

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Al Shabaz
Heard on:	Tuesday, 20 December 2022
Location:	Held Remotely by video conference
Committee:	Mr Michael Cann (Chair) Ms Wanda Rossiter (Accountant) Mrs Victoria Smith (Lay)
Legal Adviser:	Mr Richard Ferry-Swainson (Legal Adviser)
Persons present and capacity:	Ms Afshan Ali (ACCA Case Presenter) Ms Nyero Abboh (Hearings Officer)
Summary	All facts and misconduct found proved. Removal from student register with immediate effect
Costs:	£5000

INTRODUCTION/SERVICE OF PAPERS

1. The Disciplinary Committee (“the Committee”) convened to consider an allegation against Mr Al Shabaz. Mr Shabaz did not participate in the hearing, nor was he represented.

2. The papers before the Committee were in a bundle numbered 1 to 121, together with an additional bundle of two pages and three tabled additional bundles numbered 1 to 15, 1 to 3 and 1 to 11. The Committee was also provided with what was described as an *“Incomplete Case Management Form”* of 21 pages. There was also a service bundle numbered 1 to 12 and a costs bundle.

PROCEEDING IN ABSENCE

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 Ali on behalf of ACCA and also took into account the advice of the Legal Adviser.
4. Included within the service bundle was the Notice of Hearing dated 22 November 2022, thereby satisfying the requirement to notify Mr Shabaz of the date of his resumed hearing. The email was sent to Mr Shabaz’s email address as it appears in the ACCA Register. There was a receipt confirming the email had been delivered. The papers were also sent by courier to Mr Shabaz’s registered home address in India and the Committee was provided with a Courier delivery note indicating the papers were delivered on 6 December 2022.
5. The Committee was satisfied that the Notice had been served in accordance with the Regulations, which require ACCA to prove that the documents were sent, not that they were received. Having so determined, the Committee then considered whether to proceed in Mr Shabaz’s absence. The Committee bore in mind that although it had a discretion to proceed in the absence of Mr Shabaz, it should exercise that discretion with the utmost care and caution, particularly as Mr Shabaz was unrepresented.
6. The Committee noted that this case involved allegations of Mr Shabaz not cooperating with an investigation by ACCA by not responding to emails sent to him on three separate dates in 2021. The Committee also noted that when the case was originally listed in May 2022, Mr Shabaz had attended, but that hearing was adjourned because Mr Shabaz said he had been unable to view the papers in the case. The next, and last, contact with Mr Shabaz was an email to the Hearings Officer dated 1 June 2022, in which he said, *“Mam I have*

received a mail of ACCA hearings and I have gone through it.” All attempts to get in touch with him since, by phone and email, have gone unanswered. They include attempts to telephone him on 15 and 19 December 2022 and an email sent to him on 19 December 2022.

7. The Committee noted that Mr Shabaz faced serious allegations and that there was a clear public interest in the matter being dealt with expeditiously. The Committee considered an adjournment would serve no useful purpose because it seemed unlikely that Mr Shabaz would attend on any other occasion and he had not applied for one. In light of his failure to engage with ACCA since 1 June 2022, the Committee concluded that Mr Shabaz had voluntarily absented himself from the hearing and thereby waived his right to be present and to be represented at this hearing.
8. In all the circumstances, the Committee decided that it was in the interests of justice and in the public interest that the matter should proceed, notwithstanding the absence of Mr Shabaz. No adverse inference would be drawn from his non-attendance.

