

HEARING

DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Safi Ullah

Heard on: Thursday, 05 May 2022

Location: Held Remotely by Microsoft Teams via ACCA Offices,
The Adelphi, 1-11 John Adam Street, London WC2N 6AU

Committee: Ms Ilana Tessler (Chair)
Mr David Sloggett (Accountant)
Dr Jackie Alexander (Lay)

Legal Adviser: Miss Juliet Gibbon (Legal Adviser)

Persons present

and capacity: Ms Michelle Terry (ACCA Case Presenter)
Ms Nkechi Onwuachi (Hearings Officer)

Summary Allegations 1(a), 1(b), 1(c), 2(a), 2(b), 3(a), 3(b) and 4(a)
proved, removed from the student register.

Costs: Student member to pay cost to the ACCA in the sum of
£8,875.00.

ACCA



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PRELIMINARY

1. The Disciplinary Committee (*"the Committee"*) convened to hear allegations of misconduct against Mr Ullah. The hearing was conducted remotely through Microsoft Teams. The Committee had a bundle of papers numbered pages 1 to 140, two additional bundles, numbered pages 1 to 11 and 1-2, a service bundle, numbered pages 1 to 26 and video footage of the two examinations together with a costs bundle, numbered pages 1 to 5.
2. Ms Michelle Terry represented ACCA. Mr Ullah did not attend the hearing and was not represented.

SERVICE

3. Written notice of the hearing was sent by electronic mail (*"email"*) only to Mr Ullah's registered email address on 07 April 2022. The password to open the notice of hearing was sent by a separate email. The Committee has had sight of two delivery notifications stating that both emails had been delivered to the email address. 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. ACCA has, therefore, given the requisite 28 days' notice to Mr Ullah as required under Regulation 10(1)(a) of the Regulations.
4. The Committee was satisfied that the email attaching the notice of hearing had been sent to Mr Ullah's registered email address and had been delivered successfully. The notice of hearing, to which Mr Ullah had access, contained all the requisite information about the hearing in accordance with Regulation 10 of the Regulations.
5. The Committee accepted the advice of the Legal Adviser. It was satisfied that service had been effected in accordance with Regulations 10 and 22 of the Regulations.

APPLICATION TO PROCEED IN ABSENCE

6. Ms Terry made an application to proceed in the absence of Mr Ullah.
7. The Committee, having satisfied itself that the requirements of Regulations 10 and 22 of the Regulations had been complied with, therefore went on to consider whether to proceed in the absence of Mr Ullah. The Committee bore in mind that the discretion to do so must be exercised with the utmost care and caution.
8. The Committee noted that the email address to which the hearing notice had been sent was Mr Ullah's registered email address and was the same address that Mr Ullah had used to reply to an email from ACCA on 31 December 2020. It also noted that Mr Ullah had not replied to ACCA's email attaching the notice of hearing or to any subsequent communication from the Investigations Officer.
9. The Committee was informed that Mr Ullah was aware of today's hearing having spoken to the Hearings Officer and her manager on 28 April 2022, 03 May 2022 and 04 May 2022. He had given various and inconsistent reasons as to why he would not be able to attend the hearing but had not requested an adjournment of it, despite the Hearings Officer asking him if he would like the hearing moved to another date.
10. The Committee was mindful that there is a public interest in dealing with regulatory matters expeditiously. It noted that Mr Ullah had not engaged with ACCA's investigation. Given his non-engagement, the Committee was of the view that there was no evidence before it to suggest that an adjournment of today's hearing would result in Mr Ullah's attendance on a future date.
11. Having balanced the public interest with Mr Ullah's own interests, the Committee determined that it was fair, reasonable and in the public interest to proceed in his absence.

