

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Saif Ullah

Heard on: Tuesday 12 and Wednesday, 13 July 2022

Location: ACCA, The Adelphi, 1-11 John Adam Street,
London, WC2N 6AU. Virtual hearing using Microsoft
Teams

Committee: Ms Kathryn Douglas (Chair)
Ms Fiona MacNamara (Accountant)
Mr Colin Childs (Lay)

Legal Adviser: Mr David Marshall

**Persons Present
and capacity:** Ms Afshan Ali (ACCA Case Presenter)
Ms Anna Packowska (Hearings Officer)
Mr Saif Ullah (The student)
Ms Zarqa Sheikh (Interpreter in Urdu)

Summary: Removed from the student register

Costs: No order

1. The Committee heard an allegation of misconduct against Mr Ullah. Ms Ali appeared for ACCA. Mr Ullah was present and represented himself.
2. The Committee had a main bundle of papers containing 139 pages, a completed case management form containing 22 pages, a service bundle containing 19 pages, a video recording of about 1 hour 25 minutes taken during

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an examination, and a file containing extracts from that video which had been digitally enhanced.

ALLEGATION(S)/BRIEF BACKGROUND

3. Mr Ullah has been a student of ACCA since October 2019. On 04 November 2020, he sat an ACCA Financial Accounting (FFA) examination. The examination was computer-based. Mr Ullah used his own equipment at a place of his own choosing, which was the student hostel in Lahore where he lived. The examination was remotely invigilated by a company called ProctorU. The invigilation included monitoring the video and audio from Mr Ullah's computer and monitoring what was shown and typed on the computer.
4. ACCA has standard instructions for students taking such exams that '*Prior to exam starting ... You will ... be located in a private, well-lit room with no one else around you.*' ProctorU required Mr Ullah to pan his camera round the room on several occasions to demonstrate that it was empty. Nevertheless, the Invigilator formed the view that there was another person (or persons) present and eventually terminated the exam before Mr Ullah had finished.
5. Following an investigation, ACCA formulated the following allegations:

Allegation

Mr Saif Ullah (ACCA student), on 04 November 2020 during a Financial Accounting (FFA) examination (the Exam) a remotely invigilated exam:

1. *Failed to comply with instructions issued by ACCA to ensure that no one else was around him where he was sitting the exam in breach of Examination Regulation 2.*
2. *Further to the matters referred to in allegation 1, caused or permitted a third party or parties (who were present with him in the same room during the exam) to provide him with answers or possible answers to questions he was presented with during the exam.*
3. *By reason of the matters referred to in allegations 1 and 2, has engaged in improper conduct designed to assist him in his exam attempt in breach of Examination Regulation 10.*

4. *Further Mr Ullah's conduct as referred to in paragraph 1-3 above was:*
 - a) *dishonest, in that Mr Ullah sought to obtain an unfair advantage in the exam by obtaining assistance from a third party or parties; or in the alternative,*
 - b) *demonstrates a lack of integrity.*
5. *By reason of his conduct, Mr Ullah 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 - 4 above; or, in the alternative,*
 - b) *in respect of allegations 1 and or 3 only, liable to disciplinary action pursuant to bye-law 8(a)(iii)*
6. Mr Ullah denied all the allegations.

DECISION ON FACTS/ALLEGATION(S) AND REASONS

7. The critical questions were whether there was another person or persons in the exam room and, if so whether that person or persons were communicating with Mr Ullah to assist him with the examination.
8. The Committee considered all the documents before it, but the key evidence came from the contemporaneous records of the exam. ACCA called a member of staff, Witness A who had recently become the Investigating Officer in this case, the previous officer having left ACCA. They explained the ProctorU system. As well as a continuous video (and audio) recording from the camera and microphone in Mr Ullah's computer, there was a 'chat log' which was a record of typed communications between the ProctorU invigilator and the candidate. For a limited time after the exam ProctorU also retained a record of what was shown on Mr Ullah's computer screen during the exam. The previous Investigating Officer had obtained certain screenshots from that record.
9. The witness played seven extracts from the video recording. The first two were from the period when Mr Ullah was connected to the ProctorU system but had not yet been permitted to start answering questions. He should still have been alone in the room at this stage. The two extracts showed what appeared to be

the shadow of a person moving in the room briefly cast onto the wall behind Mr Ullah's head. In the second extract talking between persons other than Mr Ullah could be heard, apparently in the room.

