

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

- In the matter of:** Mr Mohammad Osama Shafiq
- Heard on:** Tuesday, 14 June 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 Kathryn Douglas (Chair)
Mr Constantinos Lemonides (Accountant)
Mr Gerry McClay (Lay)
- Legal Adviser:** Miss Juliet Gibbon
- Persons present
and capacity:** Mr Ben Jowett (ACCA Case Presenter)
Ms Anna Packowska (Hearings Officer)
- Outcome:** Allegations 1, 2, 3 and 4(a) - Proved
Removal from the student register
- Costs:** Order to pay costs to ACCA in the sum of £7,000

PRELIMINARY

1. The Disciplinary Committee ("the Committee") convened to hear allegations of misconduct against Mr Shafiq. The hearing was conducted remotely through

ACCA



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Microsoft Teams. The Committee had a bundle of papers numbered pages 1 to 157, two additional bundles, numbered pages 1 to 3 and 1 to 3, two service bundles, numbered pages 1 to 19 and 1 to 18. It also had video footage of the examination and a costs bundle.

2. Mr Ben Jowett represented ACCA. Mr Shafiq did not attend the hearing and was not represented.
3. The case had previously been listed on 25 May 2022. On that day Mr Shafiq joined the Microsoft Teams link by telephone and spoke to the Legal Adviser and the Case Presenter. He was advised that he would need access to a laptop computer or similar in order to view the documents in the case and, more importantly, to see the MP4 video, which was a key feature in the case. Mr Shafiq said that he was at his place of work and did not have access to his laptop, which was at home. He indicated that he would be happy to return home and continue the hearing from there, although he said that it was a two-hour journey for him to get home.
4. Mr Shafiq was advised to remain on the hearing link whilst the Legal Adviser updated the Disciplinary Committee. When the Legal Adviser returned to the hearing link, however, Mr Shafiq was no longer there. The Hearings Officer made many attempts to contact him by phone and email during the morning but without success. By 12.15pm there had been no word from Mr Shafiq.
5. On 25 May 2022 the Disciplinary Committee found that service had been effected in accordance with Regulations 10 and 22 of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014, as amended ("the Regulations"). Mr Jowett did not invite the Disciplinary Committee to proceed in the absence of Mr Shafiq. The Disciplinary Committee considered that Mr Shafiq may have had a perfectly innocent explanation for why contact had been lost that morning and decided that, in the circumstances, it would be unfair to proceed in his absence and adjourned the case.

SERVICE

6. Written notice of the hearing was sent by electronic mail ("email") to Mr Shafiq's registered email address on 27 April 2022. The password to open the notice of hearing was sent in a separate email. The previous Disciplinary Committee had been satisfied that service had been effected in accordance with Regulations 10 and 22 of the Regulations. By virtue of Regulation 10(8)(d) of the Regulations, where the relevant person has already been served with the documents, an adjournment does not give rise to a requirement to re-serve them either 28 days before the date set or at all, save that the relevant person shall be notified of the time and place fixed for the adjourned hearing as soon as practicable
7. The Committee noted that ACCA had sent Mr Shafiq an email on 31 May 2022 informing him that the hearing would resume at 9.00am on 14 June 2022. The Committee was, therefore, satisfied that Mr Shafiq had been notified of the time and place fixed for the adjourned hearing as soon as possible.

APPLICATION TO PROCEED IN ABSENCE

8. Mr Jowett made an application to proceed in the absence of Mr Shafiq.
9. The Committee, having satisfied itself that the requirements of Regulations 10 and 22 of the Regulations had been complied with in respect of the hearing listed on 25 May 2022, went on to consider whether to proceed in the absence of Mr Shafiq. The Committee bore in mind that the discretion to do so must be exercised with the utmost care and caution.
10. The Committee was informed that the Hearings Officer had sent an email to Mr Shafiq on 31 May 2022 informing him that the hearing on 25 May 2022 had been adjourned by the Disciplinary Committee and would reconvene on Tuesday 14 June 2022. The Committee noted that the email had been delivered but that no delivery notification had been sent by the destination server. Mr Shafiq, however, had not responded to the email.

