

HEARING

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

In the matter of: Mr Muhammad Faraz

Heard on: Tuesday, 13 December 2022

Location: Held remotely by videoconference via ACCA offices, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU

Committee: Ms Ilana Tessler (Chair)
Dr Beth Picton (Accountant)
Mr Geoffrey Baines (Lay)

Legal Adviser: Mr David Mason

**Persons present
and capacity:** Ms Afshan Ali (ACCA Case Presenter)
Ms Geraldine Murray (ACCA Hearings Officer)

Summary Removed from the student register

Costs: £5952.00

SERVICE OF PAPERS

1. Ms Ali on behalf of ACCA submitted that the student had been properly served with notice of the hearing in accordance with Regulations 10 and 22 of the Complaints and

ACCA



+44 (0)20 7059 5000



info@accaglobal.com

www.accaglobal.com

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

Disciplinary Regulations 2014 as amended. She said that the notice of hearing had been sent on 15 November 2022 to an email address supplied by the student. She submitted that this gave the necessary period of 28 days' notice.

2. The Committee accepted the advice of the Legal Adviser, who advised that the duty upon ACCA was to prove that the notice had been sent in accordance with Rule 10, not that it had been received.
3. The Committee was satisfied that the notice of hearing had been sent to an email address provided by the student. It found there was no indication that the email sending the notice had not been received or was ineffective. The Committee concluded that service had been properly effected in accordance with the Rules and that it provided the necessary 28 days' notice

PROCEEDING IN ABSENCE

4. Ms Ali made an application that the hearing should proceed in the absence of the student. She informed the Committee that following the service of the notice of hearing, attempts had been made by ACCA to speak to the student by phone on 29 November 2022, 06 December 2022 and 12 December 2022. She said that all of these attempts to phone the student had been followed by emails to the email address on the Register and that the calls had not been answered, except that on 12 December 2022 the call had been answered on the last of three calls made but that it had not been possible to speak to the student. She submitted that an adjournment would be unlikely to result in the student attending a later hearing and that it was in the public interest to proceed in his absence.
5. The Committee accepted the advice of the Legal Adviser. He advised that in deciding whether to proceed in the absence of the student, the Committee should proceed with great care and caution and consider fairness to both parties and the public interest in concluding cases in a reasonable time. He advised that the Committee should consider whether an adjournment was appropriate and whether the student could receive a fair hearing in his absence. The Legal Adviser advised that there was a duty on a student to cooperate with ACCA in its investigations and hearings and to maintain an effective

address for service.

6. The Committee concluded that it was fair, proportionate and in the public interest to proceed in the absence of the student. It found that an adjournment was unlikely to result in his attendance and that there was a public interest in concluding the case in a reasonable time. It was clear to the Committee that the student was not engaging with ACCA and that there was no reason not to proceed in his absence.

ALLEGATION(S)/BRIEF BACKGROUND

7. The Allegations

Mr Muhammad Faraz (Mr Faraz), an Association of Chartered Certified Accountants ('ACCA') student:

1. *Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended and in force at the time), 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. *11 April 2021;*
 - b. *05 May 2021;*
 - c. *17 May 2021;*
 - d. *08 June 2021;*
 - e. *23 June 2021.*
2. *By reason of his conduct Mr Faraz 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).*

8. The facts as set out by ACCA in its written submissions are as follows:

On 09 January 2019, ACCA registered Mr Faraz as a student. As such, he is bound by ACCA's byelaws and Regulations.

On 06 December 2020, Mr Faraz took his on-demand FA2 Maintaining Financial Records (the 'FA2 Exam') remotely. The proctor (remote exam invigilator) filed an Incident Report in respect of conduct observed (looking off- screen and it appeared Mr Faraz was getting help from someone) during the Exam).

An investigation was commenced, where further enquires revealed that an additional Incident Report was filed in respect of conduct observed in Mr Faraz's attempt at his MA2 Managing Costs and Finance examination (the 'MA2 Exam') on 06 December 2020. This exam and conduct (looking off screen) subsequently also became subject to investigation.

Mr Faraz has not provided any response to the correspondence sent to him during the course of the investigation. All emails were sent to Mr Faraz at an email address he provided to ACCA. The email address has not changed throughout the course of the investigation. None of the emails have been returned or bounced back into the case management system.

On 13 October 2021, ACCA sent an email to the Connect team to confirm whether Mr Faraz's email had changed at any point during the investigation or since he registered with ACCA on 09 January 2019 (page 117). On 14 October 2021, the Connect team confirmed Mr Faraz's email address had not changed since he registered with ACCA.

On 11 April 2021, ACCA sent a letter to Mr Faraz's registered email address informing him of the complaint regarding his FA2 Maintaining Financial Records examination and seeking his response by 02 May 2021. No response was received.

On 05 May 2021, ACCA sent another letter to Mr Faraz's registered email address reminding him of his obligation to co-operate with the investigation and seeking his response by 19 May 2021. No response was received.

On 17 May 2021, ACCA sent another email to Mr Faraz's registered email address with further questions and enquiries regarding his MA2 Managing Costs and Finance examination. Again, no response was received.

On 08 June 2021, ACCA sent another letter to Mr Faraz's registered email address reminding him of his obligation to co-operate with the investigation and seeking his response by 22 June 2021.

