

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Farid Ullah Majid Ullah
Heard on:	Wednesday, 15 and Thursday, 16 June 2022
Location:	Held Remotely by Microsoft Teams via ACCA Offices, The Adelphi, 1-11 John Adam Street, London WC2N 6AU
Committee:	HH Suzan Matthews (Chair) Ms Joanne Royden-Turner (Accountant) Mr Geoffrey Baines (Lay)
Legal Adviser:	Mr Andrew Granville-Stafford (Legal Adviser)
Persons present and capacity:	Mr Benjamin Jowett (ACCA Case Presenter) Ms Nkechi Onwuachi (Hearings Officer)
Summary	Allegations 1, 2(a), 2(b)(i) and 3(a) proved Student removed from the register.
Costs:	Student to pay cost to the ACCA in the sum of £5,000.00.

PRELIMINARY

ACCA



+44 (0)20 7059 5000



info@accaglobal.com



www.accaglobal.com



The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

1. The Disciplinary Committee of ACCA (*the Committee*) convened to consider Allegations concerning Mr Farid Ullah.
2. The Committee had before it a bundle of documents (121 pages), an additional bundle (22 pages), a service bundle (26 pages) and a video recording lasting one hour 9 minutes and 23 seconds.
3. Mr Ullah attended the hearing on 15 June 2022 and was not represented. The Committee announced its findings at the conclusion of the hearing on 15 June 2022 and sat in camera on 16 June 2022 to draft its reasons for those findings.

ALLEGATIONS AND BRIEF BACKGROUND

4. At the outset of the hearing, Mr Jowett on behalf of ACCA made an application under Regulation 10(5) of the Complaints and Disciplinary Regulations ('CDR') to amend Allegation 1. He invited the Committee to add the word 'or' so the allegation would read 'on or about his person' rather than 'on about his person'. Mr Ullah did not object to the proposed amendment. The Committee was satisfied that the amendment made better grammatical sense and it was appropriate to allow it.

Allegations (as amended)

Mr Farid Ullah Majid Ullah, a student member of the Association of Chartered Certified Accountants ('ACCA'):

1. On 20 December 2020, during a Corporate and Business Law (LW) - ENG examination (the Exam), had an item not permitted at his desk or on or about his person (*'item'*), contrary to Examination Regulation 1 and the Examination Guidelines (as applicable in 2020).
2. Gave false or misleading responses to ACCA's investigation in relation to the item referred to in allegation 1, in that:
 - (a) On 30 June 2021, he informed ACCA, in response to a question asking him to explain the object that appeared to his left-hand side in the exam that *'it is calculator regarding which I have already informed to the investigator in the beginning'* (sic).

- (b) The conduct described at Allegation 2(a) was:
 - i. Dishonest, in that he knew his response was untrue and/or sought to mislead ACCA's investigation; or, in the alternative,
 - ii. Conduct, that demonstrates a lack of integrity.
- 3. By reason of his conduct, Mr Ullah is:
 - (a) Guilty of misconduct pursuant to byelaw 8(a)(i), in respect of any or all of the matters set out in allegations 1 – 2 above; or, in the alternative,
 - (b) In respect of allegation 1 only, liable to disciplinary action pursuant to byelaw 8(a)(iii).
- 5. Mr Ullah was admitted to student membership of ACCA in November 2016. On 20 December 2020, he sat ACCA's Corporate and Business Law exam. This was a computer-based exam ('CBE'), invigilated remotely by a proctor via a webcam on the candidate's computer. ACCA's case was that, during the exam, Mr Ullah had an unauthorised item on his desk. ACCA further alleged that Mr Ullah gave misleading answers during the investigation into this incident.
- 6. As part of the exams booking process Mr Ullah was required to read and agree to ACCA's terms and conditions for sitting a CBE. This includes the Examination Regulations and Examination Guidelines.
- 7. The Examination Regulations include the following:

Examination Regulation 1

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 ACCA Byelaw 8, which could result in your removal from the student register

Examination Regulation 4

You are not permitted during the exam to possess, use or attempt to use any notes, books or other written materials except those expressly permitted in the guidelines below. These are known as 'unauthorised materials'.

