

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Haseeb Shah

Heard on: 09 December 2022

Location: Remote hearing using Microsoft Teams

Committee: Mr Martin Winter (Chair)
Mr David Horne (Accountant)
Ms Jackie Alexander (Lay)

Legal Adviser: Mr David Marshall

Persons present

and capacity: Ms Ariane Tadayyon (ACCA Case Presenter)
Ms Nikita Apostol (Hearings Officer)
Mr Haseeb Shah (the Student)

Observers: None

Summary: Allegations 1,2, 3(a) and 5(a) proved.
Sanction: removal from the student register.

Costs: nil

1. The Committee met to hear an allegation of misconduct against Mr Shah, a Student of ACCA. Ms Tadayyon appeared for ACCA. Mr Shah was present and represented himself with the assistance of an interpreter for Urdu. The Committee had a hearing bundle of 142 pages, the determination it made on 03 November 2022 (3 pages), submissions by ACCA in response to the order made on 03 November 2022 (12 pages), and a service bundle of 35 pages. ACCA did not show video recordings, but it relied on stills taken from videos. These stills were included in the hearing bundle.
2. The hearing was originally planned to commence on 03 November 2022. Mr Shah attended on that date, but it became apparent that for technical reasons, he had not been able to access or read the hearing bundle. In the interests of fairness, the Committee adjourned the hearing to today and gave Directions. ACCA supported this approach. The hearing of the allegations did not start on 03 November although, there was a procedural discussion on that date involving both parties.

ALLEGATION(S)/BRIEF BACKGROUND

3. Mr Shah became a student of ACCA on 09 March 2019. On 27 July 2020 he took ACCA's FFA Financial Accounting exam. This was a computer-based exam remotely invigilated by a company called ProctorU. Such invigilation includes monitoring the candidate using the camera on his computer. In September 2020, ACCA received a complaint from an Affiliate with the subject line '*Re: Request to ban remote exams*'. The email attached three screen shots apparently showing the text of question 37 from the examination taken by Mr Shah. ACCA investigated and concluded that Mr Shah had a phone with him during the exam and used it to take photographs of an exam question. ACCA alleged that Mr Shah sent copies of these photographs to another person. He faced the following allegations.

Allegations

1. On 27 July 2020 during a remotely invigilated FFA Financial Accounting Computer Based Exam ('the exam') Mr Haseeb Shah ('Mr Shah') used a mobile phone during the exam to take photographs of an exam question in breach of Exam Regulation 6 and or Exam Regulation 14.

2. Mr Shah caused or permitted the photographs referred to in Allegation 1 to be shared with a person or persons unknown.
3. Mr Shah's conduct in respect of any or all of the matters set out above:
 - a) Was dishonest in that he took the photographs referred to in Allegation 1 and shared them as alleged in Allegation 2 to enable himself and or entrants for the same exam to obtain an unfair advantage, in the alternative;
 - b) Failed to demonstrate integrity.
4. Insofar as it is found that Mr Shah's conduct is not found to be dishonest or not in breach of the Fundamental Principle of Integrity, it is alleged that Mr Shah's conduct as referred to in Allegations 1 and 2 was reckless in that the sharing of the photographs as alleged in Allegation 2 created a clear and obvious risk that they could be seen by other entrants of the same exam in order to obtain an unfair advantage.
5. By reason of the above Mr Shah is,
 - a) Guilty of misconduct pursuant to bye-law 8(a)(i) in respect of any or all of the above, or in the alternative,
 - b) In respect of Allegation 1 only, liable to disciplinary action pursuant to byelaw 8(a)(iii)

DECISION ON FACTS/ALLEGATION(S) AND REASONS

4. At the start of today's hearing, Mr Shah admitted allegations 1, 2 and 5(b). **The Committee found allegations 1 and 2 proved.** The Committee did not make a finding on Allegation 5(b) at this stage. Allegation 5(b) was an alternative to Allegation 5(a) which was not admitted.
5. In correspondence and when attending on 03 November 2022, Mr Shah named a person who he said was the person to whom he had sent the photographs as set out in Allegation 2. He said that this person, referred to as 'Person A', was a teacher at the accountancy college where he (Mr Shah) had been studying before the exam. He said that at the time he believed Person A was a member

of ACCA. On 03 November 2022, the Committee made a direction requiring ACCA to investigate this claim.