11. The Hearings Officer subsequently called Mr Shafiq on Wednesday 08 June 2022 on the telephone number that ACCA holds for him. The call was answered by a male voice that said 'hello'. The Hearings Officer introduced herself but when she said that she was from ACCA the call was disconnected. The Hearings Officer called Mr Shafiq back three times but on each occasion the call was rejected after a few rings.
12. The Hearings Officer sent a further email to Mr Shafiq on 09 June 2022 asking him to confirm if he would be attending today's hearing and he was also sent the hearing link by email on the same day. There has been no response from Mr Shafiq to either of the emails.
13. The Committee was mindful that there is a public interest in dealing with regulatory matters expeditiously. The Committee was of the view, given Mr Shafiq's non-engagement since the hearing was adjourned on 25 May 2022, that there was no evidence before it to suggest that an adjournment of today's hearing would result in his attendance on a future date.
14. Having balanced the public interest with Mr Shafiq's own interests, the Committee determined that it was fair, reasonable and in the public interest to proceed in his absence.

ALLEGATIONS

Mr Mohammad Osama Shafiq, a student member of the Association of Chartered Certified Accountants ('ACCA'):

1. On 23 November 2020 failed to comply with instructions issued by ACCA personnel (as per the Student Information Sheet) before and/or during a scheduled on-demand FMA Management Accounting examination (the 'Exam'), in that he failed to ensure he was in a room with no-one else around him, contrary to Examination Regulation 2.
2. On 23 November 2020, during and in relation to a scheduled on-demand FMA Management Accounting examination, had in his possession, one

or more unauthorised materials, namely textbooks and/or notebooks, contrary To Examination Regulations 4 and 5.

3. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2021, Mr Shafiq has failed to co-operate fully with the investigation of a complaint arising out of his conduct during an on-demand FMA Management Accounting examination in that he failed to respond fully or at all to any or all of ACCA's correspondence sent on

- (a) 01 September 2021;
- (b) 10 September 2021.

4. By reason of his conduct, Mr Shafiq 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 to 3 above; or in the alternative,
- (b) Liable to disciplinary action pursuant to bye-law 8(a)(iii).

BACKGROUND

15. Mr Shafiq registered as a student with ACCA on 02 August 2018. As such, he is bound by ACCA's Byelaws and Regulations, including the Examination Regulations.
16. On 23 November 2020, Mr Shafiq commenced an on-demand FMA Management Accounting Examination (the 'Exam') remotely. The Exam launched but was not completed as it was terminated by the Exam Proctor (online invigilator) due to suspicious behaviour that had been noted. The Exam Proctor filed an Incident Report later that day. The chat logs from the Exam indicate that Mr Shafiq's computer apparently disconnected from the internet during a room pan, and the Exam was terminated.

17. An investigation was commenced which involved obtaining documents and video footage relating to the Exam. The video footage revealed the following:
 - a. The presence of additional people in the Exam room prior to the Exam launch;
 - b. Evidence of the presence of a third party and/or third parties in the Exam room for most of the Exam, as shown by reflections on a shiny door behind where Mr Shafiq was sitting;
 - c. The presence of books at the Exam desk;
 - d. A discussion (in Urdu, with some English) prior to the Exam, which a translation suggested may be of relevance.

18. Mr Shafiq has been given a number of opportunities to explain the irregularities identified in the video footage. He did not initially respond to ACCA's communication of 16 March 2021 and was sent a first 'duty to co-operate' letter on 08 April 2021. He wrote back on 08 April 2021 stating, '*Dear sir, Yes I will fully co-operate with you, I'm looking forward to this,*' [sic], but he did not respond to any of the questions asked by ACCA in the letter, dated 16 March 2021. He was sent a second 'duty to co-operate' letter on 23 April 2021 which he did respond to.

