

# HEARING

## IN PRIVATE

### DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

#### REASONS FOR DECISION

<b>In the matter of:</b>	<b>Miss Aliya Malik</b>
<b>Heard on:</b>	<b>Friday, 23 September 2022 and Wednesday, 09 November 2022</b>
<b>Location:</b>	<b>Virtual hearing via Microsoft Teams</b>
<b>Committee:</b>	<b>Ms Valerie Paterson (Chair) Mr Ryan Moore (Accountant) Mr Colin Childs (Lay)</b>
<b>Legal Adviser:</b>	<b>Mrs Fiona Barnett</b>
<b>Persons present and capacity:</b>	<b>Miss Aliya Malik (Student) Ms Ariane Tadayyon (Case Presenter) Ms Anna Packowska (Hearings Officer)</b>
<b>Outcome:</b>	<b>Allegation 1(a)(i) – admitted Allegation 1(a)(ii) – admitted Allegation 1(b)(i) – found proved Allegation 1(b)(ii) – not considered Allegation 1(c) – admitted Allegation 1(d)(i) – found proved</b>

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**Allegation 1(d)(ii) – not considered**

**Allegation 1(e) – misconduct found**

**Sanction: Severe Reprimand**

**Costs: £500**

1. The Committee convened to consider the case of Ms Aliya Malik.
2. Ms Malik attended the hearing via video link and was not represented.

**MS MALIK’S APPLICATION FOR A PRIVATE HEARING**

3. Ms Malik made an application for the Committee to hear the case in private in its entirety. She said that the reasoning behind the allegations related to her health and that there would be little point in publicising only part of the case without the full context. She said it would be prejudicial to her if the decision was published with her full name, but anyone reading it did not know the full background.
4. Ms Tadayyon said ACCA’s position was that any matters relating to Ms Malik’s health should be heard in private, but that other parts of the hearing could be dealt with in public.
5. The Legal Adviser referred the Committee to Regulation 11(1)(a) of the *Chartered Certified Accountants’ Complaints and Disciplinary Regulations 2014, (amended 1 January 2020), “CDR”, which states,*  
  
*“Hearings of the Disciplinary Committee shall be conducted in public unless the Committee is satisfied..... that the particular circumstances of the case outweigh the public interest in holding the hearing in public, which may include but is not limited to prejudice to any of the parties.”*
6. [PRIVATE] The Committee was satisfied that the particular circumstances of this case justified holding the hearing in private in its entirety.

**APPLICATION TO ADMIT ADDITIONAL EVIDENCE**

7. At the request of Ms Malik, further evidence was put before the Committee. Ms Tadayyon confirmed that she did not object to the admission of this evidence. This evidence (additional bundles 2 and 3) included references, and further medical evidence.

8. The Committee agreed to the admission of this evidence.

### **ALLEGATIONS**

1. Miss Aliya Malik a registered student of the Association of Chartered Certified Accountants ('ACCA'):
  - (a) On a date or dates between 04 September 2020 and 08 September 2020 amended, altered or changed the contents of or otherwise permitted or allowed the changes to the following (hereafter the 'Amended Documents'):
    - (i) a letter dated 04 September 2020 from University A;
    - (ii) a *'transcript of completed modules'* taken with University A.
  - (b) Miss Malik's conduct in respect of 1(a) was:
    - (i) Dishonest, in that she intended to use the Amended Documents to mislead ACCA; or in the alternative;
    - (ii) Demonstrated a failure to act with integrity.
  - (c) On or about 08 September 2020 submitted or caused to be submitted to ACCA the Amended Documents.
  - (d) Miss Malik's conduct in respect of 1(c) was:
    - (i) Dishonest, in that she knew the Amended Documents were false and/or that she intended to mislead ACCA as to her entitlement to exemptions; or in the alternative;
    - (ii) Demonstrated a failure to act with integrity.
  - (e) By reason of her conduct in respect of any or all of the matters set out at Allegation 1, Miss Malik is guilty of misconduct pursuant to byelaw 8(a)(i).

