

APPLICATION ON PAPERS

APPEAL COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Syed Waqas Haider

Considered on: Thursday, 09 June 2022

Chair: Mr Martin Winter

Outcome: Permission to appeal against finding re allegation 2a is **granted**

Permission to appeal against order for sanction of exclusion from the student roll is **granted and exclusion order stayed pending full appeal**

Permission to appeal against order for costs of £2000 is **granted and costs order stayed pending full appeal**

APPLICATION(S)/BRIEF BACKGROUND

1. The member has applied for permission to appeal against the findings and orders of the Disciplinary Committee (“DC”) dated 16 March 2022 finding allegations 1a, 1b, 1c and 2a proved and thereafter imposing the sanction of excluding the member from the student register of ACCA. A costs order of £2000 followed the sanction and this is also the subject of the appeal application.
2. The proven allegations related to Mr Haider’s failure to respond to email enquiries from ACCA during an investigation into suspected exam irregularities in December 2020 (allegation 1) and that this conduct amounted to misconduct (allegation 2). Only the allegations of failure to cooperate were pursued to the DC on 16 March 2022, not the underlying exam irregularities.

3. The member's permission to appeal application form ("PTA form") was sent to ACCA on 21 April 2022. The deadline for the application was 07 April 2022. The Appeal Regulations (Reg.3(1) allow applications that arrive out of time to be considered if the Chair considers there to be "good reason" for the lateness. I note that Mr Haider (in his email dated 06 May 2022) states that he has few IT resources and limited access to his email account. I am prepared to accept his explanation as a "good reason" and allow the application to be considered out of time.
4. Mr Haider's PTA form does not specify which findings are subject to the applications for permission to appeal. Section 6c of the PTA form sets out his position in relation to the investigation into the suspected exam irregularities that were not proceeded with by ACCA.
5. At section 6e, Mr Haider asserts that the order (of exclusion) made by the DC was disproportionate and/or unreasonable in light of its findings. He asserts that he has been allowed to continue to successfully take ACCA examinations and has prepared for future examinations.
6. At section 6f, Mr Haider asserts that seven or eight months earlier (it is not clear from what date he is referencing this period, but it is assumed to be from the date of the PTA form) his laptop was stolen and he had also encountered difficulty accessing his emails due to a lack of appropriate resources. He stated that he had visited the Lahore offices of ACCA to find out the progress of the exam irregularities allegation. He states that he was told that he was permitted to undertake further examinations and understood this to mean that the investigation had concluded.
7. A statement of means was also sent to ACCA alongside the PTA form setting out Mr Haider's modest income.
8. In a further e-mail to ACCA dated 06 May 2022 Mr Haider accepted that his lack of attentiveness towards his e-mail account had resulted in him not responding to the emails from ACCA in April and June 2021

"I also accept and admit my fault that I should have checked my emails..."

9. Mr Haider explains that this was due to his being:

"...relaxed and busy in my work to arrange funds for my exams..."

10. I have concluded that Mr Haider is not seeking permission to appeal against the findings

contained in Allegation 1a, b and c as he accepts that he did not respond to the emails from ACCA. I conclude that he is seeking permission to appeal the finding that this conduct amounted to misconduct (Allegation 2a).

11. ACCA have responded to the PTA form in a written submission dated 01 June 2022. At paragraph 7 of that response, it is asserted that the only correspondence ACCA received from Mr Haider was at the “*pre investigation stage*”. This was the email sent by Mr Haider on 17 December 2020 in response to an email from ACCA the same day alleging suspected irregularities in the exam that Mr Haider sat the week before. Mr Haider responded with a denial of any wrongdoing and explaining what had taken place.
12. ACCA points out that the purported theft of the laptop would have taken place after the emails of April and June 2021 had been sent. Consequently, it provides no explanation as to why there was no response from Mr Haider. ACCA also points out that a member has an obligation to cooperate with an ongoing investigation and that Mr Haider, being aware of the ongoing investigation, should have made greater efforts to access his e-mail account irrespective of the theft of the laptop (see paragraph 21 of the ACCA Response).