APPLICATION TO AMEND ALLEGATION 3

12. Ms Terry made an application to amend the stem of Allegation 3 to refer to '15 December 2021' not '14 December 2021'. She informed the Committee that ACCA had written to Mr Ullah to inform him that an application to amend would be made at the hearing. Ms Terry submitted that Mr Ullah would not be prejudiced in his defence by the proposed amendment.
13. The Committee accepted the advice of the Legal Adviser. It noted that ACCA had informed Mr Ullah by email of the proposed amendment.
14. The Committee determined that Mr Ullah would not be prejudiced by the proposed amendment and allowed ACCA's application to amend Allegation 3 to refer to 15 December 2020, which is the correct date of the exam.

AMENDED ALLEGATIONS

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

1. Contrary to Paragraph 3(1) of the Complaints and Disciplinary Regulations 2020, Mr Ullah has failed to co-operate fully with the investigation of a complaint, arising out of his conduct during two on-demand examinations, referred to in allegation 2 below in that he failed to respond fully or at all to any or all of ACCA's correspondence sent on:
 - (a) 28 May 2021;
 - (b) 21 June 2021;
 - (c) 06 July 2021.
2. On 29 November 2020, during a scheduled MA2 Managing Costs and Finance examination ('Exam A'):
 - (a) Caused or permitted a third party or third parties to be present with him during all or part of the Exam, thus failing to comply with

instructions provided to him by ACCA before the Exam that he should ensure he was in a room on his own, contrary to Examination Regulation 2 and the ACCA 'Information Sheet for Students' examination guidelines;

(b) Was in possession during Exam A of one or more unauthorised materials, namely notes or additional papers, contrary to Examination Regulations 4 and/or 5.

3. On 15 December 2020, during a scheduled FFA Financial Accounting examination (*Exam B*):

(a) Having been instructed by the exam proctor to "*refrain from looking off screen*", continued to look off screen, contrary to Examination Regulation 2;

(b) Was in possession during Exam B of one or more unauthorised materials, namely notes or additional papers, contrary to Examination Regulations 4 and/or 5.

4. 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 at Allegations 1 to 3 above; or, in the alternative,

(b) Liable to disciplinary action pursuant to byelaw 8(a)(iii).

BACKGROUND

15. Mr Ullah registered as a student with ACCA on 30 December 2019. As such, he is bound by ACCA's Byelaws and Regulations, including the Examination Regulations.

16. On 29 November 2020, Mr Ullah commenced an on-demand MA2 Managing Costs and Finance examination remotely ("*Exam A*"). Irregularities were noted during the exam, including the presence of third parties in the exam room during the set-up and subsequently. There was also a concern about the presence of unauthorised materials on the floor near Mr Ullah's exam desk.
17. On 15 December 2020, Mr Ullah took an on-demand FFA Financial Accounting exam ("*Exam B*"). Irregularities were noted in Mr Ullah's behaviour relating to ongoing concerns about him looking off screen during Exam B. The proctor (the online invigilator) gave a written instruction for Mr Ullah not to look off screen, but he continued to do so. There was also a concern about the presence of unauthorised materials on Mr Ullah's exam desk during the exam.
18. An investigation was commenced which involved obtaining documents and video footage relating to both Exam A and Exam B.
19. The video footage revealed the following:
 - a. The presence of additional people in the room where Exam A took place.
 - b. The presence of unauthorised materials, being small pieces of paper, during both Exam A and Exam B.
 - c. Mr Ullah repeatedly looking off screen during Exam B, notwithstanding requests from the proctor not to do so.
20. Mr Ullah has been given a number of opportunities to explain the irregularities identified in the video footage. He has failed to respond to the enquiries made by ACCA. ACCA is confident that Mr Ullah is aware of the issues identified in both exams and that his email address is correct and functioning because he contacted ACCA using that address on the following dates prior to 28 May 2021:
 1. On 31 December 2020, via the CEC database, Mr Ullah stated that he was '*unaware of how the proctor can report that I had compromised the integrity of the examination*' and that he had complied with all the requests

that the proctor put forward. He also stated that he would be 'more than happy' to provide any information needed to assist the investigation.

