

HEARING
DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF
CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Usman Ghani
Heard on:	Tuesday, 8 February 2022
Location:	Held remotely by video conference
Committee:	Ms Wendy Yeadon (Chair) Mr David Horne (Accountant) Dr Jackie Alexander (Lay)
Legal Adviser:	Mr David Marshall
Persons present and capacity:	Ms Michelle Terry (ACCA Case Presenter) Miss Nyero Abboh (Hearings Officer)
Summary:	Facts found proved Removed from the student register
Costs:	£3,000.00

INTRODUCTION

1. The Committee heard an allegation of misconduct against Mr Ghani. Ms Terry appeared for ACCA. Mr Ghani was not present and not represented.
2. The Committee had a main bundle of papers containing 79 pages, a service bundle containing 20 pages, an 'Additional Bundle' of 2 pages and a 'Tabled Additional Bundle' of 6 pages.

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PROCEEDING IN ABSENCE

3. The Committee was satisfied that Mr Ghani had been served with the documents required by regulation 10(7) of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 in accordance with regulation 22. The required documents were contained in the papers before the Committee. There was evidence that they were sent by email on 11 January 2022 to an email address notified by Mr Ghani to ACCA as an address for all correspondence.
4. In considering whether to exercise its discretion to proceed in Mr Ghani's absence, the Committee noted that the email address shown in ACCA's records, and used for the notice, is an email address that Mr Ghani was using in November 2020 to communicate with ACCA. Subsequent emails sent by ACCA to that address had not been bounced back and were reported to have been delivered to his email account; the account apparently remains active. In addition, ACCA staff attempted to phone Mr Ghani on several occasions. There was a file note before the Committee showing that the most recent attempt was yesterday. All phone calls have been unsuccessful.
5. The Committee had no reason to doubt that Mr Ghani was (or ought to have been) aware of these proceedings and this hearing. The Committee concluded that Mr Ghani had chosen not to exercise his right to attend. The Committee considered that there would be no point in adjourning as there was no realistic prospect that Mr Ghani would attend at a future date. The Committee determined to proceed in Mr Ghani's absence.

ALLEGATIONS/BRIEF BACKGROUND

6. Mr Ghani became a registered student of ACCA on 6 November 2020. He passed one ACCA examination. On 25 November 2020, he attempted a second examination, MA1 Management Information. This was a computer-based exam which was conducted at a place of Mr Ghani's choosing in Lahore, Pakistan. The invigilation was conducted remotely by a contractor using video and audio surveillance and other techniques. There were strict rules about the conditions in which the exam was taken, such as there being no other persons present in the room.

7. During the exam, staff of the remote invigilating system, known as 'Proctor', formed the view that there was another person in the room with Mr Ghani and terminated the exam. Mr Ghani complained about this to ACCA in an email. The copy of the email seen by the Committee was dated 25 November 2020 when received in the UK but was apparently sent the following day perhaps due to the time difference. It included the following:

Sir, I had a paper Yesterday of MA1 at 11:50pm. I was doing my paper faithfully.

Sir I live in a boys hostel, you know that there is always a noise in the hostel.

My proctor told me to show him my room thrice, and I did it. there was no one in my room.

Accidentally My hostel warden came to my room door and opened the door a little bit then i gesture to him to go away, that was the reason i looked up once. During the paper my proctor told me to show him my room, I was reading his message then suddenly he submitted [stopped?] my exam and asked me to contact acca. He did not listen to me a little bit and did not ask any questions.

Sir I belong to a poor family, where the majority of people are uneducated.

My Father is a farmer, We have a hard time making ends meet. He cannot bear this loss of my exam fee.

