

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Shayne Barran
Heard on:	Wednesday, 21 October 2020
Location:	Remotely via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU
Committee:	Mr Michael Cann (Chair) Mr Edward Weiss (Accountant) Mrs Diane Meikle (Lay)
Legal Adviser:	Mrs Fiona Barnett (Legal Adviser)
Persons present and capacity:	Ms Michelle Terry (ACCA Case Presenter) Ms Nkechi Onwuachi (Hearings Officer)
Observers:	Ms Melissa Fletcher
Summary	Removed from the student register
Costs:	£6,000.00

ACCA



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SERVICE OF PAPERS

1. Mr Barran did not attend the hearing.
2. The Committee was provided with a Service Bundle numbering pages 1 to 18.
3. The documents in the service bundle showed that the notice of hearing dated 23 September 2020, and accompanying documentation were sent by email to Mr Barran's registered email address on that date, together with a link and a password to access the documents. The Committee was also provided with a delivery receipt which confirmed that the email was delivered to Mr Barran's email address.
4. The Committee was satisfied that the hearing notice had been served in accordance with Regulations 10 and 22 of the Complaints and Disciplinary Regulations 2014 ("CDR"), amended 01 January 2020.

PROCEEDING IN ABSENCE

5. Ms Terry submitted that the Committee should proceed in Mr Barran's absence and referred the Committee to correspondence from Mr Barran. She said he had chosen not to attend and that there was no good reason for the Committee to adjourn.
6. In reaching its decision whether to proceed in the absence of Mr Barran, the Committee accepted the advice of the Legal Adviser. It bore in mind that whilst it has a discretion to commence and conduct proceedings in the absence of the member, it should exercise that discretion with the utmost care and caution. The Committee had regard to the factors set out by Lord Bingham in the case of *R v Jones 2002 UKHL 5* and the case of *General Medical Council v Adeogba and Visvardis 2016 EWCA Civ 162*.

7. Following service of the hearing notice, Mr Barran engaged in correspondence with ACCA in which he stated in an email dated 15 October 2020, “*Yes I am confirming it will be ok to proceed in my absence.*”
8. The Committee was satisfied that Mr Barran was aware of the hearing and had waived his right to attend. He had not sought an adjournment and there was no evidence before the Committee to suggest that he was more likely to attend on a future occasion. The Committee was also mindful that there was a public interest in completing regulatory matters expeditiously.
9. The Committee was mindful that there might be some disadvantage to Mr Barran if it proceeded in his absence, however, he had provided written responses during the investigation.
10. Having taken these factors into account, the Committee decided that there was no good reason to adjourn and that it was fair and appropriate in all the circumstances to proceed in Mr Barran’s absence.

ACCA’S APPLICATION TO AMEND ALLEGATION 1c

11. Ms Terry made an application to amend allegation 1c. This currently reads as follows:
 - c. By reason of his conduct in respect of any or all of the matters set out at 1(a) and 1(b) above, Mr Shayne Barran is guilty of misconduct pursuant to byelaw 8(a)(i).
12. Ms Terry invited the Committee to amend the Allegation so that it reads, (proposed amendment shown in bold),
 - c. By reason of his conduct in respect of any or all of the matters set out at 1(a) **and/or** 1(b) above, Mr Shayne Barran is guilty of misconduct pursuant to byelaw 8(a)(i).

13. Ms Terry submitted that the proposed amendment did not change the substance of the allegation and would not prejudice Mr Barran in the conduct of his defence.
14. The Committee accepted the advice of the Legal Adviser, who referred it to Regulation 10(5) CDR.
15. The Committee decided that the proposed amendment did not affect the substance of allegation 1c and did not prejudice Mr Barran in the conduct of his defence. It therefore granted Ms Terry's application to amend allegation 1c as proposed.

ALLEGATIONS

Allegation 1

- a. On 03 June 2019, Mr Shayne Barran, in order to be excused from sitting an ACCA exam, submitted to ACCA a false medical certificate purporting to be issued by the University Hospital of New Jersey, when it had not been issued by that or any hospital.
- b. Shayne Barran's conduct set out at 1(a) above was:
 - i. Dishonest in that Mr Barran knew the medical certificate submitted by him was false and accordingly there was no sufficient basis for him being excused from an ACCA exam; in the alternative.
 - ii. Contrary to Subsection 111 – Integrity of ACCA's Code of Ethics (2019) by reason of the conduct above.
- c. By reason of his conduct in respect of any or all of the matters set out at 1(a) and/or 1(b) above, Mr Shayne Barran is guilty of misconduct pursuant to byelaw 8(a)(i).

