

HEARING

**DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF
CHARTERED CERTIFIED ACCOUNTANTS**

REASONS FOR DECISION

In the matter of:	Mr Muhammad Saad
Heard on:	Friday, 16 December 2022
Location:	Held Remotely by video conference
Committee:	Mrs Carolyn Tetlow (Chair) Mr Peter Brown (Accountant) Ms Sue Heads (Lay)
Legal Adviser:	Ms Helen Gower (Legal Adviser)
Persons present and capacity:	Ms Michelle Terry (ACCA Case Presenter) Ms Nyero Abboh (Hearings Officer)
Summary	Allegations 1), 2) and 3a) found proved. Removal from student register
Costs:	£5800

INTRODUCTION

1. The Disciplinary Committee (*“the Committee”*) convened to consider a number of allegations against Mr Saad. Mr Saad was not present and was unrepresented.
2. The papers before the Committee were in a main bundle numbered 1 to 107. There were also 3 additional: a service bundle (pages 1 to 15), and a Case Management Form (pages 1 to 21). ACCA also supplied video footage of approximately 57 minutes of a remotely invigilated examination undertaken by Mr Saad on 20 February 2021.

SERVICE OF PAPERS

3. The Committee first considered whether the appropriate documents had been served in accordance with the Complaints and Disciplinary Regulations (*"the Regulations"*). The Committee took into account the submissions made by Ms Terry on behalf of ACCA and also took into account the advice of the Legal Adviser.
4. Included within the bundle was the Notice of Hearing dated 18 November 2022, thereby satisfying the 28-day notice requirement, which had been sent to Mr Saad's email address as it appears on the ACCA register. The Notice included details about the correct time, date and remote venue of the hearing, it also notified Mr Saad of the option to attend the hearing by telephone or video link and to be represented, if he wished. Additionally, the Notice provided details about applying for an adjournment and the Committee's power to proceed in his absence if considered appropriate.
5. The Committee also had sight of a call note dated 12 December 2022 which recorded attempts made by ACCA's Hearings Officer to speak to Mr Saad. The note recorded there was an automated message advising that the number could not be reached and there was no opportunity to leave a voice message. A follow up email dated 12 December 2022 was sent to Mr Saad, but there was no response. The Committee was informed at the start of the hearing on 16 December 2022 that a further telephone had been made to Mr Saad prior to the start of the hearing at 8.20 a.m. The call was not answered.
6. The Committee, having considered the relevant documents, was satisfied that Notice had been served in accordance with the Regulations.

PROCEEDING IN ABSENCE

7. The Committee took into account information in the main bundle on the extent of Mr Saad's engagement with ACCA. Mr Saad sent an email to ACCA dated 25 February 2021 from his registered email address requesting that a fair investigation should be conducted into his case. On 26 October 2021, he sent a brief email from the same email address saying, *"thank you for the information"*. In a telephone call on 17 October 2022, Mr Saad acknowledged that he had received an email sent to him attaching the Case Management Form, but when he was asked another question, no response was received although the call was still connected. In a second telephone call on 18 October

2022, the call was answered, but then immediately terminated. Mr Saad had not completed ACCA's Disciplinary Committee Case Management Form.

8. The Committee inferred from all the information in the service bundle and the main bundle that Mr Saad had access to emails sent by ACCA to his registered email address, that he was or should be aware of the hearing, and that his absence was voluntary. The Committee was of the view that an adjournment would serve no useful purpose as there was nothing to indicate that Mr Saad would attend on a different date and no application for an adjournment had been made by him. The events in question occurred almost two years ago and the Committee was of the view that there was a strong public interest that the matter was dealt with expeditiously. In all the circumstances, the Committee decided that it was in the public interest and the interests of justice that the matter should proceed, notwithstanding the absence of Mr Saad.

