

HEARING

APPEAL COMMITTEE OF THE ASSOCIATION OF CHARTERED CERTIFIED ACCOUNTANTS

REASONS FOR DECISION

In the matter of:	Mr Muhammad Imtiaz
Heard on:	Monday, 20 February 2023
Location:	Held remotely via Microsoft Teams
Committee:	Mr Martin Winter (Chair) Ms Beth Picton (Accountant) Mr Damian Kearney (Lay)
Legal Adviser:	Mr Richard Ferry-Swainson (Legal Adviser)
Persons present and capacity:	Mr Ben Jowett (ACCA Case Presenter) Ms Nyero Abboh (Hearings Officer)
Summary:	ACCA appeal allowed and the sanction of severe reprimand substituted with that of exclusion. Mr Imtiaz's appeal allowed and no cost to be paid.

PRELIMINARY/ SERVICE OF PAPERS

1. The Appeal Committee ("the Committee") convened to consider a cross appeal by ACCA and Mr Imtiaz's appeal against parts of the decision of the Disciplinary Committee on 5 December 2022. ACCA was appealing the decision on sanction, whilst Mr Imtiaz was appealing the

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decision on the costs and fine levied against him. Mr Jowett appeared on behalf of ACCA. Mr Imtiaz appeared and represented himself.

2. The Committee was provided with all the papers from the original hearing together with a transcript from that hearing. In addition, the Committee was provided with a 14-page service bundle and the following documents from ACCA:

- Appeal Application Form, consisting of 5 pages
- Grounds of Appeal, consisting of 5 pages
- Mr Imtiaz's opposition to ACCA's appeal, consisting of one page
- Permission to Appeal - Chair's decision, consisting of 7 pages

3. The Committee was also provided with the following documents from Mr Imtiaz:

- Appeal Application Form, consisting of 5 pages
- Statement of Financial Position, consisting of 1 page
- Email from Mr Imtiaz to ACCA about his increased expenditure, consisting of 2 pages
- A Statement of Account, consisting of 1 page
- Household Expenses, consisting of 1 page
- A Meehan Bank Statement, consisting of 1 page
- A Salary Certificate, consisting of 1 page
- ACCA's Response to Mr Imtiaz's appeal, consisting of 2 pages
- Permission to Appeal - Chair's decision, consisting of 3 pages

BACKGROUND

4. On 1 November 2022 and 5 December 2022, Mr Imtiaz faced the following Allegation:

Mr Muhammad Imtiaz, at all material times an ACCA trainee

1. *Submitted or caused to be submitted to ACCA on or about 18 July 2017 an ACCA Practical Experience training record which purported to confirm:*

- a. *His Practical Experience Supervisor in respect of his practical experience training in the period 01 March 2015 to 30 June 2016 was Person A, when Person A did not and or could not supervise his practical experience training in accordance with ACCA's requirements as set out and published in ACCA's PER Guidance (the Guidance).*

b. *He had achieved: Performance Objective 2 (“Stakeholder relationship management”)*

- *Performance Objective 3 (“Strategy and innovation”)*
- *Performance Objective 4 (“Governance, risk and control”)*
- *Performance Objective 5 (“Leadership and management”)*
- *Performance Objective 15 (“Tax computations and assessments”)*
- *Performance Objective 18 (“Prepare for and plan the audit and process”)*
- *Performance Objective 19 (“Collect and evaluate evidence for an audit or assurance engagement”)*
- *Performance Objective 20 (“Review and report on the findings of an audit or assurance engagement”)*

2. *Mr Imtiaz’s conduct in respect of the matters described in allegation 1 above was:-*

a. *In respect of allegation 1a, dishonest, in that Mr Imtiaz sought to confirm his supervisor did and could supervise his practical experience training in accordance with ACCA’s requirements which he knew to be untrue.*

b. *In respect of allegation 1b dishonest, in that Mr Imtiaz knew he had not achieved the performance objectives referred to in paragraph 1 b above as described in the corresponding performance objective statements or at all.*

c. *In the alternative, any or all of the conduct referred to in paragraph 1 above demonstrates a lack of integrity.*