6. ACCA found a LinkedIn profile for someone with a name similar, but not identical, to the name Mr Shah had given for Person A. The profile stated that this person was a Lecturer at the college which Mr Shah attended, and the person's education included ACCA. That person had been on ACCA's register but was administratively removed in April 2018 for failing to provide evidence of CPD and non-payment of fees. ACCA also searched its student register and found that someone with Person A's name had registered as an ACCA student through a third-party tuition provider in April 2011. This person was administratively removed from ACCA's Student Register on 1 October 2020 due to non-payment of fees.
7. The Committee concluded on the balance of probabilities that there was such a person as Mr Shah described, although it had no independent evidence of whether he was involved in the way Mr Shah alleged.

Allegation 3(a)

8. The Committee considered whether ACCA had proved, on the balance of probabilities, that Mr Shah acted dishonestly. What was alleged was that Mr Shah had taken the photographs and shared them 'to enable himself and or entrants for the same exam to obtain an unfair advantage'.
9. The Committee noted that no evidence had been put forward that anyone had in fact cheated or attempt to cheat using the images taken by Mr Shah. However, it recognised that this would be difficult to investigate. It took into account that the Affiliate referred to above had somehow got hold of copies of the photographs.
10. Ms Tadayyon submitted that Mr Shah's behaviour and evidence indicated dishonesty. He had given varying and, she submitted, inconsistent accounts of why he had taken the photographs. He had (she said) demonstrated that he knew what he was doing was wrong by covering up his laptop camera at the point when he took the pictures. Ms Tadayyon submitted that the clear inference from the facts was that Mr Shah intended to assist cheating.

11. At today's hearing, Mr Shah chose to give evidence and be cross examined. He had a moderately good level of spoken English and was able to give most of his evidence in English.
12. Mr Shah had been consistent throughout about how frustrating he found the examination process. He had always taken exams at an examination centre previously and believed he was the first of his cohort to have to take one at home, after lock downs made this normal. He had very little computer knowledge and on two previous occasions when he had connected to the system to take the exam, he had been unable to proceed. He had been able to identify himself to ProctorU, but he was unable actually to start the exam. No-one gave him any assistance. On the third occasion he was worried that this might happen again which would waste time and money which his family could not afford. The Committee accepted what he said about his frustration.
13. Mr Shah had been consistent that a teacher from his college had helped him with technical issues which was how he was able finally to take the exam. This was the person he claimed to be Person A.
14. Today and during the investigation, Mr Shah gave a number of different explanations for why he had taken the photographs. Some examples illustrate this. In an email dated 15 October 2020, Mr Shah admitted that he had a mobile phone with him but said it was '*not used for cheating purposes but just a text to avoid any calls before paper started, (sic)*'. He also said he had to have a phone with him because his '*mother was in emergency ICU in hospital*', (sic).
15. In an email sent in response to questions from ACCA dated 11 December 2020, he admitted that he photographed the exam question. He referred to the teacher from his college who had helped him with technical problems. He said:

"I took 2 or 3 pictures because my teacher forced me because he needed those pictures to guide other students. He told me that he was helping me out on this condition", (sic).
16. That was a plausible explanation by Mr Shah, made against his own interests, at an early stage of the investigation. He was suggesting that his teacher helped him to take the exam on condition that Mr Shah provide photographs of

questions. It was significant that the question he photographed, question 37, was one of the two questions carrying the highest marks in the exam.

17. After the Committee met on 03 November 2022, Mr Shah sought to change the wording of his explanation:

... "because of error in my English language I was not supposed to say that he forced me I couldn't find the word out of panic similar to this but in actual he advised me to take photograph of the exam he didn't force me", (sic).