BRIEF BACKGROUND

16. Mr Barran became registered as an ACCA student on 15 October 2013.
17. In approximately June 2019, Mr Barran made a self-referral to ACCA in which he admitted that he had forwarded a forged Doctor's report to ACCA.
18. In its consideration of this matter, the Committee had before it a bundle of papers numbering pages 1 to 73.

DECISION ON ALLEGATIONS AND REASONS

19. The Committee accepted the advice of the Legal Adviser. In reaching its decisions, it reminded itself that the burden of proof rests with ACCA, and that the standard of proof is the civil standard, which is the balance of probabilities.
20. The Committee was also advised that when deciding any allegation of dishonesty, it should apply the test set out by Lord Hughes at paragraph 74 of *Ivey v Genting Casinos 2017 UKSC 67*, ("Ivey"). The test states that the Committee must first ascertain, subjectively, the actual state of the individual's knowledge or belief as to the facts, and whether that belief is genuinely held. Then, once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact finder by applying the (objective) standards of ordinary decent people

Allegation 1(a) – found proved

21. In reaching its decision on Allegation 1(a), the Committee had regard to correspondence between Mr Barran and ACCA.
22. Mr Barran contacted ACCA by email on 28 May 2019. In this email he stated,

"I have entered for the June sitting of exam. However, there have been a situation where my mom has fallen ill. Due to the stressful nature of

circumstances I am not in the frame of mind to focus on exams right now. Is it possible for me cancel my entry for exam in June and use the credit for later exams?”

23. Subsequent to the email of 28 May 2019, (above), Mr Barran made a self-referral to ACCA. In his self-referral, Mr Barran stated,

“I will like report an ethical issue both on my behalf as well as [Ms A] who is a full ACCA member. For my past exam sitting she help/suggested how I can get out of exams by forging a doctor’s report. Which she did and I forwarded it to you. Now she is attempting to blackmail me by say she would report me to ACCA.....I prefer contact ACCA than be blackmailed and live with on my shoulders I have come clean in hope that I can still become a member of ACCA and would be given a second chance.”

24. During ACCA’s investigation into this matter, Mr Barran responded to an email from ACCA on 02 August 2019. In this email, he said that he submitted a forged medical report because he did not think he was prepared for the exams. He said that he did not obtain a medical report, but wrote one for himself, and that the report was a, *“.....picture found on the internet and edited”*.

25. The Committee was provided with a copy of a document which purported to be issued by University Hospital of New Jersey. The note/report made reference to, *“hospital encounters”* on 22 and 25 May 2019, and reported the diagnosis as, *“tibial plateau fracture, right...”*

26. Having considered the correspondence and the report, the Committee found that Mr Barran submitted to ACCA a false medical report which purported to be issued by University Hospital of New Jersey. It was evident from Mr Barran’s responses that the report, which he accepted he found on the internet, had not been issued by that or any hospital. It was also evident from Mr Barran’s correspondence with ACCA that he submitted the report in the hope that it would excuse him from sitting the exam for which he did not think he was prepared.

27. Ms Terry referred the Committee to a further document in the bundle (at page 53), which she said included a full admission from Mr Barran. However, the Committee did not refer to this document in its deliberations, because it was unclear whether this document had been written by Mr Barran. The Committee had been provided with What's App messages between Mr Barran and Ms A, from which it was apparent that Ms A had written a "confession" for Mr Barran to send to ACCA, but that he had decided not to send it. The Committee's view was that the document at page 53 which was unsigned, could have been the document written by Ms A, and might not have been written by Mr Barran.
28. In the light of the above, the Committee found Allegation 1(a) proved.

Allegation 1(b)(i) – found proved

29. In considering whether Mr Barran's actions in Allegation 1a were dishonest, the Committee considered, as required by the test in Ivey, the actual state of his knowledge or belief as to the facts.
30. It was accepted by Mr Barran, as set out above, that the medical certificate he submitted to ACCA was not genuine and was a document he had obtained from the internet and then edited. He, therefore, knew that the document he submitted to ACCA was false and knew that his lack of preparedness was not a sufficient reason to be excused from the examination.
31. The Committee was satisfied that knowingly submitting a false document to a professional regulatory body in order to be excused from sitting an exam, was conduct which would be regarded as dishonest by the standards of ordinary decent people. It, therefore, found that Mr Barran's conduct in Allegation 1a was dishonest as alleged, and it found Allegation 1(b)(i) proved.

Allegation 1(b)(ii)

32. Having found Allegation 1(b)(i) proved, the Committee was not required to consider Allegation 1(b)(ii).

Allegation 1(c) - guilty of misconduct

33. The Committee was satisfied that Mr Barran's conduct in Allegations 1(a) and 1(b) amounted to misconduct. Dishonestly submitting a false medical certificate in order to be excused from an exam, when he had no sufficient basis for being so excused, fell seriously short of the standards expected of an ACCA student. This dishonest conduct brought discredit to Mr Barran, to the accountancy profession and to ACCA.