3. *In the further alternative to allegations 2a and or 2b above, such conduct was reckless in that it was in wilful disregard of ACCA’s Guidance to ensure:*

(i) *A Practical Experience Supervisor met the specified requirements in terms of qualification and supervision of the trainee; and/or*

(ii) *That the performance objective statements relating to the performance objectives referred to in paragraph 1 above accurately set out how the corresponding objective had been met.*

4. *By reason of his conduct, Mr Imtiaz is guilty of misconduct pursuant to ACCA bye-law 8(a)(i) in respect of any or all the matters set out at 1 to 3 above.*
5. Mr Imtiaz became an ACCA Member on 31 July 2017.
6. Regulation 3(a) of ACCA's Membership Regulations provided that one of the qualifications for membership was that the applicant had 'completed three years of approved experience in accordance with the Association's Practical Experience Requirement' ('PER'). The PER involved completing 36 months' supervised practical experience in a relevant role and demonstrating that the trainee had achieved the required number of performance objectives ('POs'). These are benchmarks of effective performance describing the types of work activities they would have been involved in as a trainee accountant. At the relevant time trainees had to achieve nine POs in total.
7. ACCA alleged that in the course of obtaining membership, Mr Imtiaz had submitted training records to ACCA on 18 July 2017, in which he claimed to have satisfied the relevant PERs. The supervisor named in the records was a former ACCA member referred to in the hearing as Person A. Person A came before a hearing of an ACCA Disciplinary Committee which concluded on 29 January 2021. That Committee found, amongst other things, that Person A had approved the Practical Experience Performance Objectives and/or supporting statements for 52 ACCA trainees when he had no reasonable basis for believing they had been achieved and/or were true. It also found that Person A had falsely claimed to have supervised the work experience of those trainees. Mr Imtiaz was alleged to have been one of those trainees. This called into question the probity of the process by which Mr Imtiaz achieved membership.
8. The Disciplinary Committee found Allegations 1, 3 and 4 proved. They found the entirety of Allegation 2 not proved. By way of sanction, the Disciplinary Committee imposed a Severe Reprimand plus a fine of £250. That Committee also made an Order for costs in the sum of £250.
9. In reaching its decision on sanction the Disciplinary Committee said:

"The Committee considered what sanction, if any, to impose in the light of its findings, having regard to ACCA's Guidance for Disciplinary Sanctions.

It first sought to identify mitigating and aggravating factors. In mitigation, it noted that Mr Imtiaz had no previous disciplinary findings against him and there was no evidence of any subsequent misconduct. The Committee regarded this as a one-off incident

resulting from Mr Imtiaz failing to pay due attention to his responsibilities when applying for membership. Mr Imtiaz did not initially respond to ACCA's correspondence but the Committee accepted his explanation that he thought the emails from ACCA were spam. Subsequently, he had fully cooperated with ACCA's investigation.

In aggravation of the seriousness of this case was the fact that Mr Imtiaz had been reckless with regard to the application process. He failed to appreciate that it is crucially important to ACCA's role, and to the status of ACCA's members, that applications for membership are properly scrutinised. He recklessly put another person in a position to rewrite his application which had the consequence that ACCA took its decision on the basis of false information.

The Committee considered the available and relevant sanctions in ascending order having regard to the Guidance for Disciplinary Sanctions.

The matters found proved were far too serious to conclude this case without making an order. The sanctions of admonishment, and then reprimand, are only suitable where the conduct is of a minor nature. In this case, the misconduct was too serious for these sanctions to be adequate.

The sanction of Severe Reprimand can be appropriate for serious misconduct if there are particular circumstances of the case or mitigation advanced which satisfy the Committee that there is no continuing risk to the public, and there is evidence of the individual's understanding and appreciation of the conduct found proved. The first factor listed in the guidance was that 'The misconduct was not intentional and is no longer continuing, though the member may have acted recklessly'. The Committee considered that that was a fair description of the misconduct in this case. Also, Mr Imtiaz had a good record and there had been no other allegations of reckless behaviour.

