

## HEARING

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

#### REASONS FOR DECISION

<b>In the matter of:</b>	Mr Christopher Killick
<b>Heard on:</b>	Tuesday, 07 July 2020
<b>Location:</b>	Via skype at ACCA, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU
<b>Committee:</b>	Ms Suzan Matthews (Chair) Mr David Horne (Accountant) Ms Victoria Smith (Lay)
<b>Legal Adviser:</b>	Mr Sanjay Lal (Legal Adviser)
<b>Persons present and capacity:</b>	Mr Phillip Law (ACCA Case Presenter) Mr Christopher Killick (Member) Ms Anna Packowska (Hearings Officer)
<b>Summary:</b>	Removed from the student register
<b>Costs:</b>	£4894.00

#### PRELIMINARY MATTERS

1. The Committee had before it a Main Bundle pages 1-127, an Additional Bundle pages 1-14, a Service Bundle pages 1-16 and subsequently a Costs Schedule.

#### ACCA



+44 (0)20 7059 5000



info@accaglobal.com



[www.accaglobal.com](http://www.accaglobal.com)



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

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

### 2. Allegation 1

a) During an SBR – Strategic Business Reporting examination on 06 June 2019, Mr Christopher Killick was in possession of:

(i) A mobile phone containing unauthorised materials in the form of notes whilst at his exam desk, contrary to Examination Regulations 4 and/or 5 and/or 6.

(b) Mr Christopher Killick intended to use any or all of the items set out at 1(a) above to gain an unfair advantage;

(c) Mr Christopher Killick's conduct in respect of 1(b) above was:

(i) Dishonest, in that Mr Christopher Killick intended to use any or all of the unauthorised materials which he had at his exam desk to gain an unfair advantage; or in the alternative

(ii) Contrary to the Fundamental Principle of Integrity (2019) conduct demonstrates a failure to be straightforward and honest.

(d) By reason of his conduct, Mr Christopher Killick is:

(i) Guilty of misconduct pursuant to byelaw 8(a)(i), in respect of any or all of the matters set out at 1(a) to 1(c) above; or

(ii) Liable to disciplinary action pursuant to byelaw 8(a)(iii), in respect of 1(a) above.

3. Mr Law opened the case on behalf of ACCA. He asked the Committee to note that Mr Killick first registered as an ACCA student on 31 July 2012. He had no previous attempts at the exam and has previously passed the F1, F2, F3, F4, F5, F6, F7, F8 & F9 ACCA examinations. Mr Killick attended the London South East exam centre

on 6 June 2019 in order to sit the SBR – Strategic Business Reporting examination. The exam commenced at 10.00am and was due to last for 3 hours 30 minutes.

4. Mr Law highlighted that 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 regulations and guidelines outlined in the attendance docket. Point 6 is a clear instruction to all candidates to remove all unauthorised materials from their desk. Point 7 also clearly states that mobile phones are not permitted in the exam hall.
5. Mr Law referred the Committee to the Examiner's irregular script report, in which the examiner confirmed that the material was relevant to the syllabus and was relevant to the examination. In relation as to whether the material has been used when the student was attempting the exam, the examiner has stated, "YES" but stated, "*The paper is a pro forma which can be used to answer questions on group accounts which are a core part of the examination syllabus.*"
6. Although the examiner went on to further add, "*the candidate did not use the material in answering the questions on group accounting as there is no reference to group accounting in his answer booklet. The material could have been used in answering question 1 but there is no evidence of it.*"
7. The report has been signed and dated 21 June 2019 by the examiner. It can be seen on page 55 of the Bundle that the unauthorised material consists of notes which were contained within a mobile phone.
8. The exam centre Deputy Supervisor 'Supervisor A' stated on his SCRS1B form that the unauthorised item was found in the student's possession at "12.55" and confirmed that the unauthorised item consisted of a "phone."