DECISION ON APPLICATION(S) AND REASONS

Appeal Against the Finding of Allegation 2a proved – (Misconduct)

13. Having found allegations 1a, b and c proved, the Committee moved on to consider whether the member was guilty of misconduct by virtue of those proved allegations. The DC commented at paragraph 26 (my emphasis added):

26. The Committee was satisfied that Mr Haider’s failure to co-operate with the ACCA investigation was a very serious, deliberate breach of the Regulations on more than one occasion and clearly amounted to misconduct.

14. Mr Haider now seeks to explain that his failure to cooperate with ACCA by not responding to the emails was due to his lack of attention of his e-mail account and his assumption that the investigation had concluded arising from conversations he had with the Lahore office of ACCA.
15. He, indirectly, asserts that if the DC had been aware of this evidence, that a different conclusion might have been reached. It is of little credit to Mr Haider that his failure to attend at the hearing to give this evidence before the DC is, on his own account, also attributable

to his lack of attentiveness of his e-mails. However, it should be remembered that Mr Haider is a young man for whom English is not his first language and he is a student member.

16. I find that these new submissions from Mr Haider amount to new evidence (in accordance with Appeal Reg 5(2)d) and that the DC would have reached a different conclusion in relation to Allegation 2a had they concluded that Mr Haider's failure to respond was due to negligence rather than a deliberate ploy to frustrate an investigation. I find that there is a realistic prospect of success on this ground (per Reg.6(1)a) and I grant permission to appeal against the DC's finding that allegation 2a is proved.

Appeal Against the Order of Exclusion from the Student Register

17. The DC set out some of the reasons for imposing the sanction at paragraphs 31 and 32 of the Reasons for Decision document:

31. The Committee did not consider that there were any specific aggravating features apart from the seriousness of the Mr Haider's deliberate and calculated misconduct in failing to co-operate with his regulator.

32. The Committee had no information regarding the personal circumstances of Mr Haider, nor had it been provided with any testimonials or references.

18. Paragraph 32 is not entirely accurate. The DC did have some information from Mr Haider contained within his email dated 17 December 2020 (indeed this information was taken into consideration by the DC when later assessing costs) including that he was from a poor family, living in cramped circumstances when the remote exam was taking place and had limited access to IT resources.
19. The new information from Mr Haider contradicts the DC finding that the failures of Mr Haider were "*deliberate and calculated*". Mr Haider suggests that his lack of engagement with ACCA was because of the lack of attention he paid to his email account at the relevant time, as opposed to a deliberate avoidance of ACCA's investigation. This, if accepted, could be described as reckless or negligent actions, not deliberate and calculated.
20. It is also clear that ACCA sent an email to Mr Haider on 17 December 2020 (at page 36 of the DC bundle) setting out the original allegation, that he had breached examination rules, and inviting a response. The letter also explained that the matter "*will be referred*" for further investigation and that if there was a case to answer the matter "*will likely be referred*" to a

disciplinary hearing. Mr Haider responded the same day denying any wrongdoing and explaining why there were voices heard in the background during the remote examination. This is evidence of cooperation at a very early stage and inconsistent with Mr Haider was being deliberately obstructive.

21. It was not until April 2021 that an ACCA investigator followed-up with an emailed list of further questions for Mr Haider. There is no explanation for the 4-month delay between December 2020 and April 2021. Mr Haider did not respond to the emails sent in April and it is this failure to respond that has led to the allegations being brought. It should be noted that the questions posed in April 2021 were, in part, already answered by Mr Haider in his email to ACCA of 17 December 2020.
22. Mr Haider was initially blocked from taking further ACCA examinations from December 2020 “*pending the outcome of this investigation*” (as per the 17 December 2020 letter from ACCA at page 36 of the DC bundle). However, it is apparent from Mr Haider’s exam record that he successfully completed further examinations in June 2021 (see DC bundle page 35) and so the block must have been lifted by that time. It is not clear exactly when the exam block on Mr Haider was removed by ACCA, but he was notified of the block in December 2020 and so it must have been between then and June 2021 and sufficiently before June 2021 to allow him to make arrangements to sit the examinations that month. Mr Haider states that he had been attending the ACCA office in Lahore and ascertained that the exam block had been removed by ACCA and therefore assumed that the investigation into the exam breach had concluded in his favour. This could account for why he was not looking out for further emails from ACCA.
23. I find that Mr Haider’s recent submissions amount to new evidence (in accordance with Appeal Reg 5(2)d) and I find that the DC would have reached a different conclusion in relation to the order for exclusion had they concluded that Mr Haider’s failure to respond was due to negligence rather than a deliberate ploy to frustrate an investigation. I find that there is a realistic prospect of success on this ground (per Reg.6(1)a) and I grant permission to appeal against the DC’s order of exclusion.