10. During the hearing Mr Ullah for the first time accepted that there was a person in the room with him at this time. He said this person was helping him with the IT. He said he had forgotten about it but was reminded by seeing the video. He said that the person did not remain when the exam started.
11. The next video extract was taken at about 21 minutes into the video, after the exam had started. It appeared to show the shadow of a person passing briefly across the wall behind Mr Ullah. At the same time Mr Ullah repeatedly glanced away from the computer screen in a deliberate way. While keeping his face directed towards the screen, he flicked his eyes up and to the side for a moment. He showed similar behaviour in other video extracts timed at 1:06:35, 1:10:50, and 1:24:44. In the second of these his sidelong glances coincided with the clear shadows of unseen people moving across the room in front of him. At one point two people passed in quick succession casting shadows onto him and onto the wall behind him. Whispering could be heard. In the third extract, his sidelong glances developed to him turning his head completely and saying a few words to an unseen person.
12. Mr Ullah gave various explanations for looking away from his computer screen. One was that he was distracted and irritated by the fact that ProctorU were asking him 'again and again' to use his computer camera to demonstrate that there was no-one else in the room. Another was that he was thinking about how to solve the question he was attempting. He also said that he couldn't be expected to keep his gaze fixed on the computer screen continuously. The Committee found these explanations incredible. They were not consistent with the rapid sidelong glances seen on the video. These were consistent with him making eye contact with some other person.
13. A video timed at 1:02:28 clearly showed a bearded man walking to the back of the room behind Mr Ullah. Mr Ullah said that this was his room mate who had returned to the room, unaware that an exam was going on. During the investigation Mr Ullah said that he had asked this person to leave but there was no record of that on the video. He later said that he had not asked but gestured to the man to leave but his gesture had not been caught on video. However, on

the video and audio recording Mr Ullah showed no sign of reacting to the presence of the man at all.

14. The witness also referred to a number of extracts which appeared to record whispering. In the recording at 1:00:41 someone can be heard whispering '13' and '70' and then 'sattar' which is 70 in Urdu. The previous case investigator had correlated the recording with the screenshot from the same point in the exam. On the computer, Mr Ullah can be seen responding to question 13 with the answer '70'. There were several other recordings of whispered voices, in many cases saying numbers either in English or Urdu.
15. Mr Ullah did not dispute that spoken numbers could be heard and that the Urdu had been translated correctly. However, he said they were not whispers but things spoken at normal volume outside the room. He suggested that there was a discussion about room numbers by other residents of the hostel and that the warden was collecting rents. The Committee rejected this. Firstly, there was a clear difference in the sound of a whisper heard close up compared with normal speech heard from a distance, even if the overall volume level was similar. Secondly, his explanation would require the Committee to accept that it was pure coincidence that at the time when Mr Ullah answered question 13 with '70' there was a discussion going on outside about rooms and rent involving the numbers 13 and 70.
16. Mr Ullah suggested that some of the whispering could have been by him, while working alone. However, there were clearly instances where whispering is heard and Mr Ullah's lips can be seen not to move.
17. Having formed a view about what the video showed, the Committee went on to consider the allegations.
18. **The Committee found Allegation 1 proved.** Mr Ullah did not dispute that there were other persons in the room at the start of the exam and when the bearded man was seen. The Committee was satisfied (on the balance of probabilities) that the shadows and whispering proved the presence of one or more people in the room at various other points throughout the exam. As mentioned above, there were clearly two other people in the room at one point. Even if the bearded man had entered by accident, he had remained there unchallenged as had the others. The whispering and the eye contact showed

that Mr Ullah was aware of the presence of other persons in the room. He did nothing to exclude them. He had *'failed to comply with instructions issued by ACCA to ensure that no one else was around him'*.