9. Supervisor A further confirmed that the unauthorised item was found as the student *"looked at his phone."*
10. When asked whether the unauthorised material was believed to have been used, Supervisor A asserted that the student *"looked at his phone."*
11. When asked how they were first alerted to the student with the unauthorised material, Supervisor A stated, *"the phone lit up."*
12. The student's behaviour is described in the SCRS1B form and it is asserted that the student was *"very apologetic, asked if it could be dealt with outside."*
13. Supervisor A provided a full and detailed account of the incident asserting: *"as the man was spotted he got up and said could we deal with it outside said sorry he didn't know why he did it as he wouldn't have passed anyway."*
14. The SCRS1B form has been signed and dated by Supervisor A on 14 July 2019, not on the day of the exam, and a tick is placed in the box confirming that the facts as specified are a true reflection of the incident which took place during the examination.
15. On the day of the examination, Mr Killick did not complete an SCRS2B form in relation to the incident and the unauthorised item, with Supervisor A stating that the student, *"signed back of booklet"*.
16. On 08 July 2019, ACCA's Exam's Conduct Department wrote to Mr Killick in relation to the irregularity that had occurred at the exam centre and requested a response from him.
17. Mr Killick provided a response to Exams Conduct on 19 July 2019, and in relation to his conduct stated, *"I would firstly like to apologise for my conduct in the SBR exam in the June examination. This is not both how I should conducted myself and not how I would expect to conduct myself."*
18. Mr Killick explained his personal circumstances, *"It had also been the first anniversary of the passing of my mother that I had personally struggled with. I went into that exam panicked, stressed, pressurised and depressed."*

19. Mr Killick summarised his action stating, *“All of these factors led me to behave in a way that I would never normally and still to this day have no idea why I did. The stupidity of the action is exacerbated by the note that was in my possession a presentational proforma that was firstly not even in the exam and secondly does not help you in any way.”*
20. Mr Killick accepted the consequences but added, *“I ask that I am not removed from the student register. If I was removed not only would that be the end of my career but I don’t know how I would even begin to explain what I have done to my family.”*
21. On 13 September 2019, ACCA’s Investigation Department wrote to Mr Killick to advise him of the complaint which had been received and requested his comments in this regard. On 19 September 2019, Mr Killick provided an email response. He admitted to being in possession of an unauthorised item, that the notes on the item were his and that they were relevant to the syllabus and exam. Although in relation to the intent of using the item, Mr Killick explained, *“Firstly I do refute that I was looking at the unauthorised materials as stated in the enclosed documentation ... Why I did even have it I do not know as this is nothing I have ever done or even thought about doing in the past, or would I think of doing in the future ... I do know that the person that entered that exam that day was not how I conduct myself normally ... I know that I should not have been in possession of the note but it was not used.”*
22. In his oral evidence to the Committee, Mr Killick described how he had been working in the accountancy industry for about 6 years. He described that he was at the end of the period of exams. He asked the Committee to note that in 2019 he had had a very torrid year and it had been the first anniversary of his mother’s passing. He described the effect on his mental health. He stated that he was definitely not prepared for the exam, but he went anyway due to family pressure. He accepted that the note on his phone was his, but he denied any intention to use the note. He denied that he looked at his phone and he stated that no way in a million years would he have done this to risk his career. He said that the note would not have helped him.
23. In cross examination, Mr Killick accepted he had been a student since 2012. He said he had studied by himself and that this had been around his work commitments. He denied that he was anxious to qualify or that there was any specific family pressure

to qualify. He accepted that he did not take one of the two exams he had been due to sit because he was not prepared.

24. In respect of the screen shot of the mobile phone, which he accepted that he had in his possession, he stated he had taken the screen shot and it was a revision proforma which he had used to “cram” before the exam. He stated that the proforma was from a previous exam. He stated in theory it was relevant to the exam which he undertook on 06 June 2019. He could not remember exactly when he had taken the screen shot but he thought that it was the day before.
25. He accepted he had heard the pre-exam announcement as to the possession of unauthorised materials but had disregarded it because he was not in the right state of mind; he was very depressed at the time and that it was like PTSD and he felt an immense amount of pressure at the time. He accepted that these conditions had not been medically diagnosed but he had been to a bereavement counsellor. He accepted that these factors led to a severe lack of judgement and that he was not capable of making rational decisions. He accepted with hindsight he should have put the mobile phone away but that at the time he had no idea why he had the mobile phone. He said that he was not focusing on the mobile phone. He accepted that he was not ready or fit at the time and that had no idea why he had the mobile phone. He did not know why the mobile phone was between his legs, but he denied using it. He accepted that his phone was locked. He said he did not know why the phone had lit up. He stated the screen shot was not relevant to the exam questions and that it would not have helped in any particular way. He stated that his request to have the matters dealt with outside was because he did not want to disturb fellow candidates.
26. In response to Committee questions, Mr Killick stated he had four more exams to complete in 2019 and there were four exam windows in any given year. He described that when he used the expression “locked” in respect of his mobile phone he was referring to the screen on his phone being darkened. He accepted that the exam note was on his home screen but that the invigilators did not go through the images on his mobile phone. To his recollection he thought he had only taken the one image.
27. In respect of the exam that he did not sit he could not remember exactly when he decided not to sit it. He reiterated that he was not ready to sit the exam on 06 June 2019, but he had pressure to attend. He told the Committee that his mother had