19. Mr Shafiq has acknowledged the presence of the two third parties seen and heard in the opening five minutes of the Exam footage.
 - a. On 23 April 2021, Mr Shafiq admitted that more than one third party, '*my one friend and my czn (in the starting im video)*' [sic], was present in the testing area prior to the commencement of the Exam.
 - b. On 05 May 2021, he named these individuals and provided ACCA with their contact details.

20. Mr Shafiq has also acknowledged the presence of third parties at certain points during the Exam. Mr Shafiq has not, however, admitted the ongoing presence of these individuals in his Exam. He has stated that the almost constant shadows seen behind him:
- a. Were only intermittently and momentarily there;
 - b. Belonged to family members who were in the room inadvertently;
 - c. Represented different third parties from those seen in the early frames.
21. In his email of 05 May 2021, Mr Shafiq stated '*at starting shadow it was the same guy ... then the 2nd shadow was my grandma and after that it was my sister* [sic]. ACCA submits that is not consistent with the video footage of the Exam, which indicates the ongoing presence of one or more individuals who do not appear to move in and out of the Exam room.
22. On 23 April 2021 Mr Shafiq acknowledged the presence of unauthorised items on his Exam desk. He stated that his sister '*came in room and went out immediately she unfortunately kept those books*' [sic]. Mr Shafiq also provided photographs of the unauthorised materials, one item of which corroborates the video footage and the others of which are not seen clearly on the footage.
23. ACCA wrote to Mr Shafiq on 05, 07 and 11 May 2021 asking him to provide further detail in relation to the ongoing presence of the door shadow. On 05 May 2021 Mr Shafiq responded as above. On 11 May 2021 he stated: '*... I told everything in detail as much as I remember, its been a long time now. I don't remember every hing in detail. Please accept my explanation and let me start my exam again*' [sic].
24. ACCA obtained a translation of the initial section of dialogue in the footage and sent it to Mr Shafiq on 01 September 2021. ACCA also asked Mr Shafiq about the disappearance of his phone during the Exam while he was seated at his Exam desk. A chaser letter was sent to Mr Shafiq on 10 September 2021. He did not respond to this correspondence.

THE VIDEO FOOTAGE

25. In relation to the Exam, ACCA asserts that the video footage shows the following:
 - a. Two third parties are present during the Exam set-up.
 - b. Moving reflections of two third parties are seen in the door behind Mr Shafiq at various times throughout the footage.
 - c. Books are present on the table later in the footage that were not present in earlier camera room pans.

EVIDENCE

26. The Committee heard evidence from the Investigations Officer who took the Committee through relevant parts of the video footage of the Exam.

SUBMISSIONS

27. Mr Jowett referred the Committee to the following Examination Regulations and the guidance provided in the ACCA Information Sheet for On-demand CBE Students Sitting Exams at Home that is relevant in this case:
 - a. Regulation 1 provides that *'You are required to adhere at all times to the examination regulations. If you are found to be in breach of any of these regulations or fail to adhere to the guidelines below, you may become liable to disciplinary action, pursuant to Byelaw 8, which could result in your removal from the student register'*.
 - b. Regulation 2 provides that *'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’.

- c. *Regulation 4 provides that ‘You are not permitted to possess, use or attempt to use any books, notes or other materials except those expressly permitted in the guidelines below. These are known as ‘unauthorised materials’.*
 - d. *Regulation 5 provides that ‘You are not allowed to possess, use or intend/attempt to use, any unauthorised materials while the exam is in progress (whether at your desk or otherwise’.*
28. Mr Jowett further submitted that the following guidance from the Examination Guidelines was relevant in this case:
- a. *“The exam can be attempted at home or in your office. Wherever you choose to sit the exam, you should be in a walled room, with a closed door and without distractions.*
 - b. *Before the examination start, you must ensure you follow the instructions below:*
 - i. *Ensure you are not disturbed by anyone.*
 - ii. *Disconnect extra monitors, projectors and televisions.*
 - iii. *Move electronic devices, headphones and watches out of arm’s reach.*
 - iv. *Place food and smoking equipment out of sight.*
 - v. *Move electronic devices, headphones and watches out of arm’s reach.*
 - c. *What items are permitted at your desk?*
 - i. *A small bottle of water all labels removed. No other drinks or food are permitted.*

