

HEARING

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

In the matter of:	Mr Adnan Khan
Heard on:	Tuesday, 09 and Wednesday, 10 August 2022
Location:	ACCA, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU. Virtual hearing via Microsoft Teams
Committee:	Mr Martin Winter (Chair) Ms Fiona MacNamara (Accountant) Ms Yvonne Walsh (Lay)
Legal Adviser:	Mr David Marshall
Persons present and capacity:	Mr Benjamin Jowett (ACCA Case Presenter) Ms Nikita Apostol (Hearings Officer) Mr Adnan Khan (the Student) Ms Zarqa Shaikh (Translator at start of day 1) Ms Hamida Begum (Translator on remainder of day 1 and day 2)
Summary:	Removed from the student register
Costs:	£200

1. The Committee heard an allegation of misconduct against Mr Khan. Mr Jowett appeared for ACCA. Mr Khan was present and represented himself through an Interpreter in Urdu.

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2. The Committee had a main bundle of papers containing 193 pages, a Supplementary bundle containing 63 pages and a Service bundle containing 28 pages. It also had a video recording lasting 1 hour, 35 minutes.

ALLEGATION(S)/BRIEF BACKGROUND

3. Mr Khan became a student of ACCA on 24 October 2019. On 19 November 2020, he was scheduled to take his first ACCA examination: FA1 Recording Financial Transactions. It was to be a '*remotely invigilated On-Demand Computer Based Exam at home*', using his own equipment. The examination was remotely invigilated by a company called 'ProctorU'. Such invigilation includes monitoring the video and audio from his computer and monitoring what was shown and typed on the computer. For example, a candidate is required to scan the laptop camera round the room so the Invigilator can see it is empty.
4. In addition to ACCA's Examination Regulations, there are specific Examination Guidelines for remotely proctored exams. These make it clear that the candidate must be in a room with the door closed and no other person present. Mobile phones and other electronic devices are prohibited unless switched off and out of reach. There is a period before the exam is allowed to begin when the remote Invigilator (called a 'proctor' by ProctorU) attempts to establish if the regulations and guidelines are being complied with. In this case, the Invigilator came to the conclusion that there were other people in the room and terminated the session before the exam had started.
5. During the course of the subsequent investigation, Mr Khan gave a number of different answers to questions that were put to him, and ACCA formed the view that he had deliberately given information which he knew was untrue.
6. Mr Khan faced the following allegations:

Allegations

Mr Adnan Khan, a student member of the Association of Chartered Certified Accountants ('ACCA'):

1. On 19 November 2020, prior and in relation to a scheduled FA1 Recording Financial Transactions examination:

- (a) Used and/or had at his desk, one or more unauthorised items, namely headphones and/or a mobile telephone, contrary to Examination Regulation 6;
- (b) Intended to use the unauthorised items described in Allegation 1(a) to gain an unfair advantage, contrary to Examination Regulations 7(b) and/or was engaged in improper conduct designed to assist him in his exam attempt contrary to Examination Regulation 10;
- (c) Any or all of Mr Khan's conduct described at Allegations 1(a) and/or (b):
 - i. Was dishonest, in that he used or intended to use any or all of the unauthorised items to gain an unfair advantage in an examination; or in the alternative,
 - ii. Demonstrates a failure to act with integrity.

2. On 19 November 2020, prior and in relation to a scheduled FA1 Recording Financial Transactions examination:

- (a) Allowed a person or persons to be in the room where he intended to take an examination, contrary to Examination Regulation 1 and the Examination Guidelines;
- (b) The conduct described at Allegation 2(a) was improper conduct designed to assist him in his exam attempt contrary to Examination Regulation 10;
- (c) Any and all of the conduct described at Allegations 2(a) and/or (b):
 - i. Was dishonest, in that Mr Khan intended to obtain assistance from the person or persons in his exam attempt; or in the alternative,
 - ii. Demonstrates a failure to act with integrity.

3. Gave inaccurate and/or misleading responses to ACCA's investigation into his scheduled examination attempt on 19 November 2020, in that:

(a) On 17 and/or 19 March 2021, he told ACCA, in response to questioning regarding:

- i. A third person in the examination room, that, *"There was no one else in my room"*;
- ii. The use of headphones, that, *"I only used headphone to translate English into Urdu"*.

