

## HEARING

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

**In the matter of:** Mr Safi Ullah

**Heard on:** Friday, 04 August 2023

**Location:** Virtual hearing via Microsoft Teams

**Committee:** Mr Andrew Gell (Chair)  
Ms Diane Meikle (Lay)  
Dr Beth Picton (Accountant)

**Legal Adviser:** Ms Jane Kilgannon

**Persons present**

**and capacity:** Mr Safi Ullah  
Mr Alex Mills (Case Presenter on behalf of ACCA)  
Miss Geraldine Murray (Hearings Officer)  
Miss Zarqa Sheikh (Interpreter)

**Summary:** Allegations 1, 2a and 3a proved.  
Removal from the student register.

**Costs:** Mr Ullah ordered to pay £250.00 towards ACCA's costs.

1. The Disciplinary Committee (the Committee) convened to consider the case of Mr Safi Ullah (Mr Ullah).

## ACCA



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2. Mr Alex Mills (Mr Mills) represented the Association of Chartered Certified Accountants (ACCA). Mr Ullah attended the hearing and was not represented.
3. The Committee confirmed that it was not aware of any conflicts of interest in relation to the case.
4. In accordance with Regulation 11(1)(a) of the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 (the Regulations), the hearing was conducted in public.
5. The hearing was conducted remotely through Microsoft Teams.
6. The Committee had considered in advance the following documents:
  - a. a Memorandum and Agenda (pages 1 to 2);
  - b. a Hearing Bundle (pages 1 to 119); and
  - c. a Service Bundle relating to today's hearing (pages 1 to 23).
7. The Committee had also been sent and had viewed a copy of video footage of an examination dated 22 January 2021 (53 minutes and 58 seconds in duration).

## **BRIEF BACKGROUND**

8. Mr Ullah became a student member of ACCA on 24 October 2018.
9. On 22 January 2021, Mr Ullah sat an ACCA MA2 Managing Costs and Finance examination (the examination) remotely. The Proctor (the remote invigilator) filed an Incident Report, noting "*During the session, the Proctor noticed that the test taker's mouse cursor was still moving even though their hands were holding a pen*" and "*someone is assisting the test taker as there was someone whispering on the test taker*" (sic). On that basis, ACCA opened an investigation into the matter.

10. The investigation identified the following relevant matters:
  - a. Video footage of the examination includes the sounds of what appear to be voices towards the beginning of the examination, the sound of a door opening and closing at several points during the examination, and the sound of whispering towards the end of the examination – all potentially indicating that there was another person in the room with Mr Ullah during the examination; and
  - b. Analysis of the video footage, matching still photographs with a transcript of the sounds or words whispered and Mr Ullah's response to examination questions at specific moments during the examination, appears to show that: when the letter "A" is whispered, Mr Ullah then selects the first option to answer the question on screen; when the letter "B" is whispered, Mr Ullah then selects the second option to answer the question on screen; and when the letter "C" is whispered, Mr Ullah then selects the third option to answer the question on screen.
  
11. Mr Ullah provided responses to ACCA throughout its investigation. These included:
  - a. On 31 May 2021, Mr Ullah stated: *"I did not allow anyone before, during or after the exam. The examiner checked my room before starting the examination. When [they were] completely satisfied by the environment of my room then [they] allowed me to start the exam. There was no one in my room. I locked myself and strictly followed the instructions of Proctor" and "The whispers came from room which is located by the side of my room. There was movement and whisper of family member due to bad sound proofing. I believed that those sound may not be counted in my exam violations as they were outside of my room"; (sic)*
  - b. On 13 June 2021, Mr Ullah stated: *"As I mentioned in my previous response about the whispering that they were coming from outside of my room. There was no one in my room. I was completely alone in the room. I closed the door personally but unluckily I did not control the outside*

*voices. So I am assuring you that there was no one except me in the room. There is no connecting door between the rooms. At the start of exam I closed the room door. No one entered or left my room during my session”; (sic) and*