A following accompanying email was also sent with this correspondence explaining some encrypted emails are sent to the junk folder and Mr Faraz should ensure he checks both inboxes. No response was received.

On 23 June 2021, ACCA sent a final letter to Mr Faraz's registered email address reminding him again of his obligation to co-operate and again seeking his response by 30 June 2021. A following accompanying email was also sent with this correspondence. No response was received.

DECISION ON FACTS/ALLEGATION(S) AND REASONS

9. On behalf of ACCA Ms Ali referred the Committee to the facts and the failure by the student to respond to correspondence sent to him. She submitted that the student had a duty to cooperate with ACCA when an investigation under the Regulations was being undertaken. Ms Ali referred the Committee to Regulation 3(1) of the Complaints and Disciplinary Regulations:

Duty to co-operate

...

- (a) *Every relevant person is under a duty to co-operate with any Investigating Officer and any assessor in relation to the consideration and investigation of any complaint.*

(b) The duty to co-operate includes providing promptly such information, books, papers or records as the Investigating Officer or assessor may from time to time require.

(c) A failure or partial failure to co-operate fully with the consideration or investigation of a complaint shall constitute a breach of these Regulations and may render the relevant person liable to disciplinary action.

10. Ms Ali submitted that the failure to cooperate was unprofessional and had prevented the completion of an investigation. She further submitted that the duty to engage was fundamental in protecting the public and the public interest. Ms Ali submitted that the student's behaviour amounted to misconduct, or in the alternative that it rendered the student subject to disciplinary proceedings.
11. The Committee accepted the advice of the Legal Adviser that in relation to the facts, the duty was upon ACCA to prove its case to the civil standard, proof on a balance of probabilities.
12. The Committee considered each part of the Allegation individually and decided whether ACCA had proved the facts on a balance of probabilities. It noted that the last communication received by ACCA from the student was in January 2021. The Committee was satisfied that there had been no response to the correspondence set out in the Allegation when the student was under a duty to respond. It therefore found the facts alleged at 1(a)-(e) of the Allegation proved to the required standard.
13. The Committee went on to consider whether on the basis of the facts found proved the student was guilty of misconduct. It considered that the failure to cooperate with ACCA was serious and had prevented it from carrying out an investigation. It was clear to the Committee that there was a pattern of behaviour in which the student had failed to cooperate, which hindered the duty of ACCA to protect the public and to maintain standards and the reputation of the profession in the public interest. The Committee considered that the conduct of the student fell seriously below the standards to be expected. The Committee found that the student was in breach of part 2(a) of the Allegation and did not therefore go on to consider part 2(b).

SANCTION AND REASON(S)

14. On behalf of ACCA Ms Ali referred the Committee to Rule 13 which sets out the sanctions open to the Committee. She also referred to ACCA's Guidance in relation to disciplinary action against students. Ms Ali said what sanction to apply was a matter of judgement for the Committee. She submitted that the Committee should consider the sanctions open to it in ascending order of seriousness and that it should apply the principle of proportionality. Ms Ali said that the only mitigating circumstance in the student's favour was the lack of any previous disciplinary action against the student.
15. The Committee accepted the advice of the Legal Adviser. He advised that the purpose of sanction was not punitive but was to protect the public and the public interest and that the Committee should apply the principle of proportionality. He advised the Committee to consider the sanctions open to it from the least serious in ascending order of seriousness.
16. The Committee in its deliberations took account of the appropriate ACCA Guidance. It took account of the mitigating factor in the student's favour that he had no previous history of disciplinary proceedings. It also took account of the aggravating feature of his misconduct in that it was serious and showed a pattern of behaviour. The Committee had before it no evidence of insight or remorse.
17. The Committee considered sanctions in ascending order, considering first whether to take no action, or to issue a reprimand or admonition. It considered that these did not meet the seriousness of its findings. The Committee then considered whether the sanction of a severe reprimand was appropriate and sufficient to protect the public and the public interest. It concluded that the only appropriate and proportionate sanction to meet the need to protect the public and the public interest was removal of the student from the Student Register. The Committee considered that the student's conduct was fundamentally incompatible with continued registration and that the sanction of removal was

proportionate and the least sanction it could impose to protect the public and meet the public interest.

COSTS AND REASON(S)

18. Ms Ali referred the Committee to a Schedule of Costs and made an application that the Committee may order the student to pay those costs, or any lesser sum it considered to be reasonable.
19. The Legal Adviser advised that the Committee should take into account that it had no information about the student's circumstances or ability to pay costs.
20. The Committee considered the costs claimed. In relation to the costs claimed for the attendance of the Case Presenter and Hearings Officer at the hearing, it took into account that the hearing had been shorter than the time predicted in the Schedule of Costs. It made appropriate adjustments to the figures for these claims and allowed £660 for the attendance of the Case Presenter and £240 for the attendance of the Hearings Officer, taking account of the work she would have to do after the completion of the hearing.
21. The Committee ordered that the student pay a total sum for costs of £5952. It considered that this sum is fair and proportionate in relation to the costs incurred by ACCA in bringing the case to a hearing.

EFFECTIVE DATE OF ORDER

22. The orders for sanction and costs will come into effect at the end of the appeal period.

Ms Ilana Tessler
Chair
13 December 2022