

APPLICATION ON PAPERS

APPEAL CHAIR OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

- In the matter of:** Mr Usman Ghani
- Considered on:** Monday, 25 July 2022 and Thursday, 11 August 2022
- Chair:** Mrs Helen Carter - Shaw
- Outcome:** Late application to appeal costs order allowed.
Cost order reduced to £250 payable immediately.
- Direction:** At the same time as issuing this notice to Mr Ghani ACCA either
- a. Notifies Mr Ghani whether
 - i. the payment date and details remain the same (i.e. the full amount immediately); or
 - ii. the due date for payment will be varied and if so the new payment date; and/or
 - iii. the options of paying by instalments is allowed and, if so, the details of this.
- or
- b. Makes further enquiries of Mr Ghani if ACCA consider this would enable its decision making.

ACCA's decision in this is final.

PRELIMINARY MATTERS, PAPERS, RULES AND GUIDANCE CONSIDERED.

1. This matter is an appeal made by Mr Usman Ghani, a former ACCA member, against a costs order made against him at a disciplinary hearing on 16 March 2022.
2. Mr Ghani was told that, under the rules, the deadline for any appeal was 08 April 2022. His application for permission to appeal ('[the] application') was not received by ACCA until 07 July 2022. It is therefore out of time.
3. I have received and reviewed the following papers:
 - a. The decision and reasons for Mr Ghani's disciplinary hearing dated 16th March 2022;
 - b. Mr Ghani's application and reasons dated 06 July 2022;
 - c. An undated word document, which appears to have been sent with the application. This outlines some of the difficulties that Mr Ghani says contributed to both the lateness of his application and his inability to pay;
 - d. An email dated 14 July 2022 from Mr Ghani. This again outlines some of his apparent difficulties and asks that consideration be given both to reducing the amount of costs ordered and to allowing him to pay by instalments;
 - e. An undated statement of Mr Ghani's financial position;
 - f. ACCA's response, dated 20 July 2022, to Mr Ghani's application.
4. I have, where appropriate, considered:
 - a. ACCA's Appeal Regulations 2014 ('R') as amended 14 October 2019;

- b. ACCA's Guidance on Costs orders dated 01 January 2021.

APPLICATION/BRIEF BACKGROUND

5. Mr Usman Ghani faced a number of disciplinary allegations in March 2022 whilst a member of ACCA. A video hearing ('the disciplinary hearing/committee') was held on 16 March 2022. Mr Ghani attended part of it. He was not represented. At the outset of that hearing he indicated he may not be able to attend for all of it but did not wish to apply for an adjournment and was happy for the case to continue even if he had, as turned out to be the case, to absent himself part way through.
6. The disciplinary committee found the key allegations, which amounted to dishonesty, against Mr Ghani proved. That committee ordered that Mr Ghani be excluded from membership with immediate effect.
7. At that hearing, ACCA made an application for costs of £8602. This was less than the amount originally notified to Mr Ghani (£12,257.50). Despite having been given opportunities to do so, Mr Ghani had provided no evidence of his means or statement of his financial position. He had written an email, on 10 March 2022, saying he was not working "*as I am suffering from a bad health condition*" but he provided no evidence of this. The disciplinary committee concluded they had no basis to reduce the figure on this ground and therefore ordered that Mr Ghani pay the full amount of costs claimed i.e. £8602.
8. It is this order that Mr Ghani now wishes to appeal.

DECISION ON APPLICATION AND REASONS

9. As the application is out of time, I first have to decide whether or not to allow it to be considered. I note that:
 - a. In his application Mr Ghani says "*I am going for appeal quite late because I had some health issues so I could not focus on this matter by that time.*" This is repeated in his email of 14 July 2022 in which he

says, *“The reason why I applied for late appeal as I have already mentioned I have health issues moreover when this case been decided I had to come back to my home country as I have some family issues here.”* He does not elaborate on or give evidence of either;

