

HEARING

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

**REASONS FOR DECISION**

**In the matter of:** Mr Muhammadd Faizan Fayyaz

**Heard on:** Thursday, 27 April 2023

**Location:** Remotely by Microsoft Teams

**Committee:** Mr Neil Dalton (Chair)  
Ms Jo Royden-Turner (Accountant)  
Ms Cath Brown (Lay)

**Legal Adviser:** Ms Margaret Obi

**Person's present  
and capacity:** Mr Benjamin Jowett (ACCA Case Presenter)  
Miss Anna Packowska (Hearings Officer)

**Outcome:** Allegations 1(a), 1(b), and 1(c) found  
proved. These facts were found to amount  
to misconduct.

**Sanction:** Removal from the student register of ACCA after the  
appeal period. Ordered to pay a contribution to ACCA's  
costs in the sum of £5,000.

## **Introduction**

1. The Disciplinary Committee (“the Committee”) convened to hear allegations of misconduct or liability to disciplinary action against Mr Fayyaz. The hearing was conducted remotely via Microsoft Teams. The Committee was provided with a main hearing bundle with pages numbered 1-99, a service bundle numbered 1-16, and subsequently two Costs Schedule; a simple schedule and a detailed schedule.
2. Mr Jowett presented the case on behalf of ACCA. Mr Fayyaz did not attend and was not represented.

## **Preliminary Matters**

### Service of the Notice of Hearing

3. At the outset of the hearing Mr Jowett, on behalf of ACCA, invited the Committee to conclude that Mr Fayyaz had been properly served with the Notice of Hearing in accordance with the Regulations. The Committee took into account the submissions made by Mr Jowett and accepted the advice of the Legal Adviser.
4. The Committee noted that Regulation 10(1)(a) of the Complaints and Disciplinary Regulations 2020 (amended 1 January 2020) (‘the Regulations’) requires the Notice of Hearing to be served no later than 28 days before the hearing date unless, subject to Regulation 10(2), short notice can be justified. The Committee also noted that Regulation 22 states that the Notice of Hearing may be served by post or other delivery service including email.
5. The Committee was provided with a copy of the Notice of Hearing, dated 29 March 2023, and a screenshot of the contact details for Mr Fayyaz held by ACCA. The Committee was satisfied that the Notice of Hearing had been sent to Mr Fayyaz’s email address as it appears on ACCA register and complied with the 28-day notice requirement. The Notice of Hearing included the date, time, and remote venue for the hearing and also Mr Fayyaz’s right to attend the hearing by telephone or video link and to be represented, if he wished. Additionally, the Notice of Hearing provided Mr Fayyaz with information relating to applying for an adjournment and the Committee’s power to proceed in his absence, if considered appropriate. The Committee was provided with an email delivery receipt timed at 16.13.

6. The service bundle also included two emails addressed to Mr Fayyaz; both dated 29 March 2023. One email provided the secure link to the documentation whilst the other email enclosed the password. Taking into account all of the above, the Committee was satisfied that there had been good service.

### **Proceeding in Absence**

7. Mr Jowett made an application for the Committee to proceed in Mr Fayyaz's absence.
8. The Committee, having considered the documents within the service bundle, the submissions made by Mr Jowett and the advice of the Legal Adviser determined that it was fair and appropriate to proceed in Mr Fayyaz's absence for the following interrelated reasons:
  - a. There was no response to the Notice of Hearing from Mr Fayyaz; nor any response following service of the documentation and password. The Committee noted that ACCA sent an email to Mr Fayyaz, on 24 April 2023, in which he was invited to confirm whether he would be attending the hearing. The remote link to the hearing was provided. A chaser email was sent on 26 April 2023. There was no response to either email. The Committee was also provided with a telephone attendance note which recorded that on 26 April 2023, a hearings officer had attempted to speak to Mr Fayyaz. The note recorded that the phone rang but was disconnected after a few seconds. In these circumstances, the Committee concluded that it was reasonable to infer that Mr Fayyaz's non-attendance was voluntary and therefore demonstrated a deliberate waiver of his right to attend and his right to be represented.
  - b. There has been no application to adjourn and no indication from Mr Fayyaz that he would be willing or able to attend on an alternative date. Therefore, re-listing this hearing would serve no useful purpose.
  - c. The Committee recognised that there may be a disadvantage to Mr Fayyaz in not being able to make submissions or give oral evidence. However, the Committee was satisfied that all reasonable efforts had been made to

encourage Mr Fayyaz to engage in these proceedings, but he has not taken up that opportunity. In these circumstances, the Committee concluded the Mr Fayyaz's personal and/or professional interests were outweighed by the strong public interest in ensuring that the hearing proceeds expeditiously.

