

## HEARING

**DISCIPLINARY COMMITTEE OF THE ASSOCIATION OF  
CHARTERED CERTIFIED ACCOUNTANTS  
REASONS FOR DECISION**

**In the matter of:** Mr Muhammad Talha

**Heard on:** Friday, 11 August 2023

**Location:** Remote via Microsoft Teams

**Committee:** Ms Ilana Tessler (Chair)  
Ms Wanda Rossiter (Accountant)  
Mr Nigel Pilkington (Lay)

**Legal Adviser:** Mr Robin Havard (Legal Adviser)

**Persons present**

**and capacity:** Mr Alex Mills (Case Presenter on behalf of ACCA)  
Miss Nicole Boateng (Hearings Officer)  
Mr Muhammad Talha (Student Member)

**Observer:** Ms Jackie Alexander (ACCA Appointments Board)

**Summary** Allegations 1, 2 and 3 found proved

**Sanction** Reprimand

**Costs:** £500

## ACCA



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## **ALLEGATIONS**

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

1. Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended), whilst there is correspondence received by ACCA from Mr Talha on 11 and 19 April 2021 Mr Talha has failed to fully co-operate with the investigation of a complaint, in that he did not respond to ACCA's correspondence dated:
  - a) 20 May 2021;
  - b) 04 June 2021;
  - c) 21 June 2021.
  
2. On 05 December 2020, during and in relation to an FBT Business and Technology examination (the 'Exam') had on his person, and/or within arm's reach, a watch, contrary to Examination Regulation 1 and the Examination Guidelines (as applicable in 2020).
  
3. By reason of his conduct ACCA submit Mr Talha is:
  - a) Guilty of misconduct pursuant to byelaw 8(a)(i) in relation to Allegation 1; or, in the alternative, liable to disciplinary action pursuant to byelaw 8(a)(iii);
  
  - b) Liable to disciplinary action pursuant to byelaw 8(a)(iii) in relation to Allegation 2.

## **DECISION ON FACTS, ALLEGATIONS AND REASONS**

1. The Committee had considered the following documents: a Hearing Bundle (pages 1 to 100); a video recording of the exam session on 05 December 2020, and a Service Bundle (pages 1 to 22).

2. In reaching its findings of fact in respect of allegations 1 and 2, the Committee relied on the email correspondence and documents contained in ACCA's bundle. The Committee had taken account of the submissions of Mr Mills and the evidence and submissions of Mr Talha. The Committee also listened to legal advice, which it accepted.

**Allegation 1(a), (b) & (c)**

3. On 28 October 2020, ACCA registered Mr Talha as a student. As such, and from that date, he has been bound by ACCA's byelaws and Regulations.
4. On 05 December 2020, Mr Talha took his on-demand FBT Business and Technology examination (the 'Exam') remotely. The Proctor (remote exam invigilator) filed an Incident Report in respect of conduct observed (looking off-screen) during the Exam.
5. An investigation was commenced. This involved obtaining documents and video footage relating to the Exam. In particular, ACCA considered that the video footage revealed that Mr Talha had been wearing a watch before and during the Exam. ACCA alleged that this conduct was in breach of the Examination Guidelines as Mr Talha had a watch within arm's reach before and during the Exam. It was alleged that this breach of the Examination Guidelines amounted to a breach of Examination Regulation 1.
6. On 11 April 2021, ACCA sent a letter to Mr Talha's registered email address outlining the basis of the complaint regarding his conduct during the Exam. The letter contained a series of questions which Mr Talha was required to answer. He was instructed to respond by 02 May 2021.
7. In the letter, ACCA included the following:

***"Duty to co-operate***

*In accordance with Complaints and Disciplinary Regulation 3(1), you are required to co-operate with this investigation. A failure or partial failure to co-operate fully with the investigation may render you liable to disciplinary action."*

