

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS REASONS FOR DECISION

In the matter of:	Miss Cindy Kimberley Diana
Heard on:	Tuesday, 11 August 2020
Location:	Remotely via ACCA's Offices, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU
Committee:	HH Suzan Matthews QC (Chair), Ms Beth Picton (Accountant) and Ms Catherine Brown (Lay)
Legal Adviser:	Miss Juliet Gibbon (Legal Adviser)
Persons present and capacity:	Mr Phillip Law (ACCA Case Presenter), Mr Jonathan Lionel (Hearings Officer 1) Miss Nkechi Onwuachi (Hearings Officer 2)
Observers:	Miss Joe Johnson (Member of the Public) Miss Ursula Anderson (ACCA Investigations Officer)
Summary	Allegations 1a, b(i) and (iii) and c and Allegations 2a and b(i) proved
Sanction:	Removal from the student register
Costs:	Order to pay a contribution to ACCA's costs in the sum of £5,408.50

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PRELIMINARY APPLICATIONS

1. The Disciplinary Committee (“the Committee”) convened to hear allegations of misconduct against Mr Shawn Wafula and Miss Cindy Kimberly Diana, the two sets of proceedings having been joined by a Chair of the Committee at a Case Management Meeting on 09 January 2020. The hearing was conducted remotely through Skype for Business in order to comply with the current COVID 19 Regulations. In relation to Miss Diana, the Committee had a main bundle of papers numbered pages 1 to 82, two detailed costs schedules and a separate service bundle, numbered pages 1 to 14.
2. Mr Phillip Law represented ACCA. Miss Diana did not attend the hearing and was not represented.

SERVICE

3. Written notice of the hearing was sent by electronic mail (“email”) only to Miss Diana’s registered email address on 07 July 2020. The Committee had sight of the delivery notification. By virtue of Regulation 22(8)(b) of the Chartered Certified Accountants’ Complaints and Disciplinary Regulations 2014, as amended (“the CDR”) the notice would have been deemed served on the same day. ACCA has, therefore, given more than the 28 days’ notice required under Regulation 10(1)(a) of the CDR.
4. The Committee accepted the advice of the Legal Adviser. It was satisfied that service had been effected in accordance with Regulations 10 and 22 of the CDR.

APPLICATION TO PROCEED IN ABSENCE

5. Mr Law made an application to proceed in the absence of Miss Diana.
6. The Committee considered whether it should proceed in Miss Diana’s absence. It accepted the advice of the Legal Adviser. The Committee bore in mind that whilst it had a discretion to conduct a hearing in the absence of the relevant

person, it should exercise that discretion with the utmost care and caution. The Committee paid due regard to the factors set out in the cases of *Hayward & Others* [2001] 3 WLR 125 and *R v Jones* [2002] UKHL 5.

7. The Committee was mindful that there is a public interest in dealing with regulatory matters expeditiously. It noted that Miss Diana had not engaged with ACCA's investigation or these proceedings, save for responding to one email from ACCA on 23 August 2019. Given her non-engagement, the Committee was of the view that there was no evidence before it to suggest that an adjournment of today's hearing would result in Miss Diana's attendance on a future date.
8. Having balanced the public interest with Miss Diana's own interests, the Committee determined that it was fair, reasonable and in the public interest to proceed in the absence of Miss Diana.

ALLEGATIONS

Allegation 1

- a. Miss Cindy Diana caused and/or permitted Mr Shawn Wafula to impersonate her for the purpose of sitting her MA1 (Management Information) examination on 06 October 2018 at Strathmore University CBE Centre, Nairobi, Kenya.
- b. Miss Cindy Diana's conduct above was:
 - i. Dishonest, in that she caused and/or permitted Mr Shawn Wafula to sit her MA1 examination on her behalf in order for her to gain an unfair advantage in that exam; 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; and

- iii. Contrary to exam regulations 10 and/ or 13 and/or 15.(c)
- c. By reason of her conduct, Miss Cindy Diana is:
- i. Guilty of misconduct pursuant to bye-law 8(a)(i) in respect of any of the matters set out at 1(a) to 1(b) above.
 - ii. Liable to disciplinary action pursuant to bye-law 8(a)(iii), in respect of 1(a) and 1(b)(iii) above.

Allegation 2

- a. Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2018, Miss Cindy Diana failed to co-operate with the investigation of a complaint in that between 21 November 2018 and 22 August 2019, she failed to respond to ACCA's correspondence as set out in Schedule A.
- b. In light of the facts set out at 2(a) above Miss Cindy Diana is:
 - i. Guilty of misconduct pursuant to byelaw 8(a)(i), or
 - ii. Liable to disciplinary action pursuant to byelaw 8(iii).

