

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Israr Khan

Heard on: Friday, 17 December 2021

Location: Remote via Microsoft Teams

Committee: Mr Andrew Gell (Chair)
Mr David Horne (Accountant)
Ms Rachel O'Connell (Lay)

Legal Adviser: Mr Robin Havard (Legal Adviser)

**Persons present
and capacity:** Ms Michelle Terry (ACCA Case Presenter)
Ms Anna Packowska (ACCA Hearings Officer)

Summary Removed from the student register

Costs: £5,662.00

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PRELIMINARY APPLICATIONS

SERVICE OF PAPERS

1. The Committee had considered the following documents: a hearing bundle (pages 1 to 87) and a service bundle (pages 1 to 17). The Committee had also considered legal advice which it had accepted.
2. The Committee had read the letter dated 19 November 2021 containing Notice of Proceedings, sent on the same day by ACCA by email to Mr Khan. It had noted the subsequent emails sent to Mr Khan with the necessary link and password to enable Mr Khan to gain access to the letter and the documents relating to this hearing.
3. The Committee was satisfied that such emails had been sent to his registered email address in accordance with regulation 22 of the Complaints and Disciplinary Regulations 2014 as amended ("CDR"). The Committee had noted that the emails had been delivered successfully. The emails and the documents to which Mr Khan had access also contained the necessary information in accordance with CDR10.
4. Consequently, the Committee decided that there had been effective service of proceedings on Mr Khan in accordance with CDR10 and 22.

PROCEEDING IN ABSENCE

5. On 26 November 2021, in the absence of any response from Mr Khan to the email of 19 November 2021, ACCA sent another email to him at the same email address asking him to respond, and reminding him of the date of hearing. The email had been delivered successfully. However, Mr Khan did not reply.
6. On 02 December 2021, ACCA attempted on two occasions to call Mr Khan on the mobile number registered with ACCA. On each occasion there was no reply, nor was there a facility enabling ACCA to leave a message for Mr Khan to return the call.

7. On 02 December 2021, ACCA sent an email to Mr Khan, telling him of the attempts to contact him by phone. The email also asked him if he intended to attend, making him aware of the ability to do so remotely and, if not, whether he consented to the hearing proceeding in his absence. There was no reply.
8. On 15 December 2021, ACCA sent a further email to Mr Khan with a link enabling him to join the hearing today remotely. There was no reply, nor had Mr Khan joined the hearing today.
9. The Committee was satisfied that ACCA had done everything possible to engage Mr Khan in the hearing. The Committee was satisfied that the lack of any response suggested that he had no intention of participating in the hearing, nor had he requested an adjournment.
10. The Committee found that Mr Khan had received the emails from ACCA informing him of the hearing and giving him access to the documents containing the evidence on which ACCA relied in support of the allegations. Indeed, the Committee noted that the email address of Mr Khan in the emails sent to him by ACCA regarding this hearing was the same email address as the one used by Mr Khan when he wrote to ACCA on 15 November 2020.
11. The Committee concluded that, having failed to reply to any of the emails sent to him, Mr Khan had voluntarily absented himself from the hearing, which he could have joined by telephone or video link. He had therefore waived his right to attend.
12. The Committee was also satisfied that, taking account of the seriousness of the allegations, it was in the public interest to proceed. The Committee did not consider that any benefit would be derived in adjourning the hearing and no such application had been made. Finally, the Committee considered that it was in a position to reach proper findings of fact on the written evidence presented to it by ACCA.
13. The Committee ordered that the hearing should proceed in the absence of Mr Khan.

ALLEGATIONS

Mr Israr Khan (Mr Khan), an Association of Chartered Certified Accountants ('ACCA') student:

1) Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended), Mr Khan failed to co-operate with the investigation of a complaint, in that he did not respond to any or all of ACCA's correspondence dated:

- a. 16 March 2021;
- b. 7 April 2021;
- c. 7 May 2021;

2) By reason of his conduct Mr Khan is:

- a. guilty of misconduct pursuant to bye-law 8(a)(i) in respect of any or all of the matters set out at Allegation 1 above; or in the alternative,
- b. liable to disciplinary action pursuant to bye-law 8(a)(iii)

DECISION ON FACTS, ALLEGATIONS AND REASONS

Allegation 1

14. In reaching its findings in respect of Allegation 1, the Committee relied upon the email correspondence and documents contained in ACCA's bundle and noted the Incident Report provided by the Proctor (i.e. a remote exam invigilator). The Committee also listened to legal advice, which it accepted.
15. On 16 January 2018, ACCA registered Mr Khan as a student member. As such, from that date, he was bound by ACCA's bye-laws and regulations. The Committee was satisfied that, as a student member, he had a duty to cooperate with ACCA.

