

HEARING

APPEAL COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of: Mr Syed Waqas Haider

Heard on: Tuesday, 15 November 2022

Location: Remotely via Microsoft Teams

Committee: Mr Martin Winter (Chair)
Ms Susan Gallone (Accountant)
Mrs Jackie Alexander (Lay)

Legal Adviser: Mr Robin Havard (Legal Adviser)

**Persons present
and capacity:** Ms Afshan Ali (ACCA Case Presenter)
Ms Nikita Apostol (ACCA Hearings Officer)
Mr Syed Haider Waqas (ACCA Student)
Ms A Wadood (Urdu Interpreter)

Summary: Finding of misconduct varied to one of liable to disciplinary action. Order in respect of sanction rescinded and substituted with a reprimand. Order in respect of costs rescinded and substituted with no order for costs.

Costs: Nil

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PRELIMINARY APPLICATIONS

1. The Committee had considered the following documents: an Appeal Bundle (pages 1 to 137), and a Service Bundle (pages 1 to 18). In the course of the hearing, ACCA also produced the email of 06 May 2022 from Mr Haider to ACCA, which was not, but should have been, included in the Appeal Bundle (pages 1 to 4). The Committee had also considered legal advice, which it had accepted.

WITNESSES

2. At the outset of the hearing, Mr Haider indicated that he may wish to call two witnesses who could give evidence regarding the theft of his laptop although, he was not certain that those witnesses would be available.
3. Whilst he was unable to be precise, Mr Haider confirmed that the laptop was stolen on a date which was later than the dates of the correspondence on which allegation 1 below was based.
4. Ms Ali confirmed that ACCA objected to Mr Haider's application. Mr Haider had failed to provide any notice of his intention to call witnesses, let alone that he had provided an outline of the evidence to be provided by those witnesses.
5. The Committee noted that Mr Haider had failed to provide any notice at all of his intention to call any witnesses. He would have been informed of the requirement to do so in the letter, notifying him of the date of hearing.
6. Further, for the reasons outlined below, the Committee did not consider that the evidence to be provided by the two witnesses regarding the theft of the laptop was material to the issues to be determined by the Committee. Mr Haider would therefore not be disadvantaged if the witnesses did not attend to give evidence. Consequently, the application was refused.

BRIEF BACKGROUND

7. Mr Haider first registered as a student of ACCA on 25 March 2019. As such, he is bound by ACCA's Byelaws and Regulations.
8. On 10 December 2020, Mr Haider took an on-demand FBT-Business and Technology examination ("the exam") remotely. The proctor filed an Incident Report in respect of conduct observed during the exam.
9. ACCA commenced an investigation against Mr Haider. All correspondence was sent to Mr Haider by email to the email address that he had previously registered with ACCA.
10. On 17 December 2020, ACCA sent a letter to Mr Haider's registered email address. The letter outlined the nature of the complaint and informed Mr Haider that he would be referred to the Professional Conduct Department for further investigation.
11. On the same day, Mr Haider responded to ACCA, using his registered email address in relation to the conduct identified by the proctor in the report.
12. Subsequently, and in the course of its investigation, ACCA sent letters via email to Mr Haider on 06 April 2021, 28 April 2021 and 07 June 2021 but Mr Haider failed to respond. Even though further correspondence was sent to Mr Haider on 09 September 2021, in which ACCA's report with regard to Mr Haider's failure to co-operate was enclosed, 07 December 2021 and 03 February 2022, no response was received from Mr Haider.
13. On 16 March 2022, the Disciplinary Committee ("DC") considered the following allegations against Mr Haider:

ALLEGATIONS

Mr Syed Waqas Haider (Mr Haider), an Association of Chartered Certified Accountants' ('ACCA') student:

- 1) Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended), failed to co-operate with the investigation of a complaint, in that he did not respond to any or all of ACCA's correspondence dated:
 - a) 06 April 2021;
 - b) 28 April 2021;
 - c) 07 June 2021.

- 2) By reason of his conduct in respect of any or all of the matters set out in Allegation 1, Mr Haider is:
 - a) Guilty of misconduct pursuant to byelaw 8(a)(i) or, in the alternative;
 - b) Liable to disciplinary action pursuant to byelaw 8(a)(iii).