***This includes responding to the questions referred to above by the deadline of 02 May 2021.***

*(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...'*

8. On 11 April 2021, Mr Talha responded to ACCA, providing answers to some, but not all, of the questions put to him in ACCA's letter of 11 April 2021.
9. On 12 April 2021, ACCA sent another letter to Mr Talha, reminding him of his obligation to co-operate fully with the investigation, advising him that he was required to answer all questions put to him in ACCA's letter of 11 April 2021, requesting a full response by 26 April 2021.
10. On 19 April 2021, Mr Talha provided a response to the required questions.
11. On 20 May 2021, following a review of Mr Talha's response, in conjunction with the video evidence, ACCA sent another letter to Mr Talha, putting further questions to him about his conduct during the Exam. It was accepted by Mr Mills, and the Committee found, that there was a level of overlap between the

questions in this letter and the letters sent in April 2021. However, there were certain questions which covered some new areas of enquiry. In particular, when considering allegation 2, at questions 7 to 11, ACCA asked Mr Talha if he was wearing a watch during the Exam, if so, whether it was a Smart watch and whether he made use of it during the Exam. Mr Talha was required to provide his response by 03 June 2021. No response was received.

12. On 04 June 2021, ACCA sent another letter to Mr Talha's registered email address reminding him of his obligation to co-operate with the investigation and seeking his response by 18 June 2021. No response was received.
13. On 21 June 2021, ACCA sent a final letter to Mr Talha's registered email address reminding him again of his obligation to co-operate and again seeking his response by 28 June 2021. No response was received.
14. On 12 October 2021, ACCA sent an email to the Connect team to confirm whether Mr Talha's email address had changed at any point since he registered with ACCA on 28 October 2020. The Connect team in an email confirmed there had been no change of email since his registration with ACCA.
15. The Committee found that the email address that was used by ACCA to communicate with Mr Talha had remained the same throughout the investigation. There was nothing to suggest that the emails had not been delivered successfully and the Committee found that they had been received by Mr Talha. Indeed, it was the same address used by Mr Talha to communicate with ACCA on 11 and 19 April 2021 and also in the emails dated 14 April 2023 when serving the notice of proceedings on Mr Talha.
16. Finally, it had been accepted by Mr Talha in the course of his evidence that he had received the emails.
17. In the circumstances, the Committee was satisfied that the emails of 20 May 2023, 04 June 2023 and 21 June 2023 had been delivered successfully to Mr Talha and he had failed to respond to those emails. Each of the letters attached

to the emails contained a clear reminder of the duty imposed on Mr Talha to cooperate with ACCA's investigation to include the duty to provide promptly such information that an investigating officer may require.

18. When considering whether Mr Talha had failed to fully cooperate with ACCA in failing to respond to the emails, it had listened carefully to the explanation provided by Mr Talha in the course of this hearing. As stated, he accepted, and the Committee found, that he had received the emails. However, Mr Talha had said that the emails had arrived at a time when he had left Pakistan and he had come to the UK with his partner. He had to spend time in a hotel in quarantine and had been unable to access his emails for a period of approximately ten days.
19. However, Mr Talha went on to say that, once he had looked at the questions being asked of him in the letter of 20 May 2021, he considered that he had, *"answered all the important questions"* in his previous responses in April 2021. Nevertheless, in answer to questions from Mr Mills, he accepted that the questions in the email of 20 May 2021 also covered new areas such as questions relating to him wearing a watch, and the time it had taken him to complete the exam.
20. Mr Talha also accepted that he had received the two chasing emails of 04 and 21 June 2021 but that he had not responded for the same reason i.e., that he considered that he had already answered all the questions.
21. Taking account of the evidence provided by Mr Talha, the Committee found that his failure to respond to the correspondence of 20 May 2021, 04 June 2021 and 21 June 2021 amounted to a failure to fully cooperate with ACCA in the course of its investigation. He was not entitled to exercise his discretion when deciding whether or not he should respond to correspondence from ACCA. He had a duty to do so, even if his response amounted to an assertion that he had already answered the questions raised in such correspondence. In the event, whilst there was a degree of overlap in respect of certain topics relating to his conduct in the course of the Exam, the Committee was satisfied that there were

new, and potentially important, lines of enquiry that ACCA were entitled to explore.