(b) On 28 March 2021, he told ACCA, in response to questioning regarding

- i. A third person in the examination room, that, *"Only My brother was with me and no one else inside"*;
- ii. A third party's voice heard in video footage that, *"No the third party was not answering you the voice you heard was the speaker below. You heard his voice when I was translating Urdu to English and English into Urdu his voice was coming"*.

(c) Any or all of the conduct described at Allegations 3(a) and/or (b):

- i. Was dishonest, in that Mr Khan gave answers that he knew to be untrue and/ or sought to mislead ACCA's investigation; or, in the alternative;
- ii. Demonstrates a failure to act with integrity;
- iii. Was contrary to Complaints and Disciplinary Regulation 3(1).

4. By reason of his conduct, Mr Khan is:

- (a) Guilty of misconduct pursuant to byelaw 8(a)(i), in respect of any or all of the matters set out at Allegations 1 to 3 above; or, in the alternative;
- (b) Liable to disciplinary action pursuant to byelaw 8(a)(iii), in respect of any or all of the matters set out at Allegations 1(a), 1(b), 2(a), 2(b), 3(a), 3(b) and/or 3(c)(iii).

DECISION ON FACTS/ALLEGATION(S) AND REASONS

7. At the start of the hearing, the allegations were read, and Mr Khan admitted allegations 1(a), 2(a), 3(a)(ii), 3(c)(ii) and 3(c)(iii). The Chair announced that the facts alleged had been found proved.
8. The Committee heard evidence from an ACCA Investigations Officer who presented the video recording taken by ProctorU. This lasted for 1 hour, 35 minutes. The Committee had also viewed it previously. The witness had not been involved in this case but was able to explain remotely invigilated examinations in general. The Committee also heard evidence from Mr Khan which is considered in more detail below. It received submissions from Mr Jowett and Mr Khan and accepted the advice of the Legal Adviser.
9. Before considering the individual allegations, the Committee made findings about the sequence of events. In the material provided by ProctorU, there was no correlation between the time shown on the video, which was the elapsed time since the recording started, and the time shown on the chat log of interaction between the Proctor and Mr Khan. This was expressed as the local time for the place where the Proctor was situated. The Committee was told that this was California where the time was GMT -7 hours. Time in Pakistan, where Mr Khan was located, was GMT +5. So, the two places had a 12 hour time difference.
10. The exam was scheduled to start at 14:00 (Pakistan time). It is likely that Mr Khan connected before that time. He first communicated with a Proctor at 14:28 but at 14:40 the Proctor announced, *'We will not be continuing with the session today due to an academic integrity incident. I will be disconnecting the session at this time. Please contact ACCA for further information.'* It is obvious that the video started before this 12 minute interaction and continued after it. It seems that Mr Khan kept the video link running and at 14:50, he made contact with another ProctorU employee, not necessarily a 'Proctor'. The log states that a technician ended the session at 15:01 and it is assumed that this was when the video recording ended.
11. Mr Jowett submitted that Mr Khan was subject to the Examination Regulations for the entire duration of the video. The Committee agreed that he would have

been subject to the regulations during the setting up period. It considered that the start of this period was when he logged in to the system which caused a video recording to start. Mr Khan had taken a positive step to start the exam process. It considered that the period ended at 14:40 when the examination was effectively cancelled. However, what was shown on the video thereafter could be evidence to support alleged breaches of the exam regulations earlier.

