

## HEARING

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

#### REASONS FOR DECISION

**In the matter of:** Mr Nadir Khan

**Heard on:** Tuesday, 07 March 2023

**Location:** Remotely via Microsoft Teams

**Committee:** Ms Wendy Yeadon (Chair)  
Ms Jo Royden-Turner (Accountant)  
Ms Sue Heads (Lay)

**Legal adviser:** Mr Alastair McFarlane

**Persons present  
and capacity:** Ms Michelle Terry (ACCA Case presenter)  
Ms Nikita Apostol (Hearing Officer)

1. ACCA was represented by Ms Terry. Mr Khan did not attend and was not represented. The Committee had before it a bundle of papers, numbered pages 1 – 74, and a service bundle numbered pages 1 – 26.

#### SERVICE/PROCEEDING IN ABSENCE

2. Having considered the service bundle, the Committee was satisfied that notice of the hearing was served on Mr Khan in accordance with the Complaints and Disciplinary Regulations 2014 (“CDR”).
3. The Committee next considered whether it was in the interests of justice to proceed in the absence of Mr Khan. The Committee accepted the advice of the Legal Adviser. The Committee

was mindful that Mr Khan had a right to attend the hearing and to participate and that the discretion to proceed in his absence must be exercised with the utmost care and caution.

4. The Committee noted that ACCA's notice dated 07 February 2023 to Mr Khan's registered email address in Pakistan, offered him the opportunity of attending via video or telephone link. Mr Khan had not availed himself of this opportunity. It noted that in response to a follow-up email sent to the same registered email address on 14 February 2023, Mr Khan responded by email. He did not confirm as requested by the Hearings Officer whether he would be attending the hearing or address the issue of his attendance at all. He referred to the exam, his account being banned, and that there were "some difficulties during the exam". The Committee noted that he requested a refund for his fees for the exam. The Hearings Officer sent a further three chasing emails to Mr Khan (15 February 2023, 22 February 2023 and 02 March 2023) again asking whether he would be attending the hearing. There was no response. The Committee also noted that the Hearings Officer attempted to telephone Mr Khan on 06 March 2023, but the phone was hung up and there was no opportunity to leave a voicemail. She sent a further email dated 06 March 2023 confirming this telephone call and again, informing him of the hearing link to join the hearing remotely. The Committee noted that there had been no engagement from Mr Khan throughout the history of the case, save for one response in effect denying wrongdoing, on 08 December 2020 and his two emails of 14 February 2023. This was from the same e-mail address that ACCA has used throughout the case. The Committee was satisfied that reasonable attempts have been made to secure Mr Khan's attendance/participation at the hearing. The Committee was satisfied that Mr Khan had voluntarily disengaged from the process and was not persuaded that any adjournment would increase the chance of Mr Khan attending or participating further in the case. On the information before it and bearing in mind its duty to ensure the expeditious conduct of its business and the wider public interest, the Committee was satisfied that it was in the interests of justice to proceed in the absence of Mr Khan. The Committee reminded itself that his absence added nothing to ACCA's case and was not indicative of guilt.

## **ALLEGATIONS**

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

1. On 21 November 2020, failed to comply with instructions issued by ACCA personnel (as per the Student Information Sheet) before a remotely invigilated FA2 Maintaining

Financial Records exam, in that he failed to ensure he was in a room with no-one else around him, contrary to Examination Regulation 2.

2. Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended), Mr Khan failed to co-operate with the investigation of a complaint, in that he did not respond to any or all of ACCA's correspondence sent on:

(a) 14 April 2021;

(b) 18 May 2021; and

(c) 25 May 2021.

3. By reason of his conduct, Mr Khan 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 any or all of the matters set out at allegations 1 and/or 2 above.

The Committee granted ACCA's application under Regulation 10(5) to correct a clear typographical error to the date in Allegation 1 from 2021 to 2020, which it was satisfied that it could be made without injustice.

## **BACKGROUND**

5. Mr Khan registered as an ACCA student on 31 October 2019.

6. The case concerns an allegation that Mr Khan failed to ensure that he was in a room with no one else around him during an ACCA remote exam and has failed to co-operate with ACCA's investigation into his conduct.

7. On 21 November 2020, Mr Khan sat a FA2 – Maintaining Financial Records remote invigilated exam. This was ended early by the proctor (remote exam invigilator) for the following reason:

*“Exam terminated; it can be heard during securing the environment that a door has been opening and closing, 3 times to be exact. Even after doing the camera pan twice to resecure area, it is possible a person is with him in the room. IS has been contacted and informed the test taker that they cannot proceed with the exam.”*

