

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Mujahid Zahur Shamsher
Heard on:	Thursday, 31 October 2019
Location:	ACCA, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU
Committee:	Mr Ian Ridd (Chairman) Mr Edward Weiss (Accountant) Mr Alastair Papps (Lay)
Legal Adviser:	Mr Andrew Granville-Stafford (Legal Adviser)
Persons present and capacity:	Mr Benjamin Jowett (ACCA Case Presenter) Miss Geraldine Murray (Hearings Officer)
Observers:	Ms Rachel O Connell (New Panel Observer) Mr Martin Winter (New Panel Observer)
Summary	Removed from the student register Allegations 1(a), 1(b)(i) and 1(c) found proved Costs of £1,500

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



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

PRELIMINARY

1. The Disciplinary Committee of ACCA, ('the Committee'), convened to consider a report concerning Mr Mujahid Zahur Shamsheer. Mr Shamsheer is a student member of ACCA and is resident in Kenya.
2. The Committee had before it a bundle of papers submitted electronically, (pages 1 to 66) and two service bundles (pages 1 to 23 and 1 to 5).
3. Mr Shamsheer did not attend the hearing and was not represented.
4. Pursuant to its powers to regulate the hearings process, in accordance with Appendix 1 of the Regulatory Board, and Committee Regulations and Regulation 12(1) of the Complaints and Disciplinary Regulations ('CDR'), the Committee heard Mr Shamsheer's case at the same time as the linked case of Person A.

PROCEEDING IN ABSENCE

5. The Committee was satisfied that notice of today's hearing was sent to Mr Shamsheer, by email, to his notified email address, on 30 September 2019. The Committee had sight of a delivery receipt which confirmed delivery of the email.
6. On 8 October 2019, Mr Shamsheer replied saying

'Considering my current situation, I do not want to be a part of ACCA any more and I don't want to be connected to anything related to it. Please cancel my membership.' However, two hours later he emailed again saying *'For the case against me, I will not be able to reach the hearing as I am very far. My financial position is also not stable. Furthermore, I want to make things clear on this case. Please reply on the ways forward to solve my current situation.'*

7. ACCA emailed him the same day, saying he could attend the hearing by video or telephone link, if he could not attend in person. He replied on 11 October 2019 saying he would like to participate by video call.
8. On 24 October 2019, Mr Shamsher was asked to provide a contact telephone number, and to confirm whether or not he required an interpreter. A further email to the same effect was sent on 30 October 2019, and on that day, he was sent a link to join the hearing by Skype. There has been no response to those communications. The Hearings Officer attempted to contact him by telephone on 30 October 2019, on a number provided to ACCA by Mr Shamsher, but an automated message said the number was not in use.
9. The Committee was satisfied that the requirements of Regulations 10(1) and 22(1) of the CDR, as to service, had been complied with.
10. The Committee went on consider whether to proceed in the absence of Mr Shamsher. The Committee bore in mind that the discretion to do so must be exercised with care, and in light of the public interest in dealing with matters such as this fairly, economically and expeditiously.
11. The Committee considered that no useful purpose would be served by adjourning this hearing. The Committee noted that, although there has been engagement from Mr Shamsher, he has vacillated about whether to take part or not. He is clearly aware of the hearing, and aware that he could attend by videolink, but has chosen not to do so. The proper inference to draw is that he has decided not to take part in the hearing. The Committee considered that, bearing in mind the strong public interest in the expeditious disposal of these allegations, which are of a serious nature, the hearing should proceed in Mr Shamsher's absence.

ALLEGATIONS AND BRIEF BACKGROUND

12. The allegations against Mr Shamsheer were as follows:
 - (a) On or about 11 August 2018, Mr Mujahid Zahur Shamsheer engaged in unprofessional conduct designed to assist him in his exam attempt, in that he caused and/or permitted Person A to attempt to sit an examination on his behalf at Strathmore University CBE Centre in Kenya.
 - (b) Mr Mujahid Zahur Shamsheer's conduct, in respect of (a) was:
 - (i) Dishonest, in that he attempted to gain an unfair advantage in the examination, by causing and/or permitting Person A to sit it on his behalf; or in the alternative
 - (ii) Contrary to the Fundamental Principle of Integrity, as applicable in 2018, in that such conduct demonstrates a failure to be straightforward and honest;
 - (c) Mr Mujahid Zahur Shamsheer is guilty of misconduct, pursuant to bye-law 8(a)(i).
13. Mr Shamsheer first registered as an ACCA student on 25 May 2018. He sat, and passed, the AB Accountant in Business examination on 4 August 2018, (formerly called the F1 exam). He registered to sit the F3 exam, (now called FA Financial Accounting exam), at Strathmore University Computer Based Exam ('CBE') centre in Kenya on 11 August 2018.
14. ACCA's case is that Mr Shamsheer prevailed upon another student, Person A, to sit the F3 exam pretending to be Mr Shamsheer. Person A

