

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Muhammad Kamil Zahid
Heard on:	Tuesday, 22 February 2022
Location:	ACCA, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU. Virtual hearing using Microsoft Teams
Committee:	Ms Ilana Tessler (Chair) Mr Peter Brown (Accountant) Mr Nigel Pilkington (Lay)
Legal Adviser:	Mr David Marshall
Persons present and capacity:	Mr Benjamin Jowett (ACCA Case Presenter) Ms Anna Packowska (Hearings Officer) Ms Alison Catchpole (Witness for ACCA)
Summary:	Removed from student register
Costs:	£7,400

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1. The Committee heard an allegation of misconduct against Mr Zahid arising out of an examination. Mr Jowett appeared for ACCA. Mr Zahid was not present and not represented.
2. The Committee had a main bundle of papers containing 88 pages, a service bundle containing 17 pages, an 'Additional Bundles' of 6 pages and a 'Tabled Additional Bundles' of 4 pages. The Committee was also provided with a video recording of the examination which was the subject of this case.

PROCEEDING IN ABSENCE

3. The Committee was satisfied that Mr Zahid 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 25 January 2022 to an email address notified by Mr Zahid to ACCA as an address for all correspondence.
4. In considering whether to exercise its discretion to proceed in Mr Zahid's absence, the Committee noted that the email address shown in ACCA's records, and used for the notice, was an email address that Mr Zahid had used 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 Committee was satisfied that the account remained active. The Committee noted that a member of ACCA staff attempted to phone Mr Zahid on 11 February 2022. She reported that a male voice had answered but when she introduced herself the call was cut off. This happened twice.

5. The Committee was satisfied that Mr Zahid knew of these proceedings and was either aware of the details of this hearing or had the means of knowing. The Committee concluded that Mr Zahid 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 Zahid would attend at a future date. The Committee determined to proceed in Mr Zahid's absence.

ALLEGATION(S)/BRIEF BACKGROUND

6. Mr Zahid became a registered student of ACCA on 28 January 2020. On 19 October 2020, he took an 'on-demand MA Management Accounting examination'. This was a computer-based exam which was conducted at a place of Mr Zahid's choosing. The invigilation was conducted remotely by a contractor called 'ProctorU', 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. Mr Zahid completed the examination. It was suggested that he may have ended the session before the Invigilator had entirely completed the formalities, but that was not an allegation in this hearing.
7. After the exam, ProctorU reported concerns to ACCA based on reviewing their records. These were that there may have been another person in the room. A third party was seen in the video before the exam started but ProctorU considered that the person (or another person) may have remained present while the exam was in progress. ACCA alleges that Mr Zahid was thereby in breach of the Examination Regulations.
8. Following this ACCA commenced an investigation into possible exam irregularities. As part of the normal process of investigation, ACCA sent letters by email to Mr Zahid seeking information. The first was sent on

04 May 2021. ACCA alleges that none of its emails were answered, and that Mr Zahid was in breach of his duty to cooperate with the investigation.

9. Mr Zahid faced the following allegations:

Allegations

Mr Muhammad Kamil Zahid, 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 respond to any or all of ACCA's correspondence dated:*
 - a. *04 May 2021;*
 - b. *26 May 2021;*
 - c. *10 June 2021.*

2. *On 19 October 2020, during a remotely invigilated MA Management Accounting examination (the Exam)*
 - a. *Caused or permitted a third party to be present and to communicate with him during all or part of the Exam, in breach of examination Regulation 16.*

 - b. *Failed to comply with instructions provided to him by ACCA before the Exam that he should ensure he was in a room on his own, by reason of the matters referred to in allegation 2 a above, in breach of examination Regulation 2*

3. *By reason of his conduct, Mr Zahid is:*
 - a. *Guilty of misconduct pursuant to bye-law 8(a)(i), in respect of any or all of the above matters or, in the alternative,*
 - b. *Liable to disciplinary action pursuant to bye-law 8(a)(iii).*

DECISION ON FACTS/ALLEGATION(S) AND REASONS

10. In addition to the documents already described, the Committee heard oral evidence from Ms Alison Catchpole, a paralegal employed by ACCA to investigate allegations against students alleged to have breached ACCA's rules in remotely invigilated exams. Mr Zahid did not provide any evidence or submissions.
11. The Committee found Ms Catchpole's evidence to be fair and thorough. She was able to support what she said with references to ACCA's records. The Committee accepted it. It found her evidence very helpful.
12. With regard to allegation 1 it was quite clear that the three emails referred to were sent and had not been replied to. There was evidence that the emails had been delivered to Mr Zahid's email account. Ms Catchpole gave evidence that the substance of the email could only be read by using a password to log on to an ACCA system. That had been done in relation to the first email dated 04 May 2021 and the Committee was satisfied that Mr Zahid had opened and presumably read that email. There was no such evidence in relation to the other two emails but in view of Mr Zahid's general lack of engagement with his regulator, the Committee considered that it was more likely than not that he had received them but chosen not to look at the content. This showed a deliberate intention not to cooperate with the investigation. **The Committee found Allegation 1 proved in its entirety.**

