

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Lukmanul Hakkeem
Heard on:	Tuesday, 19 July 2022
Location:	The hearing was conducted remotely by Microsoft Teams via ACCA's Offices, The Adelphi, 1-11 John Adam Street, London, WC2N 6AU
Committee:	Mrs Helen Carter Shaw (Chair) Mr Constantinos Lemonides (Accountant) Mr Gerry McClay (Lay)
Legal Adviser:	Ms Juliet Gibbon
Persons present and capacity:	Ms Ariane Tadayyon (ACCA Case Presenter) Ms Anna Packowska (Hearings Officer)
Outcome:	Allegations 1a), 1b), 1c) and 2a) (misconduct) – proved
Sanction:	Removal from the Student Register from date of the expiry of the appeal period
Costs:	£5,000

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PRELIMINARY

1. The Disciplinary Committee (“the Committee”) convened to hear allegations of misconduct against Mr Lukmanul Hakkeem. The hearing was conducted remotely through Microsoft Teams. The Committee had a bundle of papers numbered pages 1 to 90 and two service bundles, numbered pages 1 to 21 and 1 to 6. The Committee was also provided with a detailed and a simple cost schedule, both numbered pages 1 to 2.
2. Ms Ariane Tadayyon represented ACCA. Mr Hakkeem did not attend the hearing and was not represented.

SERVICE

3. Written notice of the hearing was sent by electronic mail (“email”) to Mr Hakkeem’s registered email address on 21 June 2022 and he was also sent a password separately to access the document. The Committee had sight of the delivery notification that indicated the email was delivered on 21 June 2022. By virtue of Regulation 22(8)(b) of The Chartered Certified Accountants’ Complaints and Disciplinary Regulations 2014, as amended (“the Regulations”) the notice would have been deemed served on the same day.
4. The Committee accepted the advice of the Legal Adviser. The Committee was satisfied that ACCA had given the requisite 28 days’ notice required under Regulation 10(1)(a) of the Regulations. It was also satisfied that the email attaching the notice of hearing, to which Mr Hakkeem had access, contained all the requisite information about the hearing in accordance with Regulation 10(1)(b) of the Regulations. The Committee was, therefore, satisfied that service had been effected in accordance with Regulations 10 and 22 of the Regulations.

APPLICATION TO PROCEED IN ABSENCE

5. Ms Tadayyon made an application to proceed in the absence of Mr Hakkeem.

6. Mr Hakkeem was sent emails by the Hearings Officer on 07 July 2022 asking him to confirm his attendance at the hearing. Mr Hakkeem subsequently spoke to the Hearings Officer on 12 July 2022 and informed her that he would not be attending the hearing as he had a fever and cough and was not feeling well. He said that he was waiting to see a doctor. The Hearings Officer asked Mr Hakkeem to review the case papers and explained the importance of him attending the hearing.
7. After the telephone conversation on 12 July 2022 Mr Hakkeem sent an email to the Hearings Officer stating: "*... I not feeling well, suffering fever and cough So i will not attend the committee Kindly Please record my absence Thank you*".
8. The Hearings Officer sent an email in response to Mr Hakkeem on 12 July 2022 asking him to confirm if he was happy for the hearing to proceed in his absence and for him to send an email setting out his position in relation to the allegations. There was no response to the email from Mr Hakkeem.
9. The Hearings Officer attempted to call Mr Hakkeem on two occasions on 18 July 2022 but without success. She also sent a further email to Mr Hakkeem on 18 July 2022 asking him to confirm what the doctor had said about his health and asking him to confirm if he would be attending the hearing and, if not, if he was content for the hearing to proceed in his absence. Again, there was no response to the email.
10. The Hearings Officer spoke to Mr Hakkeem on the morning of the hearing. When asked, Mr Hakkeem informed her that he was now feeling much better. He said that he would not be attending the hearing and that he was happy for the Committee to proceed in his absence. He subsequently sent an email stating: "*... I am happy to inform that pls make absenes there. Thank you*". The Hearings Officer replied to Mr Hakkeem's email thanking him for confirming that he was happy for the Committee to proceed in his absence and asking him if he would be sending in a statement of his financial position.
11. The Committee considered whether it should proceed in Mr Hakkeem's absence. It accepted the advice of the Legal Adviser. The Committee bore in

mind that whilst it had a discretion to conduct a hearing in the absence of the relevant person, it should exercise that discretion with the utmost care and caution. The Committee paid due regard to the factors set out in the cases of *R v Hayward & Others* [2001] 3 WLR 125 and *R v Jones* [2002] UKHL 5 and to the case of *The General Medical Council v Adeogba and Visvardis* [2016] EWCA Civ 162.