ALLEGATIONS/BRIEF BACKGROUND

9. It is alleged that Mr Shabaz is liable to disciplinary action on the basis of the following Allegations:

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

- 1) *Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended), failed to co-operate with the investigation of a complaint, in that he did not provide a sufficient response and/or respond fully to any or all of ACCA's correspondence dated:*
 - a. *16 March 2021;*
 - b. *7 April 2021;*
 - c. *21 April 2021.*

- 2) *By reason of his conduct in respect of any or all of the matters set out at Allegation 1, Mr Shabaz 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)*
10. On 23 December 2019, ACCA registered Mr Shabaz as a student.
11. All students are required to comply with ACCA bye-laws and Regulations.
12. On 12 October 2020, Mr Shabaz was taking his on-demand FR Financial Reporting examination (the 'Exam') remotely. The exam was stopped by the proctor when they heard another person talking to the candidate during their exam. Further scrutiny of the evidence revealed that Mr Shabaz had apparently used a phone whilst in the exam room. This is strictly prohibited whilst taking an exam. The Committee was provided with screen shots showing Mr Shabaz holding a mobile phone whilst sitting the exam.
13. ACCA's Investigations Department opened an investigation of this complaint on 25 November 2020, based on documents received from ACCA Computer Based Exam Delivery Department team.
14. On 4 Feb 2021, Mr Shabaz sent an email to ACCA saying his account was not showing as active. He used the same email address as recorded on ACCA's Register and used by ACCA to correspond with Mr Shabaz.
15. On 16 March 2021, ACCA sent a letter to Mr Shabaz's registered email address informing him of the complaint and seeking his response by 6 April 2021. No response was received. The letter also pointed out his duty to co-operate with the investigation.
16. On 7 April 2021, ACCA sent another letter to Mr Shabaz's registered email address reminding him of his obligation to co-operate with the investigation and seeking his response by 21 April 2021. No response was received to that letter.
17. On 21 April 2021, ACCA sent a further letter to Mr Shabaz's registered email address reminding him again of his obligation to co-operate and seeking his response by 21 May 2021. Again, no response was received to that particular letter.

18. This matter was first listed for a hearing on 19 May 2022. Mr Shabaz attended that hearing and was unrepresented. At the outset of the hearing, Mr Shabaz made an application for the hearing to be adjourned on the basis that he been unable to open the bundle of papers or to read it as his laptop had been broken and he only had access to his telephone. He explained that he wanted to fully engage with ACCA and his hearing, respond to ACCA and give his defence. He was aware that the original allegation in relation to misconduct in an exam could be re-instituted by ACCA. He said he had no method at that hearing of accessing the bundle so that the hearing could fairly take place. He said he was willing to agree with ACCA's future directions for the conduct of the case.
19. On allowing the adjournment application, the Committee made the following directions:
 - a) ACCA shall resend its letter of 16 March 2021, including the full bundle of papers and send the electronic link to access the exam footage on Mr Shabaz by 16 June 2022. ACCA shall send this documentation electronically to Mr Shabaz's email address, and also send a hard copy of the documentation.
 - b) Mr Shabaz is to fully respond to ACCA's correspondence and serve a detailed reply setting out his case to ACCA by 15 July 2022.
 - c) The matter is to be re-listed for hearing as soon as possible after 01 November 2022.
20. In relation to (a), ACCA confirmed that the full bundle of papers was sent to Mr Shabaz on 13 and 15 June 2022. The exam link was not sent as the footage was no longer available. However, ACCA said it would instead rely on a witness statement and the associated screenshots.
21. In relation to (b), there has been no response from Mr Shabaz. However, on 1 June 2022, the Hearings Officer received an email from Mr Shabaz confirming he had received an email from ACCA and that he had gone through it. On 5 September 2022, the Hearings Officer called Mr Shabaz on the phone, but was greeted by a message advising "*the number that you have dialled cannot be reached at this time, please try again later*". There was no option to leave a voice message. The Hearings Officer thus sent an email the same day to Mr

Shabaz thanking him for his email. The Hearings Officer tried again to phone Mr Shabaz on 7 September 2022, with the same result.

22. On 9 October 2022, an ACCA Case Progression Officer sent an email to Mr Shabaz reminding him that he had been required to provide a response by 15 July 2022 and that she continued to await his response. No response was received.

DECISION ON FACTS/ALLEGATION AND REASONS

23. The Committee considered with care all the evidence presented and the submissions made, both oral and written. The Committee accepted the advice of the Legal Adviser and bore in mind that it was for ACCA to prove its case and to do so on the balance of probabilities.