*Please sir, I want to reschedule my paper. Allow me to sit in the exam again.
[sic].*

8. Following this, on 19 January 2021, ACCA commenced an investigation into possible exam irregularities. As part of the normal process of investigation, ACCA sent emails to Mr Ghani seeking information. ACCA alleges that none of its emails were answered and that Mr Ghani was in breach of his duty to cooperate with the investigation. He was not accused of breaching exam regulations. He faced the following allegation:

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

- 1. Contrary to Paragraph 3(1) of the Complaints and Disciplinary*

Regulations 2014 (as applicable in 2021), failed to co-operate fully with the investigation of a complaint, in that he did not respond to any or all of ACCA's correspondence dated:

a. 8 June 2021

b. 30 June 2021

c. 15 July 2021

2. By reason of his conduct in respect of any or all of the matters set out at 1, Mr Ghani 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)

DECISION ON FACTS/ALLEGATIONS AND REASONS

9. The Committee heard no witnesses and received no formal witness statements but was provided with the relevant correspondence. Mr Ghani did not make any submissions beyond what is set out above.
10. It was beyond doubt that the three emails referred to in allegation 1 were sent and that Mr Ghani did not reply to them. **The Committee found allegation 1 proved.**
11. The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 (Amended 1 January 2020), Regulation 3 provides that a registered student '*is under a duty to co-operate with any investigating officer*' and that '*A failure or partial failure to co-operate fully with the ... investigation of a complaint shall constitute a breach of these regulations*'. The Committee was satisfied that Mr Ghani had completely failed to cooperate with the investigation and was therefore in breach of Regulation 3. Bye-law 8(a)(iii) states that a student is '*liable to disciplinary action if he has committed any breach of regulations*'. Accordingly, **the Committee found allegation 2(b) proved.**
12. A more significant issue was whether allegation 2(a) had been established. This was a matter for the Committee's judgement and involved an assessment of

the seriousness of the breach of regulations. The Committee carefully considered the general importance of professionally regulated persons cooperating with their regulator. It also considered the specific importance of Mr Ghani providing the information sought in the investigation of his specific matter. It concluded that the duty to cooperate, both generally and in this specific case, was a very important one. ACCA sought specific information from Mr Ghani to enable it to understand the video and audio evidence it had received. Without this, the investigation was severely hampered. The Committee concluded that Mr Ghani's complete failure to cooperate was a serious matter and did amount to misconduct. Simply ignoring the concerns of one's regulator would be regarded as deplorable by fellow professionals. **The Committee found misconduct established under Allegation 2(a).**

SANCTION(S) AND REASONS

13. The Committee considered what sanction, if any, to impose in the light of its findings, having regard to ACCA's Guidance for Disciplinary Sanctions.
14. It first sought to identify mitigating and aggravating factors. It had some sympathy for Mr Ghani given the difficult conditions in which he had to take his exam as set out in the email quoted above. However, this case was not concerned with the exam but with his failure to cooperate with the subsequent investigation. It did not identify any specific mitigating factors. Similarly, while misconduct is a serious matter it did not identify any specific aggravating factors.
15. The Committee considered the available and relevant sanctions in ascending order.
16. The sanctions of admonishment, and then reprimand, these 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.
17. 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 Ghani to indicate that he understood what he had done and would not repeat it in the future.

18. The next relevant sanction available was removal from the student register. With some reluctance, the Committee concluded that this was the minimum sanction it could impose to protect the public and mark proper standards of behaviour for ACCA registrants.
19. The Committee did not see any need to extend the period before which Mr Ghani could apply for readmission.

COSTS AND REASONS

20. Ms Terry applied for costs totalling £5,172. She stated that the costs estimate was based on a hearing time of 4 hours which was likely to be an over-estimate.
21. The Committee was satisfied that the proceedings had been properly brought and that ACCA was entitled in principle to a contribution to its costs. In assessing the amount of that contribution, the Committee took into account the fact that the hearing would last for less than the estimated time and also, importantly, Mr Ghani's ability to meet a substantial order for costs. Mr Ghani had not submitted a formal statement of means but the Committee accepted what he said in his email quoted above. It judged that he would find it impossible to pay a figure close to the sum claimed. On the other hand, in the interests of other student and members it was necessary to make a significant order. Doing the best it could, the Committee assessed the contribution as £3,000.

ORDER

22. The Committee **ordered** as follows:
 - (a) Mr Usman Ghani shall be removed from the student register
 - (b) Mr Ghani shall make a contribution to ACCA's costs in the sum of £3,000.00.

EFFECTIVE DATE OF ORDER

23. This order shall take effect at the expiry of the appeal period.

Wendy Yeadon
Chair
8 February 2022