14. Mr Haider did not attend the Disciplinary Committee hearing nor was he represented.

15. In advance of making findings in relation to the allegations, the Disciplinary Committee considered whether there had been effective service and, if so, whether it was appropriate to proceed in the absence of Mr Haider.

16. The Disciplinary Committee concluded that there had been proper service of the proceedings in accordance with Regulations 10 and 22 of the Complaints and Disciplinary Regulations 2014 (as amended) ("CDR") and went on to determine whether it was appropriate to proceed in Mr Haider's absence.

17. The Committee took account of the steps taken by ACCA to contact Mr Haider in the days prior to the Disciplinary Committee hearing as set out in paragraph

- 6 of its decision. In summary, ACCA wrote on 02 and 14 March 2022 to remind him of the date of hearing, asking him if he intended to attend.
18. ACCA also phoned Mr Haider on 11 March 2022 on two occasions to discuss his attendance at the hearing. On the first occasion, the Disciplinary Committee found that Mr Haider had answered the call but when he discovered that it was someone from ACCA attempting to speak with him, he disconnected the call. He did not answer the second call and there was no answer when ACCA tried to call him again on 14 March 2022.
 19. Having decided to exercise its discretion in accordance with CDR10(7), the Disciplinary Committee proceeded with the hearing in Mr Haider's absence.
 20. The Disciplinary Committee found the allegations proved, to include misconduct. Indeed, at paragraph 26 of its decision, the DC found that Mr Haider's failure to co-operate was, *"a very serious, deliberate breach of the Regulations on more than one occasion and clearly amounted to misconduct."*
 21. For the reasons outlined, the Disciplinary Committee determined that the only proportionate and sufficient sanction was to remove Mr Haider from the Student Register. It also ordered that Mr Haider pay ACCA's costs in the sum of £2,000.

THE APPEAL

22. Mr Haider applied for permission to appeal on 21 April 2022.
23. The grounds of appeal in Mr Haider's application under Appeal Regulation (AR) 5(3) were:
 - c) **The Committee failed to take into account certain relevant evidence, which would have altered one or more of the findings or orders made in the case.**
24. The reasons he gave in support were:

"I want to clear that I am living in flat with my family. There are 7 persons in my family and our flat has just two rooms and open kitchen which was showing in front of the camera. I want to clear that as according to proctor in front of proctor I had locked my room and my family was inside the room. proctor take a lot of time to start my exam after all investigation is done, she allowed me to set and during exam again check my surrounding took nearly 3 hours to complete my exam. They should not even talk to each other even another side of room? Microphone ups and PC were all attached at the fixed place and I don't have any other place for exam. [PRIVATE] my cam and all necessary instruments were according to ACCA were on rent." (sic)

e) The Committee's order is disproportionate and/or unreasonable in light of its findings.

25. The reasons he gave in support were:

"Due to this decision my future is on stake without doing any offence, I have already prepared my 6 other exams which I am ready to take part and get good marks. After FBT exams I have appeared in other exams and got very good marks. I request ACCA to review on this decision as I am ready to elaborate my case in front of any panel." (sic)

f) The Committee's findings and/or order are unjust because of a serious procedural irregularity in the proceedings.

26. The reasons he gave in support were:

"[PRIVATE]. From last 7-8 months I was not having access to my emails as my laptop get stolen and my mobile was not enough to access emails. I always use to visit ACCA Lahore Office and they were telling your case is resolved and you are declared pass and same you can see in your myacca profile and you may proceed with other exams which I already passed out after my FBT mishap. If they would have told something about hearing sure I will be keen to come on front and face everything as I did not do anything wrong. Severity of the

decision is very high since its related to a student future, hence I request to consider my request to come in front with details so ACCA can understand and reverse the decision." (sic)

