mansura Mammadova intended to use any or all of the materials set out at 1(a) above to gain an unfair advantage contrary to Examination Regulation 7(a).
- c) Ms Mansura Mammadova 's conduct in respect of 1 (b) above was:
  - i. Dishonest, in that Ms Mansura Mammadova used or intended to use any or all of the unauthorised materials that she had at her desk to gain an unfair advantage;
  - ii. Contrary to the Fundamental Principal of Integrity
- d) By reason of her conduct, Ms Mansura Mammadova is:
  - i. Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of all or any of the matters set out at 1(a) to 1(c) above; or
  - ii. Liable to disciplinary action pursuant to bye-law 8(a)(iii) in respect of 1(a) above.

#### **BACKGROUND**

- 5. Ms Mammadova first registered as an ACCA student on 23 October 2017. She had no previous attempts at the exam and had not previously passed any ACCA examinations.

6. Ms Mammadova attended the Baku exam centre on 7 June 2018 in order to sit the DipIFR examination. The exam commenced at 14.00 and was due to last for 3 hours 20 minutes.
7. All candidates for ACCA examinations are made aware of the Examination Regulations as follows:
  - Prior to an examination, all candidates receive an attendance docket which contains the ACCA Guidelines and Regulations
  - Before an examination commences the Supervisor's announcements draw candidates' attention to the Guidelines and Regulations outlined in the attendance docket. In particular, point 6 is a clear instruction to all candidates to remove all unauthorised materials from their desks.
8. The Exam Centre Supervisor, Person A, stated in her SCRS1B form, completed on the day of the exam, that the unauthorised item was found in the student's possession at "17.12, 3 minutes before the end." Person A confirms that the unauthorised material consisted of a "1 A4 paper with information related to ACCA. One page is full, the other is half written."
9. Person A confirmed that the unauthorised material was found "*on the desk*" and that the "*candidate initially hide it on herself (sic).*"
10. When asked whether the unauthorised material was believed to have been used, Person A asserted, "*I am not sure if the student used it or not and student claimed that the material was not relevant to any of the question in the booklet.*"
11. When asked how they were first alerted to the student with the unauthorised material, Person A explained that she was alerted "*while standing in front of the room, I saw the candidate has additional paper on the desk.*"
12. Person A stated, "*when I asked the candidate what is the information on the*

*paper she claimed that it is her rough notes. When I told her to show me the exact same info in her answer booklet, she couldn't. When exam ended, she approached to me and asked not to send it to ACCA and not fill in the report (sic)."*

13. Person A confirmed that the student asked her not to report the matter when advised that she would be reported to ACCA.
14. On the day of the examination, Ms Mammadova was provided with an SCRS2B form to complete. Ms Mammadova did not complete it and instead placed a tick in the box which states, *"please tick this box if you do not wish to provide an explanation and do not wish to complete this form."*
15. In the Examiner's irregular script report, the Examiner (Person B) circles the "yes" when asked whether the material is relevant to the syllabus and then places a cross over it. On 31 July 2018, ACCA's Investigations Officer contacted the examiner for further clarity in relation to the irregular script report.
16. On 29 June 2018, the examiner sent an email to the Exams Conduct department stating, *"The 'incriminating material' was a piece of paper which on one side contained what appeared to be a 'crib sheet' outlining the key requirements of 2 IFRSs. In principle they could have helped the student with the paper but in this case it was no help at all – the topics the student appeared to have "cribbed" didn't come up. I can't find any convincing rationale for the choice of topics. Overall based on the above the crib sheet made no difference whatever to the student's result "*
17. On 1 August 2018, the examiner provided a response asserting, *"The material that was recovered from the student was material that **could** potentially have been relevant for questions set in the Dip IFR examination but in the circumstances was not because of the subject matter on the question paper. Therefore, **for this particular question paper**, the student gained no advantage but in theory he/she **could** have."* On the same day Person B *"The material is relevant to the **syllabus**, but not to the actual question content. I guess, therefore, the answer to the question should be*