2. On 20 March 2021, directly to the Complaints Assessment Team.
 3. On 05 April 2021, via the CEC database.
 4. On 30 April 2022, in a reply to an email sent to him by the Hearings Officer.
21. Mr Ullah has not notified ACCA that the email address provided by him as his primary address has changed and none of the emails sent to him by ACCA have 'bounced back' in the case management system. There is evidence that the emails sent to Mr Ullah by ACCA on 28 May 2021, 21 June 2021 and 06 July 2021 have been accessed by him.

THE VIDEO FOOTAGE

22. In relation to Exam A, the video footage shows the following:
- a. Unidentified papers on the floor next to Mr Ullah's exam seat.
 - b. Evidence to suggest the ongoing presence of a third party in the room:
 - i. Two unidentified males are present in the exam room at the start of the video footage;
 - ii. At several points whispers can be heard close to the microphone from a person other than Mr Ullah.
 - iii. Voices can be heard in the exam room during the last minute or so of the video footage.
 - iv. The door to the exam room is initially closed but in a later room pan is seen to be open.
 - v. A room pan of the room does not show any unauthorised material at the start of the exam but subsequent room pans show 2 pieces

of paper on a shelf and small pieces of paper on the exam desk and on the floor close to the exam desk.

23. In relation to Exam B, the video footage shows the following:
1. Mr Ullah can be seen looking off screen frequently.
 2. The Intervention Specialist writes *'As a reminder, looking off-screen is not permitted during this exam ... Please refrain from looking off-screen'*. Mr Ullah responds *'oky'* [sic] but thereafter looks off screen on a number of occasions.
 3. At one point in the exam there is a loud noise and Mr Ullah looks towards the direction of the noise.
 4. A room pan carried out shortly after the start of the exam does not show any unauthorised materials on the exam desk but a subsequent room pan shows small pieces of paper on the exam desk.

SUBMISSIONS

24. Ms Terry referred the Committee to ACCA's email correspondence to Mr Ullah on 28 May 2021, 21 June 2021 and 06 July 2021. She submitted that there was evidence that Mr Ullah had accessed these emails, but he had not responded and was therefore in breach of Regulation 3(1) of the Regulations in that he failed to cooperate with the disciplinary investigation.
25. Ms Terry 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 are 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’.*
26. Ms Terry 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.*

ii. *Scratch paper (2 sheets permitted and must be destroyed on screen before the end of your exam).*

iii. *A noiseless, cordless pocket calculator which may be programmable, but which must not have a printout or graphic/word display facility in any language.*

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

27. Ms Terry also referred the Committee to an extract from the ACCA Information Sheet for On-Demand CBE Students sitting exams at home:

a. *“Prior to the Exam Starting*

i. *You will ... be located in a private, well-lit room with no one else around you”.*

28. Ms Terry referred the Committee to the video footage of Exam A that showed two males can be clearly seen in the video footage. Voices are also heard whispering after Mr Ullah has agreed to the requirements for the exam. She submitted that Mr Ullah was in breach of Examination Regulation 2 because there should not have been anyone in the exam room with him.

29. Ms Terry submitted that the proctor in Exam B had told Mr Ullah to stop looking off-screen. Mr Ullah had acknowledged this in the chat line by responding ‘oky’ [sic] but had continued to look away from the screen. She submitted that this was also a breach of Examination Regulation 2 because Mr Ullah should have complied with the proctor’s instruction.