Examination Regulation 6

You are not permitted to use a dictionary or an electronic translator of any kind or have on or at your desk a calculator (if applicable to your exam) which can store or display text. You are also not permitted to use mobile phones, electronic communication device, camera, or any item with smart technology functionality in your examination room. These are known as "unauthorised items" and are taken into the examination room at the candidates own risk. ACCA accepts no responsibility for their loss or damage, if applicable. Such items must not be worn, or be placed on your desk, in pockets of clothing, in your bag or personal belongings, or be kept anywhere else on or about your person. If you bring a mobile phone, electronic communication device or camera, or any item with smart technology functionality and/or capable of taking photographic images with you to your examination, you must declare this to the examination personnel prior to the start of the examination. You must switch the phone or electronic communication device or camera off and disable any alarms or notifications. You must then follow the instructions given to you by the examination personnel.

8. The Examination Guidelines include the following:

Proctored Exam

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.

Before the examination start, you must ensure you follow the instructions below:

- *Ensure you are not disturbed by anyone.*
- *Disconnect extra monitors, projectors and televisions.*
- *Place food and smoking equipment out of sight.*
- *Move electronic devices, headphones and watches out of arm's reach.*

What do you need for entry to the examination?

- *An official means of photographic identification, such as your valid passport, driving license or government issued photographic identification document. If you are unable to prove your identity your examination attempt may not be marked.*

What items are permitted at your desk?

A small bottle of water all labels removed. No other drinks or food are permitted.

- *Scratch paper (2 sheets permitted and must be destroyed on screen before the end of your exam)*
- *A noiseless, cordless pocket calculator which may be programmable, but which must not have a printout or graphic/word display facility in any language.*

No unauthorised items or materials are permitted on or about your person or at your desk.

9. Following the exam, an incident report was sent to ACCA by the examination proctor. They stated that during the exam they had observed Mr Ullah frequently looking off screen. He was warned about this, and he was asked to perform a camera pan so the proctor could see what was on his desk. The proctor invited an Intervention Specialist to log in and they also requested a camera pan and warned Mr Ullah that if he continued to look off screen his exam would be terminated.
10. ACCA relied on a video of Mr Ullah taking the examination, which was recorded by the camera on Mr Ullah's laptop. The video was reviewed after the exam and the following incidents were noted (times given are in minutes and seconds from the start of the recording).
 - At 1:30-2:20, after a photo of his ID is taken, Mr Ullah is taken to the exam rules page. He is asked to review the resources that are permitted during the exam, such as, a calculator and two sheets of scratch paper, and agree to these exam rules. Mr Ullah agrees to these exam rules by ticking

a box and clicking continue.

- At 6:00-6:03, Mr Ullah says to the proctor '*actually, I don't have calculator as it law theory paper [sic]*'.
- At 06:58-08:18, a camera pan is performed. At 7:18, whilst Mr Ullah's desk can be seen, no calculator can be seen on his desk, only blank paper.
- At 11:40-12:00, Mr Ullah confirms by selecting an option that his personal details are correct and that he agrees to abide by the exam regulations. He then selects his exam and clicks continue.
- At 12:14-13:05, Mr Ullah shows his left-hand side and his seating area. At 12:50, the cushion where Mr Ullah places his materials can be seen, no calculator is seen, only blank paper and his ID.
- At 13:50-14:20, the exam begins.
- At 25:08-26:25, Mr Ullah is asked to perform a camera pan. At 26:07, whilst Mr Ullah's desk can be seen, no calculator can be seen on his desk, only blank paper and his ID.
- At 39:16-39:53, a camera pan is performed. At 39:39, whilst Mr Ullah's desk can be seen, no calculator can be seen on his desk, only blank paper.
- At 43:59-44:00 and 44:02-44:04, Mr Ullah can be seen looking off-screen to his left-hand side and downwards.
- At 44:40-45:20, a camera pan is performed. At 44:47, whilst Mr Ullah's desk can be seen, no calculator can be seen on his desk, only blank paper and his ID.
- At 47:57-47:58, an object appears to Mr Ullah's bottom left-hand side. Mr Ullah appears to briefly look at the object whilst it can be seen on screen. This is the object which ACCA alleged was the unauthorised item Mr Ullah had with him in the exam.