- c. *On 13 September 2021, Mr Ullah stated: “As due to exam tension and Panic I used to mumble sometimes with myself. It makes me feel better while I attempt paper. These options whispers are not like they are coming from outside but rather they were coming from my partially closed mouth. I do often mumble with me when I am ticking or choosing options in papers. This is my core habit and it is really hard to leave. In confusion I whisper with myself the answers to the question which maybe right or wrong. In the video you mentioned that my mouth was not moving but I am sure that those sounds were of my mumbling and not some other person making those sounds to help me out in paper”. (sic)*

## **ALLEGATIONS**

Mr Safi Ullah, a student member of ACCA, on 22 January 2021, during a remotely invigilated MA2 Managing Costs and Finance examination (the exam):

1. Engaged in improper conduct designed to assist him in the exam attempt in that he caused or permitted a third party to provide assistance during all or part of the exam, contrary to Examination Regulation 10.
2. Mr Ullah’s conduct as referred to in allegation 1 above:
  - a. Was dishonest, in that Mr Ullah sought to obtain an unfair advantage in the exam by obtaining assistance from a third party; or in the alternative,
  - b. Demonstrates a failure to act with integrity.
3. 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 and/or 2 above; or, in the alternative,
- b. Liable to disciplinary action pursuant to byelaw 8(a)(iii), in respect of allegation 1 only.

## **DECISION ON ALLEGATIONS AND REASONS**

### **ADMISSIONS**

12. There were no admissions and so ACCA was required to prove all matters alleged.

### **EVIDENCE AND SUBMISSIONS OF ACCA**

13. Mr Mills took the Committee through the documentary and video evidence relied upon by ACCA. In particular, Mr Mills highlighted the video footage of the examination which he said showed evidence of another person in the room with Mr Ullah during the examination:
  - a. Mr Mills referred to the fact that Mr Ullah had stated that there were two doors in the examination room, the main door and the washroom door. Mr Mills stated that although the Proctor had been satisfied that Mr Ullah had secured the main door before the examination started, there was no way for the Committee to know whether it actually was secured at that time. Furthermore, Mr Mills noted that there did not appear to have been a check of the washroom or the washroom door before the examination started. Mr Mills submitted that each of these provided an opportunity for a third party to access the room during the examination;
  - b. Mr Mills referred to three occasions during the video footage when there is an audible sound which could be the opening and closing of a door. Mr Mills submitted that at least one of these was the sound of a third party

entering the examination room. He noted that one of these sounds immediately preceded the later sounds of whispering;

- c. Mr Mills referred to Mr Ullah having admitted at the hearing today that when he heard the sound of the door opening and closing, he rustled his scrap paper in order to attempt to conceal that sound from the Proctor; and
  - d. Mr Mills referred to the clear sound of the whispering of the letters A, B or C – which, when aligned with the options being selected by Mr Ullah to answer questions at the relevant times – appeared to match those options. Mr Mills submitted that Mr Ullah’s mouth does not open or move at these times and so Mr Ullah’s assertion that the whispering sounds are him whispering to himself is not credible.
14. Mr Mills stated that Regulation 10 of the Examination Regulations prohibits engagement in any improper conduct designed to assist the person in their examination. Mr Mills submitted that the video footage of Mr Ullah’s examination attempt shows him permitting another person to provide him with assistance – by whispering letters to him – during the examination. Given that the letters whispered appeared to be then used by Mr Ullah in relation to his selection of options to answer examination questions, Mr Mills submitted that their clear purpose was to assist Mr Ullah in his examination attempt. Mr Mills submitted that permitting such assistance to be given to him during his examination was improper conduct because it amounted to cheating. As such, Mr Mills submitted that Allegation 1 had been proved.
15. In relation to Allegation 2a, Mr Mills submitted that Mr Ullah’s conduct was dishonest because he knew that he was not permitted to obtain assistance from a third party when he was sitting the examination because it might give him an unfair advantage, yet he chose to obtain such assistance. Mr Mills submitted that the conduct was therefore objectively dishonest. In the alternative, in relation to Allegation 2b, Mr Mills submitted that Mr Ullah’s conduct demonstrated a lack of integrity because it amounted to a failure to meet the relevant professional standards of fair dealing and truthfulness.