16. On 30 October 2020, Mr Khan took his on-demand FA1 Recording Financial Transaction examination (the 'Exam') remotely. The proctor filed an Incident Report in respect of conduct observed during the Exam, namely a substantial number of occasions when it was alleged that Mr Khan was, "looking off screen".
17. On 11 November 2020, ACCA commenced an investigation by sending an email to Mr Khan. In that email, ACCA informed him that it had received a report regarding his conduct during the exam on 30 October 2020 and the allegation that he had been looking "off screen", which was against ACCA's Examination Regulations and Guidance.
18. On 15 November 2020, Mr Khan responded to the email regarding the report and alleged conduct, providing a response to such conduct. He said that, if ACCA had any concerns, he was prepared to re-sit the exam.
19. However, as set out below, despite ACCA attempting to contact him via email and phone, Mr Khan had not provided any further response to the correspondence sent to him during the course of the investigation.
20. All emails were sent to Mr Khan at an email address he provided to ACCA and which was consistent with the email address used by Mr Khan on 15 November 2020. The email address had not changed throughout the course of the investigation. None of the emails had been returned nor had any of them bounced back into the case management system.
21. Furthermore, ACCA used the phone number registered on Mr Khan's ACCA account and attempted to have a conversation with the person who answered. However, the person who answered the phone disconnected the call, ACCA having begun its Data Protection checks. The details of the attempts made by ACCA are set out below.
22. On 16 March 2021, ACCA sent a letter to Mr Khan's registered email address informing him of the complaint, asking him a series of questions and seeking his response by 6 April 2021. In that letter, Mr Khan was reminded of his duty

to cooperate and that any failure to do so could lead to disciplinary action. There was no reply.

23. On 18 March 2021, ACCA sent to Mr Khan video footage regarding his alleged conduct, inviting Mr Khan to observe the video before responding to the questions raised by ACCA in its letter of 16 March 2021.
24. On 07 April 2021, ACCA sent another letter to Mr Khan's registered email address reminding him of his obligation to co-operate with the investigation and seeking his response by 21 April 2021. There was no reply.
25. On 21 April 2021, ACCA sent another email to Mr Khan's registered email address asking him to confirm whether he had received ACCA's previous correspondence and advising him that he was required to respond. There was no reply.
26. On 22 April 2021, ACCA attempted to phone Mr Khan on two occasions. There was no response on the first occasion. However, on the second occasion, a person responded but, when asked to confirm their name, the person replied in their local language. When ACCA started to ask for details such as date of birth, the person disconnected the call.
27. On 22 April 2021, ACCA sent a further letter to Mr Khan's registered email address reminding him again of his obligation to co-operate and seeking his response by 29 April 2021. An accompanying email was also sent with this correspondence. There was no reply.
28. On 26 April 2021, ACCA wrote to Mr Khan with regard to an issue with the chat log previously sent to him with the letter of 16 March 2020.
29. On 07 May 2021, ACCA sent an email to Mr Khan's registered email address reminding him again of his obligation to co-operate and respond to the previous emails of 16 March 2021, 07 April 2021 and 22 April 2021. He was told to respond by 21 May 2021. There was no reply.

30. On 21 May 2021, ACCA sent a final email to Mr Khan's registered email address requesting that he confirm whether he had received ACCA's previous correspondence, restating that he was required to respond. There was no reply.
31. On the basis of the evidence, the Committee was satisfied that the emails of 16 March 2021, 07 April 2021 and 07 May 2021 had been sent to the registered email address of Mr Khan and that they had been delivered successfully. The Committee was also satisfied that Mr Khan had failed to respond to those emails. The Committee found that this represented a failure by Mr Khan to cooperate with ACCA. Indeed, he had been warned by ACCA in the correspondence that he had a duty to cooperate with ACCA and that there was a requirement for him to respond. Therefore, the Committee found the facts of allegation 1 proved.

Allegation 2(a)

32. Taking account of its findings that, despite clear warnings, Mr Khan had failed persistently to cooperate with ACCA and to respond to correspondence, the Committee was satisfied that such conduct brought discredit to Mr Khan, ACCA and the accountancy profession.
33. The need for members, including student members, to engage and cooperate with their regulator was fundamental. A failure by members to do so meant that ACCA's ability to regulate its members in order to ensure proper standards of conduct and to maintain its reputation was seriously compromised.
34. The Committee had made no findings in respect of the issues being investigated by ACCA. However, it was clear that they related to Mr Khan's conduct during an examination that raised serious issues which needed to be explored.
35. The Committee found Allegation 2(a) proved.