27. In a response dated 01 June 2022, ACCA resisted Mr Haider's application on two bases: first, that it was out of time and secondly, that the appeal did not have a real prospect of success. The Committee had read the response.
28. For the reasons outlined in his decision of 09 June 2022, the Chair allowed Mr Haider's application to be lodged out of time.
29. As for the substantive merits of Mr Haider's application, the Chair concluded that, on the basis of the responses given by Mr Haider, and in particular the email that he sent to ACCA on 06 May 2022 as outlined in paragraphs 8 and 9 in the Chair's decision, Mr Haider was not seeking permission to appeal against the findings contained in allegation 1a, b and c. In respect of those allegations, permission to appeal was not granted.
30. In his email of 06 May 2022, Mr Haider stated the following, in respect of the emails from ACCA in April and June 2021:

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

and that this was because he was:

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

31. For that reason, the Chair granted Mr Haider permission to appeal against the Disciplinary Committee's finding in respect of allegation 2a alone i.e., that his conduct in failing to co-operate with ACCA in failing to respond to the emails in April and June 2021 amounted to misconduct.

32. In doing so, the Chair had concluded that the submissions made, and reasons given, by Mr Haider regarding his failure to co-operate with ACCA, amounted to new evidence under AR5(2)(d).
33. Furthermore, on the basis of what the Chair considered to be new evidence, permission to appeal was also granted in relation to the sanction imposed by the Disciplinary Committee.
34. To summarise, on the basis of Mr Haider's submissions in support of his application, it was concluded by the Chair that it was arguable that Mr Haider's failure to co-operate was through negligence as opposed to deliberate behaviour.
35. The Committee was satisfied that the same email address had been used by ACCA throughout its contact with Mr Haider and that it was the address on ACCA's register. It had not been argued by Mr Haider that the email address was incorrect or that the emails had not been delivered successfully.
36. Unlike the Disciplinary Committee, and in accordance with the Chair's finding that the more recent account represented new evidence, this Committee had the advantage of hearing from Mr Haider, who gave evidence and was cross-examined quite properly by Ms Ali.
37. Whilst the Committee found Mr Haider was not entirely consistent in the account that he gave, it was satisfied that such inconsistencies were caused more by a level of disorganisation and lack of a clear understanding of his obligations as a student member and the need for him to take such steps as were necessary to maintain contact with ACCA. On balance, the Committee had not found that such inconsistencies reflected any deliberate attempt on the part of Mr Haider to obfuscate or mislead.
38. The Committee accepted the account provided by [PRIVATE]. He lived with his family made up of his parents and his two brothers and three sisters. In his written submissions, [PRIVATE].

39. The initial letter from ACCA dated 17 December 2020 was sent to Mr Haider to inform him that a report had been received regarding an incident relating to Mr Haider's conduct in an exam on 10 December 2020. He was told that if he wished to make comments in respect of the alleged incident, he should send such comments to ACCA by responding to that email.
40. ACCA's email also confirmed that the case would be referred to the Professional Conduct Department ("PCD") for further investigation. There is no indication that the PCD would be in contact with Mr Haider. The letter simply confirmed that, if the investigation determined that there was a case to answer, the matter would be referred to a Disciplinary Committee.
41. In the final paragraph, Mr Haider was informed that he would not be permitted to book or attempt any exams until further notice, pending the outcome of the investigation.
42. The Committee considered it was significant that Mr Haider responded to ACCA's letter on the same day, providing his detailed account of what had happened in the course of the exam on 10 December 2020 and explaining the logistical difficulties he faced in sitting the exam at his home.
43. He continued to live with his family in his village, but he confirmed that, when he was informed that he would not be able to take his exams, he had contacted ACCA in Lahore on two occasions asking them for advice regarding his inability to take exams pending the investigation. The advice provided by ACCA in Lahore was that ACCA UK would be contacting him in order to resolve matters.
44. Whilst Mr Haider could not be exact, at some point between June and August 2021, with financial assistance from his brother, he bought a laptop.
45. Prior to buying the laptop, he would rely on his brother or his teacher to enable him to access the internet or, when taking exams, he would rent a computer.

