

HEARING

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

In the matter of: Mr Sajjad Zakria

Heard on: Monday 20 and Tuesday 21 March 2023

Location: Remotely via Microsoft Teams

Committee: Ms Carolyn Tetlow (Chair)
Dr David Horne (Accountant)
Ms Samantha Lipkowska (Lay)

Legal Adviser: Mr Robin Havard (Legal Adviser)

Persons present

and capacity: Dr Mary-Teresa Deignan (Case Presenter on behalf of
ACCA)
Miss Geraldine Murray (ACCA Hearings Officer)

Summary Removal from student register

Costs: £100

PRELIMINARY APPLICATIONS**AS TO WHETHER THE HEARING SHOULD BE IN PUBLIC OR PRIVATE**

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1. The Committee had considered the following documents: a hearing bundle (pages 1 to 130); a supplementary bundle (pages 1 to 43), a video recording of the exam session on 02 March 2021, and a service bundle (pages 1 to 20). The Committee had also considered legal advice which it had accepted.
2. Mr Zakria made an application for the entirety of the hearing to take place in private. The grounds on which he made the application was based on his wish that his family should not become aware of the proceedings. Mr Zakria did not present any other circumstances such as health reasons to support his application.
3. Dr Deignan resisted the application, indicating that the only ground on which Mr Zakria made the application related to publicity, which was not a valid ground on which to base such an application.
4. In the circumstances, the Committee concluded that nothing had been said which suggested that there were particular personal circumstances which should not be made public and, which meant that the hearing should be in private.
5. There was a presumption that proceedings of this sort should be in public, and this was consistent with the principle of open justice.
6. If, in the course of the hearing, Mr Zakria raised an issue or said something, for example with regard to his health, which suggested that the hearing, or that part of it, should be held in private, the Committee will review the position at that time.
7. Mr Zakria's application for the hearing to take place in private was, therefore, refused.

ALLEGATIONS

Mr Sajjad Zakria (ACCA student), on 02 March 2021 during an FFA Financial Accounting examination, a remotely invigilated exam:

1. Engaged in improper conduct designed to assist him in his exam attempt in that he caused or permitted a third party to be present and to communicate with him during all or part of the exam.
2. Mr Zakria's conduct referred to in paragraph 1 above was
 - (a) in breach of examination Regulation 10; and/or
 - (b) in breach of examination Regulation 16.
3. Further, Mr Zakria's conduct as referred to in paragraphs 1 and 2 above:
 - (a) Was dishonest, in that Mr Zakria sought to obtain an unfair advantage in the examination by obtaining assistance from a third party; or in the alternative,
 - (b) Demonstrated a lack of integrity
4. Contrary to Regulation 3(1) of the Complaints and Disciplinary Regulations 2014 (as amended and in force at the time), Mr Zakria 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) 12 August 2021;
 - (b) 23 August 2021;
 - (c) 26 August 2021.
5. By reason of his conduct, Mr Zakria 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 - 4 above; or, in the alternative,

- (b) In respect of Allegations 2 and 4 only, liable to disciplinary action pursuant to byelaw 8(a)(iii).

DECISION ON FACTS, ALLEGATIONS AND REASONS

Allegations 1 and 2

8. Mr Zakria admitted allegations 1 and 2. Based on those admissions, the Committee found both allegations proved.
9. In order to better understand the context in which such admissions had been made, the Committee made additional findings of fact and took into consideration that the case as presented by ACCA had not been challenged by Mr Zakria.
10. On 29 October 2019, ACCA registered Mr Zakria as a student. As such, the Committee found that, throughout the material time, he was bound by ACCA's Byelaws and Regulations.
11. On 02 March 2021, Mr Zakria sat his FFA Financial Accounting examination ('the exam') remotely. Suspicious behaviour was noted by the proctor (remote invigilator) as described in the Incident Report, confirming that a third party could be heard whispering and possibly assisting Mr Zakria during the exam.
12. Before the exam started, Mr Zakria confirmed to the Proctor that he was familiar with the exam regulations and the exam integrity policy.
13. On 05 March 2021, an investigation was commenced. This involved obtaining documents and video footage relating to the exam and the events occurring during the exam. The investigation was commenced by ACCA Paralegal Person A, who provided a witness statement and chronology of what was observed and heard in the course of the examination.
14. The Committee had read the statement of Person A and the chronology they had prepared. The Committee had also watched the video footage. The

Committee considered that the observations of, and what was heard by, Person A were consistent with its own findings in respect of the video footage and therefore accepted their evidence.