*'yes'. Sorry for the confusion."*

18. On 9 July 2018, ACCA's Exam's Conduct Department wrote to Ms Mammadova in relation to the irregularity that had occurred at the exam centre and requested a response from her. On 16 July 2018, Ms Mammadova provided a response to ACCA and stated *"it was the first time I had taken ACCA exam. As I really felt stressed and anxious, I forgot to read the exam rules about the things we must or must not bring into the test room. So by mistake I took my exam preparation notes, which I had brought along to do revision before the exam, into the test room. Unfortunately, the supervisor who noticed them during the exam thought I was using the notes although I told him that I took them by mistake. I tried to clarify the situation and explained everything to the official comparing both exam paper and the notes I possessed. Even though it was obvious that the questions in exam paper did not match the notes (the standards in my notes were IFRS5 and IAS12). It was considered cheating and they were confiscated."* Ms Mammadova added *"I have a strong intention to take part in ACCA trainings in future and big plans in that respect. However, I am really worried about the exam results due to the reasons I have mentioned above. I sincerely hope and kindly ask you to see my mistake as the result of the exam stress and pressure I felt that moment on my part, and not any willful or intentional neglect."*

### **ACCA'S CASE**

19. ACCA submitted that it was not disputed that Ms Mammadova was in possession of an unauthorised item that contained information, which was relevant to the exam and that therefore Allegation 1(a) was proved. It further contended that the Committee could infer that she intended to use the notes to gain an unfair advantage and that this was both dishonest and contrary to the Fundamental Principal of Integrity.

20. In addition, ACCA contended that such dishonest conduct amounted to misconduct.

### **MS MAMMADOVA'S CASE.**

21. The only response to ACCA had been Ms Mammadova's e-mail of 16 July 2018 (set out above at paragraph 16). Ms Mammadova maintained that she had taken the notes into the exam by mistake at a time when she was stressed and anxious. She denied any intent to cheat or dishonesty or wrongdoing.

### **DECISION ON ALLEGATIONS AND REASONS**

22. The Committee accepted the advice of the Legal Adviser. The Committee reminded itself that the burden of proving that Ms Mammadova possessed unauthorised materials relevant to the syllabus being examined rested upon ACCA. However, pursuant to Examination Regulation 7, if this was established, the burden of proving that she did not intend to use them to gain an unfair advantage was on her. The standard of proof to be applied throughout was the ordinary civil standard of proof, namely the 'balance of probabilities'.

23. The Committee heard that there had been no previous findings against Ms Mammadova and accepted that it was relevant to put her good character into the balance in her favour.

### **DECISION ON FACTS**

24. The Committee carefully considered all the documentary evidence it had received, as well as the submissions of Ms Healy-Howell on behalf of ACCA and Ms Mammadova's written response.

25. The Committee was satisfied that Ms Mammadova sat the DipIFR exam on 7 June 2018. On the basis of Person A's and Person B's evidence, which it accepted as credible, as well as Ms Mammadova's response, it was satisfied that Ms Mammadova had the materials with her during the exam. It was further satisfied on the basis of the clarified information put forward by

Person B that these materials were relevant to the syllabus although not, in fact, as it transpired, to the actual exam questions asked on that day. It therefore determined that she possessed “unauthorised materials.” Accordingly, Ms Mammadova breached Exam Regulation 4, which states; “You are not allowed to take to your exam desk any books, notes or other materials “(unauthorised materials).

26. Exam Regulation 7 provides that where unauthorised materials relevant to the syllabus being examined are found in the possession of an examinee, it is presumed that the examinee intended to use them to gain an unfair advantage. This presumption can be rebutted by the examinee. Therefore, there was a burden upon Ms Mammadova to establish, on the balance of probabilities, that she did not intend to use the unauthorised materials to gain an unfair advantage in the exam.

27. On the evidence before it, the Committee was satisfied, on the balance of probabilities, that Ms Mammadova intended to use the unauthorised materials in her possession to gain an unfair advantage in the exam. Its reasons for this finding are as follows. It accepted the evidence of Person A that Ms Mammadova’s belongings were below her chair but that the crib sheet was found on the desk. In addition, it accepted as accurate the notes that Ms Mammadova initially tried to hide the notes on her and subsequently tried to persuade the Examiner not to submit the materials to ACCA and not to fill in the report to ACCA. The Committee found these facts to be indicative of guilty knowledge. By virtue of this finding of fact, the Committee was satisfied that this was an intentional act by Ms Mammadova. Therefore the allegation that she intended to use these materials to gain an unfair advantage, is proved. This is a breach of Examination Regulation 7.