Other factors in the guidance were less clearly met. It was difficult to say that there was no evidence of indirect harm. Anything that undermines the integrity of the admissions process could be regarded as harmful to the public interest. Mr Imtiaz provided no references. The Committee did not consider that he had well developed insight into his misconduct. He had described his failings as a 'small mistake'.

Leaving aside a fine, the next relevant sanction available was exclusion from membership. The Committee considered that sanction carefully but ultimately concluded that it was disproportionate. The sanctions guidance said that it 'is likely to be appropriate when the behaviour is fundamentally incompatible with being a member. If Mr Imtiaz had himself submitted the false documents, the Committee would have had no doubt that this test was met. However, what he did was to pass on his log-in details to someone else who abused that trust.

The Committee concluded that severe reprimand was an insufficient sanction while exclusion would be disproportionate. It decided to impose a severe reprimand combined with a fine.

As to the amount of the fine, this had to be a significant sanction in relation to Mr Imtiaz's means. However, his means were very limited. Since there was also an application for costs, the Committee considered both matters together."

10. In reaching its decision on costs and the level of the fine the Disciplinary Committee said:

"Ms Terry applied for costs totalling £12,701 for the two days of hearing. The Committee was satisfied that the proceedings had been properly brought and that ACCA was entitled in principle to a contribution to its costs.

As to the amount of costs, the Committee noted that they included 5 hours preparation time (£825) for the Case Presenter for each day of hearing. The Committee did not consider that this was justified for the second day. Also, since the hearing would conclude within half a day, the time claimed for the case presenter and the Hearings Officer should be reduced. The Committee assessed a reasonable figure for the costs of the two days at £11,300.

The Committee next considered whether this sum should be reduced on the basis of an inability on the part of Mr Imtiaz to pay. Mr Imtiaz had submitted a statement of financial position which he confirmed in his submissions to the Committee. This showed that his only income was £2,000 per month from his employment in the UAE. He told the Committee that he had no security in that employment and no prospect of an increase in salary. His outgoings were £1,980. A significant part of that was supporting his family in Pakistan. The Committee recognised that people tend to spend up to their income and may be able to find a way to meet exceptional expenses.

Nevertheless, his means were clearly very limited. The Committee concluded that the most he could pay in the short term without causing undue hardship was £500.

The Committee had decided to impose a significant fine but it also considered that it was right that a person who had caused ACCA to incur costs should make a significant contribution. It was not fair that other members should be penalised.

The Committee concluded that Mr Imtiaz should pay a fine of £250 and make a contribution to ACCA's costs of £250."

11. On 15 December 2022, ACCA submitted an application for permission to appeal dated 15 December 2022 (in accordance with AR 3(2) and 5(1)) and provided Grounds of Appeal dated 21 December 2022. ACCA sought an appeal against the Disciplinary Committee's Order imposing a sanction of severe reprimand. ACCA asserted that this was an order that no Committee acting reasonably would have made and that the appropriate sanction should have been exclusion from membership.
12. On 20 December 2022, Mr Imtiaz submitted a written application dated 20 December 2022 for permission to appeal (in accordance with Regulation 3(1) and 5(1) of the ACCA Appeal Regulations "the ARs") against the Orders of the Disciplinary Committee of the 5 December 2022 imposing the sanction of a fine of £250 and a costs order of £250.
13. Both matters were considered by a Chair of the Appeal Committee on 23 December 2022.
14. In granting ACCA permission to appeal, the Chair stated:

"Conspicuously absent from the DC's reasons for decision document is any explanation as to why a member, who has been found to have gained membership based on false information, should continue to hold that membership. The observations made by the DC at paragraph 5 of the reasons for decision document demonstrate that the DC was not concerned with whether the member met the entry requirements for ACCA membership (i.e. whether he might have had genuine practical experience other than that put forward in the false PER) but only with the probity of the process of obtaining membership. Having found that the probity of the process was fundamentally flawed, it is essential that the DC should go on to explain why the membership should then continue.