Allegation 2(b)

36. On the basis that this Allegation was pleaded in the alternative to Allegation 2(a), the Committee made no finding in respect of it.

SANCTION AND REASONS

37. The Committee considered what sanction, if any, to impose taking into account all it had read in the bundle of documents, ACCA's Guidance for Disciplinary Sanctions ("the Guidance"), and the principle of proportionality. It had also listened to legal advice from the Legal Adviser which it accepted.
38. The Committee considered the available sanctions in increasing order of severity having decided that it was not appropriate to conclude the case with no order.
39. The Committee was mindful of the fact that its role was not to be punitive and that the purpose of any sanction was to protect members of the public, maintain public confidence in the profession and in ACCA, and to declare and uphold proper standards of conduct and performance.
40. The Committee considered whether any mitigating or aggravating factors featured in this case.
41. The Committee accepted that there were no previous findings against Mr Khan. However, the Committee took into consideration the fact that Mr Khan was still a student member and had only been on the student register for under three years.
42. The Committee had no information regarding the personal circumstances of Mr Khan nor had it been provided with any testimonials or references as to Mr Khan's character.
43. The Committee noted that Mr Khan had engaged with the process to the extent that he had provided an initial response to ACCA on 15 November 2020 but was concerned that this represented the extent of his engagement. Mr Khan

had not shown any insight into the seriousness of his conduct in failing to respond to ACCA nor had he expressed any remorse.

44. As for aggravating features, the Committee repeated that, in failing to engage with ACCA during its investigation or in these proceedings, Mr Khan had shown neither insight nor contrition. His failure to cooperate also extended over a period of time and could not be described as an isolated incident.
45. For the same reasons, the Committee concluded that neither an admonishment nor a reprimand would represent a sufficient and proportionate outcome. Furthermore, neither sanction would adequately reflect the seriousness of the Committee's findings.
46. The Committee then considered whether a severe reprimand would be an appropriate sanction. Again, taking account of the seriousness of its findings, and reflecting on the criteria suggested in the Guidance, the Committee did not consider that a severe reprimand would be sufficient or proportionate.
47. Mr Khan had failed persistently to cooperate with his regulator, ACCA, in respect of an investigation of potentially serious allegations of misconduct. His lack of engagement, not only in relation to the investigation of his conduct during an exam but also in relation to these proceedings, represented conduct which was fundamentally incompatible with being a student member of ACCA. His lack of engagement since November 2020, and his failure to show any insight or contrition for his lack of cooperation, led the Committee to conclude that there was no guarantee that Mr Khan would at any stage behave in a manner expected of a member of ACCA.
48. The Committee had considered whether there were any reasons which were so exceptional or remarkable that it would not be necessary to remove Mr Khan from the student register but could find none.
49. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Mr Khan shall be removed from the student register.

COSTS AND REASONS

50. The Committee had been provided with a detailed breakdown of costs schedule (pages 1 and 2) and a simple costs schedule (pages 1 and 2) relating to ACCA's claim for costs.
51. The Committee concluded that ACCA was entitled to be awarded costs against Mr Khan, all allegations having been found proved. The amount of costs for which ACCA applied was £6,172.00. The Committee did not consider that the claim was unreasonable, but the hearing had taken less time than estimated.
52. Mr Khan had not provided ACCA with any documentary evidence of his means. In the correspondence sent to him, Mr Khan was warned at the outset of the importance of providing details of his financial circumstances. Furthermore, he was made aware of ACCA's intention to apply for costs.
53. In the absence of any information from Mr Khan, the Committee approached its assessment on the basis that he was able to pay any amount of costs awarded against him.
54. In all the circumstances, and in exercising its discretion, the Committee considered that it was reasonable and proportionate to award costs to ACCA in the reduced sum of £5,662.00.

EFFECTIVE DATE OF ORDER

55. The Committee had considered whether the order should have immediate effect. However, taking account of Mr Khan's removal from the student register, and the fact that he is not in practice, the Committee did not consider that he presented a risk to the public. It therefore concluded it was not in the interests of the public to make such an order.
56. The Committee decided that this order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

Mr Andrew Gell
Chair
17 December 2021