

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Miss Saffia Ali Haider

Heard on: Tuesday, 21 and Wednesday, 22 December 2021,
Monday, 10 January 2022 (Committee in private) and
Friday, 04 February 2022

Location: Remotely via ACCA Offices, The Adelphi, 1-11 John
Adam Street, London WC2N 6AU

Committee: Mr Mike Cann (Chair),
Ms Fiona MacNamara (Accountant)
Ms Cath Brown (Lay)

Legal adviser: Mr Alastair McFarlane

Persons present

and capacity: Mr Benjamin Jowett (ACCA Case presenter)
Miss Saffia Ali Haider (Member)
Miss Farqa Shaikh (Interpreter)
Mr Jon Lionel (Hearings Officer)

Summary: Student removed from the register
No award of costs

ACCA



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1. ACCA was represented by Mr Jowett. Miss Haider attended via videolink and had the assistance of an interpreter but was not represented. The Committee had before it a bundle of papers, numbered pages 1 – 154, and a service bundle numbered pages 1-17 and video evidence in three separate files.

SERVICE

2. Having considered the service bundle, the Committee was satisfied that notice of the hearing was served on Miss Haider in accordance with the Complaints and Disciplinary Regulations 2014 (“CDR”).

ALLEGATIONS

Miss Saffia Ali Haider on 30 November 2020, during an FBT Business and Technology Examination, a remotely invigilated exam:

1. Engaged in improper conduct designed to assist her in her exam attempt in that she caused or permitted a third party to be:
 - i. Present;
 - ii. To communicate with her during all or part of the exam.
2. In respect of Miss Haider’s conduct referred to in paragraph 1 she:
 - (a) Failed to comply with instructions issued by ACCA personnel, as per the *“Information Sheet for On-Demand CBE Students sitting exams at home”* in that she caused or permitted a third party to be present in the Exam room and thereby failed to ensure she was in a room with no-one else around her, contrary to Examination Regulation 2; and/or
 - (b) Was in breach of Examination Regulation 10; and/or
 - (c) Was in breach of Examination Regulation 16 in that further she communicated with that third party.

3. Further, Miss Haider's conduct as referred to in paragraphs 1 and 2 above was:
 - i. Dishonest, in that Miss Haider sought to obtain an unfair advantage in the examination by obtaining assistance from a third party; or in the alternative,
 - ii. Contrary to the Fundamental Principle of Integrity (as applicable in 2020) in that such conduct is not straightforward and honest.

4. By reason of her conduct, Miss Haider is:
 - (a) Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of any or all of the matters set out at allegations 1 - 3 above; or, in the alternative,
 - (b) In respect of allegation 2 only, liable to disciplinary action pursuant to byelaw 8(a)(iii)

BACKGROUND

3. On 18 December 2018, Miss Haider registered as an ACCA student.

4. On 30 November 2020, Miss Haider sat her FBT Business and Technology examination remotely. As a student, Miss Haider is bound by the ACCA's byelaws and Regulations, including the Examination Regulations '*...and the requirements set out in the "Information Sheet for On-Demand CBE Students sitting exams at home"*'. The Remote Invigilator, the "ProctorU" asked Miss Haider to "*acknowledge that you have read and understood the "Information Sheet for On-Demand CBE Students sitting exams at home" and the "On-Demand CBE Announcements" sent to you prior to the exam...*". The ProctorU asked Miss Haider to "*type "I agree" into the chat box if you agree to these exam rules.*" Miss Haider at 5:00 AM has typed "i agree".

5. The Remote Invigilator recorded in the Incident Report that a third party could be heard whispering and assisting Miss Haider during the exam. It was also noted that another person's shadow could be seen moving across the room.

6. An investigation was commenced which has involved obtaining documents and video footage relating to the Exam. ACCA contended that the key incidents identified from reviewing the video footage included: a third party's voice being heard; the blind in the room being seen raised and then, later seen drawn but Miss Haider is not seen leaving her desk to draw the blind; shadows from what ACCA contend is a third party in the room and whispering from what ACCA contend is a third party in the room. More specifically at:
 - 1:10:38, the words 'in-tray exercises' are said by the third party.
 - 1:10:42-1:10:45, the words 'system' and 'role playing using video' are said by the third party.
 - 1:10:48, the words 'one-to-one job' are said by the third party.