19. **The Committee found Allegation 2 proved.** The whispering and the evidence in relation to question 13 showed that there was collusion between Mr Ullah and other person(s) in the room in relation to his answers to questions.
20. **The Committee found Allegation 3 proved.** It was clearly improper conduct for Mr Ullah to communicate with others during the exam in relation to his answers. The purpose must have been to assist him in his exam attempt.
21. **The Committee found Allegation 4(a) proved.** Mr Ullah's conduct amounted to exam cheating which would be regarded as dishonest by all decent people. It was not necessary to deal with Allegation 4(b) which was in the alternative.
22. **The Committee found Allegation 5(a) proved.** Cheating or attempting to cheat in an exam is one of the most serious forms of misconduct that it is open to a student to commit. It was not necessary to deal with Allegation 5(b) which was in the alternative.

SANCTION AND REASONS

23. The Committee considered what sanction, if any, to impose in the light of its findings, having regard to ACCA's Guidance for Disciplinary Sanctions.
24. It first sought to identify mitigating and aggravating factors. It noted that Mr Ullah had no previous disciplinary findings against him, but he had only been registered with ACCA for about a year at the time of the exam. This was an isolated incident. He had cooperated fully with the investigation. Mr Ullah had denied the allegations, and he had not been able to demonstrate insight. In his closing submissions he did make a brief apology. However, his focus throughout was on the effect of the events on himself rather than what others would think of his behaviour. At this stage he has demonstrated no insight into his misconduct.
25. Exam cheating is a very serious matter. It discredits ACCA's reputation by undermining confidence in the system of qualifications. It demoralises honest students. It has the potential to cause serious harm to the public if a student

who does not meet the required standard manages to qualify by dishonest means. However, there were no particular aggravating factors to make Mr Ullah's case worse than other cases of a similar kind.

26. The Committee considered the available and relevant sanctions in ascending order having regard to the Guidance for Disciplinary Sanctions. The Guidance makes it clear that dishonesty is a particularly serious matter for an ACCA member or student.
27. The matters found proved were far too serious to conclude this case without making an order. 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.
28. 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 Ullah to indicate that he understood what he had done or the effect on others. There was little to show that he would not repeat his misconduct in the future if given the opportunity. Most of the significant factors in the guidance were absent in this case.
29. The next relevant sanction available was removal from the student register. Most of the factors in the Guidance were present. The Committee considered that Mr Ullah's conduct during this examination was fundamentally incompatible with student registration. The Committee concluded that removal was the minimum sanction it could impose to protect the public and mark proper standards of behaviour for ACCA registrants.
30. The Committee did not see any need to extend the period before which Mr Ullah could apply for readmission.

COSTS AND REASONS

31. Ms Ali applied for costs totalling £10,959.50. The Committee was satisfied that the proceedings had been properly brought and that ACCA was entitled in

principle to a contribution to its costs.

32. The Committee recognised that ACCA must have incurred substantial costs given the complexities of a case based on video evidence and the fact that it was listed for a two-day hearing. However, the Committee was concerned about Mr Ullah's ability to make any significant contribution to costs.
33. Mr Ullah told the Committee that he had no independent means. He had been supported by his family to undertake ACCA qualification. His father had paid him an allowance of about 25-35,000 Pakistani rupees per month (about £140). That stopped around 7 months ago. His family will no longer support him as he is no longer able to undertake ACCA training. Mr Ullah himself does not have a job or any other source of income.
34. The Committee accepted what Mr Ullah said and considered that as he had no income, he was not in a position to make any payment which would be significant in terms of an £11,000 costs bill. The Committee considered ordering a nominal payment but decided that that would be pointless and possibly counterproductive. It would not be economic for ACCA to pursue a purely nominal debt.

ORDER

35. The Committee **ordered** as follows:
 - (a) Mr Saif Ullah shall be removed from the student register.
 - (b) There shall be no order for costs.

EFFECTIVE DATE OF ORDER

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

Ms Kathryn Douglas
Chair
13 July 2022