first registered as an ACCA student on 30 May 2018, and in June 2018, he sat and passed the F3 exam.

15. Person A attended the Strathmore University CBE centre on 11 August 2018, and claimed he was Mr Shamsheer. However, the exam coordinator, Person B, noticed that Person A's appearance, and details, differed from those on the University's system. Person B says that, although Person A initially insisted he was Mr Shamsheer, he later confirmed he was impersonating Mr Shamsheer.
16. As a result, Person B did not generate an exam token, and Person A was not allowed to sit the exam. Person B asked Person A to contact Mr Shamsheer, and got both students to provide a statement about the incident.
17. Mr Shamsheer provided a statement to Person B the same day, in the form of a 'Letter of apology', in which he said as follows;

'I . . . hereby sincerely apologize for a mistake that I have committed. I sent my friend to do the exam (F3) that I booked. I did this because of examination panic and I was not ready for it because I had lost confidence due to the [PRIVATE]. I believe that 'human is to err' and I also believe that you will give me another chance to correct myself. It is my first time to do it. I am a student who has a clear record and this is my first mistake so I apologize for that and as a human I am very regretful and look forward to a positive future if you accept my sincere apologies.'

18. Person A also provided a statement to Person B the same day, saying;

'I am Person A, friend to [Mr Shamsheer], who asked me to do the exam for him. Unfortunately it was not successful [sic]. He advised [sic] me to do on his behalf after a long begging I had to accept since we are friends. Now I want to admit it

was mistak [sic] done against both academic and Strathmore. To whom it may concern, I please beg your pardon for sure it is not a minor mistake.'

19. ACCA's investigations department sent correspondence to Person A on 24 September 2018, 16 October 2018 and 9 April 2019. Person A replied on 7 May 2019, saying:

' . . . it is true I attempted to do the exam on behalf of [Mr Shamsheer] and tried to deceive the supervisor but before I sat for the exam I was caught by the supervisor and I realised it was a mistake and am really very sorry for that and am apologizing for that and I promise it will never happen again.'

20. ACCA's investigations department also sent correspondence to Mr Shamsheer on 24 September 2018, 16 October 2018, 9 April 2019 and 1 May 2019. He replied after the email of 1 May 2019, pointing out that ACCA had referred to the wrong exam, (the AB exam rather than F3). He replied again after he was informed that a report would be made to the independent assessor, saying:

'I have received the email you sent me as a report of the complaint against me. I don't want to cause you further difficulties that you go through when investigating this case.

First of all I would like to apologize for not replying on time. After further investigation, I came to realise that what I did was a great mistake. Therefore I am ready to cooperate with you and will respect your decision on this matter.

I believe you have understood the situation I was in during that period. I was in a [PRIVATE]

I know there are disciplinary actions that must be taken to ensure that I don't repeat the mistake but please consider the situation I was in.

I really didn't know what I was doing. In short, I was not in my proper senses. Anyways you are wise so your decision will be respected. I am very regretful and apologetic for the mistake done.'

DECISION ON ALLEGATIONS AND REASONS

21. The Committee considered the documents before it, the submissions of Mr Jowett 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.

Allegation 1(a)

22. The Committee was satisfied, on the basis of the Person B's evidence, that Person A attempted to sit the F3 exam for Mr Shamsher on 11 August 2018. On the basis of Mr Shamsher's admissions, made both on the day of the exam to the University and subsequently to ACCA, the Committee was satisfied that Mr Shamsher and Person A had planned this together.
23. The Committee also took account of the fact that Person A has made admissions in line with Mr Shamsher's own admissions. Indeed, at no stage has Mr Shamsher disputed the allegations.
24. There was no doubt in the Committee's mind that this was unprofessional behaviour, and furthermore the purpose of it was to enable Mr Shamsher to gain an undeserved pass in the F3 exam. The Committee therefore found Allegation 1(a) proved.