- At 48:03 and 48:05, Mr Ullah can be seen looking off-screen to his left-hand side.
 - At 1:09:23, the footage ends. Although the chat logs of the exam indicate Mr Ullah's exam is longer than 1:09:23, no further footage could be recovered.
11. The incident was reported to ACCA's Investigations Department ('ID') and an investigation was commenced. The ID wrote to Mr Ullah on 19 May and 29 June 2021, providing a link to the video footage and asking him to explain what the object was that could be seen at 47.57-47.58.
 12. Mr Ullah replied by email on 30 June 2021 saying *'Sir, it is calculator regarding which I have already informed to the invigilator in the beginning [sic].'*
 13. The ID wrote to Mr Ullah on 02 July 2021 saying:

'In your 30 June 2021 response, you said that that the object that can be seen to your bottom left-hand side at 47:57-47:58 was a calculator and that you informed the invigilator of it at the beginning. At 6:00-6:03 in the video footage of your exam, you said to the proctor 'actually I don't have calculator as it law theory paper'. At 7:18, 12:50, 26:07, 39:39 and 44:47, whilst performing a camera pan, no calculator can be seen on your desk. Was the object that can be seen at 47:57-47:58 to your bottom left-hand side a mobile phone or an electronic device capable of taking photos?'
 14. Mr Ullah responded by email the same day saying:

'I am really sorry I may forget that it was calculator because its been 6 months now.

I extremely applogize [sic] for that, but i don't remember exactly what this object was.

I was having extra wifi connecter for emergency. I think I put that on side.'
 15. Mr Ullah was asked by the ID to provide a photograph of the wifi connector and explain why he had this with him during the exam. He replied on 05 July 2021

saying that he could not provide a photograph because it does not belong to him, and that he had obtained it from a colleague for the exam day only. As to why he needed the connector he said:

'I kept that for tge [sic] only purpose that because in previous attempt in September I was faced some issue due to which i couldnt attempt the exam. For this session i thought i should keep because if any issue arise so I can switch to another.'

16. A copy of the report to the Independent Assessor was sent to Mr Ullah and he was invited to comment, which he did by email on 19 August 2021. He said:

'I plead on you to accept my apology for the uncomfort created to the examiner on my Business Law (LW) exam session. Due to the dreadful disaster caused by the covid 19, I saw myself obliged to take a remote exam in Business Law during the September 2020 exam session. Having knowledge of the constraints of the remote exams; that is the high level of complains given by students about their exams been stopped unexpectedly, and the frequent internet failures, which caused them to loose focus, which therefore had an adverse impact on their results. Having all this issues in mind, I thought safe to have another wifi connection which will help me complete my exams without any traumatising situation. The wifi connector was installed for safety purposes, without any negative intention in mind, as it is against the ACCA code of ethics, which I highly promote and stick to. This remote exam was my first experience, having little exam experience, blended with exam nervousness, made me to take that decision. Unfortunately last September I tried to go for the AA exam remotely but due to internet failures and techincal issues, my exam could not start on time and then my my exam was cancelled. Will all that in mind before going for LW exam, I borrowed one wifi connector for emergency purposes, so that any unfortunate issue could be handled. The LW exam issue has had a drastic effect on my current exam sittings.

Along with this, I truely believe that ACCA exams paper no one know about which he or she gonna face in exam so that he or she can get advantage. It took me arround 5 years to reach here so there is no reason that I would spoil

*whole my career for paper where normally passing rate is more than 76%.
[sic]*

17. The allegations were referred to the Disciplinary Committee and Mr Ullah provided his response to the allegations in a Case Management Form which he completed on 26 January 2022. He disputed the allegations and said:

'Item not permitted was wifi device and I have provided the necessary explanation.'

DECISIONS ON ALLEGATIONS AND REASONS

18. The Committee considered the documents before it; the video evidence presented by Person A, an ACCA Investigations Officer; the oral evidence of Mr Ullah; the submissions of both parties; and the advice of the Legal Adviser. The Committee bore in mind that the burden of proving an allegation, rests on ACCA and the standard to be applied is proof on the balance of probabilities.

Allegation 1

19. The Committee had to consider whether, during the exam on 20 December 2020, Mr Ullah had at his desk or about his person an item that was not permitted, in breach of Examination Regulation 1 and the Examination Guidelines as applicable in 2020.
20. Person A gave evidence relating to the video footage taken by Mr Ullah's laptop camera during the examination. Person A took the Committee to four occasions in the footage where Mr Ullah was asked to do a camera pan of the room. This showed that Mr Ullah was using a stool with a cushion on it as his desk. Apart from plain paper and his ID card, no other items could be seen on or near the 'desk' or seat Mr Ullah was using.
21. At 47 minutes and 57 seconds into the recording, Mr Ullah is seen, albeit fleetingly, to be holding something in his left hand. It was a small, dark coloured object but it was not possible to identify from the video what it was.
22. ACCA's case was that it was reasonable to draw the inference that this was a mobile phone or similar device which Mr Ullah was using to assist him with

answering the questions. Mr Jowett on behalf of ACCA further submitted that, even if the Committee accepted Mr Ullah's account that the item in question was a wifi connector, it would still not have been permitted for him to have this at his desk.