BACKGROUND

- 9. Miss Cindy Diana first registered as an ACCA student on 01 June 2018. She has not passed any ACCA examinations.
- 10. Strathmore University, in Nairobi, Kenya is a centre that offers on-demand Computer Based Examinations [CBEs]. On-demand CBEs are available to book outside of ACCA's four exam sessions and the exam booking process is different to the paper-based and session CBE exams. The students make arrangements to sit their exams directly with the CBE centre and pay the CBE centre directly for the exams they wish to sit.

11. On exam day, the student's identity is checked by the exam co-ordinator. Further validity and eligibility checks are carried out, and then the invigilator instructions are read out.
12. Miss Diana arranged to sit an on-demand CBE exam on 06 October 2018 at Strathmore University and paid the appropriate fee.
13. Miss Diana attended the Strathmore University CBE centre on 06 October 2018 in order to sit the MA1 (Management Information) examination.
14. All candidates for ACCA examinations are made aware of the Examination Regulations as follows:
 - a. Prior to an examination, all CBE candidates registering for CBE in advance of each CBE session receive a student information sheet which contains the ACCA guidelines and Regulations.
 - b. Before an examination commences the invigilator announcements draw candidates' attention to the regulations and guidelines outlined in the student information sheet. In particular, point 4 is a clear instruction to all candidates to obtain permission to leave their workstation for any reason, including if they wish to finish the exam early.
15. On 06 October 2018, the Exam Coordinator from Strathmore Institute of Management and Technology emailed ACCA's CBE Department stating, *"On Saturday 6th October 2018 Diana Cindy ... colluded with Shawn ... to sit an exam on her behalf at Strathmore University CBE centre. I discovered and stopped Shawn a few minutes after beginning the exam. Attached are reports from the students and the invigilator regarding the incident."*
16. The Exam Coordinator completed an SCRS1A – Inappropriate/ Unprofessional Behaviour form, asserting that it was "10.40 am" when the student had displayed inappropriate behaviour. The form states that *"Diana Cindy*

(4338122) reported for her exam at Strathmore University CBE centre on 6/10/18 at 8am. I checked her identification documents and confirmed that she had paid. I generated an MA1 token for her after which she stepped [sic] out of the computer lab never to come back. Around one hour later I noticed her exam was still inactive in SNA. I contacted her via phone and text but she did not respond. A few minutes later [t]he exam became active in SNA. I physically checked around and found Shawn [4346547] just having started attempting the exam”.

17. The Exam Coordinator spoke to both students and Mr Wafula confirmed that Miss Diana had asked him to sit the exam on her behalf. They both expressed remorse. The Exam Coordinator signed and dated the SCRS1B form.
18. Miss Diana completed an SCRS2A form on the day of the examination in which she provided the following account of the incident that took place during the exam: *“I came into the exam room when it was ongoing. I went and registered for the exam and left the room. A few minutes later the teacher contacted me through my phone”*. Miss Diana confirmed that she had been told about the incident *“Yes: Someone impersonated me”*. Miss Diana stated in the additional comments box that *“THIS WILL NEVER HAPPEN AGAIN”*. The form was signed by Miss Diana.
19. An SCRS2A form was also completed by Mr Wafula on the day of the exam. He confirmed that he arrived at the exam at 8.00 am and was present when the invigilator’s announcements were made. He also confirmed that he had read the information sheet for CBE students and the Examination Regulations.
20. Mr Wafula provided an account of the incident that took place during the exam asserting: *“I came into the exam room before the exam started. She went and registered for the exam and left the room. When I was about to start the exam the teacher came in and pulled me out”*. Mr Wafula confirmed that he had been told about the incident: *“Yes. Impersonating someone else”*. When asked if he agreed with what he had been told Mr Wafula stated *“Yes”*. In the additional comments box Mr Wafula wrote: *“This will never happen again”*. The form was signed by Mr Wafula.

21. The matter was referred to ACCA for investigation on 24 October 2018. The Investigations Officer wrote to Mr Wafula on 21 November 2018 to advise him of the complaint and to request his comments on the same. Mr Wafula provided the following response on 06 December 2018:

- “1. *I accept attempting to assist Miss Cindy Diana in the MA1 CBE examination in order to give her an unfair advantage in the examination.*
2. *The content contained within the Exam Centre's SCRS1 form is true and accurate reflection of the incident.*
3. *I accept the enclosed statement dated 6 October 2018 was made by me and is true and accurate account of the incident.*
4. *I confirm to writing the statement on the day of the examination.”*

22. ACCA wrote to Mr Wafula again on 03 June 2019 but Mr Wafula responded with the same answers as he had on 06 December 2018 so ACCA wrote to him again on 27 June 2019 for further clarification.