15. The Committee was satisfied that, at the stages specified by Person A in their chronology, it could hear a third party whispering whilst in the room with Mr Zakria. It was clear that it was not Mr Zakria who was whispering as his lips did not move. Furthermore, in the course of the exam, various numbers were heard being whispered. After the number had been said, there were a number of instances when Person A stated, and the Committee found, that Mr Zakria's cursor was seen to move on screen, and he selected the question relating to the number that had been whispered.
16. As a further example, the number "thirty-six" was whispered on multiple occasions. Initially, the cursor, which moved sequentially through the questions, could be seen completing question number 5 with the answer "36%". The cursor was then used to navigate to the question overview page where candidates can select which questions to go to. The cursor selects question thirty-six.
17. At the same time as this took place, Mr Zakria was seen looking up and over the screen.
18. There were also instances where, towards the end of the exam, certain papers could be seen on a cushion to the left of Mr Zakria's desk within arm's reach whereas, when panning around the room prior to the exam, the camera had not previously shown that part of the room. Earlier in the video footage, there was a sound of pages turning but Mr Zakria did not appear to move.
19. In the course of giving evidence, Mr Zakria confirmed that two other persons were in the room with him when he took the exam. One person who was present gave no assistance. However, he admitted that the second person who can be heard whispering and providing assistance to Mr Zakria in answering questions in the exam, was a friend who was also a fellow ACCA student.

20. Based on his admissions, and its findings of fact, the Committee found that Mr Zakria engaged in improper conduct designed to assist him in his exam attempt in that he caused or permitted a third party to be present and to communicate with him during all or part of the exam. It was evident, and accepted by Mr Zakria, that his friend and fellow ACCA student was trying to give him information relevant to the exam. Whether or not such information proved to be correct was immaterial. Mr Zakria also told the Committee that he had not gained the benefit from his friend's presence during the exam which he had hoped for, which the Committee considered was similarly immaterial.
21. As a consequence, and again based on his admissions, the Committee was satisfied that Mr Zakria's conduct was in breach of Examination Regulations 10 and 16.

Allegation 3(a)

22. The Committee relied on its findings of fact under allegations 1 and 2 above.
23. The Committee reminded itself of the test for dishonesty as set out in the case of *Ivey v Genting Casinos* [2017] UKSC 67.
24. The Committee also took into account the admission of Mr Zakria that his conduct was dishonest.
25. The Committee found that, on the basis on which it had found allegations 1 and 2 proved, Mr Zakria knew that it was improper conduct to allow a third party to be present in the room in which he was taking the exam. He told the Committee that he knew it was not allowed. Mr Zakria also knew it was improper to seek assistance from that third party and to communicate with them during the exam.
26. The Committee was satisfied that, by the standards of ordinary decent people, such conduct, namely cheating in a professional exam, would be considered to be dishonest.
27. Consequently, the Committee found allegation 3(a) proved.

Allegation 3(b)

28. On the basis that this allegation was pleaded in the alternative to allegation 3(a), the Committee made no finding in respect of it.

Allegation 4

29. On 04 May 2021, ACCA sent a letter as an attachment to an email to Mr Zakria's registered email address, [Private]. The letter informed Mr Zakria of the investigation into his conduct in the exam on 02 March 2021. The Proctor's Incident Report in respect of the exam was attached as an appendix together with a chronology. The attachments also included screenshots taken from the video footage of the exams. Within this letter, Mr Zakria was asked a series of questions about his conduct during the exam. The letter contained the following paragraph:

"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."

30. Mr Zakria was required to respond by 25 May 2021. No response was received.
31. On 21 May 2021, a further email was sent, encouraging Mr Zakria to respond by 25 May 2021. No response was received.
32. On 26 May 2021, ACCA sent another letter to Mr Zakria's registered email address reminding him of his obligation to co-operate with the investigation and seeking his response by 09 June 2021.
33. In a response dated 09 June 2021 purportedly from Mr Zakria, he denied that the whispers that could be heard on the sound recording of the video footage were emanating from the room where he was sitting the exam and maintained that the source of the whispers must have been outside the room.