- b. ACCA does not oppose the application being considered out of time;
 - c. Mr Ghani is unrepresented and may not fully understand the importance of providing evidence to support his claims of ill health and family difficulties.
10. Taking all of this into account I consider it reasonable and just to allow the application to be considered.
11. Mr Ghani has in his application and associated correspondence, referred to at paragraph 3 above, suggested that the costs sought would cause him severe financial hardship. This is one of the few grounds on which an application to appeal against a costs order can be considered. I note that, while circumstances may have changed since the hearing, Mr Ghani was invited to submit a statement of financial means for the disciplinary hearing in March and chose not to do so. On this basis, having considered ACCA’s application of costs to be appropriate, proportionate and reasonable that committee had no basis on which to reduce it under the relevant guidance and quite properly made the order they did.
12. Mr Ghani has now supplied a statement of financial means and made reference to the fact that he:
- a. Is suffering from (unspecified) ill health and is currently not working;
 - b. Would wish to pay once his health and unspecified family difficulties allow him to work again. He gives no indication of how soon either issue might be resolved;
 - c. Would like the amount reduced and to be given the opportunity for a *“holiday period”* of at least three months before paying by instalments;

- d. Is anyway unemployed. He says, *“I am not working these days. I am totally dependent on my parents. I am jobless since last November Because of this case I have lost my job.”*;
 - e. Has unspecified debts against his name. These are not shown in his statement of financial means and therefore play no part in my decision;
 - f. Reiterates his willingness to pay some costs.
13. Mr Ghani’s statement of means shows he appears to have monthly expenses of £150 and a monthly income via rent from property of £200. This leaves him with a net monthly income of £50. Had this information been available to the disciplinary committee, as requested, it is likely they would have reduced the costs order considerably.
14. In its response to Mr Ghani’s application, ACCA *“concedes there are arguable grounds that the costs order imposed, would result in severe financial hardship to [Mr Ghani].”* and *“invites the Chair to grant permission on this ground and proceed to make a decision under Regulation 6 (h) and, reduce the costs to such sum as the Chair considers reasonable in light of the matters relied on by Mr Ghani”*.
15. I have noted the Guidance on Costs orders and, in particular, that *“When a relevant person is ordered to pay costs to ACCA, this is intended to compensate ACCA and accordingly the membership as a whole for the costs reasonably incurred by ACCA in bringing the proceedings.”* A costs order is neither a sanction, penalty or fine.
16. Given this, and the fact that Mr Ghani appears to have some modest net monthly income I find it reasonable that some reduced costs order should be made rather than quashing it completely.
17. I note that Mr Ghani is currently unemployed. He has been excluded from membership and it is likely that his earning potential has been considerably reduced.

18. In all these circumstances a costs order against Mr Ghani in favour of ACCA of £250 seems reasonable and appropriate.

ORDER

19. For the reasons set out above, Mr Usman Ghani is to pay ACCA £250 in costs.
20. R6.3 h(i) states “*where permission [to appeal] is granted solely on the question of costs, the Chair shall proceed to make a decision on the appeal and the Chair’s decision shall be final.*” Accordingly, there is no further right of appeal.

EFFECTIVE DATE OF ORDER

21. The order comes into immediate effect. Payment is therefore to be made on receipt of this notice unless otherwise notified by ACCA in accordance with the direction at paragraph 24 of this decision.

DIRECTION

22. Given Mr Ghani’s representations about being granted a ‘payment holiday’ and being allowed to pay by instalments, he should note that this is not something that can be decided as part of his appeal. Paragraph 29 of the Costs Guidance says

‘The member can seek to defer the due date for payment or vary any payment providing any representations are submitted in advance of the due date for payment. Where the member intends to defer the due date for payment or vary any payment, written representations should be submitted to ACCA’s Adjudication Department. Upon receipt of any written representations, ACCA will determine whether the due date for payment or the payment itself can be varied. The ACCA’s decision is final.’

23. By virtue of his appeal submissions, Mr Ghani has made representations about this matter before the due date. These representations were unspecific and based on the much higher sum originally sought by ACCA.

24. I therefore direct that at the same time as issuing this notice to Mr Ghani ACCA either

a. Notifies Mr Ghani whether

- i. the payment date and details remain the same (i.e. the full amount immediately); or
- ii. the due date for payment will be varied and if so the new payment date; and/or
- iii. the options of paying by instalments is allowed and, if so, the details of this.

or

b. Makes further enquiries of Mr Ghani if ACCA consider this would enable its decision making.

25. Mr Ghani is reminded that ACCA's decision on any variation of the payment terms is final.

**Mrs Helen Carter- Shaw
Chair
11 August 2022**