Allegation 1

12. Allegation 1(a) was proved by admission. Mr Khan was using a mobile phone and wireless in-ear headphones (with microphone) to speak to a friend. He also had a translation app on his phone to translate English to Urdu. This was during the period when the Committee found that he was subject to the Examination Regulations and Guidelines.
13. As to Allegation 1(b), the obvious reason for using these devices was to get help. This could have been help with the answers, or it could have been help with translating the questions, given Mr Khan's poor command of the language. This would give him an unfair advantage. Mr Khan must have known that such conduct would not be permitted in any exam. He was therefore engaged in improper conduct. ACCA's evidence was sufficient to prove this allegation on the balance of probabilities.
14. Mr Khan said he was not using the devices for cheating but to help in setting up the exam and that he would not have used them once the exam had started. The Committee did not accept this. If his English was so poor that he needed this level of help simply to understand the instructions, he would have needed it to undertake the exam. Furthermore, the use of the phone was concealed. It remained in his pocket and the earphones were barely visible in the video. This suggested that he was deliberately flouting the rules.
15. The exam regulations provide that in a case like this, it is for the candidate to prove that he did not intend to use the unauthorised items. Mr Khan had not proved this. However, even without the reverse burden of proof, **the Committee was satisfied that allegation 1(b) was proved.**
16. Allegation 1(c)(i) alleged dishonesty. The Committee was satisfied that Mr Khan

acted dishonestly as he would have known that what he was doing was not allowed. He claimed not to have been aware of the examination regulations and guidance even though at 14:35, he had told the Proctor that he had read and understood the Information Sheet and Announcements. Nevertheless, any student would be aware that speaking by phone to a person outside while subject to exam conditions would be prohibited.

Allegation 2

17. Allegation 2(a) was proved by admission. Throughout the period covered by the video, there were two other people in the room who Mr Khan said were his brothers. He said they were assisting him with setting up the exam.
18. Allegation 2(b) was that this was improper conduct designed to assist Mr Khan in his exam attempt. The Committee was satisfied that it was improper conduct. Regardless of the wording of the exam regulations, any candidate would know that he would not be permitted to bring friends or relations into an exam room to help him. Their presence was deliberately concealed from the video camera. About 55 minutes into the video Mr Khan, or probably one of the other people in the room, said '*There is no one inside the room. You can check it*'. The camera then panned round the room without revealing the other people who Mr Khan admits were there. (It was at this point that the Proctor ended the session). The soundtrack of the video recording picked up some spoken exchanges between the three people in the room. They spoke in whispers, not normal voices as would have been expected if their presence was innocent.
19. The Committee was satisfied that the other people were present to assist Mr Khan, not just in setting up but in the exam itself when it started. He said that his brothers were not accountancy students but IT students but even if this was true, they could have helped with English translation. **The Committee found allegation 2(c)(i) proved.** Allegation 2(c)(ii) was in the alternative and did not need to be considered.

Allegation 3

20. Allegation 3(a)(ii) was admitted but allegation 3(a)(i) was not admitted. They were both based on the text of undisputed emails and there was no reason to

distinguish between them. The alleged statements were contained in those emails. The statements were incorrect as Mr Khan now accepts. **The Committee found allegation 3(a) proved in its entirety.**

21. Allegation 3(b) was not admitted, but again it was simply based on the text contained in emails that Mr Khan accepted were sent to ACCA in his name. The statements were incorrect as Mr Khan now accepts. **The Committee found allegation 3(b) proved in its entirety.**
22. Allegation 3(c)(i) alleged dishonesty. The Committee noted that during the investigation, Mr Khan had initially denied the allegations against him. He subsequently made a number of admissions in writing. His Case Management Form dated 16 August 2021, asked if he wished to admit any facts and he answered yes, '*I agree with all the allegation*' [sic] ... '*There is noting [sic] that i do not agree with*'. He also admitted misconduct. In correspondence, particularly an email dated 23 June 2021 he admitted that he had '*lied*' to ACCA.
23. At this hearing, Mr Khan denied dishonesty in relation to the untrue statements in his emails. He said that although lies had been told to ACCA, he had not written the emails concerned. He had paid other people to write them and had provided access to his email account for that purpose. He said that he was unaware of the contents of the emails. Mr Jowett told the Committee that this was the first time this defence had been put forward.
24. The Committee found Mr Khan's latest defence to lack credibility. Even if he had had help in drafting emails in English (which is plausible), he must have known the gist of what was being said in his name. At an earlier stage he said that he had been 'advised' to lie, which is an admission of lying, and of course he had admitted the allegation in writing. **The Committee found allegation 3(c)(i) proved.** Allegation 3(c)(ii) was in the alternative and did not need to be considered, although in fact it was admitted.
25. It was not clear if allegation 3(c)(iii) was also in the alternative but in any case, it was proved by admission.