34. In a further lengthier and more detailed response understood to have been sent on or about 21 June 2021 emanating from his email address, ACCA's allegations were denied in their entirety. A considerable amount of detail was included in the email to support the denial of any wrongdoing. It was denied that another person was in the same room as Mr Zakria during the exam, even though the video footage showed the shadows of another person being present and whispering could be heard.
35. There was a further email understood to have been sent on 21 June 2021 answering two further questions from ACCA.
36. However, in his oral evidence to the Committee, Mr Zakria denied that he had written the three responses in June 2021. Mr Zakria had not provided a written statement in advance of the hearing. Therefore, the account he provided in the course of his oral evidence represented the first time in the history of this matter that he had alleged that it was someone other than himself who had been corresponding with ACCA. He suggested that the person who wrote the emails was his friend who was the ACCA student who was present in the room and who can be heard whispering. Mr Zakria refused to say the name of the person but maintained that he had not been aware until much later that the emails had been sent, and it therefore followed that he was not aware of their content.
37. It was suggested by Mr Zakria in his oral evidence that, both at the time and after he took the exam, he did not own a mobile or any other device which would enable him to send or receive emails. The Committee noted however that Mr Zakria had shown a mobile phone on the video of the exam and made a point of placing it out of reach on top of the wardrobe. He stated that the mobile number registered with ACCA was that of his brother. Furthermore, he maintained that his friend and fellow ACCA student was in control of Mr Zakria's email account and his ACCA log in details. He continued to maintain that he was completely unaware until many months later that the emails of June 2021 had been sent.
38. The Committee did not find his evidence to be credible. It was not plausible that someone other than Mr Zakria would provide the level of detail contained in the

emails of June 2021 and, in particular, the first email of 21 June 2021. It was also highly improbable that someone he described as a good friend and his, "class fellow" with whom he studied would have made no mention to Mr Zakria of the fact that he had written the emails in Mr Zakria's name.

39. The Committee also noted that, until today, Mr Zakria had denied the allegations on the basis set out in the three emails of June 2021 even though he stated that he had not written those emails. He nevertheless made no mention of the suggestion that his friend wrote those emails before the hearing today. That was despite the fact that, in November 2022, he completed and signed the Case Management Form ("CMF") in which he maintained a denial of all the allegations. Indeed, in his CMF, he stated as follows:

"During the exam I find the question difficult and i can't focus on question due to which I was stressed and started looking around. I was in hostel and may be you heard the noise of other peoples in my hostel around my room."(sic)

40. The Committee found, on the balance of probabilities, that it was Mr Zakria who had drafted, and sent to ACCA, the emails of June 2021. It rejected his evidence that he was unaware of the emails having been sent to ACCA. It also rejected his account that he was not aware of, and therefore did not respond to, the emails on 12, 23 and 26 August 2021 because he had been assured by his friend that all had been resolved. The Committee found such an explanation to be highly implausible.
41. It was also inconsistent with an alternative account he gave in the course of his oral evidence that he stopped looking at emails when he saw that they related to an investigation.
42. The Committee heard evidence from Person B, ACCA paralegal. It accepted Person B's evidence and found that the emails in May and June 2021 had been delivered successfully, based on the responses having been sent by Mr Zakria in June 2021.

43. The emails of 12, 23 and 26 August 2021 had been sent to the same address as shown on the screenshots of the register for those three dates. Person B stated, and the Committee found, that those three emails had been delivered successfully.
44. The Committee was satisfied that the emails of 12, 23 and 26 August 2021 had been received by Mr Zakria and that he had failed to respond. The Committee found that, at the material time, Mr Zakria was in control of his email account. This failure to respond amounted to a failure to cooperate with ACCA in the course of its investigation.
45. On this basis, the Committee found allegation 4 proved.

Allegation 5(a)

46. Taking account of its findings that Mr Zakria had cheated in an exam and had thereby acted dishonestly, the Committee was satisfied that he was guilty of misconduct in that such conduct could properly be described as deplorable. In the Committee's judgement, it brought discredit to Mr Zakria, the Association and the accountancy profession.
47. In respect of allegation 4, 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 Zakria had failed to cooperate with ACCA and to respond to correspondence.
48. The Committee had taken into consideration that the email of 12 August 2021 contained a substantial amount of information and a significant number of detailed questions which Mr Zakria was required to answer. The emails of 23 and 26 August 2021 were designed to encourage Mr Zakria to provide the information requested in the first email to enable ACCA to continue with its investigation.
49. The need for 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.

50. The Committee found that the failure of Mr Zakria to cooperate with his regulator also amounted to misconduct in that such failure brought discredit to himself, ACCA and the accountancy profession.
51. On this basis, the Committee found allegation 5(a) proved.

Allegation 5(b)

52. On the basis that this allegation was pleaded in the alternative to allegation 5(a), the Committee made no finding in respect of it.

SANCTION AND REASONS

53. 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 listened to the submissions of Dr Deignan and Mr Zakria. It had also heard legal advice from the Legal Adviser which it accepted.
54. 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.
55. 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.
56. The Committee considered whether any mitigating or aggravating factors featured in this case.
57. The Committee accepted that there were no previous findings against Mr Zakria. However, the Committee took into consideration the fact that, at the

time the exam took place, Mr Zakria had only been a student member since 29 October 2019 i.e. approximately one year four months before he sat the exam.