22. On this basis, the Committee found allegation 1(a), (b) and (c) proved.

### **Allegation 2**

23. The Committee took account of the terms of Examination Regulation 1 and the relevant section of the Examination Guidelines which were in force at the time Mr Talha took the Exam and which are set out below.

#### **Extract from the Examination Regulations (as applicable in 2020)**

*“1. 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 ACCA Bye-law 8, which could result in your removal from the student register.”*

#### **Extract from the Examination Guidelines (as applicable in 2020)**

##### ***“Before the Examination Proctored Exam***

*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.*

*Before the examination start, you must ensure you follow the instructions below:*

- Ensure you are not disturbed by anyone.*
- Disconnect extra monitors, projectors and televisions.*
- Place food and smoking equipment out of sight.*

- *Move electronic devices, earpieces and watches out of arm's reach"*
24. The Committee relied upon the email correspondence and documents contained in ACCA's Bundle and noted the Incident Report provided by the Proctor prepared following the exam.
  25. Prior to the hearing, the Committee had viewed the video footage of the exam taken on 05 December 2020 and considered the screenshots taken from the video footage as contained in the Bundle and ACCA's report.
  26. On the basis of the evidence and submissions it had heard, seen and read, the Committee made the following findings of fact.
  27. At approximately 08:49 and 22:21 in the video footage of Mr Talha's Exam, he is seen wearing a watch on his left wrist prior to the Exam beginning.
  28. The Exam appears to start on Proctor U platform around 42:30 in the video footage.
  29. At 57:11, 01:04:01, 01:04:02 and 01:06:31, Mr Talha is seen locking the door where the watch on his left wrist can be seen.
  30. The Committee was satisfied that, in wearing a watch during the course of the Exam, this amounted to conduct that breached the Examination Guidelines, which clearly state that before the Exam, students must ensure that watches are out of arm's reach. As Mr Talha was in breach of the guidelines, it followed that he was in breach of Examination Regulation 1 which requires all students to comply with the Examination Guidelines.
  31. The Committee was satisfied that Mr Talha was aware of the requirements of the Examination Guidelines. All ACCA students are made aware of the Examination Regulations and Guidelines prior to sitting their exam.



32. In the chat log at 10.41, Mr Talha was asked if he had read and understood the Information Sheet for On-Demand CBE Students sitting exams at home to which he responded, "Agree".
33. In his email of 19 April 2021, Mr Talha advised "*yes I read everything*" in response to the question in ACCA's letter of 11 April 2021 (page 45), which asked "*Did you read the Examination Regulations and Guidelines before sitting the FBT Business and Technology examination on 05 December 2020.*"
34. In his evidence, Mr Talha did not dispute that he was wearing a watch during the Exam. However, he stated that the watch he was wearing was not a Smart watch but was simply a watch which told him the time and that he had overlooked that part of the Information Sheet which related to the Guideline that wearing a watch was prohibited.
35. On the basis of the video evidence and Mr Talha's admission, the Committee found allegation 2 proved.

### **Allegation 3(a)**

36. In respect of allegation 1, the Committee had found that, despite ACCA providing a number of reminders of his obligation to cooperate and warnings of potential consequences of his failure to do so, Mr Talha had failed to fully cooperate with ACCA and to respond to correspondence.
37. The Committee had taken into consideration that the email of 20 May 2021 contained a substantial amount of information and a significant number of detailed questions which Mr Talha was required to answer. In sending Mr Talha the emails of 04 June 2021 and 21 June 2021, ACCA had given Mr Talha every opportunity to respond substantively to its investigation.
38. The duty on members, including student members, to engage and cooperate with their Regulator was fundamental. A failure by members to do so meant that ACCA's ability to: regulate its members in order to ensure proper standards

of conduct; protect the public, and maintain its reputation, was seriously compromised.