passed away on 25 May 2018. He accepted he had the mobile phone between his legs from the commencement of the exam. He stated he was going to fail the exam anyway as he was not ready to take it and he would have needed a textbook in front of him to pass but he denied he had any intention to cheat. He suggested that the screen shot had limited value. He stated that he did not make a rational decision at the time, that this was not his character and how he conducts himself. Mr Killick asked the Committee to note the Supervisor and the Invigilator had written identical statements a long time after the incident but that he had always denied looking at his mobile phone.

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

### 28. Allegation 1

a) During an SBR – Strategic Business Reporting examination on 06 June 2019, Mr Christopher Killick was in possession of:

(i) A mobile phone containing unauthorised materials in the form of notes whilst at his exam desk, contrary to Examination Regulations 4 and/or 5 and/or 6. **Admitted and Found Proved**

(b) Mr Christopher Killick intended to use any or all of the items set out at 1(a) above to gain an unfair advantage; **Found Proved**

(c) Mr Christopher Killick's conduct in respect of 1(b) above was:

(i) Dishonest, in that Mr Christopher Killick intended to use any or all of the unauthorised materials which he had at his exam desk to gain an unfair advantage; **Found Proved** or in the alternative

(ii) Contrary to the Fundamental Principle of Integrity (2019) conduct demonstrates a failure to be straightforward and honest; **Not Proved**

(d) By reason of his conduct, Mr Christopher Killick is:

(i) Guilty of misconduct pursuant to byelaw 8(a)(i), in respect of any or all of the matters set out at 1(a) to 1(c) above; **Found Proved** or

(ii) Liable to disciplinary action pursuant to byelaw 8(a)(iii), in respect of 1(a) above. **Not Proved**

29. ACCA brought this case and, therefore, the burden of proving the case rests throughout on ACCA to the civil standard of a balance of probabilities. However, the Committee noted the effect of Exam Regulations 7(a) and 7(b) that if unauthorised material is either possessed and/or used or attempted to be used, the burden shifts to the student to prove that there was no intention to use or gain an unfair advantage. Mr Killick admitted at the outset of the hearing that he knowingly had a mobile phone on his person and that the mobile phone contained unauthorised materials in the form of notes. Therefore, Allegation 1(a)(i) was announced as admitted and found proved.
30. Having considered the evidence the Committee was satisfied Mr Killick, knowing that he was unprepared for the exam, sourced relevant material prior to this exam and placed it on his mobile phone. The Committee found as proved that Mr Killick took his mobile phone with the exam notes on it into the exam as he did not dispute this. On balance, the Committee was satisfied Mr Killick took the mobile phone loaded with a screen shot of relevant material with him into the exam with the intent to use it in the exam because he was anxious about passing the exam and, therefore, the use of the screen shot with the relevant notes was to gain an unfair advantage. The Committee, therefore, found Allegation 1(b) proved.
31. The Committee had regard to the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67* and the approach to the issue of assessing dishonesty.
32. On balance, the Committee was satisfied Mr Killick did look at his mobile phone during the exam with the intention to use those exam notes to assist him the exam and that his actions would be viewed as dishonest by the standards of ordinary reasonable people. The Committee was unpersuaded by his explanation that he was



incapable of making rational decisions and/or that he did not know why he did as the Committee accepted he had heard the exam instructions beforehand; furthermore, the exam notes were relevant to the syllabus; the phone was locked to the exam notes and that significantly he had secreted the phone under or between his legs for a number of hours during the course of the exam. Furthermore, the Committee was persuaded that his reaction when challenged by the invigilator was more likely than not to be a response to his possession of the mobile phone being identified rather than an attempt to spare disruption to his fellow candidates. Taking all these matters together, the Committee accepted that by his actions, Mr Killick has been dishonest by the ordinary standards of ordinary decent people. Therefore, the Committee found Allegation 1(c)(i) proved. In light of this finding, the Committee found not proved Allegation 1(c)(ii), as it was charged in the alternative.