58. The Committee had no information regarding Mr Zakria's personal circumstances other than his statement that he was "not a rich man" and relied entirely on financial support from his father. It had not been provided with any testimonials or references as to Mr Zakria's character.
59. The Committee noted that in all communications with ACCA up until the first day of the hearing, Mr Zakria had denied all allegations. Indeed, he had provided a number of accounts, some of which were contradictory, which sought to mislead ACCA, and subsequently the Committee, regarding the circumstances which led to the investigation and allegations.
60. Nevertheless, the Committee took account of the fact that he subsequently admitted that he had cheated in the exam and he accepted that he had acted dishonestly. Furthermore, the Committee considered that Mr Zakria had shown a level of remorse and contrition for his wrongdoing which it considered to be genuine.
61. However, the Committee was not satisfied that Mr Zakria had shown any real insight into the seriousness of his conduct. The Committee had listened carefully to Mr Zakria's submissions in mitigation. The Committee acknowledged that he had sat, and passed, certain ACCA exams since March 2021. It also listened to Mr Zakria stating that he had to wait nine months for the hearing and that he had wasted a considerable amount of time. However, the Committee did not consider that such a lapse of time was in any way excessive or prejudicial. It also acknowledged that this would be difficult news for him to give to his family.
62. The Committee had found Mr Zakria to have been guilty of two different types of misconduct, both of which the Committee considered to be very serious.
63. The Committee found Mr Zakria's misconduct was aggravated by the fact that he had shown insufficient insight. His submissions centred on the consequences for him rather than any appreciation or understanding why such

conduct was so damaging to the reputation of, and the trust of the public in, ACCA and the accountancy profession.

64. On the basis of its findings, the Committee concluded that neither an admonishment nor a reprimand would represent a sufficient and proportionate outcome. Neither sanction would adequately reflect the seriousness of the Committee's findings.
65. The Committee then considered whether a severe reprimand would be an appropriate sanction. Again, taking account of the seriousness of its findings, and reflecting on the criteria suggested in the Guidance, the Committee did not consider that a severe reprimand would be sufficient or proportionate.
66. Mr Zakria had been found to have acted dishonestly in a premeditated and deliberate manner. The Committee was also concerned that, based on its findings, the objective of his dishonest conduct was to obtain unfair assistance in order to pass the exam. It ran the risk that, in this way, Mr Zakria may have gained his qualification when not competent to do so and also gave him an unfair advantage over those students who behaved properly and within the guidelines when sitting their exams. This was conduct which was fundamentally incompatible with being a student member of ACCA.
67. As stated in the Guidance:

"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."

68. The Committee considered such guidance applied equally to student members such as Mr Zakria.
69. Mr Zakria had also failed to cooperate with his regulator, ACCA, in respect of an investigation of potentially serious allegations which had subsequently been held to be well-founded. His lack of engagement in relation to the investigation

of his conduct during an exam represented conduct which was also fundamentally incompatible with being a student member of ACCA. His lack of engagement, his lack of candour, and his refusal to admit his failure to cooperate with his regulator and show any proper insight for his lack of cooperation, led the Committee to conclude that, currently, there was no guarantee that Mr Zakria would behave in a manner expected of a member of ACCA.

70. The Committee had considered whether there were any reasons which were so exceptional or remarkable that it would not be necessary to remove Mr Zakria from the student register but could find none.
71. The Committee concluded that the only appropriate, proportionate and sufficient sanction was to order that Mr Zakria shall be removed from the student register.

COSTS AND REASONS

72. The Committee had been provided with a costs schedule (pages 1 to 6) relating to ACCA's claim for costs. This included a statement of means from Mr Zakria.
73. The Committee concluded that ACCA was entitled to be awarded costs against Mr Zakria, all allegations having been found proved. The amount of costs for which ACCA applied was £11,061.00. The Committee did not consider that the claim was unreasonable. Indeed, the level of costs had necessarily increased substantially due to Mr Zakria's denial of all allegations until the first day of the hearing.
74. Mr Zakria had provided ACCA with a schedule of means although he had not provided any documentary evidence in support. Nevertheless, he confirmed that he relied entirely on his father for financial support and he had no income of his own. The information contained in the schedule had not been challenged by Dr Deignan and it was clear that the household income was modest. Further, it represented income of Mr Zakria's father as opposed to Mr Zakria himself.

75. In all the circumstances, and exercising its discretion based on the information before it in respect of Mr Zakria's financial status, the Committee considered that it was reasonable and proportionate to reduce the award of costs to ACCA to the nominal sum of £100.00.

EFFECTIVE DATE OF ORDER

76. The Committee had considered whether the order should have immediate effect. However, ACCA had not sought such an order and the Committee did not consider that he presented a current risk to the public. It therefore concluded it was not in the interests of the public to make an order which takes effect immediately.
77. 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 Carolyn Tetlow
Chair
21 March 2023