18. Today he said that the reason for this advice was so that if there was another technical problem, he would be able to prove to ACCA that he taken some part in the exam. However, that did not explain why he had taken the three photographs necessary to record the full text of one of the most important questions in the exam.
19. In answer to a question Mr Shah said that if it had become necessary, he would have sent the photographs to ACCA. However, all three photographs before the Committee showed Mr Shah's thumb covering the camera and he admitted that he had done that because otherwise the Invigilator would have stopped him. The report from ProctorU showed that the lens had been obscured on numerous occasions during the exam.
20. Mr Shah also gave a quite different explanation in evidence which was that he sent the photograph after he completed the exam because he was so happy to have taken and passed it.
21. When questioned about his evidence Mr Shah accepted that he had taken a number of exams at examination centres and knew that it was prohibited to take a phone into an examination or to record an examination question.
22. In view of all this, the Committee did not accept Mr Shah's evidence on the key points. It was satisfied that Mr Shah took a phone into the exam and used it to photograph question 37 so as to provide the text of the question to someone else. It considered that it was more likely than not that the reason why he did that was to enable either himself or (more likely) other entrants for the same exam to obtain an unfair advantage. **The Committee found Allegation 3(a) proved.** Allegation 3(b) was in the alternative, so the Committee did not need

to consider it.

Allegation 4

23. This was in the alternative to Allegation 3 and it was not necessary for the Committee to consider it.

Allegation 5

24. The Committee was satisfied that Mr Shah was guilty of misconduct as alleged in 5(a). He acted dishonestly in photographing and sharing a key question of the exam which is a very serious matter. It was deplorable behaviour for a student. **The Committee found Allegation 5(a) proved.** Allegation 5(b) was in the alternative, so the Committee did not need to consider it.

SANCTION(S) AND REASONS

25. Having found facts proved, the Committee considered what sanction, if any, to impose having regard to ACCA's Guidance on Disciplinary Sanctions.
26. The Committee first sought to identify mitigating and aggravating factors. In mitigation, Mr Shah was of previous good character, although he had been registered for less than 18 months at the time of the exam. This was an isolated incident. He had co-operated with the investigation.
27. The Committee could only credit him with limited insight. He had been apologetic and remorseful, but he seemed mainly concerned with the disastrous consequences for himself rather than the consequences of his actions for others.
28. As to aggravating factors, this was serious misconduct in the context of a professional examination. It involved dishonesty. There had been pre-planning in that he took a phone into the exam which was itself a breach of the rules. Another person was involved. It caused harm to the integrity of ACCA's exam process. The photographs found their way into the public domain.
29. The Committee considered the available relevant sanctions. 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. In this case the misconduct was too serious for these sanctions to be adequate.

30. 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. However, few of the factors set out in the guidance were present in this case. Mr Shah had a previous good record, there had been no repetition and he had co-operated during the investigation. On the other hand, the misconduct was intentional and premeditated. It caused harm by undermining the integrity of the exam process. As already stated, Mr Shah had only limited insight and had not made what the Committee regarded as genuine expressions of regret/apologies. There had been no corrective steps and there were no references.
31. The Committee regarded the exam process as a key part of ACCA's function. It was the foundation of the system of professional regulation. Finding himself in a difficult situation, Mr Shah resorted to dishonesty. The fact that his dishonesty would enable others to cheat made his misconduct worse. The Committee considered that his behaviour was incompatible with membership of ACCA at this time. It concluded that the minimum sanction it could impose was removal from the student register.

COSTS AND REASONS

32. ACCA applied for costs totalling £9,226.50. The Committee was satisfied that these proceedings were properly brought and that, in principle, ACCA was entitled to a contribution to its costs.
33. As to the amount of the costs, Ms Tadayyon acknowledged that the schedule had been prepared on the basis of a two-day hearing. In fact, the first day was not effective and only lasted a short time. She accepted that a significant reduction should be made.
34. In this case, the Committee considered that the limiting factor would not be the precise amount properly incurred in costs but the ability of Mr Shah to pay. [PRIVATE]. He was trying to improve himself by an internship role as an

assistant accountant, but this was unpaid. He produced evidence. The Committee concluded that Mr Shah would be unable to make any significant contribution to ACCA's costs.

35. The Committee considered whether, as a matter of principle, it should order a token amount to be paid. That would be an amount that would be nominal in UK terms such as £100, although it could be very significant to someone in Mr Shah's position. It decided that this would not be a proper exercise of discretion in this case. It could cause hardship to Mr Shah while being of no benefit to ACCA and its members.

ORDER

36. The Committee **ordered** as follows:
- (a) Mr Haseeb Shah is to be removed from the student register.
 - (b) Mr Shah is not required to make a contribution to ACCA's costs.

EFFECTIVE DATE OF ORDER

37. This order will take effect at the expiry of the appeal period.

Mr Martin Winter
Chair
09 December 2022