### **Allegation**

*Mr Muhammadd Faizan Fayyaz (Mr Fayyaz), an Association of Chartered Certified Accountants ('ACCA') student:*

1. *Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended and as applicable in 2021), Mr Fayyaz 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. *20 May 2021;*
- b. *11 June 2021;*
- c. *28 June 2021*

2. *By reason of the conduct referred to above, Mr Fayyaz is:*

- a. *guilty of misconduct pursuant to bye-law 8(a)(i); or in the alternative,*
- b. *liable to disciplinary action pursuant to bye-law 8(a)(iii)*

### **Background**

9. On 21 January 2018, ACCA registered Mr Fayyaz as a student. As a student, he is bound by ACCA's bye-laws and regulations.
10. On 25 February 2021, Mr Fayyaz took his on-demand FA2 Maintaining Financial Records (the 'Exam') remotely. The proctor (remote exam invigilator) filed an Incident Report in respect of conduct observed. The report referred to Mr Fayyaz '*talking to someone during their exam*', and a concern that '*someone can be heard assisting the test-taker*' during the Exam.
11. ACCA's Investigations Department opened an investigation on 2 March 2021. The investigation was based on documents received from ACCA's Computer Based Exams (CBE) Delivery Department. It is alleged by ACCA that Mr Fayyaz did not

provide any response to the questions asked of him in the correspondence sent to him during the course of the investigation. All emails were sent to Mr Fayyaz at an email address he provided to ACCA. It is alleged that the email address has not changed throughout the course of the investigation. None of the subsequent emails have been returned or bounced back into the case management system, which also confirms relevant emails were accessed by Mr Fayyaz.

### Relevant Bye-laws, Rules and Regulations

#### **Liability to disciplinary action**

12. Liability to disciplinary action is set out in bye-law 8 (as applicable in 2021). Bye-law 8 states:

8. (a) A member, relevant firm or registered student shall, subject to bye-law 11, be liable to disciplinary action if:

he or it, whether in the course of carrying out his or its professional duties or otherwise, has been guilty of misconduct;

...

he or it has committed any breach of these bye-laws or of any regulations made under them in respect of which he or it is bound;

(c) For the purposes of bye-law 8(a), misconduct includes (but is not confined to) any act or omission which brings, or is likely to bring, discredit to the individual or relevant firm or to the Association or to the accountancy profession.

(d) For the purposes of bye-law 8(a), in considering the conduct alleged (which may consist of one or more acts or omissions), regard may be had to the following:

(i) whether an act or omission, which of itself may not amount to misconduct, has taken place on more than one occasion, such that together the acts or omissions may amount to misconduct;

(ii) ...;

## **Duty to Co-operate**

13. The following is an extract from Complaints and Disciplinary Regulations 2014 (as amended and as applicable in 2021)

### **3 *Rights and obligations of the relevant person in relation to complaints, investigations and proceedings under these regulations***

#### *(1) Duty to co-operate*

*(a) 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.*

*(b) The duty to co-operate includes providing promptly such information, books, papers or records as the investigating officer or assessor may from time to time require.*

*(c) A failure or partial failure to co-operate fully with the consideration or investigation of a complaint shall constitute a breach of these regulations and may render the relevant person liable to disciplinary action.*

*(d) A relevant person is not permitted to make a charge to the complainant for the cost of co-operating with the consideration or investigation of the complaint.*

## **ACCA Submissions**

14. Mr Jowett, on behalf of ACCA, took the Committee through the documentary evidence relied upon by ACCA. Mr Jowett submitted that in failing to respond to ACCA letters dated 20 May 2021, 11 June 2021 and 28 June 2021, Mr Fayyaz had failed to cooperate fully with ACCA's investigation.
15. Mr Jowett invited the Committee to consider whether Mr Fayyaz's alleged conduct as set out at Allegation 1 amounts to misconduct. In the alternative, the Committee was invited to find that the conduct renders Mr Fayyaz liable to disciplinary action as it amounts to breaches of byelaw 8(a) and regulation 3(1) of the Regulations.