ALLEGATIONS

9. Mr Saad faced the following allegations:

Mr Muhammad Saad a student member of ACCA:

1. On 20 February 2021, during a remotely invigilated Financial Accounting examination (the Exam), Mr Saad caused or permitted a third party to be present with him during all or part of the Exam, thus failing to comply with instructions provided to him by ACCA before the Exam and contained in ACCA's 'Information Sheet for On-Demand CBE Students', that he should ensure he was in a room with no one else around him, contrary to Examination Regulation 2.
2. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended and in force at the time), Mr Saad failed to co-operate with the investigation of a complaint, in that he did not respond fully to any or all of ACCA's correspondence dated:
 - a. 04 May 2021;
 - b. 01 June 2021;
 - c. 15 June 2021;

- d. 22 September 2021;
- e. 04 October 2021.

3. By reason of his conduct at allegations 1 and/or 2 above, Mr Saad is:

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

BACKGROUND

- 10. Mr Saad is currently an ACCA student. He was admitted to the ACCA student register on 13 July 2020.
- 11. On 20 February 2021, Mr Saad was due to take an On-Demand FFA Financial Accounting examination remotely. On the day of the exam, the online Proctor (the remote invigilator) filed an Incident Report noting concerns that they *“noticed and heard someone assisting the test-taker with their exam”*. Mr Saad emailed ACCA on 25 February 2021 and 28 March 2021 denying any wrongdoing during the exam and requesting that his ACCA account be reopened so that he could book further exams.
- 12. An investigation was subsequently commenced due to the concerns raised. During ACCA’s investigation, emails were sent to Mr Saad at an email address he registered with ACCA inviting his comments and asking questions. Mr Saad did not reply to any of the correspondence during the investigation. All the emails sent to Mr Saad detailed his duty to co-operate with ACCA and they set out how a failure to do so may render him liable to disciplinary action. ACCA sent the following emails to Mr Saad’s email address:
 - 04 May 2021 letter sent by email summarising the investigation heads of complaint, requesting a response from Mr Saad by 25 May 2021 to questions and requests for information;
 - 01 June 2021 email referring to the 04 May 2021 letter and requesting a response by no later than 15 June 2021;

- 15 June 2021 email asking Mr Saad to comply with answering the questions sent on 04 May 2021 and 01 June 2021;
 - 22 September 2021 letter sent by email containing a translation from the video footage, translating words allegedly spoken during the exam and asking Mr Saad to answer additional questions together with the questions in the 04 May 2021 letter by 29 September 2021;
 - 04 October 2021 email asking Mr Saad to comply with answering all the questions by no later than 11 October 2021.
13. ACCA also sent email correspondence to Mr Saad on 12 October 2021, 16 October 2021, 26 October 2021, advising him of the progress of ACCA's investigation and inviting his response. As noted above, Mr Saad sent a brief acknowledgement of the video evidence in an email dated 26 October 2021.

DECISION ON FACTS

Allegation 1 – proved

14. Prior to the Exam, students are provided with ACCA's Information Sheet which includes the following instruction from ACCA that the student will "*be located in a private, well-lit room with no one else around you*".
15. The Committee reviewed the exam video footage of Mr Saad on 20 February 2021 that had been provided. At a point within the footage, a third party is visible in the testing area to Mr Saad's right-hand side, and at another point the door behind Mr Saad is opened and closed. On the video audio, there are several occasions when third party whispering can be heard. The Committee concluded that it was more likely than not that a third party was in the room contrary to the instructions provided to Mr Saad by ACCA. The video footage showed that Mr Saad was completing the examination in a small room and that the third party was in his close vicinity. Consequently, Mr Saad was not located in a room with no one else around him.

16. The Committee noted that Mr Saad did not react or object to the presence of the third party and it concluded that Mr Saad had caused or permitted the third party to be present in the room.
17. Examination Regulation 2 requires exam candidates *“to comply in all respects with any instructions issued by the exam supervisor/s, invigilator/s, proctor/s, and any ACCA personnel before, during and at the conclusion of an exam”*. ACCA’s Information Sheet contains instructions, issued by ACCA personnel in respect of the remotely invigilated examination carried out by Mr Saad, that there should be no one else around him.
18. Taking everything together, the Committee was satisfied that there was sufficient evidence to find allegation 1 proved to the requisite standard.