This issue is so fundamentally important to this case that the absence of any reasoned explanation suggests that the matter had not been fully considered by the DC. No

committee acting reasonably could have imposed any sanction without considering and addressing this issue. For this reason, I conclude that the application for appeal satisfies AR5(5) and has a real prospect of success pursuant to AR 6(2)(b)."

15. In relation to Mr Imtiaz application to appeal, the Chair said:

"At the time that the financial orders were made, the DC had been provided with the document entitled "Statement of financial position" with information from the member that his income was £2000 per month. The member now asserts that his take home salary is "less than 50 pound". There is no explanation for this significant change in his finances.

This would appear to be potentially new evidence (in accordance with AR 5(2)(d)) or evidence of an error of fact made by the DC (AR 5(2)(a)) which would have altered one or more of the Committee's orders. However, without more information explaining the change in the member's financial position, this matter cannot be resolved sufficiently for me to reach a decision as to whether permission to appeal should be granted.

Therefore, in accordance with AR 6(3(c)), I direct that the member provides a detailed financial statement of income and expenditure within 14 days of the date of this document."

16. Mr Imtiaz subsequently submitted a number of documents pertaining to his financial position and consequently the Chair of the Appeal Committee considered the matter further on 11 January 2023.

17. In granting Mr Imtiaz permission to appeal, the Chair said:

"In response to the new information, ACCA has provided a document conceding that there could be a real prospect of the success of the member's appeal.

This would appear to be potentially new evidence (in accordance with AR 5(2)(d)) which would have altered one or more of the Chair's orders. I consider that the appeal has a real prospect of success in accordance with Appeal Regulation 6 and grant the member permission to appeal."

18. Both Mr Jowett and Mr Imtiaz made oral submissions to the Committee detailing their respective positions.

DECISION ON APPEAL AND REASONS

19. The Committee considered the appeals of both parties with care and took into account all the material before it together with the submissions made. The Committee accepted the advice of the Legal Adviser. The Committee was cognisant of the fact that, in accordance with the permission granted by the Chair, it was only concerned with the sanction and costs imposed and not with the findings made by the Disciplinary Committee.
20. This Committee was not bound by the decisions of the Disciplinary Committee in respect of sanction and costs. Nor was it bound by the findings of the Chair of the Appeal Committee and it reached its own decisions using its own independent judgement.
21. The Legal Adviser advised the Committee that in the case of an appeal against one or more of the orders, but not the findings, of the Disciplinary Committee, the Appeal Committee may do one or more of the following:
- (a) affirm, vary or rescind any order of the Disciplinary Committee;
 - (b) substitute any other order which the Disciplinary Committee could have made;
 - (c) in relation to any orders that have been rescinded, order that the matters be heard afresh by the Disciplinary Committee.
22. The Committee considered the question of sanction with care. It looked at all sanctions from the least serious to removal and took into account all the material provided, all the mitigating and aggravating factors identified by the Disciplinary Committee and had regard to the Sanction Guidance issued by ACCA.
23. The Disciplinary Committee had concluded the following in relation to the misconduct in this case:

“The Committee had no doubt that Mr Imtiaz’s actions did amount to misconduct. The process of demonstrating practical experience for the purpose of obtaining membership is an important one and should be treated with due care and respect. Mr Imtiaz’s reckless approach was a discredit to him, to ACCA and to the profession. Members of the profession would regard his conduct as deplorable.”