12. The Committee was mindful that there is a public interest in dealing with regulatory matters expeditiously. It noted that the Hearings Officer had made a number of unsuccessful attempts to contact Mr Hakkeem prior to the hearing but had eventually managed to speak to him today. Mr Hakkeem had previously indicated in a conversation with the Hearings Officer that he was not well and would not be attending the hearing. He had not, however, made an application to adjourn the hearing. Mr Hakkeem had informed the Hearings Officer today, however, that he felt better but would not be attending the hearing. He had also confirmed to her that he was content for the hearing to proceed in his absence.
13. The Committee determined that there was no evidence before it to suggest that an adjournment of today's hearing would result in Mr Hakkeem's attendance on a future date. It also noted that Mr Hakkeem had, today, informed the Hearings Officer that he was content for the hearing to proceed in his absence.
14. Having balanced the public interest with Mr Hakkeem's own interests, the Committee determined that it was fair, reasonable and in the public interest to proceed in the absence of Mr Hakkeem.

ALLEGATIONS

Mr Lukmanul Hakkeem K P (Mr Hakkeem), an Association of Chartered Certified Accountants' ('ACCA') student:

- 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) 10 April 2021;
- b) 04 May 2021;
- c) 21 May 2021.

2) By reason of his conduct Mr Hakkeem is:

- a) Guilty of misconduct pursuant to bye-law 8(a)(i); in respect of any or all of the matters set out at Allegation 1 above; or in the alternative,
- b) Liable to disciplinary action pursuant to byelaw 8(a)(iii).

BACKGROUND

- 15. Mr Hakkeem first registered as a student of ACCA on 30 September 2020. As such, he is bound by ACCA's byelaws and Regulations.
- 16. On 09 December 2020, Mr Hakkeem took an on-demand Business and Technology (BT) examination ("the Exam") remotely. The Proctor filed an Incident Report in respect of Mr Hakkeem's conduct as observed during the Exam.
- 17. ACCA commenced an investigation into Mr Hakkeem's conduct. All correspondence was sent to Mr Hakkeem by email to the email address that he had previously registered with ACCA. ACCA initially sent a letter, dated 10 April 2021, to Mr Hakkeem's registered email address informing him of the complaint about his conduct in the Exam and sought a response to a number of questions by 01 May 2021. Mr Hakkeem was also advised of his duty to co-operate in accordance with Regulation 3(1) of the Regulations. ACCA did not receive a response to this email from Mr Hakkeem.
- 18. A further letter was sent by ACCA to Mr Hakkeem's registered email address on 04 May 2021 reminding him of his obligation to co-operate with the investigation and seeking a response by 18 May 2021. Again, ACCA did not receive a response to this email from Mr Hakkeem.

19. On 19 and 21 May 2021, ACCA sent further emails to Mr Hakkeem's registered email address asking him to confirm that he had received the emails and attached the letters previously sent to him on 10 April and 04 May 2021. Mr Hakkeem was also reminded of his obligation to co-operate. Mr Hakkeem replied by email on 22 May 2021 stating '*I received your email. Thank you*' but he failed to answer any of the questions previously asked of him.
20. A further letter was sent to Mr Hakkeem by email on 21 May 2021 informing him that due to his failure to co-operate, an allegation under Regulation 3(1)(c) of the Regulations would be raised against him if he did not provide a satisfactory response by 28 May 2021. Mr Hakkeem responded by email stating: '*I received your mail. Thank you*'. Again, however, he did not provide a response to the previous questions asked of him.
21. ACCA again wrote to Mr Hakkeem by email on 01 July 2021 attaching copies of the previous correspondence that had been sent to him. Mr Hakkeem replied the same day stating: '*I received your mail thank you*'. He did not, however, provide any response to the questions asked in the previous correspondence.
22. On 30 July 2021, ACCA sent Mr Hakkeem a copy of the report of disciplinary allegations that had been sent to the assessor for review. He was informed that he had until 16 August 2021 to bring any comments or concerns that he wished to bring to the assessor's attention. Mr Hakkeem did not respond.
23. On 19 October 2021, ACCA sent a letter to Mr Hakkeem, together with a copy of the report of disciplinary allegations, informing him that the assessor had decided to refer the allegations to a hearing before the Disciplinary Committee. Mr Hakkeem was also sent a Case Management Form and informed that he should return the completed form by 16 November 2021.
24. The case was then referred to another assessor under Regulation 9(4) of the Regulations to reconsider the first decision. Following this further review, the assessor also decided that the disciplinary allegations should be referred to a hearing before the Disciplinary Committee. Mr Hakkeem was informed of this decision in a letter sent to him by email on 09 February 2022. He was asked to

return the completed Case Management Form by 09 March 2022. Mr Hakkeem did not do so.