Allegation 4

26. The Committee was satisfied that Mr Khan was guilty of misconduct. Attempts

to cheat in an exam and lying to ACCA were very serious departures from the standards expected of a student of ACCA. They brought discredit to him and to ACCA. **The Committee found allegation 4(a) proved.** Allegation 4(b) was in the alternative and did not need to be considered.

SANCTION(S) AND REASONS

27. The Committee considered what sanction, if any, to impose in the light of its findings, having regard to ACCA's Guidance for Disciplinary Sanctions.
28. It first sought to identify mitigating and aggravating factors. In mitigation, it noted that Mr Khan had no previous disciplinary findings against him, but he had only been registered with ACCA for about a year at the time of the exam. He had engaged with the investigation but in view of the Committee's findings, could not be given credit for co-operating. Mr Khan could not be credited with any insight. He continued to deny any blame even when making submissions in mitigation.
29. There were several aggravating factors. This was a deliberate and planned attempt to gain an unfair advantage. Mr Khan had three people assisting him by prior arrangement. He had access to a translation app. The dishonesty was not confined to the exam but was continued during ACCA's investigation when he paid for the drafting of untrue emails to ACCA.
30. Exam cheating is a very serious matter. It discredits ACCA's reputation by undermining confidence in the system of qualifications. It demoralises honest students. It has the potential to cause serious harm to the public if a student who does not meet the required standard manages to qualify by dishonest means.
31. The Committee considered the available and relevant sanctions in ascending order having regard to the Guidance for Disciplinary Sanctions. The Guidance makes it clear that dishonesty is a particularly serious matter for an ACCA member or student.
32. The matters found proved were far too serious to conclude this case without making an Order. The sanctions of Admonishment, and then Reprimand, are only suitable where the conduct is of a minor nature and there appears to be

no continuing risk to the public. In this case, the misconduct was too serious for these sanctions to be adequate.

33. The sanction of Severe Reprimand can be appropriate for serious misconduct if there are particular circumstances of the case or mitigation advanced which satisfy the Committee that there is no continuing risk to the public, and there is evidence of the individual's understanding and appreciation of the conduct found proved. There was no such evidence in this case. There was nothing from Mr Khan to indicate that he understood what he had done or the effect on others. There was little to show that he would not repeat his misconduct in the future if given the opportunity. Most of the significant factors in the guidance were absent in this case.
34. The next relevant sanction available was removal from the Student Register. Most of the relevant factors in the Guidance were present. The Committee considered that there was an abuse of trust in this case. Remotely invigilated exams place considerable trust in the candidate, and this was deliberately abused. Mr Khan was repeatedly dishonest over a period of time. He showed no understanding or insight. He attempted to cover up his misconduct during the investigation and colluded with others to do so.
35. The Committee concluded that Mr Khan's conduct was fundamentally incompatible with student registration. The Committee decided that removal was the minimum sanction it could impose to protect the public and mark proper standards of behaviour for ACCA registrants.
36. The Committee did not see any need to extend the period before which Mr Khan could apply for readmission.

COSTS AND REASONS

37. Mr Jowett applied for costs totalling £7,886. The Committee was satisfied that the proceedings had been properly brought and that ACCA was entitled in principle to a contribution to its costs.
38. The Committee was satisfied that the time spent, and the costs claimed were reasonable. Indeed, they were low given that this was a two day case but only one day of hearing costs had been claimed.

39. The Committee was concerned about Mr Khan's ability to meet a substantial Order for costs. He told the Committee that his income was [PRIVATE]. The Committee decided that a figure of £200 would be reasonable. He should be able to pay that off in about a year, even with some unforeseen expenses.

EFFECTIVE DATE OF ORDER

40. The Committee did not consider there was any risk to the public which required that the order take effect immediately. Mr Jowett did not argue to the contrary. This Order shall take effect at the expiry of the appeal period.

ORDER

41. The Committee **ordered** as follows:
- (a) Mr Adnan Khan shall be removed from the Student Register.
 - (b) Mr Adnan Khan shall pay the sum of £200 as a contribution towards ACCA's costs.

Mr Martin Winter
Chair
10 August 2022