24. This Committee considered the misconduct found proved in this case to be too serious to be dealt with by taking no action or an admonishment.
25. In accordance with the Sanctions Guidance, a reprimand was not appropriate either. It could not be said that the conduct in this case was of a minor nature. The Panel noted the Disciplinary Committee's observation that it was concerned with the probity of the process by which Mr Imtiaz had gained admission to ACCA, yet also stated that it was "*not concerned*" with whether he actually met the entry requirements. The Appeal Committee considered this to be an inexplicable conclusion to arrive at. Even with Mr Imtiaz's role being found to be reckless, rather than dishonest, the fact remained that it resulted in Mr Imtiaz obtaining membership of ACCA based on false information. It meant that Mr Imtiaz had not demonstrated that he had gained the necessary practical experience to become a member of ACCA. In the Committee's view it was difficult in those circumstances to justify a reprimand.
26. The Committee then considered whether a severe reprimand would be a sufficient sanction in this case. The Guidance states that this sanction would usually be applied in situations where the conduct is of a serious nature, which it is, but there are particular circumstances of the case or mitigation advanced which satisfy the Committee that there is no continuing risk to the public and there is evidence of the individual's understanding and appreciation of the conduct found proved. In this case, the Disciplinary Committee concluded that there was no continuing risk to the public. It was difficult, however, to reconcile that conclusion with the fact that Mr Imtiaz had not demonstrated he had the requisite practical experience to be a member of ACCA. The PER procedure is an important part of ACCA's membership process and the requirements must be strictly adhered to by those aspiring to become members. ACCA's PER is based on the International Federation of Accountants International Education Standard 5, PER. ACCA's PER develops the professional knowledge and values, ethics and behaviours needed to become a professionally qualified accountant. Mr Imtiaz's reckless behaviour risked undermining that whole process. As to there being evidence of the individual's understanding and appreciation of the conduct found proved, the Disciplinary Committee found that Mr Imtiaz did not have a "*well developed insight into his misconduct*" and this Committee, having heard from Mr Imtiaz, concurred with that assessment. For all these reasons, the Committee did not consider a severe reprimand to be a sufficient sanction in this case.
27. The Committee considered that Mr Imtiaz's reckless behaviour in becoming a member on a false premise was very serious and fundamentally incompatible with continued membership of ACCA. It was difficult for the Committee to envisage a situation where a member, who has been found to have gained membership of ACCA on the basis of false information and who had not in fact demonstrated that he had the requisite practical experience, should be able to

continue to hold that membership. The Disciplinary Committee had not given any explanation for how that could be the case. The Committee considered this issue to be so fundamentally important to this case that the absence of any reasoned explanation by the Disciplinary Committee suggested the matter had not been fully considered. The Committee was satisfied that no Committee acting reasonably could have imposed any sanction without considering this issue. The purpose of sanctions, as detailed in the Guidance issued by ACCA, is to protect the public interest, which includes maintaining public confidence in the profession and ACCA and declaring and upholding proper standards of performance. The Committee considered that the public interest would not be protected by allowing a member to remain a member when it is known they obtained their membership on a false premise. To allow that position would severely undermine public confidence in the profession and ACCA as regulator and would do nothing to uphold proper standards of performance, since it was not known if Mr Imtiaz is able to satisfy the membership criteria.

28. The Committee therefore concluded that the only appropriate sanction in this case is exclusion from membership and it therefore substituted the order of severe reprimand and fine with that of exclusion.
29. The Committee then considered Mr Imtiaz's appeal against the level of the costs, which totalled to £250. The Committee did not need to consider the appeal against the fine as this was dealt with by the Committee's decision on sanction above. The Committee took into account the additional financial information provided by Mr Imtiaz, which indicated that his expenditure now exceeded his income, leaving him in deficit every month. He said this was due to a rise in the cost of living in Pakistan. When asked how he dealt with that monthly deficit, he said he would take money from others in his group of friends and "*give to another, this is how it is going on.*" He told the Committee how he continued to be an Accounts Manager, but was unable to get any promotion or increase in salary because of ACCA's action against him. Mr Jowett said that ACCA had no basis for challenging Mr Imtiaz's figures and that it was a matter for the Committee.
30. The Committee accepted Mr Imtiaz's evidence that his financial position had deteriorated and that he could no longer afford to pay any costs. The Committee therefore decided to allow his appeal and remove the requirement for him to make any contribution to the costs of the Disciplinary process.
31. Accordingly, ACCA's appeal against the sanction of severe reprimand is allowed, as is Mr Imtiaz's appeal against the costs awarded against him. These orders will have immediate effect.

COSTS OF THE APPEAL

32. The Committee noted that neither ACCA nor Mr Imtiaz made any application in relation to the costs of their respective appeals. Accordingly, the Committee made no orders in relation to costs.

Mr Martin Winter
Chair
20 February 2023