Allegation 1 - proved

24. The Committee considered the evidence in relation to Allegation 1 and approached each date referred to separately. The Committee noted that ACCA had written to Mr Shabaz on the three dates referred to in the Allegation and that no response had been received from Mr Shabaz to any of those emails. The email address used was the same as that used by Mr Shabaz when he sent the email to the Hearings Officer on 1 June 2022 and the same as appears in ACCA's Register.
25. As a student of ACCA, Mr Shabaz is duty bound to co-operate with the investigation of a complaint against him and this he patently failed to do by not responding to any of the emails sent to him by the Investigating Officer. Accordingly, the Committee found Allegation 1a, b and c proved.

Allegation 2a) - proved

26. The Committee is of the view that failing to co-operate fully with an investigation being carried out by his regulator into his alleged misconduct is a serious matter. A student should not be able to frustrate, delay, or derail completely an investigation into their conduct. Being a student of ACCA brings with it a duty to co-operate, both in relation to compliance with the Regulations and into the investigation of a complaint. Mr Shabaz had many opportunities to respond to ACCA and failed to do so. The Committee was satisfied that such behaviour represented a serious falling short of professional standards and brought

discredit upon Mr Shabaz and also upon the profession and ACCA as regulator. If a student does not respond to such requests, it frustrates the ability of the regulator to regulate the profession. It therefore decided that Mr Shabaz's behaviour in failing to co-operate amounted to misconduct.

27. Having found Allegation 2a proved it was not necessary for the Committee to consider Allegation 2b, which was alleged in the alternative.

SANCTION AND REASONS

28. In reaching its decision on sanction, the Committee took into account the submissions made by Ms Ali. The Committee referred to the Guidance for Disciplinary Sanctions issued by ACCA and had in mind the fact that the purpose of sanctions was not to punish Mr Shabaz, but to protect the public, maintain public confidence in the profession and maintain proper standards of conduct, and that any sanction must be proportionate. The Committee accepted the advice of the Legal Adviser.
29. When deciding on the appropriate sanction, the Committee carefully considered the aggravating and mitigating features in this case.
30. The Committee found the following aggravating feature:
- A pattern of failing to fully co-operate with an investigation into his conduct by his regulator;
 - Undermining the investigation into serious allegations of cheating during an exam and thereby undermined the integrity of the examination process.
31. The Committee found the following mitigating factor:
- No previous disciplinary findings, however, given his short association with ACCA before committing this misconduct, limited weight could be attached to this mitigating feature.
32. The Committee did not think it appropriate, or in the public interest, to take no further action or order an admonishment in a case where a student had repeatedly failed to fully cooperate with his regulator.

33. The Committee then considered whether to reprimand Mr Shabaz. The guidance indicates that a reprimand would be appropriate in cases where the conduct is of a minor nature, there appears to be no continuing risk to the public and there has been sufficient evidence of an individual's understanding, together with genuine insight into the conduct found proved. The Committee did not consider Mr Shabaz's conduct to be of a minor nature and he had shown no insight into his behaviour. The Committee noted that when addressing factors relevant to seriousness in specific case types, ACCA's Guidance indicates that a failure to co-operate is considered to be very serious. Accordingly, the Committee concluded that a reprimand would not adequately reflect the seriousness of the conduct in this case.
34. The Committee then considered whether a severe reprimand would adequately reflect the seriousness of the case. The Guidance indicates that such a sanction would usually be applied in situations where the conduct is of a serious nature, but where 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. The Committee considered none of these criteria to be met. The Guidance adds that this sanction may be appropriate where most of the following factors are present:
- *The misconduct was not intentional and no longer continuing;*
 - *Evidence that the conduct would not have caused direct or indirect harm;*
 - *Insight into failings;*
 - *Genuine expression of regret/apologies;*
 - *Previous good record;*
 - *No repetition of failure/conduct since the matters alleged;*
 - *Rehabilitative/corrective steps taken to cure the conduct and ensure future errors do not occur;*
 - *Relevant and appropriate references*