Appeal Against the Order of Costs of £2000

24. The DC set out some of the reasons for imposing the order for costs at paragraphs 40 and 41 of the Reasons for Decision document:

40... Mr Haider had not provided any details of his current financial means, although the

Committee noted that in his initial correspondence to ACCA, dated 17 December 2021, he had stated that he belonged to 'a poor family' and had to rent the equipment necessary to take the exam. The Committee also took into account that Mr Haider was a young student living in Pakistan.

41. The Committee determined that it would be fair and proportionate to order Mr Haider to pay a contribution to ACCA's costs in the sum of £2,000.00.

25. The DC did not specifically refer to the ACCA Guidance on Costs but would have been aware of the requirement for a costs order to be within the financial means of the member. Despite being aware of some information as to his ability to pay (and reducing the sum to £2000 as a consequence) there is no reasoned approach from the DC why £2000 was a sum that Mr Haider could be expected to pay when £6006 (the original cost figure) was not.
26. The Detailed Costs Schedule produced by ACCA sets out a breakdown of the work undertaken by ACCA in preparation for the DC hearing. I note that at Part B the preparatory work commenced on 04 February 2021. This pre-dates the emails sent by ACCA that Mr Haider failed to respond to and so must relate to work connected to the underlying investigation into the alleged breach of exam procedure in December 2020. No proceedings were brought against Mr Haider in relation to the alleged breach of exam procedure and so he ought not be liable for these costs. The DC does not appear to have taken this into consideration.
27. It is arguable that Mr Haider should only be liable for the costs attributable to his failure to respond to the 3 emails on 06 and 28 April and 07 June 2021. The costs schedule does not distinguish between the work connected to the allegations not brought by ACCA (connected to the exam irregularities) and those that were found proven by the DC. The failure to apportion the overall costs figure indicates that the order was not reasonable and proportionate (in breach of the ACCA Guidance on Costs at paragraph 13).
28. Mr Haider has subsequently provided details of his income and expenditure. This information was not available to the DC. ACCA has not challenged any of the figures put forward in their Response to Appeal document. These figures show Mr Haider has a very modest income of £180 per month, all of which is spent on essentials.
29. I find that Mr Haider's recent submissions amount to new evidence (in accordance with Appeal Reg 5(2)d) and I find that the DC would have reached a different conclusion in relation to the order for costs had it known of Mr Haider's financial situation. I find that there

is a realistic prospect of success on this ground (per Reg.6(1)a) and I grant permission to appeal against the DC's order of costs.

ORDER(S)

1. Permission to appeal against finding re allegation 2a is **granted**
2. Permission to appeal against the order for sanction of exclusion from the student roll is **granted**
3. Permission to appeal against order for costs of £2000 is **granted**

EFFECTIVE DATE OF ORDER

30. Reg 6(3)i allows for the stay of any order of a DC which is to have immediate effect if permission to appeal is granted if to do so is *justified in all the circumstances*.
31. I order that the order for costs is stayed pending the full appeal. I find that it would be wrong to pursue the order in light of the unchallenged evidence from Mr Haider concerning his modest financial situation.
32. I am also concerned with the order of exclusion from the student register as Mr Haider is currently taking, and preparing for, ACCA professional examinations. The exclusion order has halted his progress in this regard. I take into consideration that there might be some delay before the appeal is resolved. This delay could have a significant adverse impact upon Mr Haider's studies and examination preparation. Against that I have considered the public interest in maintaining the reputation of ACCA and the accountancy profession. I have taken into consideration that Mr Haider is a student member and that he poses less of a threat to the public than a full member in public practise. Any risk to the public can be mitigated by listing the full appeal hearing as soon as practicable.
33. Taking all of these circumstances into account, I order a stay of the order for exclusion from the student register pending the resolution of the full appeal.

Mr Martin Winter
Chair
09 June 2022