39. The Committee found that the failure of Mr Talha to cooperate with his Regulator, and the reasons he gave for not doing so, amounted to misconduct in that such failure brought discredit to him, ACCA and the Accountancy profession.
40. On this basis, the Committee found allegation 3(a) proved.

### **Allegation 3(b)**

41. In respect of allegation 2, ACCA had found that Mr Talha had breached Examination Regulation 1 by wearing a watch during the Exam in breach of the Examination Guidelines. On this basis the Committee found Allegation 3(b) proved and that Mr Talha was liable to disciplinary action.

### **SANCTION AND REASONS**

42. The Committee considered what sanction, if any, to impose, taking into account all it had read in the bundle of documents, ACCA's Guidance for Disciplinary Sanctions, and the principle of proportionality. It had also listened to the submissions of Mr Mills, and legal advice from the Legal Adviser which it accepted.
43. The Committee considered the available sanctions in increasing order of severity having decided that it was not appropriate to conclude the case with no order.
44. 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.

45. The Committee considered whether any mitigating or aggravating factors featured in this case.
46. The Committee accepted that there were no previous findings against Mr Talha. The Committee also took into consideration the fact that he had responded promptly to the emails from ACCA of 11 and 12 April 2021 and had engaged in these proceedings. This was also the first online examination he had taken, and he had subsequently taken a second online examination without any concerns being expressed as to his conduct.
47. The Committee also accepted that, in respect of wearing a watch, there had been no attempt to conceal the fact that he was doing so.
48. As for aggravating factors, the Committee had found Mr Talha had failed at the outset to show an appropriate level of insight, particularly with regard to the failure to cooperate with his regulator, but he had not sought to minimise his conduct when giving his evidence and, on balance, the Committee found that his conduct was more an error of judgement as opposed to any wilfully obstructive behaviour on his part.
49. On the basis of its findings, the Committee concluded that an admonishment would not represent a sufficient and proportionate outcome. Such a sanction would not adequately reflect the seriousness of the Committee's findings.
50. The Committee then considered whether a reprimand would be an appropriate sanction. On balance, and reflecting on the criteria suggested in the Guidance, the Committee concluded a reprimand would be sufficient, appropriate and proportionate.

## **COSTS AND REASONS**

51. The Committee had been provided with a detailed Costs schedule (pages 1 to 3) and a Simple costs schedule (pages 1 to 12) relating to ACCA's claim for costs.

52. The Committee concluded that ACCA was entitled to be awarded costs against Mr Talha, all allegations having been found proved. The amount of costs for which ACCA applied was £6,142.50. The Committee did not consider that the claim was unreasonable but the hearing had taken less time than estimated which needs to be reflected in the amount awarded.
53. Mr Talha had not provided ACCA with any documentary evidence of his means in advance of the hearing. The Committee was satisfied that, in the correspondence sent to him, Mr Talha had been warned at the outset of the importance of providing details of his financial circumstances and of ACCA's intention to apply for costs if any or all of the allegations were established. He had also been sent a Statement of Financial Means for him to complete and return, which he had failed to do.
54. Nevertheless, Mr Talha had provided oral evidence of his current circumstances. [Private] This information was not challenged and the Committee accepted Mr Talha's outline of his current financial circumstances.
55. In all the circumstances, and in exercising its discretion, the Committee considered that it was reasonable and proportionate to award costs to ACCA in the reduced sum of £500.00.

#### **EFFECTIVE DATE OF ORDER**

56. The Committee decided that this order shall take effect at the expiry of the period allowed for an appeal in accordance with the Appeal Regulations.

**Ms Ilana Tessler**  
**Chair**  
**11 August 2023**