13. With regard to Allegation 2, the Committee watched the video of the examination before the hearing. Ms Catchpole had prepared a commented chronology with screenshots and a further analysis showing screenshots of the video of Mr Zahid alongside views of what was on his computer screen at the same time. There was no doubt that a person wearing spectacles was present alongside Mr Zahid before the exam started. The transcript of the 'chat' recorded that the Invigilator had asked Mr Zahid to get the person to leave. Mr Zahid said he had done this. However, there were a number of passages in the video which made it clear that a person was still present. For example, a shadow could be seen at one point, and also a reflection in Mr Zahid's glasses. The video also showed Mr Zahid apparently interacting with someone out of the camera's vision. The soundtrack recorded whispered remarks. The Committee was satisfied that Mr Zahid had caused or permitted this other person to be present during the exam and that he had failed to comply with the instructions to clear the room. Both of these were breaches of the Examination Regulations. **The Committee found Allegation 2 proved in its entirety.**
14. With regard to Allegation 3(a), the failure to cooperate with ACCA's investigation was a serious matter. ACCA has a duty to protect the public and uphold proper standards of professional behaviour. The exam system is a key element in this and investigating exam irregularities is a key function. ACCA is entitled to, and does, expect its members and students to cooperate fully. Mr Zahid chose to ignore the requests for information. The Committee considered that even taken in isolation this amounted to misconduct.
15. The Committee considered that Mr Zahid's conduct could have represented an attempt to gain an unfair advantage. At the start of the exam Mr Zahid had typed into the chat window that *'they [the third person] have leaved'* (sic). The fact that a person remained in the room

showed that his actions were a deliberate attempt to flout the regulations. The Committee regarded this as a very serious departure from the proper standards of behaviour of any student, but particularly an ACCA student. It was quite satisfied that it could properly be described as misconduct. **The Committee found Allegation 3(a) proved.** Allegation 3(b) was in the alternative and the Committee did not need to consider it.

SANCTION(S) AND REASONS

16. The Committee considered what sanction, if any, to impose in the light of its findings, having regard to ACCA's Guidance for Disciplinary Sanctions.
17. It first sought to identify mitigating and aggravating factors. It noted that Mr Zahid had no previous disciplinary findings against him, but he had only been registered with ACCA for about two years and at the time of the exam he had only been registered for nine months. There had been no communication from Mr Zahid so he had had no opportunity to demonstrate insight, remorse, or any other mitigating factor.
18. There were aggravating factors. The two separate allegations of fact were both very serious matters in their different ways. For the reasons given, both forms of misconduct were deliberate and calculated to undermine the regulatory process.
19. The Committee considered the available and relevant sanctions in ascending order.
20. The sanctions of admonishment, and then reprimand, 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.

21. 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 Zahid to indicate that he understood what he had done and would not repeat it in the future.
22. The next relevant sanction available was removal from the student register. 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.
23. The Committee did not see any need to extend the period before which Mr Zahid could apply for readmission. However, it did consider that any future application for re-admission should be referred to the Admissions and Licensing Committee.
24. The Committee noted that Mr Zahid had been able to complete his exam. Since the result had not been formally notified to him the Committee had the power to order that he be disqualified from the examination he had taken. Mr Jowett invited the Committee to consider exercising that power. The Committee considered that it would be grossly unfair to other candidates and present a risk to the public to allow Mr Zahid to claim an examination pass. The Committee made the order suggested.

COSTS AND REASONS

25. Mr Jowett applied for costs totalling £8,142.50. he acknowledged that the preparation costs were high but submitted that investigating video evidence was very time consuming. He stated that the costs estimate

was based on a full day for the hearing whereas it was likely to conclude much earlier.

26. The Committee was satisfied that the proceedings had been properly brought and that ACCA was entitled in principle to a contribution to its costs. It did not consider that the preparations costs were excessive given the difficulty of proving this case without any cooperation by Mr Zahid.
27. The Committee made a reduction for the fact that the hearing would take less time than estimated. In all the circumstances, it assessed the costs at £7,400.
28. There was no evidence, or submission, from Mr Zahid as to his means. Therefore, the Committee could not make any reduction on the basis of his ability to pay.

ORDER

29. The Committee ordered as follows:
 - (a) Mr Muhammad Kamil Zahid shall be removed from the student register.
 - (b) Any future application by Mr Zahid for admission to ACCA shall be referred to the Admissions and Licensing Committee.
 - (c) Mr Zahid shall be disqualified from the Management Accounting examination he took on 19 October 2020.
 - (d) Mr Zahid shall make a contribution to ACCA's costs in the sum of £7,400.

EFFECTIVE DATE OF ORDER

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

**Ms Ilana Tessler
Chair
22 February 2022**