46. Indeed, it was accepted that Mr Haider had taken exams in June 2021 despite what was said by ACCA in its letter of 17 December 2020. Ms Ali confirmed that the fact that Mr Haider was subject to an investigation would not preclude him from sitting exams. The risk that someone in Mr Haider's position would run was, if he was removed from the student register, he would forfeit the fees he had paid to sit the exams and the results would be null and void.
47. Mr Haider maintained that he simply did not see the emails of 06 and 28 April 2021 and 7 June 2021. He accepted that he should have been more diligent in checking his email account even though that presented considerable difficulties in terms of equipment and internet connection. However, he admitted that he had been negligent in failing to respond.
48. Nevertheless, he maintained that it was not the case that he had seen the emails and then deliberately failed to respond.
49. The Committee had taken account of his immediate engagement with ACCA on 17 December 2020 by replying immediately to the initial notification of the incident outlined in the Proctor's report. On balance, the Committee accepted Mr Haider's evidence and found that he had not seen the emails of 06 and 28 April 2021 and 7 June 2021. The Committee found that, had he been aware of the emails in April and June 2021, he would have responded to them.
50. The Committee therefore varied the finding of the DC that his actions were deliberate. Instead, its finding was that his failure to co-operate by failing to respond to the emails of 06 and 28 April 2021 and 7 June 2021 was as a result of his negligence.
51. As a consequence, and whilst it was accepted that the negligent course of conduct continued over a period of some two months from April to June 2021, the Committee did not find that such conduct reached the threshold necessary to conclude that such conduct brought discredit to Mr Haider or ACCA or the accountancy profession.

52. On this basis, the Committee varied the finding that allegation 2(a) had been found proved and that Mr Haider was guilty of misconduct and, instead, found allegation 2(b) proved, namely that, by reason of his conduct in allegation 1, Mr Haider was liable to disciplinary action pursuant to byelaw 8(a)(iii).

SANCTION AND REASONS

53. In the light of its findings, the Committee considered the Disciplinary Committee's decision in respect of sanction to determine whether, in the circumstances, the decision to remove Mr Haider from the Student Register remained a proportionate outcome.
54. The Committee paid due regard to ACCA's Guidance for Disciplinary Sanctions, and the principle of proportionality.
55. The Committee concluded that, as it had found that Mr Haider was not guilty of misconduct and had not deliberately failed to co-operate with his Regulator, it was necessary to consider sanction afresh, assessing the available sanctions in increasing order of severity, having decided that it was not appropriate to conclude the case with no order.
56. The Committee was mindful of the fact that its role was not to be punitive and that the purpose of any sanction was to protect members of the public, maintain public confidence in the profession and in ACCA, and to declare and uphold proper standards of conduct and performance.
57. The Committee considered whether any mitigating or aggravating factors featured in this case.
58. The Committee accepted that there were no previous findings against Mr Haider. The Committee also took account of the fact that Mr Haider had limited resources available to him and was a student at the start of his career.

59. As for aggravating features, again the Committee determined that Mr Haider's negligent behaviour had extended over a period of two months.
60. The Committee concluded that an admonishment would not adequately reflect the seriousness of the Committee's findings.
61. Nevertheless, having found that Mr Haider's conduct was not in deliberate disregard of his professional obligations and that he had readily accepted that his conduct and overall approach had been negligent, the Committee concluded that a reprimand would be a proportionate and sufficient sanction.
62. The Committee therefore rescinded the Disciplinary Committee's order to remove Mr Haider from the Student Register and substituted that order with a reprimand.

COSTS AND REASONS

63. As part of the Appeal Bundle, the Committee had been provided with a simple cost schedule and a detailed cost schedule. The Committee also considered ACCA's Guidance on Costs.
64. In the absence of Mr Haider, the Disciplinary Committee had concluded that, without any information from him other than [PRIVATE], it would reduce the amount of costs awarded to ACCA to £2,000.
65. Mr Haider appealed against that order and had provided a statement of means. [PRIVATE], on further enquiry, it transpired that [PRIVATE].
66. In fairness to Ms Ali, she did not challenge Mr Haider's evidence that he was not working and therefore not in receipt of an income.
67. In all the circumstances, the Committee decided that it should rescind the Order of the Disciplinary Committee in respect of costs and substitute it with an Order that there should not be an award of costs against Mr Haider.

**Mr Martin Winter
Chair
15 November 2022**