### **ADMISSIONS**

9. Ms Malik admitted allegations 1(a)(i), 1(a)(ii), and 1(c). These were found proved by the Committee pursuant to CDR 12(3)(c).

10. Allegations 1(b)(i), 1(b)(ii), 1(d)(i), 1(d)(ii) were denied. The Committee was therefore required to hear evidence and decide whether ACCA has proved these matters on the balance of probabilities. Ms Malik also denied allegation 1(e).

### **BRIEF BACKGROUND**

11. On 08 September 2020, ACCA received an email from Ms Malik's registered email address requesting an examinations exemption. With the email, Ms Malik provided a letter dated 04 September 2020 from University A, and a '*transcript of completed modules*' taken with University A. These showed that Ms Malik had passed the module ACFI3221, Advanced Financial Reporting.
12. Enquiries were made of University A, and it was confirmed that Ms Malik had not passed that module. Further, a representative of University A confirmed that the documents had been changed.

### **EVIDENCE**

13. In its consideration of this matter, the Committee had before it a bundle of papers numbering pages 1 to 120. This included documents from ACCA's investigation into this matter and responses and supporting documentation provided by Ms Malik. The Committee also had the following:
  - Additional bundle 1, [PRIVATE]
  - Additional bundle 2, numbering pages 1 to 6, (correspondence and references), and
  - Additional bundle 3, (correspondence [PRIVATE] ), numbering pages 1 to 5.
14. Ms Malik also gave oral evidence to the Committee. This evidence is set out in further detail below.

### **DECISION ON DENIED ALLEGATIONS AND REASONS**

15. The Committee accepted the advice of the Legal Adviser. In reaching its decisions, it reminded itself that the burden of proof rests with ACCA, and that the standard of proof is the civil standard, which is the balance of probabilities.
16. Where matters of dishonesty were alleged, the Committee was advised by the Legal Adviser, to apply the test for dishonesty which was set out by Lord Hughes at paragraph 74 of *Ivey v Genting Casinos 2017 UKSC 67*, ("*Ivey*"). That test

states that the Committee must first ascertain, subjectively, the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. Then, once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people.

**ALLEGATION 1(b)(i) – found proved**

17. Ms Malik gave detailed evidence to the Committee. [PRIVATE]
18. [PRIVATE]
19. Ms Malik accepted that she did alter her transcript on 08 September 2020, and submit it to ACCA, but said that at the time, she was not "*thinking right*". [PRIVATE]
20. [PRIVATE]
21. However, the Committee reminded itself, that in accordance with the test set out in Ivey, it must first ascertain, subjectively, the actual state of Ms Malik's knowledge or belief as to the facts.
22. In ascertaining this, the Committee had regard to the following factors:
  - Ms Malik was able to recall, with clarity, how she amended the transcript. She told the Committee that people were working from home during Covid, and consequently, the University was unable to send documents which displayed the University seal. She said she received the transcript from the University, opened the document and immediately noticed that the document was a Word document. Ms Malik said she could see the cursor flashing on the screen and thought to herself that anyone could amend a Word document. She then amended the document, saved it, and sent it to ACCA. (Ms Malik was unable to recall how she amended the letter from the University).
  - Ms Malik accepted, when questioned by the Committee, that she knew what she had done was not right and how the document she sent did not reflect the grade she obtained.

- Ms Malik told the Committee that she immediately called ACCA to retract the documents but was unable to get through as the line was busy. Subsequently, she emailed ACCA on 24 September 2020, (which email was before the Committee), saying that she wished to cancel the exemption, as the process was taking too long, and she would prefer to sit the exam. Ms Malik's case was that her actions, in attempting to retract the documents, demonstrate that she was not dishonest, and was acting with integrity. The Committee however, determined that her immediate regret and attempts to retract the documentation served to demonstrate that she had been aware of what she was doing, and knew she was wrong to have sent it in the first place.
- In Ms Malik's response to ACCA, dated 18 January 2021, she acknowledged that she had acted dishonestly, stating, "*Whilst I can agree that there was dishonesty on my part, I can attest that at the time of the incident* [PRIVATE].
- [PRIVATE]