23. Mr Wafula responded by email on 29 June 2019 stating: “*She [Miss Diana] approached me sometime before the exam date and proposed I do the exam for her. She had had trouble understanding most of what was being taught. We had a whole group for discussing everything that was taught in class. Afraid of her father if she failed this exam, she asked if I could sit the exam for her, since I was the group leader and the best performer*”. He stated: “*I did not receive any form of payment nor benefit for sitting the exam. We were in the same group discussion and I did it out of sympathy for her*”. Mr Wafula further stated: “*We met on the day of the exam. She went and registered for the exam and left. I later on went in took her place with her Acca number and did the exam for her*”.

24. Miss Diana was also asked by ACCA to comment on the complaint in emails dated 21 November 2018; 01 April 2019; May 2019, 30 May 2019; 01 July 2019

and 23 July 2020. Miss Diana did not, however, respond to any of the emails until 22 August 2020 when she contacted ACCA to say that she was unable to access the email of 23 July 2020. ACCA responded to her the same day and her only response to ACCA was received on 23 August. 2019 as follows:

“Greetings.

- a. I accept I allowed Mr Wafula to impersonate me In the MA1 examination on 6th of October 2018. This was due to the reason I had not fully prepared myself for the examinations and was also afraid of my father.*
- b. The content contained in the exam centre's SCRS1 form is an accurate reflection of what happened.*
- c. The enclosed SCRSA statement made by me on the 6th October 2018 is also true.*
- d. I confirm to have written the statement on the day of the examination”.*

SUBMISSIONS

25. Mr Law submitted the following in relation to Miss Diana and Mr Wafula:
 - a. Both are registered students of ACCA and are bound by the Bye-laws and Regulations.
 - b. Both appear to accept, and the evidence supports, that Miss Diana was due to take an exam but caused or permitted Mr Wafula to impersonate her for the purpose of sitting her MA1 examination on 06 October 2018.
 - c. Plainly, both knew this was wrong:
 - (i) It is obvious;
 - (ii) They were aware of the regulations and
 - (iii) Neither has sought to suggest otherwise in their written submissions.

- d. The purpose of this exercise was plainly to assist Miss Diana in passing the examination unfairly. It is entirely inappropriate for somebody to allow another to take their exam for them. The result that would have followed would have provided Miss Diana with a score (and possibly a pass) that she did not earn or deserve. Any qualification earned as a result would have been unjustified.
- e. Their actions were plainly dishonest in accordance with the test set out in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67*.
- f. They had conspired to cheat and their actions undermined the examination process and ACCA's reputation as a provider of examinations.
- g. Their dishonest conduct fell far short of the conduct expected of professional accountants and those training to become accountants and that misconduct, as defined by Bye-law 8(c) and the case of *Roylance v GMC (No 2) [2000] 1 AC 311*, was clearly made out.
- h. In relation to Allegation 2 in respect of Miss Diana only, she was under a duty to cooperate with investigation but had failed to cooperate with ACCA's investigation by failing to respond to a number of emails sent to her over a period of nine months.

DECISION AND REASONS

- 26. The Committee carefully considered the documentary evidence before it together with the oral submissions made by Mr Law. The Committee accepted the advice of the Legal Adviser.
- 27. The Committee bore in mind that the burden of proving an allegation rests on ACCA and the standard of proof is the balance of probabilities.

ALLEGATION 1a – PROVED

28. The Committee noted that Miss Diana had admitted on the day of the exam that she had asked Mr Wafula to impersonate her in the exam by sitting the exam on her behalf. It was also satisfied on the evidence of the Exam Coordinator that Mr Wafula had done so. The Committee, therefore, found Allegation 1a proved.

ALLEGATION 1b(i) and 1b(iii) – PROVED

29. The Committee went on to consider whether Miss Diana's conduct had been dishonest. On the basis of the findings already made, the Committee was clearly satisfied that Miss Diana had deliberately colluded with Mr Wafula to sit the ACCA exam for her in order to gain an unfair advantage in the exam. It was quite satisfied, applying the standards of ordinary decent people, that such conduct was, on the balance of probabilities, dishonest. Accordingly, the Committee found Allegation 1b(i) proved and did not consider the alternative charge in Allegation b(ii).
30. The Committee also found that Miss Diana had clearly breached Examination Regulation 10, 13 and 15 in that she had obtained assistance by improper means from Mr Wafula; she had engaged in unprofessional conduct designed to assist her exam attempt and she had attempted to gain an unfair advantage by asking Mr Wafula to sit the exam for her.