Allegation 2 – proved

19. The Committee reviewed the documentary evidence in the form of emails dated 04 May 2021, 01 June 2021, 15 June 2021, 22 September 2021 and 04 October 2021 sent to Mr Saad’s registered email address. None of the emails have been returned to ACCA or bounced back into the case management system.
20. Mr Saad did not acknowledge or respond to any of the emails. The Committee reviewed the documentary evidence and noted that Mr Saad sent emails to ACCA from his registered email address which pre-date and post-date the series of emails in question. Mr Saad’s emails are dated 25 February 2021, 26 February 2021, 28 March 2021 and 26 October 2021. The Committee also noted evidence in October 2022 of Mr Saad’s disengagement with two attempts made by ACCA to contact him by telephone in relation to his completion of the Case Management Form. The Committee inferred from this evidence that Mr Saad had received the emails and had chosen not to reply to them.
21. The Committee noted ACCA’s records from its case management system indicating the dates and times that Mr Saad had “opened” the emails. However, it placed limited weight on this evidence because there was no evidence to explain the operation of the case management system and Ms Terry was not able to explain the detail of the system or how the dates and times the emails had first been opened, had been established.
22. The Committee was satisfied that Mr Saad had not responded to any of the emails and that his lack of response amounted to a failure to cooperate with an ACCA Investigation

and a breach of Regulation 3 of the Complaints and Disciplinary Regulations 2014 (as amended).

23. The Committee therefore found allegation 2 proved.

Allegation 3(a) – proved

24. Having found all the facts of the allegations proved, the Committee went on to consider whether they amounted to misconduct.
25. The Committee considered that Mr Saad's failure to follow the instructions provided to him in respect of the conduct of the exam amounted to misconduct. Adherence to exam instructions is essential to maintain the integrity of the assessment process and failure to do so could undermine public confidence in ACCA as a regulator.
26. The Committee was also satisfied that Mr Saad's failure to co-operate with an investigation that was being carried out by his regulator into his alleged misconduct, was a serious matter. ACCA relies on the co-operation of its members and student members to carry out its functions as a regulator. A failure to co-operate, not only undermines ACCA's ability to function effectively but also has the potential to undermine its standing as a professional body.
27. The Committee was satisfied that Mr Saad's conduct in both allegation 1 and 2 represented a serious departure from professional standards and brought discredit upon Mr Saad and also upon ACCA as his regulator.
28. It therefore decided that Mr Saad's behaviour in failing to comply with examination instructions contrary to Examination Regulation 2 and his failure to co-operate with ACCA's investigation of a complaint, considered both separately and together, amounted to misconduct under bye-law 8(a).

Allegation 3(b)

29. Having found the behaviour amounted to misconduct, it was not necessary for the Committee to also consider whether Mr Saad was liable to disciplinary action, since this was alleged in the alternative.

SANCTIONS AND REASONS

30. The Committee considered what sanction, if any, to impose, taking into account all the information provided in the bundle of documents, ACCA's Guidance for Disciplinary Sanctions, and the principle of proportionality. It had also listened to legal advice from the Legal Adviser, which it accepted.
31. 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.
32. 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.
33. The Committee considered whether any mitigating or aggravating factors featured in this case.
34. The Committee accepted that there were no previous findings against Mr Saad. However, it did not find that this amounted to a mitigating factor bearing in mind the short period of time in which he had been a student member. The Committee had no information regarding Mr Saad's personal circumstances as no information had been provided by him in this regard. Overall, the Committee found there to be no mitigation.
35. The Committee considered that aggravating features of the failure to comply with Examination Regulation 2 were the breach of a fundamental requirement which had the potential to undermine an ACCA qualification and that the conduct was contrary to the ethical principles of the profession and a breach of the trust placed in Mr Saad as an ACCA student. The aggravating features of the failure to co-operate were that the conduct was repeated on a number of occasions over a period of six months and that the requirement to co-operate with an ACCA investigation is a fundamental obligation. A further aggravating feature which applied to both allegations was the absence of any evidence of insight or remediation.
36. The Committee's view was that both allegations were at the high end of the scale of seriousness for a student member of ACCA. A high degree of trust is placed in students in permitting them to participate in examinations remotely rather than in traditional