25. A further email was sent to Mr Hakkeem on 05 May 2022 in relation to his failure to return the Case Management Form. The Case Progression Officer also spoke to Mr Hakkeem on 05 May 2022 and asked him to check that he had received the email that had been sent to him. Mr Hakkeem was asked to fill in the form and return it as soon as possible. He said '*okay, bye*' and the call was terminated by him.
26. Screenshots from ACCA's Case Management System show that Mr Hakkeem had opened the correspondence sent to him by ACCA on 10 April 2021 and 21 May 2021. The letter sent by email to Mr Hakkeem on 21 May 2021 had attached copies of the letters previously sent to him by ACCA on 10 April and 04 May 2021.

ACCA SUBMISSIONS

27. Ms Tadayon submitted that the evidence proved that Mr Hakkeem had received the letters sent to him on 10 April, 04 May, and 21 May 2021. She further submitted that, in failing to respond to the correspondence sent to him by ACCA, Mr Hakkeem had breached Regulation 3(1) of the Regulations, that provides:
 - a) Every relevant person is under a duty to co-operate with any investigating officer and any assessor in relation to the consideration and investigation of any complaint.
 - b) The duty to co-operate includes providing promptly such information, books, papers or records as the investigating officer or assessor may from time to time require.
 - c) A failure or partial failure to co-operate fully with the consideration or investigation of a complaint shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.

28. Ms Tadayyon further submitted that:

- a) The failure of a student to co-operate with his professional body was a very serious matter, demonstrating a lack of professional responsibility and a complete disregard for ACCA's regulatory process. Further, a failure by Mr Hakkeem to respond to questions asked by the Investigating Officer during the investigation into his conduct at the Exam had prevented ACCA from fully investigating the complaint against him and, if considered necessary, taking disciplinary action in relation to what may have amounted to a very serious matter.
- b) Mr Hakkeem had an obligation to co-operate with his professional body and to engage with it when a complaint was raised. Such co-operation is fundamental to ACCA, as his regulator, being able to discharge its obligations of ensuring public protection and upholding the reputation of the profession.
- c) Mr Hakkeem had acted in a manner which brought discredit to him, the Association and the accountancy profession and his failure to co-operate with the investigation into a complaint against him was so serious as to amount to misconduct.
- d) If the Committee was not satisfied that Mr Hakkeem's failure to co-operate amounted to misconduct then, as he has breached Regulation 3(1) of the Regulations, it should find him liable to disciplinary action.

DECISION AND REASONS

29. The Committee carefully considered the documentary evidence before it and the oral submissions made by Ms Tadayyon. The Committee accepted the advice of the Legal Adviser.
30. The Committee bore in mind that the burden of proving a factual allegation in dispute rests on ACCA and the standard of proof is the balance of probabilities.

ALLEGATION 1a), 1b) and 1c) - PROVED

31. On the evidence before it the Committee was satisfied that ACCA had sent emails to Mr Hakkeem's registered email address on 10 April, 04 May, and 21 May 2021 and that they had been successfully delivered. It noted that there was evidence from ACCA's Case Management System that Mr Hakkeem had opened the email of 10 April 2021 on 11 April 2021 and the email of 21 May 2021 on 22 May 2021. It further noted that the correspondence of 21 May 2021 had attached copies of the letters previously sent to Mr Hakkeem on 10 April and 04 May 2021.
32. The Committee noted that Mr Hakkeem had sent an email to ACCA on 21 May stating '*I received your email*' but he had not responded to any of the questions asked of him by ACCA in the previous correspondence.
33. The Committee was satisfied that Mr Hakkeem had not responded to the questions asked of him by ACCA in the correspondence of 10 April, 04 May, and 21 May 2021 in relation to the complaint that had been made against him by the Exam Proctor. It noted that Mr Hakkeem had been warned by ACCA in the correspondence that he had a duty to co-operate with the ACCA investigation and that there was a requirement for him to respond. The Committee was satisfied that Mr Hakkeem, in failing to respond to the correspondence, had failed to co-operate with ACCA's investigation into his alleged conduct in the Exam, in breach of Regulation 3(1)(c) of the Regulations. Accordingly, it found Allegations 1a), 1b) and 1c) proved.

ALLEGATION 2a) - MISCONDUCT FOUND

34. The Committee determined that Mr Hakkeem's conduct, in failing to co-operate with the investigation against him, fell far below the standards expected of an ACCA student. In the Committee's determination, Mr Hakkeem's conduct showed a flagrant disregard for his regulator; undermined the integrity of ACCA's investigatory process and had brought discredit to him, the Association, and the accountancy profession.