7. ACCA's case is that after these words are said by the third party, Miss Haider selected '*In-tray exercises*', '*Role playing using video and playback*' and '*One-to-one, on the job training*' as answers to the question on screen (Question 50). Later in the exam, ACCA contend that further whispering is recorded from a third party.

More specifically at:

- 1:20:04, the word 'B' is said by the third party.
 - 1:20:14, the word 'C' is said by the third party and immediately after that Miss Haider is heard whispering the word '*insurance*' in response. ACCA contend that after the words 'B' and 'C' are whispered by a third party, Miss Haider selects 'B' as an answer for the second option and selects 'C' for the '*Car insurance products*' option (Question 47).
8. Miss Haider has fully engaged with ACCA and repeatedly denied any wrongdoing in her responses to provided ACCA's enquiries. She denied that another person was in the same room while she sat the exam session.

ACCA'S SUBMISSIONS

9. ACCA submitted that Miss Haider had engaged in improper conduct by allowing a third-party to be present in the room where she was sitting the exam and for the third-party to communicate with her. It contended that this was clearly designed to assist her in the exam. This was contrary to the instructions on the Information Sheet and therefore was contrary to Exam Regulations 2, 10 and 16. ACCA further contended that such conduct was clearly dishonest in that Miss Haider was seeking to obtain an unfair advantage and that this conduct was dishonest by the standards of ordinary decent people. It further contended that the seriousness of such behaviour clearly amounted to misconduct.
10. As an alternative, ACCA submitted that Miss Haider has breached the Fundamental Principle of Integrity, which imparts a duty on students and members to be "*straightforward and honest.*"

MISS HAIDER'S SUBMISSIONS

11. Miss Haider gave evidence to the Committee and made submissions to it. She consistently maintained that she was innocent of any wrongdoing. She had also made detailed written responses to ACCA's enquiries. She explained that she was attempting the exam at her friend's office, which had adequate Internet speed and that she had sat remote exams on ProctorU before. She stated that a person had come into the room to clean it before the exam, but she told him not to enter and apart from that did not speak to any third party and there was no third-party in the room with her during the exam. She stated that she frequently read out the questions aloud to herself and postulated that any other voices must be people outside the room that the video has captured as a whisper. She said that sounds could easily come through from outside the room. She also contended that the video footage is out of sync with the audio footage, for example when she asserts her voice is heard, but her lips are not moving. She referred to her voice being recorded and repeating the questions over but the video not being synced with the audio. She

also referred to the blind coming down on its own accord during the exam. She also stated that she undertook two camera pans of the room which showed that there was nobody else in the room, and no one entered through the door throughout the exam.

DECISION ON ALLEGATIONS AND REASONS

12. The Committee accepted the advice of the Legal Adviser. The standard of proof to be applied throughout was the ordinary civil standard of proof, namely the 'balance of probabilities. It reminded itself of Collins J's observations in Lawrance v. GMC [2015] EWHC 581(Admin) to the effect that in cases of dishonesty, cogent evidence was required to reach the civil standard of proof.
13. The Committee heard that there had been no previous findings against Miss Haider and accepted that it was relevant to put her good character into the balance in her favour.

DECISION ON FACTS

14. The Committee carefully considered the oral evidence of Mr V for the ACCA, and of Miss Haider, as well as the documentary evidence it had received, and also the submissions of Mr Jowett on behalf of ACCA and Miss Haider. It carefully watched and re-watched the video recording of the examination.
15. It noted that Mr V's evidence was in effect limited to producing the video. The interpretation of what was and what was not said on the recording was a question of fact for the Committee alone. There was no expert evidence before it.

Allegation 1.