8. An investigation was commenced. Mr Khan in his response asserted that the exam on 21 November 2020 was ended early due to technical issues and he sat the FA2 exam again on 30 November 2020, which he passed. ACCA assert that prior to April 2021, a student whose exam was ended early due to exam irregularities would not be able to book to sit another exam until the investigation has concluded. On this occasion, Mr Khan booked and sat the FA2 exam on 30 November 2020 before his ACCA account was suspended on 07 December 2020.
9. The video footage of the exam was reviewed by the Investigations Officer. The total run time of the video is 2h 05m 52s. The Investigations Officer identified the following suspicious events:
  - a) At 00h 30m 19s, Mr Khan can be seen talking to someone outside the video camera shot;
  - b) At 00h 30m 25s, sound of a door opening/closing;
  - c) At 01h 41m 41s, sound of a door opening/closing and someone outside of the video camera shot can be heard talking;
  - d) At 01h 42m 57s, sound of a door opening/closing;
  - e) At 01h 53m 32s, 01h 55m 20s sound of door opening / closing during Mr Khan performing the 360 room pan;
  - f) At 01h 57m 20s, sound of door opening / closing Mr Khan can be seen looking off screen.
10. The Investigations Officer wrote to Mr Khan at his registered email address on 14 April 2021 and requested his comments and observations on this matter by 27 April 2021. The Investigations Officer also arranged for a copy of the video to be sent to Mr Khan.
11. Mr Khan did not respond, and a first chaser was sent to his registered email address on 18 May 2021. Mr Khan was requested to respond by 24 May 2021. Mr Khan did not respond to the first

chaser. A final chaser was sent to Mr Khan at his registered email address on 25 May 2021. Mr Khan was requested to respond by 01 June 2021. ACCA has not received a response.

## **SUBMISSIONS**

### **Allegation 1 – Breach of Exam Regulation 2**

12. It is ACCA's submission that Mr Khan failed to ensure he was in a room with no-one else around him when he sat his FA2 exam on 21 November 2020. This is supported by the video of the exam where on at least three occasions, a door can be heard opening and closing and Mr Khan talking to someone outside the screen shot. In addition, this was recorded in a note by the remote invigilator. The student information sheet states:

#### *"PRIOR TO EXAM STARTING*

*• You will have a government-issued I.D. (Passport, Driving Licence or Government Issued Photographic Identification) ready and be located in a private, well-lit room with no one else around you."*

### **Allegation 2 – Failure to Co-operate**

13. ACCA submitted that by not responding to the three emails particularised, Mr Khan had breached the duty to co-operate with his Regulator set out in Regulation 3(1). ACCA's submission was that Mr Khan's failure to co-operate with ACCA's investigation into his conduct demonstrates a lack of professionalism and a disregard for ACCA's regulatory process. Mr Khan's failure to respond to questions asked by ACCA did not assist ACCA's investigation. This is a serious issue for organisations, such as ACCA, that self-regulate their membership. ACCA requires members' and registered students' co-operation in order to fully investigate complaints. ACCA reminded the Committee of the observations of Sir Brian Levenson in *Adeogba v General Medical Council [2016] EWCA Civ 162*:

*"there is a burden on...all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession."*

14. ACCA submitted that there is the public interest and there is a necessity for a registered professional to declare and uphold proper standards of conduct and behaviour. By not engaging with his professional body, Mr Khan could frustrate ACCA's central duty to regulate its members and so undermine ACCA's reputation and public confidence in it.
15. ACCA submitted that both breaching Exam Regulation 2 and the breach of the duty to cooperate by a professional with his Regulator amounted to misconduct or in the alternative, was a breach of the byelaw.

### **MR KHAN'S SUBMISSIONS**

16. There were no submissions from Mr Khan. The Committee noted that his email dated 08 December 2020 stated:

*"Dear sir*

*At the start i apologise for my collection of words because my English is weak.*

*With due respect it is stated that I am a student of Acca and I received an email regarding my fa2 exam which I attempted on 30 November 2020 as i received an email which told about 21 November 2020 according to that date the Proctor of the proctoru advised me to reschedule my exam because of location error or computer error.*

*Actually my exam held on 30 November 2020.*

*On 30 November 2020 i show everything which was required in my room to my Proctor*

*Sir it was my first experience on remote exam so as a student I became nervous.*

*I live in joint family. Due to problem of lighting i connected my laptop to charger then after sometime its switch started sparking.*

*I became confused the nervous and look there towards sparking and my laptop was powered off when I completed 48 mcqs*

*I explained the situation to my Proctor. He then accepted and we gone forward I passed my exam and at last we goodbye each other*

*My result was also entered in my Acca account*

*On 7 December 2020 I received an email from Acca as I explained*

*I can give this exam in cbe in front of camera because I read it from last 3 months I passed my fa1 ma1 FAV anime one exam after hard work*

*Sir it is requested from my heart.*

*Acca is my hobby*

*Your sincere*

*Nadir Khan”, (sic).*

## **DECISION ON ALLEGATIONS AND REASONS**

17. The Committee accepted the advice of the Legal Adviser. The Committee reminded itself that the burden of proving the allegations was on ACCA alone and that Mr Khan’s absence added nothing to ACCA’s case.