33. Mr Jowett submitted that Mr Shafiq's actions undermined the examination process and ACCA's reputation as a provider of examinations.
34. Mr Jowett referred the Committee to ACCA's email correspondence to Mr Shafiq on 01 and 10 September 2021. In the email of 01 September 2021, ACCA asked Mr Shafiq a number of questions about the conversation he had with the third parties present in the room at the start of the Exam. A 'chaser' email was sent to Mr Shafiq on 10 September 2021 in which he was reminded of his duty to co-operate with the investigation. Mr Jowett submitted that Mr Shafiq was in breach of Regulation 3(1) of the Regulations in that he failed to fully cooperate with the disciplinary investigation by not responding to these two communications.
35. Mr Jowett further submitted that Mr Shafiq's conduct in breaching the Exam Regulations, together with his failure to fully co-operate with the investigation as provided for by Regulation 3 of the Regulations, fell far short of the conduct expected of professional accountants and those training to become accountants and that misconduct, as defined by Byelaw 8(c), was clearly made out.

DECISION AND REASONS

36. The Committee carefully considered both the oral and documentary evidence; the video footage and the oral submissions made by Mr Jowett. The Committee accepted the advice of the Legal Adviser.
37. The Committee bore in mind that the burden of proving each of the allegations rests on ACCA and the standard of proof is the balance of probabilities.
38. The Committee noted the evidence that Mr Shafiq had agreed to abide by the Examination Regulations, as part of the pre-examination set up, as seen in the chat log.

Allegation 1 - Proved

39. The Committee was satisfied, on the evidence before it, that Mr Shafiq had received instructions prior to the exam that he should not have any other person in the exam room with him. The Committee noted that this would have been confirmed to Mr Shafiq in the 'Information Sheet for Students' examination guidance provided to him by ACCA prior to the exam. It was also satisfied from the video footage that there had been at least two people in the exam room at the start of the Exam and at least one other person in the exam room whilst Mr Shafiq was taking the Exam on 23 November 2020.
40. The Committee was satisfied, on the balance of probabilities, that by causing or permitting third parties to be present with him during the exam, Mr Shafiq had been in breach of Regulation 2 of the Exam Regulations and the ACCA examination guidelines, and he had failed to comply with the instructions provided to him by ACCA to ensure that he was in a room on his own. The Committee found Allegation 1 proved.

Allegation 2 - Proved

41. The Committee noted the video footage of Mr Shafiq carrying out a room pan during the Exam in which books and/or notebooks, that were not there at the start of the exam, can clearly be seen on his exam desk later in the Exam. The Committee was satisfied that Mr Shafiq had been in possession of unauthorised materials during the exam. The Committee was satisfied that Mr Shafiq had breached Examination Regulations 4 and 5 by having such unauthorised materials in his possession during the exam. The Committee found Allegation 2 proved.

Allegation 3 - Proved

42. The Committee was satisfied that ACCA had written to Mr Shafiq about the investigation into his alleged conduct on 1 and 10 September 2021 and the emails had been delivered to his registered email address. The Committee was also satisfied, on the evidence before it, that Mr Shafiq had not responded to

this correspondence from ACCA, which had included a number of detailed questions for Mr Shafiq to answer.

43. Regulation 3 of The Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014, as amended, provides that: *'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'*.
44. The Committee was satisfied, on the balance of probabilities, that Mr Shafiq had breached Regulation 3(1) of the Regulations by his failure to co-operate with ACCA's investigation. The Committee found Allegation 3 proved.