30. Ms Terry referred the Committee to the Examination Guidelines that set out what a student may have at their desk during the exam which, in terms of materials, include a bottle of water, a calculator and two pieces of A4 '*scratch paper*'.
31. Ms Terry submitted that the pieces of paper seen on Mr Ullah's exam desk and on the floor next to the exam desk in the exams were '*unauthorised materials*' and that Mr Ullah was in breach of Examination Regulations 4 and 5 by being in possession of such unauthorised materials during both exams.
32. Ms Terry submitted that Mr Ullah's actions undermined the examination process and ACCA's reputation as a provider of examinations. She further submitted that Mr Ullah's conduct fell far short of the conduct expected of professional accountants and those hoping to become accountants and that misconduct, as defined by byelaw 8(c), was clearly made out.

DECISION AND REASONS

33. The Committee carefully considered the documentary evidence and the video footage before it together with the oral submissions made Ms Terry. The Committee accepted the advice of the Legal Adviser.
34. The Committee bore in mind that the burden of proving the allegations rests on ACCA and the standard of proof is the balance of probabilities.
35. The Committee noted the evidence that Mr Ullah had agreed to abide by the Examination Regulations in both Exam A and Exam B, as part of the pre-examination set up, as seen in the chat log.

Allegations 1(a), (b) and (c) - Proved

36. The Committee was satisfied that ACCA had written to Mr Ullah about the investigation into his alleged conduct on 28 May 2021, 21 June 2021 and 06 July 2021 and that he had accessed the emails. The Committee was also

satisfied, on the evidence before it, that Mr Ullah had not responded to any of the correspondence from ACCA.

37. 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'*.
38. The Committee was of the view that Mr Ullah's failure to cooperate with the investigation had the potential to undermine public confidence in the profession and ACCA as a regulator.
39. The Committee was satisfied, on the balance of probabilities, that Mr Ullah had breached Regulation 3(1) of the Regulations by his failure to co-operate with ACCA's investigation.

Allegation 2(a) - Proved

40. The Committee was satisfied, on the evidence before it, that Mr Ullah 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 Ullah 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 two males in the exam room at the start of Exam A and a third party or third parties in the exam room subsequently whilst Mr Ullah was taking Exam A on 29 November 2020.
41. The Committee was satisfied, on the balance of probabilities, that in causing or permitting a third party or third parties to be present with him during the exam, Mr Ullah had, in breach of Regulation 2 of the Exam Regulations and the ACCA examination guidelines, failed to comply with the instructions provided to him by ACCA to ensure that he was in a room on his own. The Committee was of the view that Mr Ullah had caused or permitted the presence of a third party or third parties in the exam room in an attempt to gain an unfair advantage in the exam.

Allegation 2(b) - Proved

42. The Committee noted the video footage that showed the presence of papers on the exam desk and on the floor beside Mr Ullah's exam desk. It was satisfied that Mr Ullah had been in possession of papers that were unauthorised materials during the exam. The Committee was satisfied, on the balance of probabilities, that Mr Ullah had breached Examination Regulations 4 and 5 by having such unauthorised materials in his possession during the exam. The Committee was of the view that Mr Ullah had such papers in his possession in order to gain an unfair advantage during the exam.

Allegation 3(a) - Proved

43. The Committee noted the video footage that showed Mr Ullah continuing to look off-screen after he had been instructed by the exam proctor to *'refrain from looking off-screen'*. It was satisfied that Mr Ullah's behaviour, in failing to comply with the proctor's instructions, had been contrary to Examination Regulation 2 that provides *'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'*. The Committee was of the view that Mr Ullah continued to look off screen, despite the proctor's warning, in an attempt to gain an unfair advantage in the exam.

Allegation 3(b) - Proved

44. The Committee noted the video footage of Mr Ullah carrying out a room pan during the exam in which unidentified papers, that were not there at the start of the exam, can subsequently be seen on his exam desk. The Committee was satisfied that the papers were unauthorised materials that Mr Ullah should not have had at his desk during the exam. It was satisfied that, by having unauthorised materials in his possession during the exam, Mr Ullah had been in breach of Regulations 4 and 5 of the Examination Regulations. The Committee was of the view that Mr Ullah had such papers in his possession in order to gain an unfair advantage during the exam.