Engaged in improper conduct designed to assist her in her exam attempt in that she caused or permitted a third party to be

- i. Present;

- ii. To communicate with her during all or part of the exam.
16. The Committee carefully watched and listened to the video on repeated occasions. It noted Miss Haider's explanation that she frequently read out questions that appeared on her screen, her denial of any third-party being in the room and the suggestion that the whispers heard may have been her own voice or were people talking outside the room that were heard as whispers on the recording.
 17. The Committee was satisfied, on the basis of listening to the recording and viewing it that a third-party voice can frequently be heard during the exam. It was satisfied on the balance of probabilities that the voice was not Miss Haider's voice. It appeared to the Committee to be, more likely than not, a male voice. The Committee rejected as implausible Miss Haider's assertions that the whispering was either her own voice or voices coming from outside the room. Whilst it noted that frequently the video recording was out of sync with the footage, in that, for example, when Miss Haider did speak reading out questions it was not in sync with her lips, it was satisfied that this did not explain the whispering, which the Committee concluded was the voice of a third-party who, on the balance of probabilities, was in the room with Miss Haider. Having found that the whispering was from an unknown third party, the Committee considered it significant as evidence of wrongdoing that after some of the whispering, for example "*in tray exercises*" and "*role-play*", Miss Haider selected those answers.
 18. The Committee did not find ACCA's submissions as to the shadows in the room or as to the blind being up and then down as persuasive in support of its case. The shadow could have been caused by any lighting issue and the blind could have descended on its own. The Committee did not therefore use this evidence in reaching its conclusions. Nonetheless, the Committee was satisfied on the "whispering evidence" that there was sufficiently cogent evidence to reject Miss Haider's account and for it to conclude that there was a third party in the room, whom she permitted to communicate with her during the exam. It was further

satisfied that the communications were not innocent and were designed to assist her in her examination attempt. It therefore found Allegation 1 proved.

Allegation 2

In respect of Miss Haider's conduct referred to in paragraph 1 she:

Allegation 2 (a)

Failed to comply with instructions issued by ACCA personnel, as per the "Information Sheet for On-Demand CBE Students sitting exams at home" in that she caused or permitted a third party to be present in the Exam room and thereby failed to ensure she was in a room with no-one else around her, contrary to Examination Regulation 2;

19. The Committee next considered Allegation 2 (a) and whether ACCA has proved that Miss Haider breached Exam Regulation 2.

20. Exam Regulation 2 provides

You are required 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. Failure to comply with these instructions may result in the termination of your examination and potential disciplinary procedures being invoked.

21. The Committee was satisfied that by causing a third-party to be present in the room with her during the exam and to communicate with her during the exam that she breached the instructions given to her for the conduct of the exam and therefore was in breach of Exam Regulation 2.

Allegation 2 (b) - was in breach of Examination Regulation 10;

22. The Committee next considered Allegation 2 b) and whether ACCA has proved that Miss Haider breached Exam Regulation 10

23. Exam Regulation 10 provides

You may not engage in any improper conduct designed to assist you in your exam attempt or provide any improper assistance to any other exam entrant in their exam attempt.

24. The Committee was satisfied on the video footage that there was a third party in the room with her during the exam and that this third party provided improper assistance to her by suggesting, in whispers, answers to some of the questions. The Committee could hear this on the video and considered it significant that Miss Haider could then be seen selecting her answers as per some of the whispers. The Committee was satisfied these whispers were from a third-party within the room, not seen on the camera. The Committee had no hesitation this amounted to engaging in improper conduct design to assist her in the exam and accordingly that Exam Regulation 10 was breached by Miss Haider.

Allegation 2 (c) - was in breach of Examination Regulation 16 in that further she communicated with that third party.

25. The Committee next considered Allegation 2 c) and whether ACCA has proved that Miss Haider breached Exam Regulation 16

26. Exam Regulation 16 provides

“Candidates must not talk to, or attempt to communicate with, people other than the exam supervisor/s, invigilator/s or proctor/s for the duration of the exam”

27. Given the Committee’s finding that Miss Haider did communicate with a third-party i.e., someone other than the exam supervisors or Proctor during the exam, it was satisfied that she is in breach of Exam Regulation 16. Accordingly, Allegation 2 (c) is proved.