Allegation 1(b)

25. The Committee considered Allegation 1(b)(i), which alleged Mr Shamsher's conduct was dishonest. The Committee had regard to the two stage test in *Ivey v Genting Casinos*.
26. It is clear, from the admissions made by Mr Shamsher, that he was nervous about taking the exam, and the reason he wanted Person A to sit the exam for him was because Person A had already passed this paper earlier in the year. The Committee was satisfied that Mr Shamsher's purpose in getting Person A to sit the exam for him was to gain an unfair advantage.
27. There was no doubt in the Committee's view that this was conduct which was dishonest, and would be regarded by ordinary and decent people as such.
28. It, therefore, found Allegation (1)(b)(i) proved. Accordingly, there was no need for it to consider the alternative in Allegation (1)(b)(ii).

Allegation 1(c)

29. Dishonestly attempting to sit a professional exam on behalf of another student is a deception, and clearly brings discredit to Mr Shamsher, and the accountancy profession. The Committee was in no doubt that this amounted to misconduct. Allegation 1(c) was found proved.

SANCTION AND REASONS

30. The Committee considered what sanction, if any, to impose, taking into account ACCA's Guidance for Disciplinary Sanctions ('GDS'), in particular paragraph E2, 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. Having found that Mr Shamsheer'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.

31. The Committee took into account that no previous findings had been made against Mr Shamsheer. He had made full and prompt admissions. The Committee accepted that he was going through difficult personal circumstances, and that he had, at a relatively young age, made a very foolish decision, no doubt borne out of panic knowing that he was not ready for the exam. The Committee accepted he had apologised, and shown remorse.
32. However, any student member who attempts to subvert the exam process will face serious consequences. Professional exams are the gateway to the profession, and only those who are qualified to pass through that gateway should do so. Mr Shamsheer was well aware that he was not so qualified.
33. Mr Shamsheer's actions were not only a very serious departure from proper and acceptable standards, but were deliberate. Furthermore, his actions were dishonest. It would be inappropriate, given the nature of the behaviour in question, to admonish, reprimand, or severely reprimand Mr Shamsheer. The public interest requires the maintenance of confidence in the system by which accountants gain their professional qualification. None of these sanctions would, in the Committee's view, be sufficient to mark the public interest in this case.
34. The Committee concluded that Mr Shamsheer's actions in this case were fundamentally incompatible with being a student member of a professional association. They constituted a serious departure from relevant standards. The Committee did not feel that any order which allowed Mr Shamsheer to retain his student membership of ACCA could be justified.

35. Therefore, the Committee made an order under CDR 13(4)(c) of the Disciplinary Regulations removing Mr Shamsheer from the student register.
36. The Committee did not consider that the public interest in this case required it to additionally make an order under CDR 13(4)(c) restricting Mr Shamsheer's right to apply for readmission beyond the normal minimum period.

COSTS AND REASONS

37. ACCA applied for costs against Mr Shamsheer in the sum of £6,623.50. The application was supported by a schedule, providing a breakdown of the costs incurred by ACCA in connection with the hearing.
38. The Committee found that there was no reason in principle not to make an order for costs in ACCA's favour. Mr Jowett accepted some reduction may be appropriate, as the hearing had not lasted a full day and as there had been some duplication of work, as the file had been transferred between Investigation Officers. He also accepted there should be an apportionment of the fixed costs, to reflect the fact that Person A and Mr Shamsheer's cases had been heard together.
39. The Committee did not have any information about Mr Shamsheer's financial circumstances, save for an assertion in an email to ACCA that his financial situation was not stable. However, it accepted that, in light of his age, and his status as a student in Kenya, his means would be limited.
40. In all the circumstances, the Committee determined the appropriate order was that Mr Shamsheer should pay ACCA's costs in the sum of £1,500.

EFFECTIVE DATE OF ORDER

41. 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 Shamsheer gives notice of appeal, in accordance with the Appeal Regulations prior to that date.

**Mr Ian Ridd
Chairman
31 October 2019**