Allegation 4(a) - Misconduct Proved

45. Mr Ullah had failed to respond to three emails sent to him by ACCA in relation to the investigation. There is a duty on ACCA members to engage with their regulator. The Committee was of the view that Mr Ullah's failure to cooperate with the investigation had the potential to undermine public confidence in the profession and ACCA as a regulator.
46. The Committee was satisfied that Mr Ullah had deliberately sought to gain an unfair advantage in both Exam A and Exam B by having at least one third party present during Exam A and unauthorised materials in his possession during both Exam A and Exam B. It was also satisfied that Mr Ullah had sought to gain an unfair advantage in Exam B by failing to comply with the proctor's instructions not to look off-screen.
47. The Committee determined that Mr Ullah's premeditated conduct, in attempting to 'cheat' in an ACCA professional examination, to gain an unfair advantage in that examination, fell far below the standards expected of an ACCA student. In the Committee's determination Mr Ullah's conduct undermined the integrity of ACCA's examination process and brought discredit to him, the Association and the accountancy profession.
48. The Committee was satisfied that Mr Ullah's attempts to gain an unfair advantage in the two exams and his failure to cooperate with the disciplinary investigation both individually and collectively amounted to misconduct.

Allegation 4(b) - Not Considered

49. 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

50. Ms Terry informed the Committee that there were no previous disciplinary findings against Mr Ullah.

51. 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 Ullah'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.

52. 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 Ullah had no previous disciplinary findings against him, although the Committee noted that he had only been a registered student since 30 December 2019, which was less than a year prior to the date of Exam A.

53. The Committee considered the following to be aggravating features:
 - a. This was deliberate and premeditated conduct on the part of Mr Ullah in an attempt to gain an unfair advantage in two ACCA professional examinations.

 - b. The conduct was repeated.

 - c. Mr Ullah's misconduct undermined the integrity of the ACCA examination process and had the potential to damage the reputation of the ACCA qualification.

 - d. There would have been a risk of harm to members of the public if Mr Ullah had been successful in his attempts to gain an unfair advantage in two exams.

- e. Mr Ullah had not engaged with the ACCA investigation or the proceedings and so there was no evidence of any insight or remorse on his part.
54. 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 dishonest 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.
55. 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 were not applicable in this case. The Committee concluded that a severe reprimand would not be appropriate or sufficient to protect the public interest.
56. The Committee considered the factors to be taken into account when considering a sanction of removal from the student register. It noted that Mr Ullah's conduct was deliberate and premeditated, that it had been repeated over a period of time, that there had been the potential to affect a substantial number of members of the public and that there was no evidence of insight on his part.
57. 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 Ullah's conduct in attempting to cheat in two professional examinations, together with his failure to cooperate in ACCA's disciplinary investigation, had reached that high threshold. The Committee had heard no mitigation from Mr Ullah to warrant anything other than removal from the student register.

58. For the above reasons, the Committee concluded that the appropriate and proportionate sanction was removal from the student register.
59. The Committee did not deem it necessary to impose a minimum period before which Mr Ullah is able to reapply for admission as a student member.

DECISION ON COSTS AND REASONS

60. The Committee was provided with a cost schedule. ACCA applied for costs in the sum of £9,325.00.
61. The Committee was satisfied that the costs sought by ACCA were appropriate and reasonably incurred. The Committee noted that Mr Ullah 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 Ullah'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 £450 to reflect the fact that the hearing had concluded earlier than anticipated.
62. The Committee determined that it would be fair and proportionate to order Mr Ullah to pay costs to ACCA in the sum of £8,875.00.

ORDER

1. Mr Safi Ullah shall be removed from ACCA's student register.
2. Mr Safi Ullah shall pay a contribution to ACCA's costs in the sum of £8,875.00

EFFECTIVE DATE OF ORDER

63. 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.

Ms Ilana Tessler
Chair
05 May 2022