16. In relation to Allegation 3a, Mr Mills submitted that Mr Ullah's conduct has brought discredit to Mr Ullah, ACCA and the accountancy profession, and that, as such, it amounted to serious professional misconduct. In the alternative, in relation to Allegation 3b, Mr Mills submitted that Mr Ullah's conduct rendered him liable to disciplinary action.

### **EVIDENCE AND SUBMISSIONS OF MR ULLAH**

17. Mr Ullah gave oral evidence to the Committee.
18. Mr Ullah stated that there was no other person in the examination room with him. He explained that he had locked the main door to the examination room before the examination, and the Proctor had seen this and had been satisfied with it.
19. Mr Ullah asserted that the sounds of a door opening and closing that can be heard on the video footage are from the room in front of his room. He explained that the walls are made of wood and so noise travels easily between them.
20. Mr Ullah stated that the sound of whispering towards the end of the examination was him mumbling to himself. This is why the letter whispered corresponds with the option he then selected to answer each relevant question. Mr Ullah stated that if the whispering had come from another person, they would not simply have whispered individual letters, but would instead have had to also referenced a particular question number and then the relevant option to select – for example, "*question four, tick option B*".
21. Under cross-examination, Mr Ullah accepted that:
  - a. He read the candidate instructions prior to sitting the examination;
  - b. There were two doors in the examination room – the main door and the door to the washroom;

- c. The door of the neighbouring room is outside of the examination room's main door and across a corridor;
  - d. He could not remember whether the door of the washroom was locked before the examination;
  - e. The Proctor did not ask to see inside the washroom before the examination;
  - f. When he heard the sound of a door opening and closing, he was worried that the Proctor might stop his examination, so he sought to "*minimise*" the sound by rustling his scrap paper; and
  - g. The sound of the letters being whispered towards the end of the examination is "*quite clear*".
22. Mr Ullah submitted that he did not engage in improper conduct in the examination in that he did not cause or permit a third party to provide assistance during the examination.
23. Mr Ullah submitted that if the Proctor had concerns about whispering during the examination, they should have said so at the time and asked to see the examination room again.
24. Mr Ullah submitted that the whispering heard during the examination was for a very brief period of time. However, the ACCA investigation has taken two years to get to this point. In the meantime, Mr Ullah's time has been wasted waiting for the outcome.

#### **DECISIONS AND REASONS OF THE COMMITTEE**

25. The Committee considered all of the oral, documentary and video evidence before it and the submissions of Mr Mills and Mr Ullah.



26. The Committee accepted the advice of the Legal Adviser, which included reference to the applicable burden and standard of proof, and the interpretation of the terms dishonesty, a failure to act with integrity, and misconduct.

**Allegation 1 – proved**

27. In relation to Allegation 1, having carefully reviewed the video footage of the examination, the Committee found that, on the balance of probabilities, it was more likely than not that another person was in the room with Mr Ullah during the examination. In coming to that conclusion, the Committee had particular regard to the following matters:
- a. The Committee noted, and it was accepted by Mr Ullah, that there were audible sounds of a door opening and closing on at least three occasions during video footage of the examination;
  - b. Those sounds were loud, such that they sounded close by and such that it was unlikely that they came from the neighbouring room which Mr Ullah had described as being on the other side of the closed main door and across a corridor;
  - c. The Committee noted that there were two doors within the examination room, the main door and the door to the washroom. The Committee noted that, although the Invigilator had asked Mr Ullah to lock the main door before the examination started, there did not appear to have been any check that the washroom door was locked, nor whether anyone was inside the washroom; and
  - d. The Committee noted that Mr Ullah had accepted that when he heard the sound of the door opening and closing he had rustled his scrap paper in an effort to disguise the sound from the Invigilator. The Committee rejected Mr Ullah's explanation that he did this because he was nervous about the sound from another room causing the Invigilator to stop the exam, because it considered it to be implausible. In such circumstances, the Invigilator could have been shown the room and the doors in the room