- *Co-operation during the investigation stage.*

35. The Committee considered that almost none of these factors applied in this case and that accordingly a severe reprimand would not adequately reflect the seriousness of Mr Shabaz's behaviour. His misconduct was intentional, he has not demonstrated any insight into his failings nor made any apology; he does have a previous good record, albeit for a very short duration; however, his behaviour was repeated; there has been no evidence of effective rehabilitate steps; no references; and the misconduct itself included a lack of co-operation during the investigation stage.

36. The Committee thus moved on to consider removal from the student Register. The Guidance states that this sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a student. This is the most serious sanction that can be imposed on a student. Removal may be appropriate when the conduct involves any or all of the following circumstances (this list is not exhaustive):

- (a) *Serious departure from relevant professional standards, such as repeated defective work;*
- (b) *Actual loss or adverse impact on client and/or members of the public;*
- (c) *Abuse of trust/position;*
- (d) *Dishonesty;*
- (e) *Lack of understanding and insight into the seriousness of the acts/omissions and the consequences thereof;*
- (f) *Conduct continued over a period of time;*
- (g) *Affected or had the potential to affect a substantial number of clients/ members of the public;*
- (h) *Attempted to cover up the misconduct;*
- (i) *Persistent denial misconduct;*

- (j) *Breach of regulatory order;*
 - (k) *Convictions or cautions involving any of the conduct set out above;*
 - (l) *Collusion to cover up conduct.*
37. The Committee considered (a), (e) and (f) to be engaged in this case and noted that the Guidance indicates removal may be appropriate when the conduct involve any of these factors. There was no doubting this was a serious departure from the relevant professional standards.
38. Accordingly, the Committee decided that the only appropriate and proportionate sanction was removal from the student Register. Mr Shabaz's failure to co-operate with an investigation being carried out by his regulator into his alleged misconduct is a very serious matter. A student should not be able to frustrate, delay, or derail completely an investigation into their conduct. Being a student of ACCA brings with it a duty to co-operate, both in relation to compliance with the Regulations and into the investigation of a complaint. The Committee was satisfied that such behaviour represented a serious falling short of professional standards and was fundamentally incompatible with membership of ACCA since it prevented ACCA from carrying out its regulatory function.
39. The Committee acknowledged the impact this decision would have on Mr Shabaz. However, this intentional conduct was such a serious breach of bye-law 8 and the complete lack of insight, and the concern that he may continue to flout the Regulations, meant that no other sanction would adequately reflect the gravity of his offending behaviour. The Committee considered that a failure to exclude a student, who was prepared to ignore requests from his regulator in the course of investigating alleged exam irregularities, would seriously undermine public confidence in the profession and in ACCA as its regulator. In order to maintain public confidence and uphold proper standards in the profession it was necessary to send out a clear message that this sort of behaviour would not be tolerated.
40. The Committee therefore ordered that Mr Shabaz be removed from ACCA's student Register.

COSTS AND REASONS

41. ACCA applied for costs in the sum of £5885.00. The Committee was provided with a schedule of costs. The Committee was satisfied that the costs claimed were appropriate and reasonable. The case had been listed for a full day, however, the case was concluded in less than a day and thus the Committee made an adjustment to reflect this.
42. Mr Shabaz was sent a statement of financial means but did not provide any details of his means or provide any representations about the costs requested by ACCA. There was, therefore, no evidential basis upon which the Committee could make any reduction on that ground.
43. In light of its observations above, the Committee reduced the amount requested to reflect the actual costs more likely to have been incurred and made an order in the sum of £5000.00.

EFFECTIVE DATE OF ORDER

44. In light of its decision that Mr Shabaz's conduct was fundamentally incompatible with continued membership of ACCA, the Committee concluded it was appropriate for its order of removal to take immediate effect.

Mr Michael Cann
Chair
20 December 2022