## **Decisions and Reasons**

### Findings of Fact

16. The Committee was aware that the burden of proving the facts was on ACCA. Mr Fayyaz did not have to prove anything, and the charges could only be found proved if the Committee was satisfied, on the balance of probabilities.
17. Mr Fayyaz did not provide any written submissions to the Committee. As there were no admissions nor denials before the Committee, the allegations were assumed to be denied in their entirety.
18. In reaching its decision the Committee took into account the documentary evidence contained within the hearing bundle, as well as the oral submissions made by Mr Jowett.
19. The Committee accepted the advice of the Legal Adviser which included reference to the applicable burden and standard of proof, and the caselaw guidance on the meaning of the term 'misconduct'.

**Allegation 1(a)** - *"...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: 20 May 2021;"* -

### **Found Proved**

20. The Committee was provided with the correspondence relating to Allegation 1(a).
21. The Committee was provided with documentary evidence which confirmed that on 25 February 2021, Mr Fayyaz sent an email to the CBE delivery team explaining that he had an issue with the FA2 Exam which had been terminated by the proctor. On 25 February 2021, an automated email was sent to Mr Fayyaz by the CBE delivery team. Mr Fayyaz replied asking for the issue to be resolved. Shortly afterwards Mr Fayyaz emailed again asking for the Exam to be rescheduled. Mr Fayyaz sent a further email to the CBE delivery team on 25 February 2021, explaining that a family member had knocked on the door during the Exam and this had been seen by the proctor. Mr Fayyaz stated that he was provided with a warning by the proctor and was allowed to continue with the Exam. However, the Exam was then terminated.

22. The Committee noted that the chat log details an intervention specialist was invited to the session and it was that person that terminated the Exam. The chat logs records that this was due to “...repeated egregious behaviour towards ProctorU employees after [the] warning” and that Mr Fayyaz was informed that an incident report would be filed with his institution.
23. On 26 February 2021, Mr Fayyaz was sent an email by the CBE delivery team advising him to await an outcome from the investigation.
24. On 21 April 2021, ACCA sent an email to Mr Fayyaz informing him that his ACCA account had been unlocked. Mr Fayyaz sent an email on 22 April 2021, expressing appreciation that his account had been unlocked and requested that the issue regarding the FA2 Maintaining Financial Records Exam be resolved.
25. The Committee noted that on 20 May 2021, ACCA sent a letter to Mr Fayyaz’s registered email address informing him of the complaint regarding his exam and seeking his response by 10 June 2021. No response was received.
26. The Committee was satisfied that Mr Fayyaz had a duty to respond to the queries that were raised by ACCA. ACCA received no correspondence from Mr Fayyaz in relation to the investigation despite being informed that a response was required. The complaints required prompt action and a genuine effort to co-operate with ACCA in resolving the concerns. There was no evidence before the Committee that Mr Fayyaz cooperated with ACCA. Instead, Mr Fayyaz chose to disregard the numerous efforts that were made to obtain his response to the complaint. ACCA’s email was sent to Mr Fayyaz’s email address and on that basis, the Committee was satisfied that he was aware of ACCA investigation into his conduct and the expectation that he provides ACCA with a response.
27. The Committee concluded that Mr Fayyaz’s conduct amounted to a failure as no reason has been provided for the lack of co-operation. The Committee was satisfied that it was reasonable to infer that the failure to respond to ACCA was a conscious decision. In reaching this conclusion the Committee noted that Mr Fayyaz had been corresponding with ACCA using the same email address that the requests for information were being sent to. Therefore, the Committee concluded that it was reasonable to infer that Mr Fayyaz was aware of the correspondence from ACCA.



28. Accordingly, Allegation 1(a) was found proved.

**Allegation 1(b)** “...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: **11 June 2021**,”  
- **Found Proved**

29. The Committee was provided with the correspondence relating to the Allegation 1(b).

30. The Committee was provided with documentary evidence which confirmed that Mr Fayyaz sent an email to the CBE delivery team on 7 June 2021, explaining that he sat the F1 Exam. He expressed concern this Exam did not appear on his account. On 11 June 2021, ACCA sent another letter to Mr Fayyaz reminding him of his obligation to co-operate fully with the investigation and advised that he was required to answer all questions put to him in ACCA’s letter of 20 May 2021. ACCA requested that Mr Fayyaz provide his full response by 25 June 2021. No response was received.

31. For the same reasons as stated in paragraphs 26 and 27 above the Committee concluded that Allegation 1(b) was found proved.

**Allegation 1(c)** “...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: **28 June 2021**,”  
- **Found Proved**

32. The Committee was provided with the correspondence relating to the Allegation 1(c).

33. The Committee noted that on 14 June 2021, Mr Fayyaz sent an email to the CBE delivery team again asking about the status of his account not showing that he sat the F1 Exam on 24 February 2021.