again if they had asked. Instead, the Committee found it more likely that Mr Ullah's efforts to disguise the sound of the door opening and closing were because the door opening and closing was allowing access to the examination room to a third party.

28. The Committee found that the video footage provided included clearly audible whispering of the letters A, B or C on at least three occasions during the examination. The Committee could hear the sound of whispering on the video footage, and also noted that Mr Ullah had accepted that there was an audible sound of the whispering of letters towards the end of the video footage of the examination.
29. The Committee found that, on the balance of probabilities, the whispering did not come from Mr Ullah but, rather, from a third party. In coming to that conclusion, the Committee had particular regard to the following matters:
  - a. The Committee's earlier finding that it was more likely than not that there was another person in the examination room with Mr Ullah;
  - b. The volume and clarity of the letters that could be heard whispered made it unlikely that they came from a person outside of the examination room; and
  - c. The Committee rejected Mr Ullah's explanation that the whispering heard on the video footage was him mumbling to himself because it was inconsistent with what could be viewed on the video footage. At the relevant times, Mr Ullah's mouth is closed, and it does not open or move at all. The Committee considered that in order to whisper letters as clearly as they can be heard on the video, the person whispering would need to open and/or move their mouth so as to create the relevant sounds.
30. Given that the letters whispered could be observed in the timestamped screenshots provided to align with the options selected by Mr Ullah to answer examination questions, the Committee was satisfied that the video footage, together with ACCA's analysis of it, showed Mr Ullah engaging in improper

conduct designed to assist him in the examination. This is because it showed him accepting information from another person during the examination and using that information to assist him in answering examination questions.

31. The Committee noted that Regulation 10 of the Examination Regulations prohibited improper conduct designed to assist a person in their examination attempt.
32. Accordingly, the Committee found Allegation 1 proved.

#### **Allegation 2a – proved**

33. In relation to Allegation 2a, the Committee applied the test for dishonesty set out in the case of *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67.
34. Applying the first stage of the test, the Committee had regard to Mr Ullah's previous good character and considered that that made it less likely that he would have had a dishonest state of mind at the relevant time or since been untruthful about his state of mind at that time. However, bearing in mind its findings in relation to Allegation 1, the Committee considered that Mr Ullah's subjective state of mind at the relevant times was that he knew that he should be undertaking the examination alone and without any third party assistance, but he nevertheless chose to obtain assistance from a person in the room with him whispering suggested responses to the examination questions. In coming to this conclusion, the Committee took into account that Mr Ullah obtained that assistance covertly, without making the presence of the other person in the room clear to the Proctor that was invigilating the examination. Indeed, Mr Ullah actively sought to conceal the presence of the other person by rustling scrap paper to hide the sound of the door opening and closing when they entered the room.
35. Applying the second stage of the test, the Committee considered that Mr Ullah's conduct would be viewed by ordinary decent members of the public to be

dishonest by objective standards because it amounted to an attempt to gain an unfair advantage in a professional examination.

36. Accordingly, the Committee found Allegation 2a proved.
37. Given its finding in relation to Allegation 2a, it was not necessary for the Committee to consider the alternative matter set out at Allegation 2b.