## **DECISION ON FACTS**

18. The Committee carefully considered all the documentary evidence it had received, as well as the submissions of Ms Terry on behalf of ACCA. It reminded itself to exercise caution as it was working from documents alone.
19. The Committee was satisfied under the regulations and supporting documentation that Mr Khan had a duty to ensure that no-one was in the room with him. On the basis of the documentation before it, including a viewing of the CCTV footage, that on the balance of probabilities, Mr Khan was not in a private room with no one else around him as required. The Committee was satisfied that on several occasions, the squeaking noise that could be heard was of the door opening and closing. This coupled with Mr Khan’s facial expressions and looking off camera satisfied the Committee that it was a reasonable inference to conclude that he was not at all times in the room on his own. It rejected Mr Khan’s explanation that his computer was “sparking” as implausible. It did not take into account the alleged issue of a silhouette on a wardrobe, which it felt was weak evidence. Therefore, for the reasons set out, the Committee was satisfied that Mr Khan was in breach of Exam Regulation 2.
20. The Committee was satisfied that under paragraph 3(1) of the Complaints and Disciplinary Regulations 2014, there was an obligation on Mr Khan to co-operate with ACCA in the investigation of any complaint. It was satisfied that Mr Khan made no response to ACCA’s correspondence requesting his co-operation on the 14 April 2021; 18 May 2021; and 25 May 2021. It was further satisfied that these non-responses amounted to failures as Mr Khan had a duty to respond and that therefore, he breached the obligation under the Regulations and that Allegation 2 was proved.

## MISCONDUCT

21. The Committee was satisfied that Mr Khan's duty to comply with the Exam Regulations was fundamental to maintaining the integrity of ACCA's exam system and upholding public confidence in it. The Committee was satisfied that Mr Khan knew he had to comply with this duty. Further, his duty to co-operate with his Regulator is an important one, both to enable the Regulator to properly and fairly discharge its regulatory function and to uphold public confidence in the regulatory system. Both proved allegations were therefore undoubtedly serious. The Committee had regard to the definition of misconduct in byelaw 8(c) and the assistance provided by the case law on misconduct. It was satisfied that Mr Khan's actions brought discredit on him, the Association, and the accountancy profession. For these reasons, the Committee was satisfied that Mr Khan's failure to comply with the Exam Regulations and his failure to co-operate were sufficiently serious to amount to misconduct. Given the failure amounted to misconduct, the Committee did not need to consider the alternative of liability to disciplinary action.

## SANCTIONS AND REASONS

22. The Committee noted its powers on sanction were those set out in Regulation 12(4). It had regard to ACCA's Guidance for Disciplinary Sanctions and bore in mind that sanctions are not designed to be punitive and that any sanction must be proportionate. It accepted the advice of the Legal Adviser.
23. The Committee considered that the conduct here was serious. The exam failure could undermine public trust in ACCA's qualifications and in the profession generally. In relation to non-co-operation, the Committee was mindful of what Sir Brian Levenson said in [Adeogba v General Medical Council \[2016\] EWCA Civ 162](#) : *"there is a burden on...all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession."* The Committee had regard to the public interest and the necessity to declare and uphold proper standards of conduct and behaviour. Not engaging with your professional body can frustrate the Regulator's central duty to regulate the profession and so undermines its reputation and public confidence in it.



24. The only mitigating factor the Committee identified was:
- Mr Khan had no previous disciplinary record – although he had only been a student member for 1 year.
25. The aggravating factors the Committee identified were:
- The non-cooperation failures were repeated;
  - There was no evidence that Mr Khan had any insight into the significance of his failings or its impact on public confidence in the Regulator and the profession.
26. Given the Committee's view of the seriousness of his conduct and its detrimental effect upon the reputation of the profession and the absence of insight, apology, rehabilitative steps, and co-operation, it was satisfied that the sanctions of No Further Action, Admonishment, Reprimand and Severe Reprimand were insufficient to highlight to the profession and the public the gravity of the proven misconduct.
27. The Committee determined that Mr Khan's behaviour was fundamentally incompatible with his remaining on the student register of ACCA. The conduct was a serious departure from professional standards and the failure to engage was a repeated failure. The Committee was satisfied that the only appropriate and proportionate sanction was that he be removed from the student register. The Committee did not consider that it was necessary to combine this with an order that Mr Khan may not apply for re-admission for a further period beyond the minimum period.

### **COSTS AND REASONS**

28. ACCA claimed costs of £6,134.50 and supplied a detailed and simple breakdown of its costs. Mr Khan has not provided any statement of his means. The Committee decided that it was appropriate to award costs in this case, as it was properly brought, and was persuaded that the costs claimed by ACCA were justified. It discounted a proportion of the sum claimed as the Case Presenter and Hearings Officer were not engaged for the full time claimed in the schedule as the case concluded earlier than anticipated. It was satisfied in these circumstances that the sum of £5,500 was appropriate and proportionate. Accordingly, it ordered that Mr Khan pay ACCA's costs in the amount of £5,500.

## **EFFECTIVE DATE OF ORDER**

29. This order shall take effect from the date of the expiry of the appeal period unless notice of appeal is given prior to the expiry of that period, in which case it shall become effective as described in the Appeal Regulations. The Committee determined it was not necessary to impose an Immediate Order.

**Ms Wendy Yeadon**  
**Chair**  
**07 March 2023**