23. Mr Jowett referred the Committee to ACCA's Examination Guidelines which limits the items a candidate is permitted to have at their desk to a bottle of water, 'scratch' paper and a calculator. He also took the Committee to the definition of 'unauthorised items' in the Examination Regulations, which includes mobile phones, cameras and electronic communication devices.
24. In his evidence to the Committee, Mr Ullah denied that the item seen in his hand was a mobile phone. He said he had left his phone outside of the room. The item he was holding was, he said, a wifi device which he had borrowed from a friend. The reason he had it was because he was concerned about the internet dropping out during the exam, having previously had an exam cancelled due to such a problem.
25. Mr Ullah told the Committee the reason that the device could not be seen in any of the camera pans of the room was because it was portable, and he had it in his pocket. He said he took it out of his pocket and clicked it to switch it on. However, he also told the Committee that he had not in fact experienced any connectivity problems during this exam. He accepted that he should have told the proctor invigilating the exam about the device, and that he had made a mistake by not doing so. However, he said it was not a device that could store data and he denied having used it to cheat in the exam.
26. Mr Ullah said that the paper he was sitting was a multiple-choice exam. He told the Committee that his previous examination results were up-and-down and that he had failed a number of papers. He said he was never disappointed by failure. He had in fact passed this exam, with a score of 70%.
27. The Committee did not accept that the evidence Mr Ullah gave was truthful and, in particular, it did not accept that the item seen briefly in his hand was a wifi connector.

28. The Committee noted that the video showed Mr Ullah looking to his left on many occasions. It was obvious that the proctor considered this to be a matter of concern because they asked Mr Ullah to do several camera pans of the room and they also reported it to a supervisor. Mr Ullah did not dispute that he was seen looking to his left on the video. In his email to ACCA on 19 May 2021 he said *'I accept that I have seen off the screen which is against the examinations rules, and I am apologize for this . . .'* However, of significance in the Committee's view, he failed to provide any credible explanation as to why he kept looking to his left.
29. It was also highly significant, in the Committee's opinion, that Mr Ullah had changed his explanation over time. When first asked to explain what object, he was holding in his left hand, he said it was a calculator. However, his account changed when it was pointed out to him that he had told the proctor he did not have a calculator, because it was a law and business exam, and that no calculator was visible on any of the room pans.
30. Mr Ullah told the Committee in his oral evidence that over six months had passed between the exam and giving this explanation. He said he had forgotten what the item was due to the passage of time. The Committee did not accept that. The Committee had no doubt that in the circumstances Mr Ullah fully understood both what he was being asked and the significance of it. If he had genuinely been so concerned about the internet dropping out that he had gone to the trouble of borrowing a wifi connector, keeping it with him during the exam, and indeed accessing it during the exam, it is unlikely that he would have forgotten about it six months later. The Committee was satisfied that, when he initially told ACCA that the object in his hand was a calculator, he was lying in order to protect himself. The Committee was also satisfied that, when he was caught out in this lie, he changed his account to claim it was a wifi device.
31. That, in the Committee's view, was also a lie. If the object had been a wifi connector there was no reason for him to conceal this in his pocket and no reason not to tell the proctor that he, had it. Nor would there have been any reason for him not to admit this when first questioned by ACCA's Investigations Department. Even when he did tell ACCA about it, his account was initially somewhat equivocal. He said in his email of 02 July 2021 that he was having

connectivity problems and that he thought the object was an extra connector, but he did not remember exactly what it was. Further, ACCA asked him by email on 05 July 2021 to provide a photograph of the wifi device, but he has failed to do so. The reason he gave was that the device belonged to a friend. However, the Committee found it surprising that, given the seriousness of the situation Mr Ullah found himself in, he had not made greater efforts to provide a photograph.

32. The Committee was drawn to the conclusion that Mr Ullah lied to conceal the fact that the item shown fleetingly in his hand on the video was a device, whether a mobile phone or not, that he was using to gain an unfair advantage. Given that this was a multiple-choice exam, any device on which revision materials could be stored or accessed would be very helpful for a candidate.
33. The Committee was therefore satisfied that the item Mr Ullah had with him in the exam was not a permitted item and, accordingly, he was in breach of Exam Regulation 1 and the Examination Guidelines. It found Allegation 1(a) proved.