23. The Committee was satisfied, having considered the evidence as a whole, that Ms Malik knew what she was doing at the time she amended the documents. She made a conscious decision to amend the documents and followed a process to achieve this. These actions were all deliberate. The Committee acknowledged, from the evidence before it, that [PRIVATE] however, it was satisfied that she nevertheless knew what she was doing, and knew that it was wrong, immediately regretting her actions thereafter. Further, it was reasonable to infer that her intention in changing the documents in the way that she did was to use the amended documents to mislead ACCA.
24. In accordance with the second limb of Ivey, the Committee considered whether Ms Malik's conduct was honest or dishonest by applying the (objective) standards of ordinary decent people. The Committee concluded that amending documents to show she had passed an exam, when that was not the case, intending to mislead the regulatory body, was conduct which would be regarded as dishonest according to the standards of ordinary decent people.
25. The Committee therefore concluded that Ms Malik's actions were dishonest, and it found allegation 1(b)(i) proved.

### **ALLEGATION 1(b)(ii)**

26. Given that the Committee found allegation 1(b)(i) proved, it was not required to adjudicate on 1(b)(ii), which was alleged in the alternative.

### **ALLEGATION 1(d)(i) – found proved**

27. In determining this allegation, the Committee again applied the test set out in Ivey. It was satisfied, in accordance with its reasoning set out above, that Ms Malik knew the amended documents were false. She amended the documents herself and accepted that she recorded one module as “passed” when the documents should have read “compensated” in relation to that module. The Committee found, as above, that her actions in amending the documents were a conscious and deliberate decision, that she was aware of what she was doing at the time, and that it was wrong.
28. Ms Malik accepted that having amended the documents, she then submitted them to ACCA. It was reasonable to infer from the facts that her purpose in submitting these amended documents was to mislead ACCA as to her entitlement to examination exemptions.
29. The Committee was satisfied that submitting documents to ACCA which she knew were false, intending to mislead ACCA about her entitlement to exemptions, would be regarded as dishonest behaviour according to the standards of ordinary decent people.
30. The Committee found that submitting amended documents to ACCA which Ms Malik knew were false in order to mislead ACCA, was therefore dishonest, and it found allegation 1(d)(i) proved.

### **ALLEGATION 1(d)(ii)**

31. Given that the Committee found allegation 1(d)(i) proved, it was not required to adjudicate on 1(d)(ii), which was alleged in the alternative.

### **ALLEGATION 1(e) – Misconduct found**

32. In the Committee’s judgement, Ms Malik’s actions amounted to serious misconduct. She had knowingly amended documents to show that she had passed Advanced Financial Reporting, when this was not the case. She then submitted these to ACCA, intending to mislead ACCA into believing that she was entitled to exemptions which she was not in fact entitled to.

33. [PRIVATE] However, her actions were a conscious decision, and she knew what she was doing. Although she told the Committee that she immediately regretted her actions and tried to undo them, changing the documents, and submitting them to ACCA was dishonest conduct intended to subvert the regulatory framework which is in place to ensure high standards within the profession and to protect the public. This conduct fell significantly short of the standards expected of a student member of ACCA and brings discredit to Ms Malik, to ACCA and to the accountancy profession as a whole.

#### **ACCA SUBMISSION ON SANCTION**

34. Ms Tadayyon reminded the Committee that it must act proportionately at the sanction stage. She submitted that Ms Malik had opportunities to accept her dishonesty/lack of integrity throughout the proceedings but that she did not do so. She said this was an aggravating factor.
35. By way of mitigation, Ms Tadayyon informed the Committee that there are no previous regulatory findings against Ms Malik, and that Ms Malik has provided character references.