### **Allegation 3a – misconduct established**

38. In relation to Allegation 3a, the Committee considered the seriousness of Mr Ullah's conduct set out at Allegations 1 and 2a. The Committee referred back to the evidence that it had seen and heard. The Committee carefully noted the video footage of the examination, together with the analysis setting out the video footage against Mr Ullah's timestamped responses to examination questions.
39. The Committee considered that Mr Ullah's conduct in engaging in improper conduct designed to assist him in the examination was not only a breach of the ACCA Examination Regulations but also departed significantly from what was proper in the circumstances and brought discredit to Mr Ullah, ACCA and the accountancy profession. The conduct risked the academic integrity of the examination and therefore risked undermining proper professional standards and public confidence in the ACCA and its qualifications.
40. The Committee noted that Mr Ullah had sought to conceal from ACCA the true course of events in the examination room.
41. The Committee noted that Mr Ullah's conduct in attempting to cheat in the examination had been designed to afford him an unfair advantage and was dishonest. As such, the Committee found it to be conduct that fell far below the standards expected of a student member of ACCA.
42. For these reasons, the Committee concluded that Mr Ullah's conduct at Allegations 1 and 2a – both taken individually and collectively - was serious enough to amount to misconduct.

43. Given the Committee's finding in relation to Allegation 3a, it was not necessary for it to consider the alternative matter set out at Allegation 3b.

### **SANCTION AND REASONS**

44. In reaching its decision on sanction, the Committee took into account the evidence that it had already heard and the further submissions made by Mr Mills and Mr Ullah.
45. Mr Mills submitted that the Committee may consider that the lack of evidence of insight or understanding is an aggravating feature of the case (acknowledging that Mr Ullah's rejected defence of honesty should not be unfairly relied upon as evidence of a lack of insight).
46. Mr Mills submitted that the Committee may consider that the following are mitigating features of the case:
- a. There are no previous regulatory findings against Mr Ullah; and
  - b. Mr Ullah has stated that the proceedings against him have wasted his time for two years.
47. Mr Ullah indicated that he wished to remain on the student register.
48. Mr Ullah drew attention to the length of time that it had taken from the date of the conduct to the hearing today – approximately two years. He stated that his time had been wasted.
49. Mr Ullah stated that if he was not allowed to remain on the student register, he would seek out other options.
50. The Committee accepted the advice of the Legal Adviser, who referred it to Regulation 13(4) of the Regulations, relevant case law and the ACCA document 'Guidance for Disciplinary Sanctions'. The Committee bore in mind that the purpose of any sanction was not to punish Mr Ullah, but to protect the

public, maintain public confidence in the profession and maintain proper standards of conduct, and that any sanction must be proportionate.

51. When deciding on the appropriate sanction, the Committee carefully considered whether there were any aggravating and mitigating features in this case.
52. The Committee considered the following matters to be aggravating features of the case:
  - a. The conduct amounted to deliberate dishonesty, motivated by a desire to obtain an unfair personal advantage; and
  - b. A lack of insight.
53. In relation to a lack of insight, the Committee carefully considered the guidance set out in the case of *Sawati v General Medical Council* [2022] EWHC 283 (Admin). In the context of this case, the Committee considered that its finding that there was a lack of insight was not placing unfair reliance on Mr Ullah's rejected defence of honesty for the following reasons:
  - a. The Committee was satisfied that Allegations 1 and 2a taken together – dishonest conduct in attempting to cheat in a professional examination – amounted to a primary allegation of dishonesty in that it was an allegation of deceitful conduct, as opposed to an allegation of some other kind of conduct that could be done in an honest or a dishonest way;
  - b. The Committee noted that Mr Ullah had denied an objectively verifiable fact, namely that another person was whispering to him during the examination;
  - c. The Committee noted that Mr Ullah was not only denying a dishonest state of mind, but rather the very presence of the other person in the examination room with him and whispering to him; and
  - d. The Committee considered that the Mr Ullah's defence was itself a lie.