Allegation 2(a)

34. Allegation 2(a) alleged that Mr Ullah gave a false or misleading response to the ID in his email of 30 June 2021.
35. At the outset of the hearing Mr Ullah admitted as a fact that he had told ACCA in that email that the item which appeared in the video at 47 minutes 57 seconds was a calculator. He further admitted that this statement had been incorrect, although he said that was a result of an error rather than a deliberate intention.
36. The Committee was satisfied that Mr Ullah's response was, on the basis of his admissions, objectively false and misleading. It therefore found Allegation 2(a) proved.

Allegation 2(b)(i)

37. The Committee had to consider whether, by making a false and misleading statement in his email of 30 June 2021, Mr Ullah's action were dishonest.

38. For the reasons set out above, in paragraphs 28 to 33, the Committee found that Mr Ullah lied to ACCA when he said the item, he was seen holding was a calculator. He was trying to conceal the fact that it was a device he was using to assist him in the exam. There could, in the Committee's view, be no doubt that this conduct would be regarded as dishonest by ordinary and honest people.
39. Therefore, the Committee found Allegation 2(b)(i) proved.

Allegation 2(b)(ii)

40. Allegation 2(b)(ii), alleging that Mr Ullah's conduct lacked integrity, was in the alternative to the allegation of dishonesty in 2(b)(i). Having found the allegation of dishonesty proved, there was no need for the Committee to consider this allegation.

Allegation 3(a)

41. The Committee had to consider whether Mr Ullah's conduct in acting dishonestly and breaching the exam rules amounted to misconduct. Honesty is a fundamental tenet of the accountancy profession and therefore it is always going to be regarded as a very serious matter when a member of the profession acts dishonestly. The Committee was satisfied that the conduct found proved in this case amounted to misconduct.

Allegation 3(b)

42. As Allegation 3(b) was an alternative to Allegation 3(a), there was no need for the Committee to consider it.

SANCTION AND REASONS

43. The Committee considered what sanction, if any, to impose taking into account ACCA's Guidance for Disciplinary Sanctions ('GDS') and the principle of proportionality. The Committee bore in mind that the purpose of sanctions was not punitive but to protect the public, maintain confidence in the profession and declare and uphold proper standards of conduct and behaviour. Having found that Mr Ullah's actions amounted to misconduct, taking no further action was

clearly not appropriate. The Committee therefore considered the available sanctions in ascending order of seriousness.

44. In mitigation, the Committee took into account that no previous findings had been made against Mr Ullah. He had co-operated with the investigation and engaged with the hearing process.
45. The Committee did not consider there were any aggravating features, over and above the nature of misconduct itself.
46. The Committee considered that neither an admonishment nor a reprimand would be sufficient to mark the seriousness of the case. The Committee noted that the GDS suggests a severe reprimand may be appropriate where the misconduct was not intentional. Mr Ullah's actions were not only a very serious departure from proper and acceptable standards but were deliberate. A severe reprimand would not adequately reflect the public interest in this case.
47. The Committee was of the view that the public would rightly be concerned if an accountant who had committed dishonesty of this nature was allowed to practise. It concluded that Mr Ullah's actions in this case were fundamentally incompatible with being a member of a professional association.
48. Therefore, the Committee made an order under CDR 13(4)(c) of the Disciplinary Regulations removing Mr Ullah from the student register.
49. The Committee did not consider that the public interest in this case required it to additionally make an order under CDR 13(4)(c) restricting Mr Ullah's right to apply for readmission beyond the normal minimum period. Any application for re-admission must be considered by the Admissions and Licensing Committee.

COSTS AND REASONS

50. ACCA applied for costs of £9,235 against Mr Ullah but adjusted this where costs were estimated to the sum of £6,150. The application was supported by a schedule providing a breakdown of the costs incurred by ACCA in connection with the hearing.

51. The Committee found that there was no reason in principle not to make an order for costs in ACCA's favour. It was satisfied that the costs claimed had been reasonably and properly incurred.
52. The Committee, however, reduced the costs Mr Ullah is required to pay to £5,000 to reflect his student status and the explanation he gave to the Committee of his means.

EFFECTIVE DATE OF ORDER

53. The order will come into effect from the date of expiry of the appeal period, namely after 21 days from service of this written statement of the Committee's reasons for its decision, unless Mr Ullah gives notice of appeal in accordance with the Appeal Regulations prior to that.

HH Suzan Matthews QC
Chair
16 June 2022