34. On 15 June 2021, the CBE delivery team sent an email to Mr Fayyaz informing him that his request would be passed on for the correct team to deal with. On 25 June 2021, ACCA sent an email to Mr Fayyaz’s registered email address asking him to confirm whether he had received the previous emails sent to him by ACCA. No response was received.

35. On 28 June 2021, ACCA contacted Mr Fayyaz via telephone call, on a number which had been provided by him when he registered with ACCA. The call was diverted to an automated messaging service. That same day, ACCA sent a final letter to Mr Fayyaz's registered email address reminding him of his obligation to cooperate with the investigation and again seeking his response by 5 July 2021. No response was received. A further email was sent to Mr Fayyaz's registered email address, again on 28 June 2021, informing him to ensure he checks his inbox and junk folder as the password to access the correspondence would be sent in a separate email.
36. On 03 July 2021, Mr Fayyaz sent an email to the CBE delivery team explaining that he sat the F1 Exam on 24 February 2021. However, he stated that his ACCA account does not show the correct status. On 4 July 2021, the CBE delivery team sent an email to Mr Fayyaz informing him that his Exam result was still under investigation. On 6 July 2021, ACCA sent a further email to Mr Fayyaz's registered email address asking him to confirm whether he had read and received the email and correspondence sent on 28 June 2021 which required a response by 5 July 2021. No response was received. On 17 August 2021, ACCA telephoned Mr Fayyaz on a registered number. An individual answered the phone and when asked whether it was Muhammadd Faizan Fayyaz speaking, the party on the phone spoke in Urdu and stated it was not Mr Fayyaz. The call was then disconnected.
37. On 13 October 2021, ACCA sent an email to the Connect team to confirm whether Mr Fayyaz's email address had changed since he registered with ACCA on 21 January 2018. The email confirmed there was one change of email address on 26 April 2019. There has been no change of email since this date.
38. On 17 March 2023, ACCA sent an email to Mr Fayyaz's registered email address requesting that he complete and return the case management form by no later than 24 March 2023. ACCA contacted Mr Fayyaz via telephone on the same date without success. The case management form was not returned.
39. For the same reasons as stated in paragraphs 26 and 27 above the Committee concluded that Allegation 1(c) was found proved.

## **Allegation 2 - Misconduct**

40. The Committee noted that Mr Fayyaz as a student member of ACCA has a duty to comply with ACCA rules, regulations and bye-laws and there is a legitimate expectation that he will do so. The Committee noted that all student members agree to adhere to these requirements and accept that any failure may result in disciplinary action.
41. The Committee took the view that Mr Fayyaz's failure to respond to the requests made by ACCA amounted to a serious falling short of his duties and obligations. The failings cannot be described as one-off instances as they were repeated and demonstrate a complete disregard for the standards expected of student members. Furthermore, Mr Fayyaz's failings have the potential to seriously undermine public trust and confidence in the profession and the regulatory process.
42. In these circumstances, the Committee was satisfied that Mr Fayyaz's actions amount to misconduct.
43. Given the Committee's finding in relation to misconduct, it was not necessary for the Committee to consider the alternative matter of liability to disciplinary action (other than when misconduct is found).

## **SANCTION AND REASONS**

44. Mr Jowett informed the Committee that there were no previous disciplinary findings against Mr Fayyaz.
45. The Committee accepted the advice of the Legal Adviser who referred it to Regulation 13(4) with regard to the sanctions available to student members, relevant caselaw and to ACCA's Guidance for Disciplinary Sanctions. The Committee was aware that it was required to ensure that any sanction was no more restrictive than necessary to address its public interest objectives, by considering the available sanctions in order of severity. 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 Fayyaz's own interests. The public interest includes protecting the public, maintaining public confidence in the profession, and declaring and upholding proper standards of conduct and behaviour. The Committee was also mindful that the purpose of any sanction is not to be punitive.