35. The Committee made no findings in respect of the complaint being investigated by ACCA. The requirement for members, including students of ACCA, to engage and co-operate with their regulator during an investigation was, however, fundamental. A failure by members to do so would mean that ACCA's ability to regulate its members, in order to ensure proper standards of conduct and to maintain its reputation as a regulator, could be seriously compromised.
36. The Committee was satisfied that Mr Hakkeem's failure to co-operate with the ACCA investigation was a very serious and deliberate breach of the Regulations that occurred on more than one occasion and clearly amounted to misconduct.
37. The Committee, having found Allegation 2a) proved, did not go on to consider Allegation 2b), which was pleaded in the alternative.

SANCTION AND REASONS

38. Ms Tadayon informed the Committee that there were no previous disciplinary findings against Mr Hakkeem.
39. The Committee accepted the advice of the Legal Adviser who referred it to Regulation 13(4) of the Regulations and to ACCA's Guidance for Disciplinary Sanctions. In considering what sanction, if any, to impose the Committee bore in mind the principle of proportionality and the need to balance the public interest against Mr Hakkeem's own interests. The purpose of any sanction was not meant to be punitive but was to protect members of the public, maintain public confidence in the profession and ACCA and to declare and uphold proper standards of conduct and behaviour.
40. When considering the appropriate sanction, the Committee considered the aggravating and mitigating features of the case. The Committee accepted that there were no previous findings against Mr Hakkeem but also took into consideration that he had been a student member of ACCA for a relatively short period of time when the misconduct took place. The Committee did not consider that there were any specific aggravating features.

41. The Committee had no information regarding the personal circumstances of Mr Hakkeem, nor had it been provided with any testimonials or references.
42. The Committee considered each available sanction in ascending order of seriousness, having concluded that taking no further action was not appropriate due to the seriousness of the misconduct. The Committee also considered that issuing an admonishment or a reprimand would not be sufficient or proportionate, given the gravity of the matters proved, and would not protect the public interest.
43. The Committee carefully considered whether a severe reprimand would be a sufficient and proportionate sanction, or whether removal from the Student Register was required. It paid careful regard to the factors applicable to each of these sanctions as set out in the Guidance for Disciplinary Sanctions. The Committee considered that most of the factors applicable to a severe reprimand did not apply in this case. Mr Hakkeem had failed to co-operate with ACCA, his regulator, not only in relation to the investigation of his conduct during an examination, but also in relation to these proceedings. The Committee concluded that a severe reprimand would not be appropriate or sufficient to protect the public interest in this case.
44. The Committee was mindful that the sanction of removal from the student register was the most serious sanction that could be imposed. The Committee took into account the guidance that this sanction was likely to be appropriate when the behaviour of the student was fundamentally incompatible with being a registered student of ACCA. The Committee was satisfied that Mr Hakkeem's conduct, in failing to co-operate with his regulator on more than one occasion, had reached that high threshold. There was no mitigation before the Committee from Mr Hakkeem to warrant anything other than removal from the student register.
45. For the above reasons, the Committee concluded that the appropriate and proportionate sanction was for Mr Hakkeem to be removed from the student register.

46. The Committee did not deem it necessary to impose a specified period before which Mr Hakkeem can make an application for readmission as a student member.

EFFECTIVE DATE

47. The Committee determined that the order shall take effect from the date of the expiry of the appeal period referred to in the Appeal Regulations.

DECISION ON COSTS AND REASONS

48. ACCA applied for costs in the sum of £5,385. The Committee had been provided with a schedule of costs. Mr Hakkeem had not sent ACCA a completed Statement of Financial Position despite being encouraged to do so by ACCA on numerous occasions, including immediately prior to today's hearing. The Committee was therefore unable to consider what impact, if any, the imposition of a costs order would have on Mr Hakkeem.
49. The case had finished earlier than had been anticipated. The Committee, therefore, made deductions for the hours claimed in relation to the Case Presenter and concluded that the sum of £5,000.00 would be an appropriate and reasonable sum for ACCA to claim by way of costs.
50. The Committee determined that it would be fair and proportionate to order Mr Hakkeem to pay a contribution to ACCA's costs in the sum of £5,000.00.

ORDER

- i. Mr Lukmanul Hakkeem shall be removed from ACCA's student register.
- ii. Mr Lukmanul Hakkeem shall pay a contribution to ACCA's costs in the sum of £5,000.00.

**Mrs Helen Carter Shaw
Chair
19 July 2022**