#### **MITIGATION FROM MS MALIK**

36. Ms Malik apologised to the Committee for her actions on 08 September 2020. She said she accepted the Committee's findings and understood how the Committee reached the conclusions it had. Ms Malik said she had denied dishonesty on the basis that she attempted to rectify her actions after 08 September. Ms Malik referred to the written representations she made to ACCA during the investigation when she expressed sincere regret for her actions. [PRIVATE]. She said she has regretted her actions constantly, and that these proceedings have served as a constant reminder that she must always act honestly in the face of adversity and hardship.
37. [PRIVATE] She said she is now desperate to prove to ACCA that she is capable of achieving progression in her career by sitting her exams.
38. Ms Malik referred to the character references submitted on her behalf which, she said, attest to her honesty. She submitted that her actions were a "*moment of madness*" and an isolated incident.
39. Ms Malik said she has had good feedback from her current employer at a recent



appraisal, but that her employer has been asking her why she is not taking exams to progress her career. She told the Committee that her employer is unaware of these proceedings and that she has told her employer she is not currently ready to sit any exams.

40. Ms Malik accepted that her conduct fell short of the standards expected of her and assured the Committee that she will never repeat her actions. She pointed out that she has co-operated with ACCA throughout the investigation. She said she attends training at work and has been recognised as a key member of the team on many occasions.
41. Ms Malik said her actions were not intended to cause harm, and that her intention was not malicious.
42. Ms Malik submitted that an appropriate sanction would fall between a Reprimand and a Severe Reprimand. She said that her actions had been careless, [PRIVATE].

#### **COMMITTEE DECISION ON SANCTION**

43. The Committee accepted the advice of the Legal Adviser who referred the Committee to ACCA's current Guidance on Disciplinary Sanctions, ("the Guidance") with effect from January 2020. It bore in mind that it must act proportionately at this stage, balancing the member's interests against the public interest, and that any sanction imposed must be no more than necessary to meet the purpose of a disciplinary sanction.
44. The Committee first considered the seriousness of the conduct found proved before deciding upon any sanction (in accordance with paragraph E3 and Section F of the Guidance). Ms Malik accepted amending documents and sending them to ACCA. The Committee found that her actions in this respect were dishonest in that she intended to mislead ACCA. Her purpose at that time was, in effect, to make a gain for herself, in that she was seeking an exemption to which she was not entitled. "Deceiving/misleading ACCA" is categorised in the Guidance as conduct which is "very serious".
45. The Committee considered whether there were any aggravating factors. It concluded that Ms Malik's dishonest conduct was an attempt to subvert a regulatory framework which is in place to ensure that accountants are properly qualified and that the public is protected. It was satisfied that this is an aggravating factor.

46. By way of mitigation, the Committee bore in mind that there are no previous regulatory findings against Ms Malik. She has engaged fully with the regulatory process, and also tried promptly to take steps to put matters right after she had submitted the documents to ACCA. Ms Malik provided references which attest to her good character, [PRIVATE] for a considerable period of time both before, and at the time of the misconduct. Ms Malik also admitted several allegations during the investigation and at the hearing.
47. The Committee was satisfied that Ms Malik has some insight into the seriousness of what she has done, that she recognises that her actions were wrong and has shown regret and remorse for them. She has also clearly understood and accepted the findings of the Committee in relation to the matters which were denied and demonstrated in her submissions that she understood how/why the Committee reached the conclusions that it did. However, the Committee did not find that Ms Malik's insight was complete, given that she has not informed her current employer about these proceedings.
48. The Committee first considered whether to conclude this case without taking further action. It decided that taking no action would be insufficient to address the public interest given the seriousness of the misconduct.
49. The Committee next considered whether an Admonishment would be an appropriate and proportionate sanction in this case. It had regard to paragraph C2 of the Guidance. The Committee concluded the following:
  - There was no evidence of any loss caused, nor were there any adverse effects on members of the public.
  - Some of the facts alleged were admitted at an early stage.
  - Ms Malik does have some insight into her failings.
  - The incident appeared to be an isolated one.
  - Ms Malik made a genuine expression of remorse and has apologised for her actions.
  - Ms Malik also took corrective steps after she submitted the documents by telling ACCA that she did not seek to pursue the exemption application.