54. The Committee considered the following to be mitigating features in this case:
  - a. Mr Ullah has had no previous regulatory findings made against him; and
  - b. It appears to have been a single, isolated incident.
55. The Committee did not note any expression of remorse on the part of Mr Ullah.
56. Given the lack of remorse and insight, the Committee considered there to be a significant risk of repetition of the misconduct.
57. No professional or character testimonials were presented for the consideration of the Committee.
58. The Committee noted that Section E2 of the 'Guidance for Disciplinary Sanctions' document indicated that:
  - a. Dishonesty, even when it does not result in direct harm and/or loss undermines trust and confidence in the profession;
  - b. 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; and
  - c. The Committee should bear these factors in mind when considering whether any mitigation presented by the student member is so remarkable or exceptional that it warrants anything other than removal from the student register.
59. The Committee considered the available sanctions in increasing order of severity.

60. The Committee first considered whether to take no further action, but considered that such an approach was not appropriate given the seriousness of the misconduct.
61. The Committee considered that neither admonishment, reprimand nor severe reprimand would be appropriate, because the nature of the conduct was deliberate and there is no evidence of remorse or insight. The Committee considered that these three sanctions would be insufficient to mark the seriousness of the misconduct, to provide adequate protection of the public and to address the wider public interest.
62. The Committee considered that removal from the student register was the appropriate sanction in this case because Mr Ullah's conduct:
  - a. Was a serious departure from professional standards;
  - b. Was fundamentally incompatible with being a Student Member;
  - c. Had the potential to have an adverse impact on members of the public if trust was undermined in ACCA qualifications and the profession of accountancy;
  - d. Included dishonesty; and
  - e. Demonstrated a lack of insight into the seriousness of the conduct and the consequences thereof.
63. The Committee did not consider the mitigating features of the case were so remarkable or exceptional so as to warrant anything other than removal from the student register.
64. 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 Ullah in terms of his reputation and financial circumstances. However, the Committee considered the sanction to be proportionate in the circumstances, given the seriousness of the



misconduct, the need to protect the public, and the wider public interest in upholding proper professional standards and maintaining public confidence in ACCA and the accountancy profession.

65. Accordingly, the Committee decided to remove Mr Ullah from the student register.
66. The Committee did not deem it necessary to impose a specified period before which Mr Ullah could make an application for re-admission as a student member.

#### **COSTS AND REASONS**

67. Mr Mills made an application for Mr Ullah to make a contribution to the costs of ACCA. Mr Mills applied for costs totalling £5,193.00. The Committee was provided with a Schedule of Costs providing a breakdown of the activity undertaken by ACCA and the associated costs. Mr Mills submitted that the costs claimed were appropriate and reasonable.
68. Mr Ullah did not provide the Committee with a Statement of Financial Position. However, he did provide a letter from his employer setting out details of his monthly income and expenditure.
69. The Committee accepted the advice of the Legal Adviser who referred the Committee to Regulation 15(1) of the Regulations and the ACCA document 'Guidance for Cost Orders'.
70. The Committee was satisfied that ACCA was entitled to costs in principle and had been justified in investigating these matters. However, it considered that there should be a reduction to reflect Mr Ullah's financial position. The Committee had been told by Mr Ullah that he had very limited financial means.
71. In deciding the appropriate and proportionate order for costs, the Committee took into account the above matters and decided to make an order for costs in the sum of £250.00.

72. Having considered the financial information provided by Mr Ullah, the Committee was satisfied that Mr Ullah could pay the amount ordered without undue hardship.

### **ORDER**

73. The Committee made the following order:
- a. Mr Ullah shall be removed from the ACCA student register; and
  - b. Mr Ullah shall make a contribution to ACCA's costs in the sum of £250.00.

### **EFFECTIVE DATE OF ORDER**

74. In accordance with Regulation 20(1) of the Regulations, the order relating to removal from the ACCA student register will take effect at the expiry of the appeal period.
75. In accordance with Regulation 20(2) of the Regulations, the Order relating to costs will take effect immediately.

**Mr Andrew Gell**  
**Chair**  
**13 August 2023**