formats and Mr Saad's conduct was a clear breach of that trust. The sustained failure to co-operate with the investigation was also very serious because it limits ACCA's ability to carry out its important regulatory function.

37. The Committee moved on to consider the range of potential sanctions. It concluded that neither an admonishment nor reprimand would adequately reflect the seriousness of its findings. In particular, the Committee considered that the public needs to be able to trust the conduct of future ACCA members and have confidence in the ACCA as a regulator. There was also no evidence of any corrective steps taken by Mr Saad to ensure future misconduct did not occur and he had demonstrated no insight into his failings.
38. The Committee then considered whether a severe reprimand would be an appropriate sanction. Again, taking account of the seriousness of its findings, the Committee did not consider that a severe reprimand would be sufficient or proportionate. The Committee had regard to ACCA's Guidance for Disciplinary Sanctions and did not consider that the factors indicating that this sanction may be appropriate were present.
39. The Committee considered the other sanctions available to it in Regulation 13 of the Complaints and Disciplinary Regulations. It did not consider that the options of declaring Mr Saad ineligible to be admitted to membership for a specified period, declaring him ineligible to sit examinations for a specified period, or that a specified period should not be reckoned as part of his accountancy experience would be appropriate or sufficient to protect the public interest. There is no indication that Mr Saad has any understanding of the seriousness of his conduct, and informed members of the public would be very concerned if the Committee were to impose a sanction which envisaged Mr Saad's continuation as a student of ACCA.
40. Mr Saad had been found to have failed to comply with instructions provided to him in respect of the conduct of an exam and had failed to co-operate with an ACCA investigation. Such conduct amounts to a serious departure from the standard expected of student members and is fundamentally incompatible with student membership. In all the circumstances, the Committee considered that the only appropriate, proportionate and sufficient sanction was to order Mr Saad be removed from the student register. The Committee did not consider it necessary to order a minimum period before which an application for readmission may be considered.

COSTS AND REASONS

41. The Committee had been provided with a 5-page costs bundle which it considered, together with the submissions made by ACCA. No information had been submitted by Mr Saad in respect of his financial or personal circumstances, although the opportunity to do so had been offered to him.
42. The Committee concluded that ACCA was entitled to be awarded costs against Mr Saad on the basis that all the allegations had been found proved.
43. £6,501.00 in costs were applied for by ACCA. Mr Saad had not responded to ACCA's invitation to him to provide information about his financial means. The Committee noted that Mr Saad is a student, but it also took into account the absence of any information about his circumstances and the principle that the costs should not fall on the membership of ACCA as a whole. The Committee therefore decided that there should be no reduction in costs as a result of Mr Saad's circumstances.
44. The detailed costs schedule included an estimated element for attendance at the hearing for the Case Presenter and Committee Officer. Ms Terry acknowledged that the length of the hearing was less than the estimated time. The Committee did not consider it appropriate for the full costs for attending the hearing to be awarded. In all the circumstances, the Committee considered that £5,800.00 was the reasonable and proportionate amount to award as a contribution to the costs incurred by ACCA.

EFFECTIVE DATE OF ORDER

45. This Order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations. The Committee considered whether the sanction should have immediate effect but decided that its decision to remove Mr Saad from the student register was sufficient to protect the public interest, given that Mr Saad is not currently able to complete any ACCA examinations.

Ms Carolyn Tetlow
Chair
16 December 2022