Allegation 3()(i) – Dishonesty, in that Miss Haider sought to obtain an unfair advantage in the examination by obtaining assistance from a third party.

28. The Committee next asked itself whether the proven conduct in Allegations 1 and 2 was dishonest.
29. The Committee considered what Miss Haider’s belief was, as to the facts. It was satisfied that by obtaining answers to questions in the exam from a third-party in the room covertly, she was clearly seeking to obtain an unfair advantage in the exam and that Miss Haider knew it was prohibited to have assistance from a third-party during the exam. In short, she was cheating. It was satisfied that this conduct was dishonest according to the standards of ordinary decent people. Accordingly, it was satisfied that Allegation 3 (i) was proved and did not consider the alternative of Allegation 3 (ii).

Allegation 4(a) - Misconduct

30. The Committee next asked itself whether, by seeking to obtain an unfair advantage, dishonestly, by obtaining answers from an unauthorised third-party in the exam room, Miss Haider was guilty of misconduct.
31. The Committee had regard to the definition of misconduct in byelaw 8(c) and the assistance provided by the case law on misconduct. It was satisfied that Miss Haider’s actions brought discredit on her, the Association and the accountancy profession. It was satisfied that her conduct to gain an advantage in a professional exam reached the threshold for misconduct.
32. In the light of its judgment on Allegation 4 (a), no finding was needed upon Allegation 4(b).

SANCTIONS AND REASONS

33. The Committee noted its powers on sanction were those set out in Regulation 13(4). It had regard to ACCA’s Guidance for Disciplinary Sanctions and bore in

mind that sanctions are not designed to be punitive and that any sanction must be proportionate.

34. The Committee accepted the advice of the Legal Adviser.
35. The Committee had specific regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. The dishonest behaviour was serious. Trust and honesty are fundamental requirements of any professional. Dishonesty by a member of the accountancy profession undermines its reputation and public confidence in it.
36. The aggravating factors the Committee identified were:
 - The behaviour involved dishonesty which was a pre-planned course of conduct;
 - The serious impact on the reputation of the profession;
 - There was no evidence of insight into the seriousness of the conduct;
 - There were no expressions of regret or apology.
37. The only mitigating factor the Committee identified was:
 - A previous good character with no disciplinary record
38. The Committee noted that Miss Haider stated that she highly valued her ACCA student membership and wanted to be allowed to continue her exams. However, given the Committee's view of the seriousness of her conduct, it was satisfied that the sanctions of No Further Action, Admonishment, Reprimand and Severe Reprimand were insufficient to highlight to the profession and the public the gravity of the proven misconduct.
39. The Committee reminded itself that it was dealing with a case of dishonesty and had specific regard to Section E2 of the Guidance in relation to dishonesty and was mindful of the case law to the effect that dishonesty lies at the top of the spectrum of misconduct. The Committee determined that Miss Haider's

behaviour was fundamentally incompatible with her remaining on the student register of ACCA and considered that the only appropriate and proportionate sanction was that she be removed from the student register.

COSTS AND REASONS

40. ACCA claimed costs of £11,202 and provided a detailed schedule of costs. The Committee noted Miss Haider explained that she is a full-time student and is supported by her father and family with whom she lives and has no income or means. Whilst the Committee decided that the that the sum claimed by ACCA was a reasonable one in relation to the work undertaken, the Committee was satisfied that Miss Haider has no income and cannot afford to pay any costs given her lack of income and means. Accordingly, the Committee concluded that it was not appropriate to make any award of costs in this case.

EFFECTIVE DATE OF ORDER

41. This order shall take effect from the date of the expiry of the appeal period unless notice of appeal is given prior to the expiry of that period, in which case it shall become effective (if at all) as described in the Appeal Regulations. The Committee was not persuaded that the ground for imposing an immediate order was made out given the facts of this case and that public protection is not involved.

Mr Mike Cann
Chair
04 February 2022