Allegation 4(a) - Misconduct Proved

45. Mr Shafiq had failed to respond to two emails sent to him by ACCA in relation to the investigation. There is a duty on ACCA members to fully engage with their regulator. The Committee was of the view that Mr Shafiq's failure to fully cooperate with the investigation was a very serious failure that had the potential to undermine public confidence in the profession and ACCA as a regulator.
46. The Committee was satisfied that Mr Shafiq's two breaches of the Exam regulations, together with his failure to co-operate with the investigation, fell far below the standards expected of an ACCA student. In the Committee's determination Mr Shafiq's conduct undermined the integrity of ACCA's examination process and ACCA as a regulator and brought discredit to Mr Shafiq, the Association and the accountancy profession.
47. The Committee was satisfied that Mr Shafiq's two breaches of the Examination Regulations and his failure to cooperate with the disciplinary investigation were very serious and collectively amounted to misconduct.

Allegation 4(b) - Not Considered

48. The Committee, having found Allegation 4(a) proved, did not go on to consider the alternative charge set out in Allegation 4(b).

SANCTION AND REASONS

49. Mr Jowett informed the Committee that there were no previous disciplinary findings against Mr Shafiq.
50. 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 Shafiq'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.
51. When considering the appropriate sanction, the Committee considered the aggravating and mitigating features of the case. The Committee considered the following to be mitigating features:
 - a. Mr Shafiq had no previous disciplinary findings against him although the Committee noted that he had only been a registered student since 02 August 2018, which was only two years prior to the date of the Exam.
 - b. Mr Shafiq had initially co-operated with the investigation and had admitted the presence of third parties in the room and unauthorised materials on the Exam desk.
52. The Committee considered the following to be aggravating features:
 - a. Although Mr Shafiq had said that he was sorry there had been third parties present in the Exam room, he appeared to lack insight into the seriousness of this.
 - b. Mr Shafiq's misconduct had the potential to undermine the integrity of the ACCA examination process and to damage the reputation of the ACCA as regulator.

53. 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 conduct. The Committee also considered that issuing an admonishment or a reprimand would not be sufficient or proportionate, given the gravity of the conduct proved, and would not protect the public interest.
54. The Committee carefully considered whether a severe reprimand would be sufficient and proportionate, or whether removal from the student register was required. It had careful regard to the factors applicable to each of these sanctions as set out in the Sanctions Guidance. The Committee considered that most of the factors applicable to a severe reprimand did not apply in this case. The Committee concluded that a severe reprimand would not be appropriate or sufficient to protect the public interest.
55. The Committee considered the factors to be taken into account when considering a sanction of removal from the student register. It noted that there was little evidence of insight or genuine remorse on the part of Mr Shafiq.
56. The Committee was mindful that a 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 Shafiq's misconduct in breaching the Examination Regulations, together with his failure to fully cooperate in ACCA's disciplinary investigation, had reached that high threshold. The Committee had heard no mitigation from Mr Shafiq to warrant anything other than removal from the student register.
57. For the above reasons, the Committee concluded that the appropriate and proportionate sanction was to remove Mr Shafiq from ACCA's student register.
58. The Committee did not deem it necessary to impose a minimum period before which Mr Shafiq is able to reapply for admission as a student member.

DECISION ON COSTS AND REASONS

59. The Committee was provided with a detailed costs schedule. ACCA applied for costs in the sum of £7,907.50.
60. The Committee was satisfied that the costs sought by ACCA were appropriate and reasonably incurred. The Committee noted that Mr Shafiq had not provided any details of his current financial means or provided the Committee with any written representations in relation to the costs claimed by ACCA. The Committee was not, therefore, in a position to make any reductions based on Mr Shafiq's financial circumstances. The Committee did, however, consider that there should be a reduction in the costs as the hearing had taken less time than anticipated. The Committee decided to reduce the amount of the costs claimed by £907.50 to reflect the fact that the hearing had concluded earlier than anticipated.
61. The Committee determined that it would be fair and proportionate to order Mr Shafiq to pay costs to ACCA in the sum of £7,000.00.

ORDER

- i. Mr Mohammad Osama Shafiq shall be removed from ACCA's student register.
- ii. Mr Mohammad Osama Shafiq shall pay a contribution to ACCA's costs in the sum of £7,000.

EFFECTIVE DATE OF ORDER

62. 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.

Mrs Kathryn Douglas
Chair
14 June 2022