ALLEGATION 1c – PROVED

31. Having found that Miss Diana had acted dishonestly and in breach of the Examination Regulations, the Committee was satisfied that her dishonest conduct in asking Mr Wafula to take the exam for her clearly amounted to misconduct. The Committee, therefore, found Allegation 1c proved.

ALLEGATION 2a and 2b(i) – PROVED

32. The Committee was satisfied that Miss Diana had failed to cooperate with ACCA's disciplinary investigation over a prolonged period of time. There is a clear duty on members to cooperate with such investigations and in failing to do so Miss Diana's conduct had fallen far below the standard expected of an ACCA student and, in the Committee's determination, this amounted to misconduct.

SANCTION AND REASONS

33. Mr Law informed the Committee that there were no previous disciplinary findings against Miss Diana.
34. The Committee accepted the advice of the Legal Adviser who referred it to Regulation 13(4) of the CDR and to ACCA's Guidance for Disciplinary Sanctions. In considering what sanction, if any, to impose the Committee bore in mind the principle of proportionality and the need to balance the public interest against Miss Diana's own interests. The purpose of any sanction was not meant to be punitive but was to protect members of the public, maintain public confidence in the profession and ACCA and to declare and uphold proper standards of conduct and behaviour.
35. When considering the appropriate sanction, the Committee considered the aggravating and mitigating features of the case. The Committee considered the following to be mitigating features:
 - a. Miss Diana's early admissions both on the day of the exam and in an email to ACCA on 23 August 2020.
 - b. Miss Diana had shown remorse to the Exam Coordinator on the day of the exam.
36. The Committee considered the following to be aggravating features:

- a. This was deliberate and premeditated dishonest conduct in that Miss Diana had deliberately colluded with Mr Wafula to take a professional exam for her in order for her to gain an unfair advantage in the exam.
 - b. Such conduct undermined the ACCA examination process and there was potential impact of the reputation of the ACCA qualification.
 - c. Miss Diana had failed to cooperate with ACCA's investigation.
37. The Committee considered each available sanction in ascending order of seriousness, having concluded that taking no further action was not appropriate due to the seriousness of the dishonest conduct. The Committee also considered that issuing an admonishment or a reprimand would not be sufficient or proportionate, given the gravity of the matters proved, and would not protect the public interest.
38. The Committee carefully considered whether a severe reprimand would be sufficient and proportionate, or whether removal from the Student Register was required. It had careful regard to the factors applicable to each of these sanctions as set out in the Sanctions Guidance. The Committee considered that most of the factors applicable to a severe reprimand were not applicable in this case. The Committee concluded that a severe reprimand would not be appropriate or sufficient to protect the public interest.
39. The Committee had regard to paragraph E 2.2 of the Guidance for Disciplinary Sanctions which states:

“The public is entitled to expect a high degree of probity from a professional who has undertaken to abide by a code of ethics. The reputation of ACCA and the accountancy profession is built upon the public being able to rely on a member to do the right thing in difficult circumstances. It is a cornerstone of the public value which an accountant brings”.
40. The Committee was mindful that the sanction of removal from the student

register was the most serious sanction that can be imposed. The Committee took into account the guidance that this sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a member. The Committee was satisfied that Miss Diana's dishonest conduct and failure to cooperate had reached that high threshold.

41. For the above reasons, the Committee concluded that the only appropriate and proportionate sanction was removal from the student register. The Committee did not deem it necessary to impose any minimum period before which Miss Diana cannot re-apply for admission as a student member.

DECISION ON COSTS AND REASONS

42. ACCA applied for costs in the sum of £9,154.00. The Committee was provided with a detailed schedule of costs. The Committee was not satisfied that the costs claimed were appropriate and reasonable because there appeared to be duplication. The Committee noted that Miss Diana had not provided any details of her financial means or provided any written representations in relation to the costs claimed by ACCA.
43. The Committee took into account that the hearing would conclude in one day not two and that too many hours had been allocated to the Case Presenter. It determined that it was fair and proportionate to order to pay a contribution to ACCA's costs in the sum of £5,408.50.

ORDER

- i. Miss Cindy Kimberly Diana shall be removed from ACCA's student register.
- ii. Miss Cindy Kimberly Diana shall pay a contribution to ACCA's costs in the sum of £5,408.50.

EFFECTIVE DATE OF ORDER

44. This order shall take effect from the date of expiry of the appeal period referred

to in the Appeal Regulations.

HH Suzan Matthews QC
Chair
11 August 2020