50. However, although many of the factors set out at paragraph C2 were applicable, the Committee concluded that an Admonishment was an insufficient sanction to mark the seriousness of the misconduct.
51. The Committee next considered whether a Reprimand would be an appropriate and proportionate sanction and had regard to paragraph C3 of the Guidance. The Guidance states that this sanction is usually applied, “...*where the conduct is of a minor nature.....*”. The Committee had concluded that Ms Malik’s misconduct was “very serious”, and it could not therefore be said that it was of a “minor nature”. In the circumstances, the Committee decided that a Reprimand would not be sufficient to meet the public interest.
52. The Committee next considered a Severe Reprimand and had regard to paragraph C4 and section E of the Guidance.

Paragraph E2.1 states,

*“Dishonesty, even when it does not result in direct harm and/or loss or is related to matters outside the professional sphere undermines trust and confidence in the profession. The Committee should consider all possible sanctions and/or combinations of sanctions available to it in every case, nevertheless the courts have supported the approach to exclude members from their professions where there has been a lack of probity and honesty”.*

Paragraph E2.2 states,

*“The public is entitled to expect a high degree of probity from a professional who has undertaken to abide by a code of ethics. The reputation of ACCA and the accountancy profession is built upon the public being able to rely on a member to do the right thing in difficult circumstances. It is a cornerstone of the public value which an accountant brings.”*

53. The Committee was mindful of the seriousness of Ms Malik’s misconduct. She had acted dishonestly by amending documents and sending these amended documents to the regulatory body in an endeavour to subvert the regulatory process. This aggravated her dishonesty. Her actions were deliberate and constituted a serious departure from the standards expected of her.
54. However, there were a number of mitigating factors which led the Committee to

conclude that Ms Malik's conduct was not fundamentally incompatible with her remaining on the student register.

55. During the fact-finding stage of the proceedings, [PRIVATE] over a significant period of time prior to, and at the time of her misconduct. [PRIVATE]. It was satisfied from the testimonials provided that she is not a fundamentally dishonest person, [PRIVATE].
56. The Committee was satisfied that although Ms Malik had known what she was doing at the time of her misconduct, it was an isolated incident. The Committee's view was that given her improving health, and her insight into the Committee's findings, she is highly unlikely to repeat her misconduct and does not pose an ongoing risk to the public.
57. For these reasons, the Committee concluded that in spite of the seriousness of Ms Malik's misconduct, having weighed the aggravating and mitigating factors, it could justify imposing a sanction short of removal from the student register.
58. The Committee concluded that a Severe Reprimand was an appropriate and proportionate sanction in all the circumstances.
59. The Committee did consider whether Removal from the student register would be an appropriate and proportionate sanction. However, it decided, given the weight which it attached to the medical evidence, and the minimal risk of repetition, that Removal from the student register would be disproportionate. The Committee was satisfied that a Severe Reprimand was sufficient to address the public interest in that it would ensure that the public is protected, that confidence in the profession is maintained and that proper standards of conduct are upheld.

### **COSTS AND REASONS**

60. Ms Tadayyon referred the Committee to the schedule of costs and applied for costs in the sum of £6,493. She pointed out to the Committee that the costs sought for attendance for herself, and the Hearings Officer did not include an amount for a second day of attendance at the hearing.
61. Ms Malik provided a completed Statement of Financial Position. [Private].
62. The Committee was of the view that the costs schedule was reasonable and bore in mind that ACCA had not included costs for a second day of the hearing. However, it had regard to the Statement of Financial Position and Ms Malik's

submissions. It bore in mind that Ms Malik has limited disposable income and already has some debt. [PRIVATE] In the light of these factors, the Committee decided that it would be fair to mitigate the costs to £500, which it concluded was an appropriate sum in all the circumstances.

**EFFECTIVE DATE OF ORDER**

63. This Order shall take effect on the date of the expiry of the appeal period referred to in ACCA's Appeal Regulations.

**Ms Valerie Paterson**  
**Chair**  
**23 September and 09 November 2022**