46. When considering the appropriate sanction, the Committee considered the aggravating and mitigating features of the case. The Committee considered that the only the mitigating feature was that no previous disciplinary findings had been made against Mr Fayyaz.
47. The Committee considered the following to be aggravating features:
- Mr Fayyaz's failures to cooperate were persistent and demonstrated a pattern of behaviour.
  - Mr Fayyaz had demonstrated no insight into the seriousness of his conduct or the impact of his behaviour on the profession.
  - Mr Fayyaz's lack of cooperation has continued beyond the three specific findings of non-cooperation and has included a general refusal to engage with this regulatory process.
48. Given that Mr Fayyaz had failed co-operate with the investigation into a complaint about him, and failed to engage with this ACCA disciplinary process, the Committee considered that Mr Fayyaz had shown no insight into his conduct.
49. The Committee noted that Section F of the '*Guidance for Disciplinary Sanctions*' document indicates that a failure to cooperate with a disciplinary investigation is a very serious matter.
50. The Committee first considered taking no further action. The Committee concluded that, in view of the nature and seriousness of Mr Fayyaz's conduct and behaviour, it would not be in the public interest to take no further action.
51. The Committee then considered an Admonishment. The Committee concluded that Mr Fayyaz had not demonstrated any remorse or insight. In any event, the Committee concluded that an Admonishment would be insufficient to mark the seriousness of Mr Fayyaz's disregard of his obligation to cooperate with ACCA with regard to its investigation and therefore would not uphold trust and confidence in the profession and the regulatory process.

52. The Committee went on to consider a Reprimand or a Severe Reprimand. It noted that such sanctions may be suitable if the member has proper insight into their failings or has expressed genuine expression and where there was a low risk of repetition; none of which applies to Mr Fayyaz. The Committee concluded that the nature of Mr Fayyaz's conduct in undermining the very purpose of regulation was towards the higher end of the spectrum for misconduct of this type as there was no attempt to respond to ACCA's requests. Registered students have a duty to cooperate with ACCA and a repeated failure to do so is fundamentally incompatible with continued registration as a member. As a consequence, even a Severe Reprimand would undermine rather than uphold public trust and confidence in the profession and the regulatory process.
53. Having determined that a Severe Reprimand would be insufficient to address the nature and seriousness of Mr Fayyaz's conduct the Committee determined that he should be removed from the student register of ACCA. Removal is a sanction of last resort and should be reserved for those categories of cases where there is no other means of protecting the public or the wider public interest. The Committee concluded that Mr Fayyaz's case falls into this category because his conduct represents a very serious departure from the standard expected, had continued for several months and demonstrates a lack of appreciation of the serious of the importance of cooperating with one's regulator.
54. The Committee was mindful that the sanction of removal from the student register was the most serious sanction that could be imposed and recognised that it could have negative consequences for Mr Fayyaz in terms of his reputation and financial circumstances. However, the Committee considered that Mr Fayyaz's interests were significantly outweighed by the need to protect the public, and the wider public interest.
55. Accordingly, the Committee decided that the appropriate and proportionate sanction is removal. The Committee did not deem it necessary to impose a specified period before which Mr Fayyaz could make an application for readmission as a student member.

## **Costs**

56. Mr Jowett made an application for Mr Fayyaz to make a contribution to the costs of ACCA. Mr Jowett applied for costs. He invited the Committee to reduce the costs of £6,694.50 for the following reasons. He submitted that the costs included an element of duplication due to the time spent on the substantive investigation that could not be concluded, some of the estimated costs up to and including today's hearing would not be incurred and some of the preparation costs had been overestimated.
57. The Committee was provided with a detailed Schedule of Costs providing a breakdown of the activity undertaken by ACCA and the associated costs.
58. The Committee accepted the advice of the Legal Adviser.
59. The Committee concluded that it is appropriate to make an award for costs. The Committee was satisfied that the case had been properly brought, and that on the whole the costs were fair and reasonable. The Committee concluded that the costs should be reduced in accordance with the submissions made by Mr Jowett and applied a further reduction to reflect the nature of the case and the need for the costs to be proportionate. In the absence of a statement of means form from Mr Fayyaz the Committee concluded that no further deductions should be made to the costs schedule
60. The Committee determined that Mr Fayyaz should be required to make a contribution to the costs of bringing these proceedings otherwise the entirety of the costs would be borne by the profession as a whole. The Committee concluded that these costs should be in the sum of £5,000.

## **ORDER**

61. The Committee makes the following orders:
  - (i) Mr Fayyaz shall be removed from the student register of ACCA.
  - (ii) Mr Fayyaz shall pay a contribution to ACCA's costs in the sum of £5,000.

## **EFFECTIVE DATE OF ORDER**

62. Taking into account all the circumstances, the Committee decided that the order for removal should take effect on the expiry of the appeal period.

**Neil Dalton**  
**Chair**  
**27 April 2023**