### **Dishonesty**

28. The Committee applied the test as set out by the Supreme Court in Ivey v Genting Casinos Limited. It specifically considered as far as it could on the information before it, what Ms Mammadova’s belief was as to the facts. The Committee was satisfied that Ms Mammadova knew she was not permitted to have her notes with her in the exam. It rejected her denial of such

knowledge as not credible. Even if she did not read the exam rules, the Committee was satisfied that the prohibition was announced before the exam started. The Committee was satisfied that the intention on her part was to cheat, to try and ensure she passed this exam. It had no hesitation in concluding that Ms Mammadova's conduct was dishonest according to the standards of ordinary decent people. Allegation 1(c)(i) was found proved.

### **Fundamental Principle of Integrity**

29. Having found Allegation 1(b) and 1(c)(i) proved, the Committee next considered Allegation 1(c)(ii) and whether Ms Mammadova's conduct in respect of 1(b) was contrary to the Fundamental Principle of Integrity. This imposed "an obligation on all professional accountants to be straightforward and honest in all professional and business relationships." It also implied "fair dealing and truthfulness".
30. The Committee concluded that attempting to cheat in exams by using unauthorised notes was not being straightforward and honest and was a clear breach of the Fundamental Principle of Integrity. The Committee found Allegation 1(c)(ii) proved.
31. The Committee next asked itself whether, by reason of her conduct Ms Mammadova was guilty of misconduct.
32. The Committee had regard to the definition of misconduct in Bye-law 8(c) and the assistance provided by the case law on misconduct. It was satisfied that Ms Mammadova's actions brought discredit on her, the Association and the accountancy profession. It was satisfied that intending to cheat in a professional exam was deplorable conduct and reached the threshold for misconduct.
33. In the light of its finding on Allegation 1(d)(i), no finding was needed upon Allegation 1(d)(ii).

## **SANCTIONS AND REASONS**

34. The Committee noted its powers on sanction were those set out in Regulation 12(3). It had regard to ACCA's Guidance for Disciplinary Sanctions and bore in mind that sanctions are not designed to be punitive and that any sanction must be proportionate. It accepted the advice of the Legal Adviser.
35. The Committee considered that the attempt at cheating in this case was very serious. The Committee had specific regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. Trust and honesty are fundamental requirements of any professional. Dishonesty by a member of the accountancy profession undermines its reputation and public confidence in it.
36. The only mitigating factor the Committee could identify was that Ms Mammadova's previous good character
37. The aggravating factors the Committee identified were:
- That Ms Mammadova's actions were deliberate;
  - The conduct involved dishonesty;
  - She had sought to gain an advantage over other students by cheating;
  - The Committee had seen no evidence from Ms Mammadova of insight or understanding into the seriousness of her misconduct and its adverse impact on the standing and reputation of the profession.
38. Given the Committee's view of the seriousness of her conduct, it was satisfied that the sanctions of No Further Action, Admonishment, Reprimand and Severe Reprimand were insufficient to highlight to the profession and the public the gravity of the proven conduct.

39. The Committee determined that her behaviour was fundamentally incompatible with Ms Mammadova remaining on the student register of ACCA. The conduct involved dishonesty and is a serious departure from professional standards. The Committee was satisfied that the only appropriate and proportionate sanction was that she be removed from the student register.

#### **COSTS AND REASONS**

40. ACCA claimed costs of £6,506.23, based on an assessment of what work this case involved. The Committee decided that it was appropriate to award costs in this case, as it was properly brought. It noted Mrs Healy-Howell's concession as to the reduced hearing time this case had taken and thus made a reduction of £500 for this. Further, it noted that Ms Mammadova has been employed for some years. It had no other information as to her means. It concluded in these circumstances that the sum of £6,000 was appropriate and proportionate. Accordingly, it ordered that Ms Mammadova pay ACCA's costs in the amount of £6,000.00.

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

41. 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. The Committee was not persuaded that the ground for imposing an immediate order was made out given the facts of this case and that public protection is not involved.

**Mr Maurice Cohen**

**Chairman**

**02 May 2019**