SANCTIONS AND REASONS

34. The Committee accepted the advice of the Legal Adviser who referred the Committee to ACCA's current Guidance on Disciplinary Sanctions. It bore in mind that it must act proportionately at this stage, balancing the member's interests against the public interest, and that any sanction imposed must be no more than necessary to meet the purpose of a disciplinary sanction.
35. The Committee identified the following aggravating factors:
- Mr Barran's conduct in preparing a false medical certificate was planned and premeditated.
36. The Committee identified the following mitigating factors:
- Mr Barran made admissions during the ACCA investigation.
 - Mr Barran has no previous disciplinary findings against him.
37. Mr Barran made a self-referral to ACCA and ACCA may not have become aware of his misconduct if he had not done so. However, the Committee decided that this did not serve as mitigation. The self-referral was made only because Mr Barran feared that Ms A, who was aware of his fraud, would refer him to ACCA.

38. The Committee considered the seriousness of the conduct found proved before deciding upon any sanction (in accordance with paragraph E3 of the Guidance). It concluded, given that Mr Barran had forged a document to misrepresent his position to ACCA, that his conduct was very serious.
39. The Committee first considered whether to conclude this case without taking further action. It concluded that to do so would not be sufficient to uphold the public interest, which included protection of the public, maintenance of public confidence in the accountancy profession, and the upholding of proper professional standards.
40. The Committee next considered whether an Admonishment would be an appropriate and proportionate sanction. Given its finding that Mr Barran had acted dishonestly, it decided that an Admonishment would not be sufficient to uphold the public interest.
41. The Committee next considered a Reprimand. The Guidance states that this sanction is usually applied, “...where the conduct is of a minor nature.....”. Having concluded that the conduct was very serious, the Committee decided that a Reprimand would not be an appropriate and proportionate sanction.
42. The Committee next considered a Severe Reprimand and considered paragraph C4 of the Guidance.
43. Mr Barran had co-operated during the investigations stage and has a previous good record with ACCA. However, the Committee bore in mind that Mr Barran’s act of forgery and sending the forged document to ACCA was deliberate.
44. Overall, there were some factors which supported a Severe Reprimand and one factor which did not. The Committee, therefore, decided to also consider Removal, and in so doing it had regard to paragraph C5 of the Guidance. The Guidance states that,

“This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a member”.

45. Mr Barran's misconduct was a serious departure from the standards expected from a student member of ACCA. He had acted dishonestly by forging a document which he then provided to his regulatory body in order to facilitate his withdrawal from an exam for which he knew he was not properly prepared.

46. The Committee also had regard to paragraph E2.2 of the Guidance, 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."

47. Whilst there were some mitigating factors, these attracted little weight when they were weighed against the aggravating factor and the fundamental purpose of a disciplinary sanction. The public could not have trust in a student accountant who had knowingly provided a false document to his regulator in order to misrepresent his true position. Mr Barran was not properly prepared for the exam, and rather than withdraw legitimately from the exam, he chose to forge a document to corroborate his reason for withdrawing, which was that his mother was ill. He knew that he was unprepared for the exam and had made the choice to act dishonestly in order to excuse himself. The Committee concluded that Mr Barran's actions were fundamentally incompatible with continued student membership of ACCA, and a Severe Reprimand would not, therefore, be sufficient or appropriate to uphold the public interest.

48. Taking into account the seriousness of the case and balancing the interests of Mr Barran, the public interest and the interests of ACCA, the Committee concluded that Removal would be the proportionate sanction in all the circumstances. Any sanction less than Removal would be insufficient to protect the public, maintain public confidence in the accountancy profession and uphold proper professional standards. The Committee, therefore ordered that Mr Barran removed from ACCA membership.

COSTS AND REASONS

49. ACCA applied for costs in the sum of £6,500.00.
50. In determining whether to make a costs order, the Committee bore in mind that Mr Barran had not provided any information about his current means. The Committee had found all the allegations proved and was satisfied that the charges were properly brought.
51. The costs requested included costs for a full day hearing. Given that the hearing was likely to take less than a full day, the Committee decided to reduce the costs to reflect this. It concluded that £6,000 was an appropriate sum.
52. The Committee, therefore, ordered that Mr Barran pay costs to ACCA in the amount of £6,000.

EFFECTIVE DATE OF ORDER

53. This Order shall take effect on the date of expiry of the appeal period referred to in the Appeal Regulations.

Mr Michael Cann
Chair
21 October 2020