33. Turning to Allegation 1(d)(i), the Committee reminded itself that Misconduct is a matter of judgment for the Committee.
34. The Committee was in no doubt that such actions amount to misconduct and that they would be readily regarded as deplorable by members of the public and the profession. Therefore, the Committee found Allegation 1(d)(i) proved. In the light of this finding, the Committee did not find Allegation 1(d)(ii) proved, as this was charged in the alternative.

## **SANCTION**

35. The Committee had regard to the Guidance for Disciplinary Sanctions. The Committee accepted the advice of the Legal Adviser. The Committee accepted his advice that any sanction must be proportionate, and it should consider the least restrictive sanction first and move upwards only if it would be proportionate to do so.
36. The Committee balanced Mr Killick's interests with that of the public interest, which includes the protection of members of the public, the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and performance.
37. Mr Killick accepted he had been informed in advance of today's hearing of the ability to produce testimonial evidence, but he had not done so. It noted Mr Killick submitted

he not be removed from the student register as the matters found proved were not a reflection of how he normally conducts himself. He was still in work and he highlighted his personal circumstances at the present time. He stated that he would probably lose his job were he to be removed from the Student Register. He described his actions as constituting one moment of madness.

38. The issue of sanction was for the Committee exercising its own professional judgement.
39. Mr Laws informed the Committee that there were no previous disciplinary matters known to ACCA.
40. The Committee carefully considered the aggravating and mitigating factors in this case. The Committee considered the following to be aggravating features:
  - The serious nature of the dishonest conduct.
41. In terms of mitigating factors, the Committee considered the following factors:
  - No previous regulatory or disciplinary matters;
  - Person of previous good character;
  - Personal and domestic circumstances;
  - Cooperation with the regulatory process;
  - Some insight into the seriousness of his actions.
42. The Committee first considered taking no action in this case. It was in no doubt that to do so would fail to mark the gravity of Mr Killick's misconduct and would undermine confidence in the profession and in ACCA as regulator.
43. Having decided that it was necessary to impose a sanction in this case, it considered the question of sanction in ascending order, starting with the least restrictive.
44. The Committee considered whether the appropriate and proportionate sanction would be an Admonishment or Reprimand, but the Committee decided that the misconduct found was too serious and that public confidence in the profession and in the Regulator would be undermined if any such orders were made.

45. The Committee then went on to consider whether a Severe Reprimand would be appropriate and proportionate in the circumstances of this case. The Committee determined that the imposition of a Severe Reprimand would not be the proportionate sanction because it was misconduct of a particularly serious nature. Honesty in respect of professional qualifications is fundamental to professional regulation. Members of the public would expect nothing less from those that are registered with professional bodies.
46. In the circumstances, the Committee determined that the only appropriate and proportionate sanction would be one of Removal from the Student Register. The dishonesty was serious. The dishonest conduct was fundamentally incompatible with continued membership of the Student Register. The Committee was in no doubt that any lesser sanction would undermine public confidence in the profession and in ACCA as its regulator. The Committee determined that removal from the Student Register for the standard minimum period of 12 months was the only proportionate response in the circumstances of this case.
47. The Committee further decided that were Mr Killick to reapply for ACCA student membership after the expiration of the 12-month period, his case be referred to the Admissions and Licensing Committee.

## **COSTS AND REASONS**

48. ACCA claimed costs of £5672 which comprised the costs of the investigation and the matters as highlighted by Mr Law in respect of the history of the matter. These cover the costs of investigation, preparation and the presentation of the case as well as the costs of the Committee Officer and of today's hearing. The Committee noted the Costs Schedule was sent to Mr Killick in advance of the hearing and he had filled in the Statement of Financial Position, he had sent it back with supporting documentation. Mr Killick submitted he did not have any spare capital at the present time and that he had mortgage outgoings. The Committee had regard to the Guidance of Costs document.
49. The Committee decided that it was appropriate to reduce costs to the sum of £4894 to reflect the fact that there was additional correspondence with witnesses in this

case which was no fault of Mr Killick. The Committee noted the personal circumstances highlighted by Mr Killick but in light of the Committee's findings, determined that the appropriate costs would be £4894.

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

50. The Committee decided that the order would be effective at the end of the expiry of the appeal period referred to in the Regulations.

**Suzan Matthews QC**  
**Chair**  
**07 July 2020**